## \*\*\* 1NC

### PIC

#### Jason and I advocate that there are some who should remain imprisoned. Others should be released.

#### It’s competitive b/c the aff advocates for universal abolition whereas our strategy is more fluid and allows for particular demands to be made.

#### Vote negative to endorse a radical embrace of uncertainty in place of a unitary executive and unitary theory of the structure of contemporary political space.

Ernesto LACLAU Political Theory @ Essex 7 [*Giorgio Agamben: Sovereignty and Life* eds. Matthew Calarco and Steven DeCaroli p. 21-22]

Needless to say, we fully reject Agamben's third thesis, according to which the concentration camp is the nomos or fundamental biopolitical paradigm of the West. He asserts: The birth of the camp in our time appears as an event that decisively signals the political space of modernity itself. It is produced at the point at which the politi­cal system of the modern nation-state, which was founded on the functional nexus between a determinate localization (land) and a determinate order (the State) and mediated by automatic rules for the inscription of life (birth or the nation), enters into a lasting crisis, and the State decides to assume directly the care of the nation's biological life as one of its proper tasks. . . . Something can no longer function within the traditional mechanisms that regulated this inscription, and the camp is the new, hidden regulator of the inscription of life in the order—or, rather, the sign of the system's inability to function without being transformed into a lethal machine. (HS, 174-75) This series of wild statements would only hold if the following set of rather dubious premises were accepted: I. That the crisis of the functional nexus between land, State, and the automatic rules for the inscription of life has freed an entity called "biological—or bare—life" That the regulation of that freed entity has been assumed by a single and unified entity called the State That the inner logic of that entity necessarily leads it to treat the freed entities as entirely malleable objects whose archetypical form would be the ban Needless to say, none of these presuppositions can be accepted as they stand. Agamben, who has presented a rather compelling analysis of the way in which an ontology of potentiality should be structured, clos­es his argument, however, with a naïve teleologism, in which potentiality appears as entirely subordinated to a pre-given actuality. This teleologism is, as a matter of fact, the symmetrical pendant of the "ethymologism" we have referred to at the beginning of this essay. Their combined effect is to divert Agamben's attention from the really relevant question, which is the system of structural possibilities that each new situation opens. The most summary examination of that system would have revealed that: (1) the crisis of the "automatic rules for the inscription of life" has freed many more entities than "bare life," and that the reduction of the latter to the former takes place only in some extreme circumstances that cannot in the least be considered as a hidden pattern of modernity; (z) that the pro­cess of social regulation to which the dissolution of the "automatic rules of inscription" opens the way involved a plurality of instances that were far from unified in a single unity called "the State"; (3) that the process of State building in modernity has involved a far more complex dialec­tic between homogeneity and heterogeneity than the one that Agamben's ‘`camp-based" paradigm reflects. By unifying the whole process of mod­ern political construction around the extreme and absurd paradigm of the concentration camp, Agamben does more than present a distorted his­tory: he blocks any possible exploration of the emancipatory possibilities opened by our modern heritage**.** Let me conclude with a reference to the question of the future as it can be thought from Agamben's perspective. He asserts: "Only if it is pos­sible to think the Being of abandonment beyond every idea of law (even that of the empty form of laws being in force without significance) will we have moved out of the paradox of sovereignty towards a politics freed from every ban. A pure form of law is only the empty form of relation. Yet the empty form of relation is no longer a law but a zone of indistinguishabil­ity between law and life, which is to say, a state of exception" (HS, 59). We are not told anything about what a movement out of the paradox of sover­eignty and "towards a politics freed from every ban" would imply. But we do not need to be told: the formulation of the problem already involves its own answer. To be beyond any ban and any sovereignty means, simply, to be beyond politics. The myth of a fully reconciled society is what governs the (non-)political discourse of Agamben. And it is also what allows him to dismiss all political options in our societies and to unify them in the concentration camp as their secret destiny. Instead of deconstructing the logic of political institutions, showing areas in which forms of struggle and resistance are possible, he closes them beforehand through an essentialist unification. Political nihilism is his ultimate message.

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#### FIRST OFF IS TOPICALITY—

#### Our interpretation is that debate is a game which should revolve around the topic. Our interpretation is that the affirmative should defend some type of statutory or judicial restrictions on the war powers authority of the President of the U.S. in one of the topic areas.

#### “USFG should” means the debate is about a topical action established by governmental means

Jon M. ERICSON, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., 3 [*The Debater’s Guide*, Third Edition, p. 4]

The Proposition of Policy: Urging Future Action

In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb should—the first part of a verb phrase that urges action. 3. An action verb to follow should in the should-verb combination. For example, should adopt here means to put a program or policy into action though governmental means. 4. A specification of directions or a limitation of the action desired. The phrase free trade, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the affirmative side in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

#### They don’t meet—they don’t do one of the 5.

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### Judicial means the court

WEST’S LAW 08 [West's Encyclopedia of American Law, edition 2. http://legal-dictionary.thefreedictionary.com/judicial]

Relating to the courts or belonging to the office of a judge; a term pertaining to the administration of justice, the courts, or a judge, as in judicial power.

A judicial act involves an exercise of discretion or an unbiased decision by a court or judge, as opposed to a ministerial, clerical, or routine procedure. A judicial act affects the rights of the parties or property brought before the court. It is the interpretation and application of the law to a particular set of facts contested by litigants in a court of law, resulting from discretion and based upon an evaluation of the evidence presented at a hearing.

Judicial connotes the power to punish, sentence, and resolve conflicts.

#### Indefinite detention authority is Presidential war power authority to detain enemy combatants

MASUR 5—Law clerk to the Honorable Richard A. Posner, Seventh Circuit Court of Appeals, Chicago, IL. J.D., magna cum laude, Harvard Law [Jonathan Masur, A Hard Look or a Blind Eye: Administrative Law and Military Deference, Hastings Law Journal, February, 2005, 56 Hastings L.J. 441]

While Padilla left factual scrutiny in service of the rule of law dangling by a "gossamer" thread, the Fourth Circuit's opinion in Hamdi sliced the remaining strand completely. The facts and procedural history of Hamdi v. Rumsfeld—consolidated alongside Padilla for certiorari [\*466] review by the Supreme Court n94—are by now as well known as those of its Second Circuit companion. Little further explication is necessary or instructive here. n95 Indeed, the Fourth Circuit's approach and reasoning in Hamdi largely mimics the Padilla district court's n96 emphasis on the Executive's special constitutional role. The Hamdi appellate court first acknowledged that Yaser Hamdi, an American citizen, could not be held indefinitely by the Executive without some fashion of judicial review. n97 The Fourth Circuit, like the Southern District of New York, understood that meaningful judicial review of the legality of an alleged enemy combatant's detention required consideration of the underlying facts that gave rise to the President's war power authority to detain combatants in the first instance. n98 It is inappropriate, explained the Hamdi appellate court, for Article III courts to second-guess lawful executive decisions in wartime. However, courts must first ascertain whether those decisions were indeed lawful, an inquiry that demands examination of the predicate facts according to which executive action is taken. n99

[\*467] Yet the court selected an impossibly low standard for assessing the government's factual case against Hamdi: if the government has asserted facts that "would, if accurate, provide a legally valid basis for Hamdi's detention," the court will not inquire further—the court viewed the veracity of those asserted facts as beyond its purview. n100 The Hamdi appellate court located the Executive's right to essentially unfettered discretion over the factual basis for Hamdi's incarceration within the President's plenary constitutional authority over national security and foreign affairs, committing the same error of conflation made by the court in Padilla. n101 The Fourth Circuit stated further that anything beyond token judicial oversight would encroach upon the Executive's Article II war-making powers, ignoring the countervailing notion that judicial withdrawal might constitute an abdication of the court' own constitutional responsibilities. n102 The Fourth Circuit's overly deferential [\*468] approach to the military compelled it to criticize the district court for engaging in more searching review and demanding from the government even a quantum of proof of Hamdi's putative guilt. n103 Such a standard strips much of the potency of the rule of law; the government need barely proffer any proof, much less "substantial" evidence or "a preponderance of the evidence," before being allowed to detain Yaser Hamdi indefinitely. By refusing to inquire meaningfully into the facts underlying and legitimating the government's deprivation of Hamdi's constitutionally guaranteed liberty, the Fourth Circuit had effectively demoted its powerful conception of the rights at stake to the status of mere precatory language. n104

#### Our interpretation is best—

#### 1. Predictability—ignoring the resolution opens up an infinite number of topics—this undermines our ability to have in-depth research on their arguments destroying the value of debate.

#### Modest predictability of the resolution is worth potential substantive tradeoff. Topicality creates space for relevant debate.

Toni M. MASSARO, Professor of Law, University of Florida, 89 [August, 1989, “Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?” *Michigan Law Review*, 87 Mich. L. Rev. 2099, Lexis]

Yet despite their acknowledgment that some ordering and rules are necessary, empathy proponents tend to approach the rule-of-law model as a villain. Moreover, they are hardly alone in their deep skepticism about the rule-of-law model. Most modern legal theorists question the value of procedural regularity when it denies substantive justice.52 Some even question the whole notion of justifying a legal decision by appealing to a rule of law, versus justifying the decision by reference to the facts of the case and the judges' own reason and expe-rience.53 I do not intend to enter this important jurisprudential de-bate, except to the limited extent that the "empathy" writings have suggested that the rule-of-law chills judges' empathic reactions. In this regard, I have several observations.

My first thought is that the rule-of-law model is only a model. If the term means absolute separation of legal decision and "politics," then it surely is both unrealistic and undesirable.54 But our actual statutory and decisional "rules" rarely mandate a particular (unempathetic) response. Most of our rules are fairly open-ended**. "Relevance,"** "the best interests of the child," "undue hardship," "negligence," or "freedom of speech" - to name only a few legal concepts - hardly admit of precise definition or consistent, predictable application. Rather, they represent a weaker, but still constraining sense of the rule-of-law model. Most rules are **guidelines** that **establish** spheres of **relevant** **conversation**, **not** **mathematical** **formulas**.

Moreover, legal training in a common law system emphasizes the indeterminate nature of rules and the significance of even subtle variations in facts. Our legal tradition stresses an inductive method of discovering legal principles. We are taught to distinguish different "stories," to arrive at "law" through experience with many stories, and to revise that law as future experience requires. Much of the effort of most first-year law professors is, I believe, devoted to debunking popular lay myths about "law" as clean-cut answers, and to illuminate law as a dynamic body of policy determinations constrained by certain guiding principles.55

As a practical matter, therefore, our rules often are ambiguous and fluid standards that offersubstantial room for varying interpretations. The interpreter, usually a judge, may consult several sources to aid in decisionmaking. One important source necessarily will be the judge's own experiences -including the experiences that seem to determine a person's empathic capacity. In fact, much ink has been spilled to illuminate that our stated "rules" often do not dictate or explain our legal results. Some writers even have argued that a rule of law may be, at times, nothing more than a post hoc rationalization or attempted legitimization of results that may be better explained by extralegal (including, but not necessarily limited to, emotional) responses to the facts, the litigants, or the litigants' lawyers,56 all of which may go un-stated. The opportunity for contextual and empathic decisionmaking therefore already is very much a part of our adjudicatory law, despite our commitment to the rule-of-law ideal.

Even when law is clear and relatively inflexible, however, it is not necessarily "unempathetic." The assumed antagonism of legality and empathy is belied by our experience in rape cases, to take one important example. In the past, judges construed the general, open-ended standard of "relevance" to include evidence about the alleged victim's prior sexual conduct, regardless of whether the conduct involved the defendant.57 The solution to this "empathy gap" was legislative action to make the law more specific - more formalized. Rape shield statutes were enacted that controlled judicial discretion and specifically defined relevance to exclude the prior sexual history of the woman, except in limited, justifiable situations.58 In this case, one can make a persuasive argument not only that the rule-of-law model does explain these later rulings, but also that obedience to that model resulted in a triumph for the human voice of the rape survivor. Without the rule, some judges likely would have continued to respond to other inclinations, and admit this testimony about rape survivors. The example thus shows that radical rule skepticism is inconsistent with at least some evidence of actual judicial behavior. It also suggests that the principle of legality is potentially most critical for people who are least understood by the decisionmakers - in this example, women - and hence most vulnerable to unempathetic ad hoc rulings.

A final observation is that the principle of legality reflects a deeply ingrained, perhaps inescapable, cultural instinct. We value some procedural regularity - "law for law's sake" - because it lends stasis and structure to our often chaotic lives. Even within our most intimate relationships, we both establish "rules," and expect the other party to follow them.59 Breach of these unspoken agreements can destroy the relationship and hurt us deeply, regardless of the wisdom or "substantive fairness" of a particular rule. Our agreements create expectations, and their consistent application fulfills the expectations. The modest predictability that this sort of "formalism" provides actually **may encourage human relationships**.60

#### 2. Ground—the resolution exists to create fair division of aff and neg ground—any alternative framework allows the aff to pick a moral high ground that destroys neg offense.

#### Our argument is a *deliberative* strategy to reach consensus about the best way to debate. Our argument is not that “the aff has violated a rule and are not allowed to debate this way”—instead we say “we think the model of debate you are proposing is not productive and a model that privileges predictable advocacies would create superior debate.” We then engage in a process of debate in order to decide whether the affirmative’s or negative’s version of debate would be better.

#### We should endorse procedures that ensure exposure of our positions to the best range of evidence and reasoning.

Cheryl **MISAK** Philosophy @ Toronto **‘8** “A Culture of Justification: The Pragmatist's Epistemic Argument for Democracy” *Episteme* 5 (1) p. 95-97

I have argued in Truth, Politics, Morality (2000) that when C. S. Peirce, the founder of pragmatism, unpacks the idea of the scientific method, the epistemic notions of truth and justification are strenuously linked to the political ideal of democracy and the values associated with it – the values of freedom of association, freedom of speech, listening to the views of others, expanding public spaces in which open debate can flourish, etc. The epistemic argument for democracy which is implicit in Peirce’s thought is, in a nutshell, as follows. One of Peirce’s many lasting contributions to philosophy was the pragmatist account of truth, on which a true belief is one that would **stand up to inquiry**. A true belief is one that is indefeasible – it would not be improved upon; it would forever meet the challenges of reasons, arguments, and evidence. Peirce argues that the best method for achieving our aspirations to truth is what he calls the method of science. He has a minimalist conception of this method – it is just the method that pays attention to experience. Then here is the connection between truth and the method of science. A true belief is one that best fits with experience and argument, so one is committed, as an inquirer or truth-seeker, to taking experience seriously. Hence, one is committed to the method of science and to trying to ensure that the experiences of all are taken into consideration. If a domain of inquiry is to aspire to truth, it must be open – it must encourage the free exchange of results, experiences, arguments, and ideas. Scientific inquiry can thus be seen as a democratic kind of inquiry. The contemporary pragmatist Hilary Putnam puts it this way: “Democracy is a requirement for experimental inquiry. . . . To reject democracy is to reject the idea of being experimental” (Putnam 1994, 64; see also his 1992, 180). Here is another way of putting the argument. We should put our beliefs through the tests of inquiry in order to make them the best they can be. We should expose our beliefs to **reasons**, **arguments**, and **evidence**. If we want to arrive at beliefs that will withstand criticism and accommodate all the evidence, then it is best to throw criticism and evidence at our beliefs so we know whether they might withstand it. Information, arguments, and evidence must be freely exchanged, so that we can ensure that our beliefs are responsive to them. Freedom of association, freedom of speech, etc. are necessary aspects of a deliberation that is suited to getting us the right answers to our questions. On the Peircean view of truth, truth is a product of human inquiry. This holds for all domains of inquiry, but it is especially clear in political inquiry. Inquirers take human interests and contexts seriously in the messy business of political deliberation (how could they not?). They are fallible and they need to seek out potentially conflicting experience if their beliefs are going to be properly aimed at truth. They never know that they have the truth in hand, but only that they are following a method that is conducive to finding the truth. 3 . DEWEY, INQUIRY, AND DEMOCRACY Dewey was the most explicit of the classical pragmatists about linking democracy and inquiry. But just as Peirce’s view needs elucidation, so does Dewey’s. Putnam is one contemporary pragmatist who offers him a hand. His Dewey argues that there are two kinds of justification of something. You can aim your justification at the skeptic or you can aim it at those who are already a part of a community in that they presuppose certain things together. This is a thought at the very heart of pragmatism: Peirce, for instance, argued that the doubts of the skeptic are “tin” or “paper” doubts, not effective against living belief. Throughout the process of inquiry or deliberation, we are aiming at revising our beliefs when prompted by real doubt. Presaging Neurath’s metaphor about building our boat of knowledge while still at sea, Peirce says that inquiry is not standing upon the bedrock of fact. It is walking upon a bog, and can only say, this ground seems to hold for the present. Here I will stay till it begins to give way. (CP 5.589, 18982) Peirce, James, and Dewey speak with one voice when they suggest that we are always immersed in a context of inquiry, where the decision to be made is a decision about what to believe from here, not what to believe were we able to start from scratch – from certain infallible foundations. Putnam (1992, 188) argues that Dewey starts with this basic pragmatist idea that we have to begin with our capacities and current practices and turns his interest to our capacities to intelligently initiate action, to talk, and to experiment. Democracy, he suggests, is a precondition of these practices. The method that we use to solve problems, from physics to politics, is to experiment, reflect, and discuss. The scientific method requires the unimpeded flow of information and the freedom to offer and to criticize hypotheses. Elizabeth Anderson (2006) describes Dewey’s account of inquiry this way. We propose solutions to the problems which press upon us, try to predict the consequences of the solutions’ implementations, and ask whether our reactions to those consequences would be positive or negative. We then test the solution that has withstood the challenge of testing in thought experiment or experiment in the imagination. That is, we see what the results actually are. Dewey thought, with Peirce, that if a belief were to always withstand challenges, if it were to always stand up to experience and argument, there is nothing higher or better we could ask of it. He too, that is, sees the pragmatist account of truth as a central feature of the pragmatist’s epistemic argument for democracy. In order to flesh out that argument, we need to address some concerns about mixing truth and politics.

#### Limits produce a rigorous *culture of justification* instead of a culture of *assertion* or *presumption*. Without a bridge for subjecting beliefs to a rigorous test, we are left with might-makes-right. Limits are revisable – but revisions must also be open to well-researched testing.

Cheryl **MISAK** Philosophy @ Toronto **‘8** “A Culture of Justification: The Pragmatist's Epistemic Argument for Democracy” *Episteme* 5 (1) p. 100-104

The charge that Rorty has had to face again and again is that he really is a relativist, holding that one belief is no better than another, and that one must “treat the epistemic standards of any and every epistemic community as on a par” (Haack 1995, 136). Rorty, that is, leaves us with no way of **adjudicating claims** that arise in **different communities**. It is argued that this is not only an unsatisfactory view, but it is **incompatible** with his **commitment to his own set of beliefs** and with his practice of **arguing** or **giving** **reasons** for them. Peirce would join in this charge, arguing that it is the community of inquirers or reasoners that matter, not this or that local community. One of Rorty’s responses to this clutch of objections is to say that he doesn’t have to treat the epistemic standards of every community as on a par: “I prize communities which share more background beliefs with me above those which share fewer” (Rorty 1995b, 153). There is nothing incoherent about asserting that your community has it right, for all “right” amounts to is what your community agrees upon. I have argued (2000, 12ff) that this kind of comeback puts Rorty in a very difficult position, giving him nothing to say against the likes of Carl Schmitt, the fascist legal philosopher who found it natural to join the Nazi bandwagon. Schmitt, like Rorty, argued that there is no truth and rationality in politics. Rather, politics is the arena in which **groups assert themselves**, with the strongest coming out on top and the weaker groups disappearing. One makes an existential choice – opts for a conception of the good – and then tries to attain “substantive homogeneity” in the population. Might ends up being right and the elimination of those who disagree with us ends up being a fine method of reaching our political decisions. A democrat or liberal like Rorty has an impossible time in giving us – and himself – reasons for opting for his view rather than his fascist opponent’s view. Once you give up aiming at truth, once you give up aiming at something that goes beyond the standards of your own community, then you give up the wherewithal to argue against the might-is-right view. The charge I am trying to answer here, on behalf of the non-Rortian pragmatist, is that mixing truth and politics is dangerous. One of the points I want to make is that, whatever the dangers are in saying morals and politics aim at the truth, the dangers of denying it are even more alarming. If we were to get rid of the notion of truth, nothing would protect us from the idea that there is nothing to get right, no better or worse action, and no better or worse way of treating others. Nothing would protect us from the Schmittian worldview. Another point is that the pragmatist view encourages something which is downright salutary, not dangerous at all. It encourages a culture of justification, a culture the importance of which grows as we face the challenges of living in a global society with **worldviews struggling against each other**. This thought was prominent in the debate about how the new democratic order in South Africa should be conceived. Here is how Etienne Murienik put it: If the new constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification – a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defense of its decisions, not the fear inspired by the force of its command. The new order must be a community **built on persuasion,** not on coercion.4 A final point rests on the nature of the kinds of answers the pragmatist envisions. Rorty and Rawls seem to think that any view of truth carries with it the idea that there is one and only one true answer to every question. It is important to see that, whatever the case might be for other views of truth, the pragmatist’s view of truth does not entail anything about the precise nature of right answers. On the Peircean view of truth, it might be true that the best solution to a problem is to compromise in a certain way. Or a question might have a number of equally right answers: it might be true that either A or B or C is an acceptable solution to a problem. That is, bringing truth into politics need not result in a view on which one theory of the good triumphs over the others. Indeed, the pragmatist account of truth does not require agreement at the end of the day (whatever that might mean) and it does not require the consent of all who are affected by a particular decision here and now. The right answer to a question might be one that only a few see is right. A right answer is the one that would be best – would stand up to the evidence and arguments – were we to inquire into the matter as far as we fruitfully could. That is, we are **not primarily aiming at agreement** in **deliberation** – we are aiming at getting a view that will **stand up to reasons and evidence.** That said, there may be cases in moral and especially political deliberation in which we do aim for agreement because we think that what will best stand up to reasons in that case is a solution that is agreed upon by all or by all who are affected. But this will be just one kind of case amongst many. Right answers aren’t necessarily answers that are acceptable by all. Nor are right answers necessarily those that resolve a conflict with a compromise, although sometimes a compromise or cooperative solution may indeed be what is required. Nor is bargaining always not conducive to truth – in some cases, that may be exactly what is required. This view of truth does not lead to zeal, oppression, closing off of discussion, or a squashing of pluralism, even if it might happen to be the case that there is only one reasonable conception of the good out there. The idea is that we are always aiming at getting the best answer – whatever that may be – and to do that we need to take into account the views of all. 6 . WHO DECIDES? One of the first questions put to those who would like to think of politics as a species of truth-oriented deliberation is this: why deliberate with the ignorant multitude? Would it not be better to expose our moral and political beliefs only to the reasons and experience of experts? Science, after all, doesn’t work by asking the person in the street what he or she thinks about quantum mechanics. The reason that the pragmatist’s epistemic justification is a justification of democratic politics, rather than of a hierarchical politics, in which an elite makes decisions, is that we do not and will not ever have an identifiable pool of moral and political experts. Dewey saw this clearly. As experts become specialized, “they are shut off from knowledge of the needs which they are supposed to serve” (Dewey 1926/1984, 364). Everyone engages in moral and political deliberation and it is not obvious that having special education makes you better at it – just look at priests, politicians, and moral philosophers/political theorists and ask yourself if they seem especially decent or especially wise when it comes to practical matters. Some people are good at examining moral and political issues, but it’s not clear that they are the ones trained to do so. Even if we could identify genuinely wise people, this kind of expertise is liable to be corrupted merely by being identified – merely by the wise person starting to think of herself as a moral expert.5 And it is far from clear that the rule of the wise would really take the views and experiences of all into account better than the democratic rule of the people. So how do we distinguish deliberating well and deliberating badly if we cannot appeal to education and training? No account of deliberative democracy can ignore the call to make the distinction. The trouble is that, in saying what good, as opposed to poor, deliberation amounts to, one finds oneself facing a justificatory problem: how can we specify what good deliberation is without simply assuming that our current standards of deliberation and inquiry are the gold standards? (This is the deep and central question of pragmatism: how do genuine norms arise out of contingent practices?) It will be unsurprising that I agree with Robert Talisse that the way forward is to focus on an epistemic justification of the whole range of deliberative virtues. Some of the virtues we think important in inquiry are open-mindedness, courage, honesty, integrity, rigor, willingness to listen to the views of others and to seriously entertain challenges to one’s own views, willingness to put oneself in another’s shoes, and the like. These virtues may well have a number of kinds of justifications – justifications, for instance, with their origins in the canons of etiquette or in this or that substantive moral or religious view. Politeness and Christianity (do unto others . . . ), for instance,may both dictate that we should listen to the views of others. But this kind of justification doesn’t break out of the circle of local practices. Talisse argues that the virtues are justified because they lead to true belief. Listening to others is not merely the polite thing to do, but it is also good because we might learn something. The epistemic argument I have presented on Peirce’s behalf gets us this far: we need to expose our beliefs to the views of others if we are to follow a method that will get us good or better or true beliefs. Talisse takes us the next step – there are other characteristics that make one an inquirer who aims at the truth. Honesty is the trait of following reasons and evidence, rather than self-interest. Modesty is the trait of taking your views to be fallible. Charity is willingness to listen to the views of others. Integrity is willingness to uphold the deliberative process, no matter the difficulties encountered. The distinction between deliberating well (having deliberative virtues) and deliberating badly (having deliberative vices), that is, is drawn in terms of whether a method promotes beliefs which are responsive to and fit with the reasons and evidence. 7 . THE SOURCE OF AUTHORITY The pragmatist has offered us a compelling reason to take the views of others seriously and encourage the values associated with deliberative democratic politics. For inquirers must engage in the ongoing project of continually subjecting their beliefs to the tests of further experience and argument. The virtues inherent in a deliberative model of democratic citizenship must be cultivated if we are to come to good beliefs about how to treat others, how to resolve conflicts, and how to arrange society. The model of democratic citizenship which results is one that makes democratic citizenship part of a culture of justification. Citizens search for how best to structure our institutions and how best to live our lives. Democratic citizenship is a quest to get things right, with a genuine engagement in looking for right answers to pressing questions.We are not after mere agreement and we are not after the transformation of initial preferences into something that others can accept. We aim at getting things right – at getting beliefs that would forever stand up to scrutiny. In so aiming, citizens commit themselves to abiding by the decisions produced by the democratic procedure. For those decisions are the best we can do here and now. Here we find the justification of the coercive power of democracies. Eventually there has to be a decision in politics. The question that faces all societies is who decides and who wields the power to coerce once the decision is made? My argument is that as more people deliberate and more reasons and experience go into the mix, it will become more likely that the decisions made will account for the reasons and experience of all. The more likely, that is, that the answer will be right. Decisions produced by a democratic deliberative process are made by a rational method and so they are enforceable.

### 1NC DA

#### Restricting detention creates a perverse incentive for drone use—that’s worse

Gartenstein-Ross 12—Daveed Gartenstein-Ross, J.D. from NYU School of Law, is the Director of the Center for the Study of Terrorist Radicalization at the Foundation for Defense of Democracies, a Washington-based think tank. He frequently consults on counter-terrorism for various government agencies as well as the private sector [Dec 4 2012, “Gitmo's Troubling Afterlife: The Global Consequences of U.S. Detention Policy,” http://www.theatlantic.com/international/archive/2012/12/gitmos-troubling-afterlife-the-global-consequences-of-us-detention-policy/265862/]

One option, of course, is ending preventive detention entirely, which is favored by many of Obama's critics on the left. But that carries second-order consequences of its own, since al Qaeda has not ended its fight against the United States, nor is the broader problem of violent non-state actors going to disappear. If the U.S. doesn't employ preventive detention, doesn't this create a perverse incentive for killing rather than capturing the opponent? As Wittes writes, "The increasing prevalence of kill operations rather than captures is probably not altogether unrelated to the fundamental change in the incentive structure facing our fighters and covert operatives."

Moreover, if the U.S. tries to wash its hands of preventive detention, detainees will almost certainly end up in worse conditions as a result. The idea has seemingly taken hold that because detention of violent non-state actors by Western governments is unjustifiable and immoral, "local" detention is preferable. So, for example, the United States supported recent military efforts by African Union, Somali, and Ke

nyan forces to push back the al Qaeda-aligned Shabaab militant group in southern Somalia. The U.S. did not take the lead in detaining enemy fighters, and instead its Somali allies did so. But when one compares, say, detention conditions in Somalia to those in Gitmo, the latter is far more humane. If the U.S. and other Western countries eschew detention when fighting violent non-state actors, somebody is going to have to do it, and that alternative is almost certainly going to be worse for the detainees themselves.

What these second-order consequences point to is the fact that reform of U.S. detention policy is more vital than moving detainees to other facilities. William Lietzau, the deputy assistant secretary of defense for rule of law and detainee policy, has told me that the detention of violent non-state actors is an unsettled area of law. To Lietzau, defined and developed rules govern the prosecution of criminals, while the Geneva Conventions govern detention of privileged belligerents under the law of war. But for unprivileged belligerents, such as violent non-state actors, the applicable law is largely undefined. Lietzau has even designed a chart, which has become famous among his colleagues, illustrating the law's lack of development.

This is not to say that moving detainees from Guantánamo to the continental United States is necessarily a bad idea. One could argue that removing that symbol is important. Further, in the long run, moving the detainees may actually save money, since everything at Gitmo, from food to construction materials, must be imported at high cost. But the location of the detention does not address any substantive concerns.

Though it will not be easy, working with partners like the International Committee of the Red Cross to forge a better set of principles and procedures governing the detention of unprivileged belligerents is far more important than moving the Gitmo detainees elsewhere. Put simply, violent non-state actors will continue to challenge the nation-state, so nation-states need a way to deal with detention in this context. Our current policy of pretending that we have moved past noncriminal detention all but ensures we will be caught flat-footed the next time such detention is necessary in a large scale, and thus that the problems inherent to detaining unprivileged belligerents will have gone unaddressed.

#### Maximizing all lives is the only way to affirm equality

Cummiskey 90—David, Professor of Philosophy, Bates [Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, JSTOR]

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. Persons may have "dignity, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), but, as rational beings, persons also have a fundamental equality which dictates that some must sometimes give way for the sake of others. The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

### Solvency

#### “Focusing on specific roadmaps and results is debilitative to movements and a misinterpretation of history – no one ever knew that a particular strategy would work – it’s all about work and testing strategies”

#### The negative social view of the impaired impact all of society, causing it to recreate an ethic of exclusion

Barnes, 1992. Colin Barnes, Professor of Disability Studies in the [School of Social and Health Sciences Halmstad University](http://www.hh.se/english/research/professors/colinbarnes.8675.html), 1992, “*DISABLING IMAGERY AND THE MEDIA*” KL

This section has demonstrated how the vast majority of information about disability in the mass media is extremely negative. Disabling stereotypes which medicalise, patronise, criminalise and dehumanise disabled people abound in books, films, on television, and in the press. They form the bed-rock on which the attitudes towards, assumptions and about and expectations of disabled people are based. They are fundamental to the discrimination and exploitation which disabled people encounter daily, and contribute significantly to their systematic exclusion from mainstream community life. It is also clear that recent attempts by some elements in the media to remedy the situation and 'normalise' disabled people will only partly resolve the problem. The only solution with any hope of success is for all media organisations to provide the kind of information and imagery which; firstly, acknowledges and explores the complexity of the experience of disability and a disabled identity and; secondly, facilitates the meaningful integration of all disabled people into the mainstream economic and social life of the community. Failure to adopt such an approach has important implications for both disabled people and society as a whole. At present around twelve per cent of Britain's population are disabled people. It is highly likely that this figure will increase dramatically in the next few years due to several factors including medical advances and an ageing population - the likelihood of acquiring an impairment increases significantly with age. Disablism in the media is no longer simply morally and socially reprehensible it is economically inept.

#### Exposing and Complicating rhetoric is key to expose and stop the hegemonic unawareness and bias that hides in the language we use.

**Lunsford 2005** *(Scott, Scott Lunsford has his M.A. in writing and began his PhD in Rhetoric and Writing studies in 2005, January 1st 2005, “ Seeking a Rhetoric of the Rhetoric of Dis/abilities”, Rhetoric and Composition PhD Papers, Department of English,* [*http://digitalcommons.utep.edu/cgi/viewcontent.cgi?article=1000&context=rhet\_comp&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Ddisability%2520and%2520rehtoric%26source%3Dweb%26cd%3D10%26ved%3D0CHsQFjAJ%26url%3Dhttp%253A%252F%252Fdigitalcommons.utep.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1000%2526context%253Drhet\_comp%26ei%3DOaTsT\_2lJIuY8gSI-6y-BQ%26usg%3DAFQjCNGi67PqtbUndsIS7f6HPkueRkRJ8A%26sig2%3DsO\_68H9jX3Eo8B09DxEAPg#search=%22disability%20rehtoric%22*](http://digitalcommons.utep.edu/cgi/viewcontent.cgi?article=1000&context=rhet_comp&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Ddisability%2520and%2520rehtoric%26source%3Dweb%26cd%3D10%26ved%3D0CHsQFjAJ%26url%3Dhttp%253A%252F%252Fdigitalcommons.utep.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1000%2526context%253Drhet_comp%26ei%3DOaTsT_2lJIuY8gSI-6y-BQ%26usg%3DAFQjCNGi67PqtbUndsIS7f6HPkueRkRJ8A%26sig2%3DsO_68H9jX3Eo8B09DxEAPg#search=%22disability%20rehtoric%22)*, accessed 6/28/12, JK)*

So, yes, discussing words, and ultimately asking why we valorize some words over others, is important. How else do we perform metadiscussions without these words, words appropriate or not? When we stop interrogating the rhetoricity of rhetoric we stop theorizing about our own discipline. I think it’s safe to say that we might never find the answers to Why?, but it doesn’t mean we shouldn’t ask the questions about our own rhetorics. When we stop complicating any rhetoric, its discourse may become fixed, second-nature, and taken for granted. We stop thinking about that discourse, and, eventually, it becomes trite and slips into silence and then invisibility. We cannot stop questioning what becomes commonplace: “It must be that way because it’s always been that way.” And, thus, we cannot stop questioning authority. Science, for example, in its authoritative “absolutism” and “objectivity,” should not escape criticism of labels used about people with disabilities. Should we not question scientific terms which are set firm because of their very “scientificity”? James Wilson takes on this question in his symposium article, “Evolving Metaphors of Disease in Postgenomic Science: Stigmatizing Disability.” He examines terms used in eugenics, terms which can be figuratively attached to attributes shared by people with disabilities. The eugenics movement, Wilson says, attempts in part to “eliminate so-called ‘defectives’” such as “deadbeat,” “oft-shifty,” “renegade,” and “immigrant” DNA sequences (199). Genes termed as mutants, lesions, and errant “are cast as misfits that subvert the social collective” (198). Thus, these metaphors “are profoundly disturbing to many members of the disability community” (199). If these terms are set by science, what is the likelihood for change? Does science prevail while rhetoric continues only to ask questions? Probably. But the fact that we are even asking questions about terms and tropes leads to awareness. When we become aware that science is not always linguistically appropriate, that there might just be a Hearing culture, that terms not yet created will someday be so and people will have their disagreements with these new terms as well—when we become conscious of all of these and more, we will not return to hegemonic unawareness where dis/abilities are invisible. Deconstructing questions must always be asked, for if we become satisfied with our answers, we run the risk of slipping back into our own comfortable silence.

#### Obama will disregard the demand. He is on record that he will always keep detaining

Pyle 12—Professor of constitutional law and civil liberties @ Mount Holyoke College [Christopher H. Pyle, “Barack Obama and Civil Liberties,” Presidential Studies Quarterly, Volume 42, Issue 4, December 2012, Pg. 867–880]

Preventive Detention

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, Holder has chosen to deny some prisoners any trials at all, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, the president considered asking Congress to pass a preventive detention law. Then he decided to institute the policy himself and defy the courts to overrule him, thereby forcing judges to assume primary blame for any crimes against the United States committed by prisoners following a court-ordered release (Serwer 2009).

According to Holder, courts and commissions are “essential tools in our fight against terrorism” (Holder 2009). If they will not serve that end, the administration will disregard them. The attorney general also assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt for the rule of law than this refusal to abide by the judgment of a court. Indeed, it is grounds for Holder's disbarment.

As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. The National Defense Authorization Act of 2012 authorized the military to round up and detain, indefinitely and without trial, American citizens suspected of giving “material support” to alleged terrorists. The law was patently unconstitutional, and has been so ruled by a court (Hedges v. Obama 2012), but President Obama's only objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b).

Thus, Obama's “accomplishments” in the administration of justice “are slight,” as the president admitted in Oslo, and not deserving of a Nobel Prize. What little he has done has more to do with appearances than substance. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge.

It is probably naïve to expect much more of an elected official. Few presidents willingly give up power or seek to leave their office “weaker” than they found it. Few now have what it takes to stand up to the national security state or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

#### The public wants security—not liberty—and they can’t alter that choice. This is an enduring cognitive transformation.

Huq 12—Professor of law @ University of Chicago [Aziz Z. Huq, “Structural Constitutionalism as Counterterrorism,” California Law Review, 100 Calif. L. Rev. 887, August, 2012]

\*\*\*TMT=Terror Management Theory

Evidence for TMT's application to terrorism derives from experimental studies in which control and treatment groups' preferences over candidates and policies are measured after the treatment group has been exposed to terrorism-related mortality reminders. Four studies are worth reporting. The first, conducted before the 2004 presidential election, found terrorism-related mortality reminders increased support for George W. Bush over John Kerry  [\*937] among both liberals and conservatives, independent of rational Bayesian updating based on new information. n261 A second 2004 study found "registered voters ... reported intending to vote for Senator John Kerry by a huge margin in psychologically benign conditions, but favored Bush after a mortality salience induction." n262 Similar to the first study, experimental subjects were not supplied with new information about the candidates, which might have otherwise confounded the results of the study. The third study found that exposure to terrorism-related material led subjects to view President Bush as more charismatic and less blameworthy for policy failures on his watch. n263 More pertinent here, it also identified a positive effect for state-level politicians (for example, governors), who typically have few terrorism-related responsibilities. n264 The study found that subjects felt "particularly compelled to protect a given leader against accusations of wrongdoing" under conditions of terrorist threat. n265 In other words, threat induced the suppression of evidence inconsistent with a preference for a strong leader. The fourth study analyzed cross-sectional national polling data from 2000, 2002, and 2004. It found that positive feelings toward diverse out-groups, both with and without affective connections to terrorism (e.g., both immigrants and homosexuals), "decrease in the face of terrorist threat." n266 This study is significant because it is not vulnerable to the external validity critiques to which studies conducted with university students are often subjected.

All four studies illustrate the effect of terrorism on preferences, even after controlling for the effect of new information. This last aspect of the studies merits emphasis. It might be thought that shifts in public preferences over the  [\*938]  past decade are best explained by the simple fact that a terrorist event provides observers with new information about the world. When controlling for this possibility, these studies isolate distortive cognitive effects that are independent of empirical updating. The third study additionally demonstrates that motivated cognitive responses to terrorism may dampen the processing of negative information about leaders in ways that leave incompetent or ill-intentioned leaders in place. And the final study suggests that judgments about in-groups and out-groups of all kinds change as terrorism risk perceptions change.

In the aggregate, this research demonstrates that the public will demand a policy response to terrorism based not merely on new information about risk, but also based on a cognitive tendency to weigh terrorism risk heavily. They will also suppress information about the government's failures and impose superfluous burdens on disfavored out-groups.

A second line of experiments tests how exposure to terror or threat affects people's normative judgments. It confirms that terrorism does not merely drive people to take more extreme versions of prior positions but pushes all toward pro-security policies. This research uses a concept of "authoritarianism," which is defined to include a predisposition to submit to authority and to prefer "moral absolutism and conformity"; intolerance and castigation of dissidents and deviants; and animosity and aggression toward racial and ethnic out-groups. n267 Consider a 2006 authoritarianism study of national cross-sectional data from the Cooperative Congressional Study. n268 The sample was divided by degree of perceived threat. Among those who did not see terrorism as a significant threat, there was a significant gap in preferences between authoritarians and nonauthoritarians. Among those who did see a large threat, the gap narrowed: nonauthoritarians' preferences moved toward those of authoritarians. n269 Under conditions of perceived threat, nonauthoritarians and authoritarians converged on a preference for military force over diplomacy. n270 Terrorism's effect on political psychology also appears to be asymmetric in the sense that it affects those with different normative priors in different ways. n271

 [\*939]  In sum, recent empirical work demonstrates that terrorism triggers a need for increased security, predictability, and control. This induces voters across the political spectrum to tilt toward "resistance to change and opposition to equality, which reduce uncertainty and threat." n272 Such biasing effect is not transmitted via briefly experienced emotion, but follows from a change in underlying cognitive demands. n273 The TMT research thus suggests that incidents of terrorism can have enduring cognitive consequences. Although experiments have not yet provided a satisfactory account of the temporal dimensions of cognitive change, one study found that the effects of 9/11 on  [\*940] attitudes towards civil liberties lingered five years after the event. n274 Other experimental TMT studies have found significant effects in responses to questions about terrorism years after 9/11. n275 Thus, it might be posited that the operative cognitive mechanism is not a short-term response akin to quotidian fear or panic, but a more enduring species of cognitive transformation.

#### Politics requires a higher level of attention to detail—means consequences aren’t just “blackmail” they’re a reality you have to confront

Issac 2—Professor of Political Science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale [Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, “Ends, Means, and Politics,” p. Proquest]

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

## \*\*\* 2NC

### T version

#### The argument that being topical is structurally unfair for them is a self-serving assertion used to sidestep clash—critiquing any part of the resolution, like the FG, to legitimize avoiding topical action gets co-opted by the right for the opposite purpose.

TALISSE 5— Robert, philosophy professor at Vanderbilt [“Deliberativist responses to activist challenges,” *Philosophy & Social Criticism*, 31.4]

\*\*\*gendered language in this article refers to arguments made by two specific individuals in an article by Iris Young

My call for a more detailed articulation of the second activist challenge may be met with the radical claim that I have begged the question. It may be said that my analysis of the activist’s challenge and my request for a more rigorous argument presume what the activist denies, namely, that arguments and reasons operate independently of ideology. Here the activist might begin to think that he made a mistake in agreeing to engage in a discussion with a deliberativist—his position throughout the debate being that one should decline to engage in argument with one’s opponents! He may say that of course activism seems lacking to a deliberativist, for the deliberativist measures the strength of a view according to her own standards. But the activist rejects those standards, claiming that they are appropriate only for seminar rooms and faculty meetings, not for real-world politics. Consequently the activist may say that by agreeing to enter into a discussion with the deliberativist, he had unwittingly abandoned a crucial element of his position. He may conclude that the consistent activist avoids arguing altogether, and communicates only with his comrades. Here the discussion ends.

However, the deliberativist has a further consideration to raise as his discursive partner departs for the next rally or street demonstration. The foregoing debate had presumed that there is but one kind of activist and but one set of policy objectives that activists may endorse. Yet Young’s activist is opposed not only by deliberative democrats, but also by persons who also call themselves ‘activists’ and who are committed to a set of policy objectives quite different from those endorsed by this one activist. Once these opponents are introduced into the mix, the stance of Young’s activist becomes more evidently problematic, even by his own standards.

To explain: although Young’s discussion associates the activist always with politically progressive causes, such as the abolition of the World Trade Organization (109), the expansion of healthcare and welfare programs (113), and certain forms of environmentalism (117), not all activists are progressive in this sense. Activists on the extreme and racist Right claim also to be fighting for justice, fairness, and liberation. They contend that existing processes and institutions are ideologically hegemonic and distorting. Accordingly, they reject the deliberative ideal on the same grounds as Young’s activist. They advocate a program of political action that operates outside of prevailing structures, disrupting their operations and challenging their legitimacy. They claim that such action aims to enlighten, inform, provoke, and excite persons they see as complacent, naïve, excluded, and ignorant. Of course, these activists vehemently oppose the policies endorsed by Young’s activist; they argue that justice requires activism that promotes objectives such as national purity, the disenfranchisement of Jews, racial segregation, and white supremacy. More importantly, they see Young’s activist’s vocabulary of ‘inclusion’, ‘structural inequality’, ‘institutionalized power’, as fully in line with what they claim is a hegemonic ideology that currently dominates and systematically distorts our political discourses.21

The point here is not to imply that Young’s activist is no better than the racist activist. The point rather is that Young’s activist’s arguments are, in fact, adopted by activists of different stripes and put in the service of a wide range of policy objectives, each claiming to be just, liberatory, and properly inclusive.22 In light of this, there is a question the activist must confront. How should he deal with those who share his views about the proper means for bringing about a more just society, but promote a set of ends that he opposes?

It seems that Young’s activist has no way to deal with opposing activist programs except to fight them or, if fighting is strategically unsound or otherwise problematic, to accept a Hobbesian truce. This might not seem an unacceptable response in the case of racists; however, the question can be raised in the case of any less extreme but nonetheless opposed activist program, including different styles of politically progressive activism. Hence the deliberativist raises her earlier suspicions that, in practice, activism entails a politics based upon interestbased power struggles amongst adversarial factions.

### AT: Kappeler

#### The critique is disempowering—it cedes the political sphere.

Kath Gelber, Lecturer in Australian Politics and Human Rights at the University of New South Wales, 1995 (“The Will To Oversimplify,” *Green Left Weekly*, Issue 198, August 16, Available Online at http://www.greenleft.org.au/back/1995/198/198p26b.htm, Accessed 12-23-2004)

The Will to Violence presents a powerful and one-sided critique of the forces which enable violence between individuals to occur. Violence between individuals is taken in this context to mean all forms of violence, from personal experiences of assault to war.

Kappeler's thesis is that violence in all these cases is caused in the final instance by one overriding factor -- the individual choice to commit a violent act. Of course, in one sense that is true. Acknowledging alternative models of human behaviour and analyses of the social causes of violence, Kappeler dismisses these as outside her subject matter and exhorts her readers not to ignore the “agent's decision to act as he [sic] did”, but to explore “the personal decision in favour of violence”.

Having established this framework, she goes on to explore various aspects of personal decisions to commit violence. Ensuing chapters cover topics such as love of the “other”, psychotherapy, ego-philosophy and the legitimation of dominance.

However, it is the introduction which is most interesting. Already on the third page, Kappeler is dismissive of social or structural analyses of the multiple causes of alienation, violence and war. She dismisses such analyses for their inability to deal with the personal decision to commit violence.

For example, “some left groups have tried to explain men's sexual violence as the result of class oppression, while some Black theoreticians have explained the violence of Black men as a result of racist oppression”. She continues, “The ostensible aim of these arguments may be to draw attention to the pervasive and structural violence of classism and racism, yet they not only fail to combat such inequality, they actively contribute to it” [my emphasis].

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## \*\*\* 1NR

### Ablism

#### Ableist rhetoric is empirically based in xenophobic ideals and was used to exclude people for extermination, immigrants were considered “feebleminded”, leading to their systematic sterilization and institutionalization. Disability rhetoric paints people with disabilities as something to be controlled or eliminated in favor of “able-bodied” people.

**Wilson 2003** *(James, James C. Wilson is a Professor of English at the University of Cincinnati, where he teaches in a pro-fessional writing and editing program, 2003, “Evolving Metaphors of Disease in Postgenomic Science: Stigmatizing Disability”, Rhetoric Review, Volume 22, Page 197-202,* <http://www.jstor.org/stable/3093041>,  *Accessed 6/28/12, JK)*

Another common rhetorical strategy in postgenomic discourse is to describe the ongoing evolution of the human genome as a war between "positive" and Rhetoric "negative" selection (Liberles). Positive selection is sometimes referred to as "purifying selection." For example, J. K. Pritchard, writing in a recent issue of the American Journal of Human Genetics, proposes "an explicit model for the evaluation of complex disease loci, incorporating mutation, random genetic drift, and the possibility of purifying selection against susceptibility mutations" (124). Here we see the military metaphors so common to medical discourse applied to genomics, as those elements of the human genome designated as socially dys-functional wage war against good citizen genes and the evolutionary forces of purification. According to this rhetorical scheme, proteins also participate in the military campaign to capture the genome. For example, the p53 protein, which is activated in response to DNA-damaging agents and which functions as a tumor suppresser, is often cast as a "key regulator" and "the 'guardian of the genome,"' (Verhagen). Proteins like p53 wage war against the socially undesirable elements of the genome. The ubiquity of these tropes, as well as their historical echoes, are profoundly disturbing to many members of the disability community. Metaphors of "deadbeat,"" oft-shifty,"" renegade," and "immigrant" DNA sequences, when combined with the concept of genetic purification, evoke the problematic history of an earlier science of purification: eugenics. Based on Gregor Mendel's theory of heredity, the American eugenics movement (from about 1910 through 1939) focused increasingly on "negative" eugenics-that is, on identifying, controlling, and eliminating so-called "defectives" so as to prevent them from passing on undesirable genetic traits. Charles B. Davenport founded and directed the Station for Experimental Evolution and the Eugenics Record Office at Cold Spring Harbor, Long Island, in 1910. Davenport and others at the Eugenics Record Office attempted to establish the inheritability of social behaviors, intelligence, and personality." Criminality,"" feeblemindedness,"" shiftlessness," and other such nebulous traits were among those found to be prevalent among certain populations, especially eastern Europeans, Mediterraneans, and Russian Jews. This psuedo-scientific method of social control was underwritten by a growing xenophobia. Increased immigration from southern and eastern Europe trig-gered a wave of hysteria that, in turn, led to eugenics-based anti-immigration legislation such as the Johnson-Lodge Immigration Act of 1924. Henry H. Goddard, a member of the Committee on Eugenics (with Charles B. Davenport), perfected the Binet-Simon intelligence scale as an instrument by which to screen immigrants for defective genes. Using his test, Goddard found, for example, that 40 to 50 percent of immigrants arriving at Ellis Island were "feebleminded." Another committee, the Committee to Eradicate Feeblemindedness, was funded by members of some of America's most prominent families (including the Vanderbilts and the Harrimans). The committee sponsored various eugen-ics-based strategies to control the feebleminded, including institutionalization and forced sterilization. Eventually, more than 30 states complied by enacting laws designed to incarcerate and forcibly sterilize those designated as feeble-minded or otherwise defective.5 The work of these committees might seem laughable today were it not for the harm they caused those who became the objects of their scrutiny. For example, when Charles B. Davenport opened the Eugenics Record Office, he ap-pointed Princeton PhD HarryW . Laughlina is its superintendent and hired graduates of Radcliffe, Vassar, and the Ivy League schools to interview people in poor and working class neighborhoods in New York and New Jersey. After a few weeks of training, Davenport's upper-class recruits considered themselves competent to diagnose, by sight alone, such conditions as criminalism, feeblemind-edness, and shiftlessness. Of shiftlessness, Davenport determined the following: Let us take "shiftlessness" as an important element in poverty. Then classifying all persons in [...] two families as very shiftless, some-what shiftless, and industrious the following conclusions are reached. When both parents are very shiftless practically all children are "very shiftless" or "somewhat shiftless." Out of 62 offspring, 3 are [.. .] "industrious" or about 5 per cent. When both parents are shiftless in some degree about 15 per cent of the known offspring are recorded as industrious. When one parent is more or less shiftless while the other is industrious only about 10 per cent of the children are "very shiftless." (Qtd. in Hubbard and Wald 18) Far from scientific, these findings simply reveal the prejudices (of class, race, and ability) held by Davenport and his colleagues. It is this unfortunate legacy of discrimination that resonates in the meta-phors used by Avise and the other biomedical researchers quoted above. As in eugenics discourse, physical difference has been transformed into social devi-ance. Problematic genes and proteins, construed as social misfits, serve to under-mine the social collective (the human genome) much as the hordes of suppos-edly feebleminded and shiftless immigrants disembarking at Ellis Island were accused of undermining American society in the first decades of the twentieth century. By extension, then, people with disease/disability are postgenomic de-fectives to be controlled or eliminated by genetic engineers. The metaphors that currently shape postgenomic research stigmatize disability in ways that are only beginning to be understood

### Fairness O/W

#### Fairness outweighs—debate is played for its own sake—fairness outweigh all other concerns.

Villa 96—Dana Villa Political Theory @ UC Santa Barbara [*Arendt and Heidegger: the Fate of the Political* p. 37]

If political action is to be valued for its own sake, then the content of political action must be politics “in the sense that political action is talk about politics.” The circularity of this formulation, given by George Kateb, is unavoidable. It helps if we use an analogy that Kateb proposes, the analogy between such a purely political politics and a game. “A game,” writes Kateb, “is not ‘about’ anything outside itself, it is its own sufficient world…the content of any game is itself.” What matters in a game is the play itself, and the **quality of this play** is **utterly** **dependent** upon the **willingness** and ability of the **players** to **enter the “world” of the game**. The Arendtian conception of politics is one in which the spirit animating the “play” (the sharing of words and deeds) comes **before all else**—before personal concerns, groups, interests, and even moral claims. If allowed to dominate the “game,” these elements detracts from the play and from the performance of action. A good game happens only when the players submit themselves to its spirit and **do not allow subjective or external motives to dictate the play**. A good game, like genuine politics, is played for its own sake.

### AT: Kappeler

#### The critique is disempowering—it cedes the political sphere.

Kath Gelber, Lecturer in Australian Politics and Human Rights at the University of New South Wales, 1995 (“The Will To Oversimplify,” *Green Left Weekly*, Issue 198, August 16, Available Online at http://www.greenleft.org.au/back/1995/198/198p26b.htm, Accessed 12-23-2004)

The Will to Violence presents a powerful and one-sided critique of the forces which enable violence between individuals to occur. Violence between individuals is taken in this context to mean all forms of violence, from personal experiences of assault to war.

Kappeler's thesis is that violence in all these cases is caused in the final instance by one overriding factor -- the individual choice to commit a violent act. Of course, in one sense that is true. Acknowledging alternative models of human behaviour and analyses of the social causes of violence, Kappeler dismisses these as outside her subject matter and exhorts her readers not to ignore the “agent's decision to act as he [sic] did”, but to explore “the personal decision in favour of violence”.

Having established this framework, she goes on to explore various aspects of personal decisions to commit violence. Ensuing chapters cover topics such as love of the “other”, psychotherapy, ego-philosophy and the legitimation of dominance.

However, it is the introduction which is most interesting. Already on the third page, Kappeler is dismissive of social or structural analyses of the multiple causes of alienation, violence and war. She dismisses such analyses for their inability to deal with the personal decision to commit violence.

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### Cp overview

#### Analogizing contemporary violence to a global concentration camp turns into a victory for fascism. Their framing erases specific experiences, survival tactics, and suffering of concentration camp innmates.

Dominick LaCAPRA Bryce and Edith M. Bowmar Professor of Humanistic Studies @ Cornell 4 [*History in Transit: experience, identity, critical theory* p. 180-185]

Agamben not only sees Primo Levi as speaking for the Muselmann but he generalizes the gray zone in a manner that threatens to undo significant distinctions and to eventuate in a view of all existence in terms of the limit event or situation as a state of exception, if not emer­gency or crisis, in which the exception becomes the rule. I have noted that, from Agamben's postapocalyptic perspective, "Auschwitz marks the end and the ruin of every ethics of dignity and conformity to a norm" and "Levi, who bears witness to the drowned, speaking in their stead, is the cartographer of this new terra ethica, the implaca­ble land-surveyor of Muselmannland" (69). Of Levi, Agamben also writes: "He is the only one who consciously sets out to bear witness in place of the Muselmanner, the drowned, those who were demol­ished and touched bottom" (59). The problem here is not the argu­ment that Auschwitz, or the Muselmann in particular, poses distinctive problems for ethics or that it is dubious to impute essential dignity to the Muselmann, especially for self-serving reasons. What is problem­atic pertains to the synecdochic use of the Muselmann as a theoretical cypher to disprove human dignity and to discredit all preexisting (perhaps all presently conceivable) forms of ethics. What remains of ethics (if it still can be called ethics) in Agamben is dissociated from law and voided of all forms of normativity (including responsibility and guilt). It seems to eventuate in an empty utopianism and a form of political romanticism ("as Spinoza knew, the doctrine of the happy life" [24]). In any case, Agamben takes a potential in humanity and, rather than examining closely its historical role in Auschwitz and comparing it carefully to other situations and possibilities, actualizes it in universal terms by generalizing the Muselmann as the prototype or exemplar of humanity. This condition humaine, as "life in its most extreme degradation," becomes "the touchstone by which to judge and measure all morality and dignity" (ibid.).% The result is an unsi­tuated, extreme mode of victimology or identification with the abject and utterly disempowered—something that, despite its transhistori­cal cast, might most generously be seen as a radical reversal of, or perhaps an overcompensation for, extreme victimization under the Nazis. See also Slavoj 2i2ek, Did Somebody Say Totalitarianism? (London: Verso, 2001), chap. 2. One difficulty with Agamben's generalization of the gray zone is that it allows an illegitimate metaleptic slippage from the defensible view that there is an impor­tant sense in which everyone is a potential Muselmann (or, for that matter, perpetra­tor) to the dubious view that the Muselmann is everyman. In his brief but trenchant reflections on ethics, Agamben apparently takes Auschwitz as an apocalyptic divide between past and present that delegitimates all uses in the present of past ethical assumptions or discourses. He even attributes such a view to Levi: "The Musel­mann, as Levi describes him, is the site of an experiment in which morality and humanity themselves are called into question" (63). Moreover: The unprecedented discovery made by Levi at Auschwitz concerns an area that is independent of every establishment of responsibility, an area in which Levi succeeded in isolating something like a new ethical element. Levi calls it the "gray zone." It is the zone in which the "long chain of conjunction between victim and executioner" comes loose, where the oppressed becomes oppressor and the executioner in turn appears as victim. A gray, incessant alchemy in which good and evil and, along with them, all the metals of traditional ethics reach their point of fusion. (21) There are many contestable features in these statements to which I shall return. Here I would point out the dubiousness of seeing total ethical meltdown in Levi, who drew from traditional culture and ethics both to provide him with sustenance in the camps and, in a manner that was, if anything, perhaps insufficiently informed by the concerns that preoccupy Agamben, to inform his postwar reflections on his experience. If one recalls the quotation from Himmler's Posen speech, one may well sympathize with Agamben when he asserts of the Muselmeinner: "To speak of dignity and decency in their case would not be decent." Sympathy wavers when he adds, in his prevalent turn to a kind of free indirect style or middle voice: "The survivors [including Levi as Agamben speaks with(in) and for him] are not only 'worse' in com­parison with the best ones—those whose strength rendered them less fit in the camp—they are also 'worse' in comparison with the anony­mous mass of the drowned, those whose death cannot be called death. This is the specific ethical aporia of Auschwitz: it is the site in which it is not decent to remain decent, in which those who believed them­selves to preserve their dignity and self-respect experience shame with respect to those who did not" (6o). Auschwitz epitomizes the absolute impossibility of "death with dignity" in the modern world, the way in which death gives way to the manufacture of corpses. "This means that in Auschwitz it is no longer possible to distinguish between death and mere decease, between dying and 'being liqui­dated" " (76).3' More generally, in the modern world one's unease about dying is related to its privatization, deritualization, and con­cealment from public view. Agamben is touching on important issues here—issues that should not be obliterated by any reservations about his approach. Still, Agamben is so concerned with the problem of death that he pays scant attention to processes of killing among the Nazis and their rela­tions to specific objects of victimization. In the relatively few refer­ences to the SS, even they undergo, rather than activate, processes and are often framed in the passive voice or in something approximating a bystander position or a position that almost seems to place them (as in the soccer game) on a gray on gray, level playing field with victims. "The SS could not see the Muselmann, let alone bear witness to him" (78). Or again: "Both the survivor's discomfort and testimony concern not merely what was done or suffered, but what could have been done or suffered. It is this capacity, this almost infinite potentiality to suffer that is inhuman—not the facts, actions, or omissions. And it is pre­cisely this capacity that is denied to the SS" (77). There may be a worthwhile shock or scandal induced by accusing the SS of an incapacity to be inhuman—a shock relating to an attempt to rethink the threshold between the human and the inhuman or non­human and to reposition ethics as other than purely humanistic. Agamben does not make explicit and explore the implications of this unsettling, seemingly paradoxical idea, for example, concerning the "rights" or claims of other-than-human animals. (Indeed, one danger of Agamben's sharp binary between the human and the inhuman or nonhuman, which he maps onto the opposition between the speak­ing being and mere or naked life, is the exclusion or even scapegoating of nonhuman animals who, by implication, seem reduced to mere life or raw material.) Moreover, pace Agamben and whatever may be the case concerning almost infinite potentiality, the capacity to suffer is something humans share with other animals, and it is related to empathy, which the SS did not have for victims. But this capacity (or Agamben's postulated incapacity, for that matter) was not simply denied the SS as passive recipients. It was actively countered, blocked, or eliminated through ideological and related practical forces as well as through the dynamic of victimization that brought victims to the abject state Nazi ideology, in circular and self-fulfilling fashion, attrib­uted to them. A particularly questionable feature of Agamben's ori­entation is that the deficit of the SS, in terms of a lack of inhumanity, is itself construed in terms of an almost infinite (quasi-divine?) capac­ity or potentiality for suffering. No known being, human or other­wise, has this infinite capacity. Beyond a certain threshold of suffering, one blacks out, and it would seem that Agamben strives to write from, or even from beyond, that threshold. Once again we seem to be in the vicinity of ethics understood in paradoxical terms as supraethical, supererogatory excess rather than in more socially and politically viable terms. Does empathy for both human and other-than-human beings require an infinite capacity for suffering, or does the latter rad­ically transcend empathy into an ecstatically indistinct realm of sub­limity that would itself seem, in any social or political terms, to be isolating? (Almost involuntarily, I think of the unimaginably suffer­ing but transfigured Christ ascending into heaven.) Agamben's related understanding of the meaning of Himmler's Posen speech is curious at best. He sees it in line with his idea of the SS as not having the inhuman, almost infinite capacity to suffer. He relates the latter to another passive position with a paradoxical twist: the Befehlnotstand. "The executioners unanimously continue to repeat that they could not do other than as they did, that, in other words, they simply could not; they had to, and that is all. In German, to act without being capable of acting is called Befehlnotstand, having to obey an order" (77-78). Agamben then relates the perpetrator's claim to submit to orders that one must obey, thereby acting without really acting, to the passage from Himmler's Posen speech (which I earlier quoted in a somewhat different translation): "Most of you know what it means when ioo corpses lie there, or when 500 corpses lie there, or from a few exceptions caused by human weakness—to have remained decent, that has made us great. That is a page of glory in our history which has never been written and which will never be written" (quoted 78). Himmler himself shows a preference for passive or indeterminate constructions that veil somewhat the fact that those whom he addresses not only have beheld a scene but are responsible for having brought it about. One may analyze the functions of such a construc­tion but one ought not simply to repeat it transferentially in one's own analysis. Moreover, Himmler in this passage is not altogether like Eichmann on trial appealing to a distorted Kantian sense of duty in doing one's job and obeying orders; he does not simply appeal to a Befehlnotstand or the inability to do otherwise. There are in his words an appeal to the sublime (notably a mathematical sublime in the geo­metrically increasing expanse of corpses), to the fascination with excess and radical transgression in the form of unheard-of mass destruction, to the glory that the uninitiated will never understand, to the quasi-sacrificial allure of victimization in the absolute injunc­tion to kill all Jews without exception (by definition there is no such thing as a good Jew), and to the superhuman ability to become hard (interestingly mistranslated in the above quotation as "great"— "absolute greatness" characterized the sublime for Kant) by enduring (durchstehen) the aporia or combining in oneself the antinomic features of decency and radical transgression.' In other words, for Himmler, Nazis did look the Gorgon directly in the face, and this "sublime," petrifying gaze made them hard in a sense they desired. What is inter­esting is Agamben's inability to detect these aspects of the Posen speech and to focus instead on what would seem unaccentuated in, if not projectively inserted into, it." There is also a problem with respect to what might be termed, for lack of a better word, subject positions. For Levi as survivor to say that not he but the Muselmann is the true witness is, I think, an accept­able hyperbole. For Agamben to identify with Levi and hence speak for (or in the stead of) Levi and hence for the Muselmann (as he believes Levi does) may be hyperbolic in an objectionable sense.' Moreover, the idea that Auschwitz radically delegitimates all preex­isting ethics and all present appeals to them, including all notions of decency and dignity, paradoxically runs the risk of granting a posthu­mous (postapocalyptic?) victory to the Nazis. In any event it obviates a careful inquiry into the uses of such concepts by victims and sur­vivors themselves as well as their attempts to preserve some sense of dignity and decency in impossible situations (for example, by washing themselves with filthy water). It also risks handing the concept of decency over to Himmler as his heritage rather than to struggle for and to rethink it (for example, by criticizing any invidi­ous use of it to distinguish the human from the other-than-human, including the animal, which should not itself be reduced to bare or naked life or be understood in neo-Heideggerian terms as not having a world or a form of life).

#### Globalizing the camp annihilates spatial and temporal difference. This turns the case – compressing different phenomena into a singular coherent logical structure accelerates political activity into a messianic moment.

Ichiro TAKAYOSHI English @ Tufts 11 [“Can philosophy explain Nazi violence? Giorgio Agamben and the problem of the ‘historico-philosophical’ method” *Journal of Genocide Research* 13 p. 60-62]

The second lesson is related to the larger problem that frames this case study: Can philosophy explain Nazi violence? The above assessment of Agamben’s treatment of the ‘euthanasia’, the camp system, and Hitler’s law revealed many tendencies characteristic of his ‘historico-philosophical’ method. Among the most important are: (1) literalism; (2) failure to consider partial explanations; (3) de-contextualization; and (4) the naturalization of logic (that is, conflation of conceptual reasoning with the logic of events).41 These tactics can be traced to as many corresponding assumptions about the nature of historical investigation and the investigator’s relation to it. The first technique enables the philosopher to contrive a linguistic unity out of diverse phenomena. If one attaches the same label to different objects, the oneness of these objects, no matter how incommensurable in other respects, is established verbally. This explains why Agamben tends to take rhetorical plays of historical documents on faith, when doing so furthers the amalgamation of disparate objects, events, sites, and actors. Also, the verbal unification of objective phenomena—the creation of the verbal ‘zone of indistinction’— reflects another assumption underlying the second shortcoming. As his impatience with partial answers attests, Agamben imagines the causes and goals behind the various instances of Nazi violence as singular. This faith in the single cause and single purpose, when the unity in operation cannot be found, leads the philosopher to supply the missing unity in language. The faith in the unity of phenomena is a progenitor of the unity in discourse; the latter is a methodological necessity for the former. Agamben’s penchant for de-contextualization is quite expected in a thinker who defines ‘historico-philosophical’ method by opposition to historicism. By historicism I mean a pessimistic credo prevalent among researchers that a void in the body of knowledge can be partially filled over the long course of a cumulative process, but because this process is only additive and never transformative the void will remain open forever. It presupposes the imperfectability hard-wired in all research projects, and this presupposition is in turn informed by a secularist view that there will never come the Day of Judgement when humankind is redeemed and all moments in the past become citable.42 This hopelessness contrasts with Agamben’s optimism; he tells us that the truth has eluded his predecessors, including Hannah Arendt and Michel Foucault, the two main sources of inspiration in Homo Sacer, because they chose to occupy a wrong vantage point. The inevitable implication is that an adjustment to the theoretic perspective, not an endless muddling through, opens the passageway to historical truth. This messianic perspectivism partially explains the unusual proliferation of the ‘only from this perspective can we understand’ type of sentence constructions throughout Homo Sacer. An esoteric truth discloses itself ‘only if’ it is contemplated from a special ‘perspective’ he recommends. Contra historicism, this modality of investigation conceives of truth as an instantaneous and eternal epiphany (the two adjectives mean the same thing), a holographic figure that flashes before the eye of the spectator when gazed at from an appropriate angle. The whole secret would remain, Agamben warns the reader, ‘otherwise unintelligible’. And the secret Agamben discovers is often troubling. In one of the most uncertain passages in Homo Sacer, Agamben writes: The stadium in Bari into which the Italian police in 1991 provisionally herded all illegal Albanian immigrants before sending them back to their country, the winter cycle-racing track in which the Vichy authorities gathered the Jews before consigning them to the Germans, the Konzentrationslager fur Auslander in Cottbus-Sielow in which the Weimar Government gathered Jewish refugees from the East, or the zones d’attentes in French international airports in which foreigners asking for refugee status are detained will then all equally be the camps. (174) If we were to believe Agamben, all these dissimilar sites scattered across time and space share one decisive feature: they all exemplify the ‘creation of a space in which bare life and the juridical rule enter into a threshold of indistinction’ (174). But the unity of these objects is perspectival, existing only in the mind of the Knower by virtue of their contiguity and juxtaposition in his experience of knowing, the experience whose psychological reality overrides the reality of physical disjunctions and blockages among these objects of contemplation. This passage can be also read as an illustration of the fourth and last tactic, namely, Agamben’s tendency to naturalize the logic of thinking. The quote conveys a vivid feel of a certain style of thinking that is assured of its unmolested automaticity because it knows that its intellectual life is independent of the world, history, and experience. ‘If this is true, if the essence of the camp consists in the materialization of the state of exception . . . then’, so Agamben reasons. Logic in human thought, however, often deviates from logic in nature and history, even if its starting-point is anchored in a robust referentiality. When one’s premise does not bottom out on historical experience in any meaningful way, as is often the casewith Agamben’s speculations, the best one could hope is to gain historical truth by happenstance.