## 2AC

### Detention Word Pic

#### detention: period of custody BEFORE a trial

The Free Dictionary No Date

de·ten·tion (d-tnshn)

n.

1. The act of detaining.

2. The state or a period of being detained, especially:

a. A period of temporary custody while awaiting trial.

b. A period of confinement to a detention home.

c. A form of punishment by which a student is made to stay after regular school hours.

3. A forced or punitive delay.

#### imprisonment implies a term

The Hindu 12

http://www.thehindu.com/news/national/life-imprisonment-means-jail-term-for-entire-life-sc/article4133231.ece

Life imprisonment implies a jail term for the convict’s entire life, the Supreme Court has held, clearing a misconception on this sentence.

#### No one is “imprisoned” under the AUMF- means CP does nothing

AUMF'01, Authorization of Use of Military Force, September 18, 2013,

http://www.govtrack.us/congress/bills/107/sjres23/text

¶ Joint Resolution¶ ¶ To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.¶ ¶ Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and¶ ¶ Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and¶ ¶ Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and¶ ¶ Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and¶ ¶ Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it¶ ¶ Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,¶ ¶ SECTION 1. SHORT TITLE.¶ This joint resolution may be cited as the `Authorization for Use of Military Force'.¶ ¶ SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.¶ (a) IN GENERAL- That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.¶ ¶ (b) War Powers Resolution Requirements-¶ ¶ (1) SPECIFIC STATUTORY AUTHORIZATION- Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.¶ ¶ (2) APPLICABILITY OF OTHER REQUIREMENTS- Nothing in this resolution supercedes any requirement of the War Powers Resolution.

#### Isolated instances of renaming fail to create change

Schram 95 (Sanford F., Associate Professor of Political Science at Macalester College, former Visiting Professor at the La Follette Institute of Public Affairs at the University of Wisconsin and Visiting Affiliate at the Institute for Research on Poverty at the University of Wisconsin, “Discourses of Dependency: The Politics of Euphemism,” Words of Welfare: The Poverty of Social Science and The Social Science of Poverty, Published by The University of Minnesota Press, ISBN 0816625778, p. 21-23)

The deconstruction of prevailing discursive structures helps politicize the institutionalized practices that inhibit alternative ways of constructing social relations.5 Isolated acts of renaming, however, are unlikely to help promote political change if they are not tied to interrogations of the structures that se

rve as the interpretive context for making sense of new terms.6 This is especially the case when renamings take the form of euphemisms designed to make what is described appear to be consonant with the existing order. In other words, the problems of a politics of renaming are not confined to the left, but are endemic to what amounts to a classic American practice utilized across the political spectrum.7 Homeless, welfare, and family planning provide three examples of how isolated instances of renaming fail in their efforts to make a politics out of sanitizing language. [end page 21] Reconsidering the Politics of Renaming Renaming can do much to indicate respect and sympathy. It may strategically recast concerns so that they can be articulated in ways that are more appealing and less dismissive. Renaming the objects of political contestation may help promote the basis for articulating latent affinities among disparate political constituencies. The relentless march of renamings can help denaturalize and delegitimate ascendant categories and the constraints they place on political possibility. At the moment of fissure, destabilizing renamings have the potential to encourage reconsideration of how biases embedded in names are tied to power relations.8 Yet isolated acts of renaming do not guarantee that audiences will be any more predisposed to treat things differently than they were before. The problem is not limited to the political reality that dominant groups possess greater resources for influencing discourse. Ascendant political economies, such as liberal postindustrial capitalism, whether understood structurally or discursively, operate as institutionalized systems of interpretation that can subvert the most earnest of renamings.9 It is just as dangerous to suggest that paid employment exhausts possibilities for achieving self-sufficiency as to suggest that political action can be meaningfully confined to isolated renamings.10 Neither the workplace nor a name is the definitive venue for effectuating self-worth or political intervention.11 Strategies that accept the prevailing work ethos will continue to marginalize those who cannot work, and increasingly so in a post­ industrial economy that does not require nearly as large a workforce as its industrial predecessor. Exclusive preoccupation with sanitizing names overlooks the fact that names often do not matter to those who live out their lives according to the institutionalized narratives of the broader political economy, whether it is understood structurally or discursively, whether it is monolithically hegemonic or reproduced through allied, if disparate, practices. What is named is always encoded in some publicly accessible and ascendent discourse. 12 Getting the names right will not matter if the names are interpreted according to the institutionalized insistences of organized society.13 Only when those insistences are relaxed does there emerge the possibility for new names to restructure daily practices. Texts, as it now has become notoriously apparent, can be read in many ways, and they are most often read according to how prevailing discursive structures provide an interpretive context for reading them.14 The meanings implied by new names of necessity [end page 22] overflow their categorizations, often to be reinterpreted in terms of available systems of intelligibility (most often tied to existing institutions). Whereas renaming can maneuver change within the interstices of pervasive discursive structures, renaming is limited in reciprocal fashion. Strategies of containment that seek to confine practice to sanitized categories appreciate the discursive character of social life, but insufficiently and wrongheadedly. I do not mean to suggest that discourse is dependent on structure as much as that structures are hegemonic discourses. The operative structures reproduced through a multitude of daily practices and reinforced by the efforts of aligned groups may be nothing more than stabilized ascendent discourses.15 Structure is the alibi for discourse. We need to destabilize this prevailing interpretive context and the power plays that reinforce it, rather than hope that isolated acts of linguistic sanitization will lead to political change. Interrogating structures as discourses can politicize the terms used to fix meaning, produce value, and establish identity. Denaturalizing value as the product of nothing more than fixed interpretations can create new possibilities for creating value in other less insistent and injurious ways. The discursively/structurally reproduced reality of liberal capitalism as deployed by power blocs of aligned groups serves to inform the existentially lived experiences of citizens in the contemporary postindustrial order.16 The powerful get to reproduce a broader context that works to reduce the dissonance between new names and established practices. As long as the prevailing discursive structures of liberal capitalism create value from some practices, experiences, and identities over others, no matter how often new names are insisted upon, some people will continue to be seen as inferior simply because they do not engage in the same practices as those who are currently dominant in positions of influence and prestige. Therefore, as much as there is a need to reconsider the terms of debate, to interrogate the embedded biases of discursive practices, and to resist living out the invidious distinctions that hegemonic categories impose, there are real limits to what isolated instances of renaming can accomplish.

#### Perm do both – reality can change language – the perm allows the transformation of meaning

Kidner 2K (David W, Nature and Psyche: Radical Environmentalism and the Politics of Subjectivity, pg 26-27)

In the absence of a language that is sufficiently resonant with the natural world, we will have to make do with what we have available; and this requires that we use words in a way that is self-critical, inconsistent, and sometimes ironic. This will not be the postmodernist use of language that problematizes *any* nondiscursive structure; but rather one that uncovers the naturalizing and legitimizing function of words so as to reveal the organic structures that they occlude. For example, in the sentence “the thug offered to rearrange my teeth,” the denial of structure is obvious; but in the Easterbrook statement above, the word “reposition” is all to easily accepted as an “objective” description of what happened, or at least as one of many equally valid descriptions. Similarly, words such as “pests,” “weeds,” or “development” also carry their own particular ideological baggage; and by pointing out their hidden implications we challenge the industrialist structures that they are part of, and so uncover the indigenous forms that lie beneath them. But in pointing out that language has practical implications for the ecological fate of the world, we should not ignore the other side of this dialectic, for language is itself affected by what frames it ideologically and physically. Just as those characteristics of nature that are difficult to name tend to disappear physically from the world when we restructure it, it is equally true that what has been post physically tends to disappear linguistically and conceptually. While the first part of this dialectic is accomplished through technological power, academia plays an important role in the second part. It is no coincidence, for example, that claims that nature is socially constructed are usually made by writers who inhabit “overdeveloped” parts of the world such as Britain where wilderness has already been virtually eliminated; and the effect of such claims is to deny the possibility of nature that transcends its current domesticated state. By making language consistent with this impoverished ecological reality and denying the possibility that is “beyond the text,” constructionism undermines any possible role of language in pointing to and formulating states of ecosystemic health that are potential rather than actual. In this case, the industrialist worldview becomes the only possible worldview; and the major task of environmental theory is to keep alive those ecological scenarios that do exceed such industrialized views of nature.

#### Language isn’t predetermined – the CP only masks the function of power

Butler 1 (Judith, Speech Acts Politically, Deconstruction: a Reader, pg 256-257)

When anti-intellectualism becomes the counter to anti-censorship, and academic language seeks to dissolve itself in an effort to approximate the ordinary, the bodily, and the intimate, then the rituals of codification at work in such renderings become more insidious and less legible. The substitution of a notion of ordinary language becomes the alternative to censorship, fails to take account the formative power of censorship, as well as it subversive effects. The ‘break’ with ordinary discourse that intellectual language performs does not have to be complete for a certain decontextualization and denaturalization of discourse to take place, one with potentially salutary consequences. The play between the ordinary and non-ordinary is crucial to the process of reelaborating and reworking the constraints that maintain the limits of speakability and, consequently, the viability of the subject.¶ The effects of catachresis in political discourse are possible only when terms that have traditionally signified in certain ways are misappropriated for other kinds of purposes. When, for instance, the term ‘subject’ appears to be too bound up with presumptions of sovereignty and epistemological transparency, arguments are made that such a term can no longer be used. And yet, it seems that the reuse of such a term in, say, a post-sovereign context, rattles the otherwise firm sense of context that such a term invokes. Derrida refers to this possibility as reinscription. The key terms of modernity are vulnerable to such reinscriptions as well, a paradox to which I will return toward the end of this chapter. Briefly, though, my point is this: precisely the capacity of such terms to acquire non-ordinary meanings constitutes their continuing political promise. Indeed, I would suggest that the insurrectionary potential of such invocations consists precisely in the break that they produce between an ordinary and an extraordinary sense. I propose to borrow the depart from Bourdieu’s view of the speech act as a rite of institution to show that there are invocations of speech act as a rite of institution to show that there are invocations of speech that are insurrectionary acts. ¶ To account for such speech acts, however, one must understand language not as a static and closed system whose utterances are functionally secured in advance by the ‘social positions’ to which are mimetically related. The force and meaning of an utterance are not exclusively determined by prior contexts or ‘positions’; an utterance may gain its force precisely by virtue of the break with context that it performs. Such break with prior context or, indeed, with ordinary usage, are crucial to the political operation of the performative. Language takes on a non-ordinary meaning in order precisely to contest what has become sedimented in and as the ordinary.

### Agamben

#### Public and congressional advocacy for legal checks on the executive are key to avoid a state of exception

Mitzen 11 Dr. Jennifer, Associate Professor of Political Science at Ohio State University and Michael Newell, PhD student in Political Science at the Maxwell School of Citizenship and Public Affairs, “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” JUROS Arts & Humanities Vol. 2, http://libeas01.it.ohio-state.edu/ojs/index.php/juros/article/download/1265/1791

As Benjamin Wittes notes, the “presidential power model has failed,” and “Only Congress can ultimately write the law of this long war” (Wittes, 2008). The pursuit of terrorist policies through the exception has not resulted in clear, transparent and legally correct outcomes because the exception has been entirely controlled by “unilateral presidential actions” (Wittes, 2008). Instead, Congress “can build comprehensive legal systems and do so in the name of the political system as a whole” (Wittes, 2008). What this would entail would be a “law of terrorism” that would “at once restrain and empower the executive branch” in its actions in the War on Terror (Wittes, 2008). Simply allowing the executive to continue to unilaterally decide the fate of suspected terrorists and anti-terrorism policy will prove Agamben correct: that the American system of checks on power has been replaced with the primacy of the executive. It should then be Congress’ goal to step forward and outline the exact legal policies in the War on Terror, allowing President Obama this role will only prolong the elements of the exception that Agamben has given such dire warnings about.¶ Conclusion¶ The state of exception has been the standard response to crises for American presidents and other world leaders since the emergence of constitutional law and democratic government. Its creation and longevity as a political and legal tool should not be surprising. Constitutional democracies were not and are not designed to have laws and rules governing every potential complication that the country could face. Instead, it has been consistently argued that exceptional times require exceptional measures. The use of these measures when the public is ready and willing to accept the securitizing speech-act almost invariably lead to breaches of the law, and in Agamben’s opinion the expansion of executive authority. The War on Terror has seemingly reinforced Agamben’s argument, as the breadth and magnitude of legal issues resulting from this war have made the legal recovery extremely complicated.¶ However, some scholars suggest that the War on Terror has actually undermined the ability of the sovereign to invoke the state of exception, stating that instead:¶ In so far as it pursues this end, the effect of such commentary is to compound efforts to curtail the experience of deciding on/in the exception – efforts that are already well under way at Guantánamo Bay. For notwithstanding all the liberal heartache that they provoke, the law and legal institutions of Guantánamo Bay are working to negate the exception (Johns, 2005).¶ Johns suggests that the policies of the War on Terror are leading towards a tendency to condemn the state of exception and crisis authority. Johns bases his argument in the abundance of legal scholarship calling for “a newly fashioned emergency regime” that would “rescue the concept [of emergency power] from fascist thinkers like Carl Schmitt” (Johns, 2005). This logic would suggest that Agamben’s prediction is not coming true, that the executive will now be limited by what actions they can pursue during future crises and that the legal authority acquired by the executive during the War on Terror has been ceded back to its designated proprietors.¶ But for Johns to be proven right, it requires a change in long established habits. Citizens cannot expect the executive to singularly react to any complication the country faces. Indeed, Agamben’s warnings and the results of the War on Terror suggest that doing so will continue to produce dissatisfying results at best, immoral quagmires at worst. For democracy and constitutional governance to survive, it is the responsibility of officials and citizens alike to adapt existing legal structures to novel threats, and to not rely on executive mandate alone.

#### The state’s inevitable and engagement is necessary to effective reform---Agamben’s focus on pure potentiality is dangerous

Paul A. Passavant 7, Hobart and William Smith Colleges in New York, “The Contradictory State of Giorgio Agamben”, Political Theory Volume 35, Number 2, April, SAGE

Third, any social formation is constituted by elements of both contingency and determination. By emphasizing pure potentiality, Agamben misses this and either cherishes the excessive quality of pure potentiality to the neglect of the exigent needs of the present, or neglects how the active political subjects he does defend are embedded within finite commitments that necessarily persevere through the foreclosure of other possibilities. Some contemporary political theorists concerned with injustice and the lack of democracy also emphasize contingency, excess, and potentiality over determination, finitude, and acts.49 These theorists correctly seek to disrupt oppressive patterns. Since politics-hence political change-would not be possible under conditions of absolute determination, emphasizing contingency or excess makes sense. Yet reflection upon the retraction of certain state services from places like the Bronx during the late 1970s per mits us to see how neither justice nor democracy is served by excessive eco nomic duress or violence. Not only are these contingencies unjust, but also their incapacitating effects prevent democratic practices of government where the latter necessarily presupposes some collective capacity to direct and achieve collective purposes. State actions that mitigate chaos, economic inequality, and violence, then, potentially contribute to the improved justice of outcomes and democracy. Political theorists must temper celebrating contingency with a simultaneous consideration of the complicated relation that determination has to democratic purposes.50 ¶ Fourth, the state's institutions are among the few with the capacity to respond to the exigency of human needs identified by political theorists. These actions will necessarily be finite and less than wholly adequate, but responsibility may lie on the side of acknowledging these limitations and seeking to redress what is lacking in state action rather than calling for pure potentiality and an end to the state. We may conclude that claims to justice or democracy based on the wish to rid ourselves of the state once and for all are like George W. Bush claiming to be an environmentalist because he has proposed converting all of our cars so that they will run on hydrogen.5" Meanwhile, in the here and now, there are urgent claims that demand finite acts that by definition will be both divisive and less than what a situation demands.52 In the end, the state remains. Let us defend this state of due process and equal protection against its ruinous other.

#### Agamben is wrong---if the WOT was a state of exception Bush would still be in power

Newell and Mitzen 11 Michael Newell, PhD student in Political Science at the Maxwell School of Citizenship and Public Affairs, and Dr Jennifer Mitzen, Associate Professor of Political Science at Ohio State University; “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” JUROS Arts & Humanities Vol. 2, http://libeas01.it.ohio-state.edu/ojs/index.php/juros/article/download/1265/1791

But what Agamben has potentially overlooked is the conversation between the government, public and media concerning the state of exception. Waever’s desecuritization theory tells us that it is possible for continued debate and media coverage to desecuritize a threat in whole or in part (Waever, 1995). As the War on Terror progressed, more academics and government officials began to speak out against the usefulness of interrogations, the reality of the terrorist threat and the morality of the administration’s policies. Some critics suggested that the terrorist threat was not as imminent as the Administration made it appear, and that “…fears of the omnipotent terrorist…may have been overblown, the threat presented within the United States by al Qaeda greatly exaggerated” (Mueller, 2006). Indeed, as Mueller points out, there have been no terrorist attacks in the United States five years prior and five years after September 11th. The resignation of administration officials, such as Jack Goldsmith, who, it was later learned, sparred with the administration over Yoo’s torture memos, their wiretapping program and their trial of suspected terrorists also contributed to this shift in sentiment (Rosen, 2007). The use of the terms “torture,” and “prisoner abuse,” that began to surface in critical media coverage of the War on Terror framed policies as immoral. As the public gradually learned more from media coverage, academic discourse, and protests from government officials, the administration and its policies saw plummeting popularity in the polls. Two-thirds of the country did not approve of Bush’s handling of the War on Terror by the end of his presidency (Harris Poll) and as of February 2009 two-thirds of the country wanted some form of investigation into torture and wiretapping policies (USA Today Poll, 2009).¶ In November 2008 a Democratic President was elected and Democrats gained substantial ground in Congress partly on promises of changing the policies in the War on Terror. Republican presidential nominees, such as Mitt Romney, who argued for the continuance of many of the Bush administration’s policies in the War on Terror, did not see success at the polls. Indeed, this could be regarded as Waever’s “speech-act failure” which constitutes the moment of desecuritization (Waever, 1995). In this sense, Agamben’s warning of “pure de-facto rule” in the War on Terror rings hollow because of one single important fact: the Bush administration peacefully transferred power to their political rivals after the 2008 elections. The terrorist threat still lingers in the far reaches of the globe, and a strictly Agamben-centric analysis would suggest that the persistence of this threat would allow for the continuance of the state of exception. If Agamben was correct that the United States was under “pure de-facto rule” then arguably its rulers could decide to stay in office and to use the military to protect their position. Instead, Bush and his administration left, suggesting that popular sovereignty remained intact.

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#### Their alternative seeks to abolish the realm of the political through the institution of “whatever singularities” – this cannot be achieved without a devastating form of violence equal to that of sovereignty itself, and their alternative must necessarily reassert its own equally malignant form of sovereign power

William Rasch 4, Professor of Germanic Studies at the University of Indiana, Sovereignty and Its Discontents, p. 2-4

Now, if the triumph of a particular species of liberal pluralism denotes the de-politicization of society, one would think that theoretical opposition to this trend would seek to rehabilitate the political. But rather than asserting the value of the political as an essential structure of social life, the post-Marxist left seems intent on hammering the final nails into the coffin. In the most celebrated works of recent years, Giorgio Agamben’s Homo Sacer (1998) and Michael Hardt and Antonio Negri’s Empire (2000), the political (denoted by the notion of sovereignty) is irretrievably identified with nihilism and marked for extinction. In both instances, the political is the cause of the loss of ‘natural innocence’ (Agamben, 1998, p 28), that flowering of human productivity that the Western metaphysical tradition has suppressed; and the logical paradox of sovereignty is to be overcome by the instantiation of a new ontology. In this way, violence, which is not thought of as part of the state of nature but is introduced into the human condition by flawed or morally perverse social institutions, is to be averted. That is, the faulty supposition of ineluctable violence that guides political theory from Hobbes to Weber is to be replaced by a Heideggerian, Deleuzean, Spinozan or Christian ontology of original harmony. In the words of John Milbank, a Christian social theorist who currently enjoys a modest following among political thinkers on the Left, there is no ‘original violence’, but rather an originary ‘harmonic peace’ which is the ‘sociality of harmonious difference’. Thus violence ‘is always a secondary willed intrusion upon this possible infinite order’ (Milbank, 1990, p 5). This, then, is the great supposition that links the ascetic pessimism of an Adorno with the cheery Christian optimism of Milbank: the world as it is is as it is because of the moral perversity of (some) human agents who willfully construct flawed social institutions. To seek to remedy the perversity of the world as it is from within the flawed social and political structures as they are only increases the perversity of the world. One must, therefore, totally disengage from the world as it is before one can become truly engaged. Only a thorough, cataclysmic cleansing of the world will allow our activities to be both ‘innocent’ and ‘productive’. Clear, though only partially acknowledged, is the fact that this cleansing, which aims at ridding the world of intrusive violence, is itself an act of fierce and ultimate violence —ultimate in its purported finality, but also, certainly, in its extreme ferocity. What remains equally clear, though not acknowledged, is that whoever has the power to determine the nature of this harmonious sociality is the one who can determine which acts of violence are to be judged as intrusions into the placid domain and which acts of violence are to be condoned as the necessary means of re-establishing the promise of perpetual peace. Determining the nature of this desired, nay, required originary peace is itself a sovereign act, not the abolition of such sovereignty. What our ultimate sovereign of harmonious peace will do with the willfully violent intruders can only be guessed, but it is certain that they will not be looked upon as legitimate political dissenters, and the unconditional violence that will be used to eliminate their presence will be justified by invoking the ‘harmonic peace’ or ‘natural innocence’ they have so deliberately and maliciously disturbed. In opposition to the near universal pressure to abolish the pesky complexity of the political, the aim of this volume is to reject every resurrection of eschatological desire, and to affirm conflict as the necessary and salutary basis of political life. To this end, the work of Carl Schmitt can be of considerable help. One must be clear, however, that the term most often associated with his thought — namely political theology — is not a term that can be sensibly used to describe his own best work. When, in 1922, Schmitt writes that ‘all significant concepts of the modem theory of the state are secularized theological concepts’ (Schmitt, 1985b, p 36), he makes an analogous claim about the modem political state to the one Max Weber had already made nearly two decades earlier about the modem money economy.2 Just as wealth, industriously achieved, serves as a sign of grace for the Puritans in early modem Europe (and the Massachusetts Bay Colony), so too the sovereign, as a mortal God, mimics divinity. But God and grace soon become mere power and market value, and Schmitt’s and Weber’s emphases center on the necessities of this secularization, on the profane, not the sacred, on the political and the economic, not the theological. Their focus is on the butterfly, so to speak, not the caterpillar. Schmitt and Weber, each in their own way, may have recoiled from the effects of neutralization and rationalization, even preached the occasional Jeremiad against the vacuous sterility of the modem wasteland, but, as both recognized and clearly stated, by at least the end of the eighteenth century neither the monopolization of power nor the accumulation of wealth were thought to guarantee salvation, or even hint at special dispensation when it came to God’s favors. If capitalism was born from the spirit of Protestantism, it was, for all that, capitalist, not Calvinist. And if the concepts of the modem theory of the state still carried the traces of their ethereal origin, they were nonetheless political concepts, and these traces had been thoroughly profaned. In short, the political for Schmitt was no more theological than money was for Weber. And it made absolutely no sense to be nostalgic for an imagined other space or fulfilled time in which the sacred and the profane were united. Indeed, it was for the autonomy of the political against the prevailing political theologies, the religions of humanity called socialism and liberalism, that Schmitt waged his conceptual warfare. Thus, if one wants to insist on referring to Schmitt as a political theologian, it is because he made a religion out of the political — out of the distinction, that is, between the theological and the political — and not because he sought either the spirit or the authority of the divine in the power and violence that is the mundane world of politics. It behooves us, therefore, to examine, briefly, the nature of this autonomy before we move on to the more detailed examinations of the structure of the political in the chapters that follow.

#### Critical legal philosophy is non-empirical, cherry-picked garbage

John Stick 86, Assistant Professor of Law at Tulane University School of Law, “Can Nihilism Be Pragmatic?”, Harvard Law Review, Vol. 100, No. 2 (Dec., 1986), pp. 332-401, JSTOR

This Article examines the relationship between the critical legal nihilists and the philosophers they rely upon for support. The nihilists' use of philosophy is important, because their critique is at bottom conceptual and not empirical. Legal nihilists do not study the work of large numbers of practicing attorneys or judges to discover the extent of agreement about whether particular legal arguments are valid. Instead, they parse the words of theorists and appellate judges to discover contradictions and opposed values. This selective parsing of the language of a few theorists and judges (neglecting the hundreds of thousands of practicing attorneys) is itself far from adequate empirical technique. More important, the nihilists' leap from the general inconsistencies they discover to a claim that law does not follow standards of rationality is unconvincing without philosophical argument. Nihilists rarely attempt to supply that argument themselves; if they feel any need of further discussion they usually rely upon theorists outside the discipline of law.9 ¶ This Article demonstrates that the nihilists misuse much of the philosophy they attempt to appropriate. In order to focus the discussion, this Article concentrates on one comprehensive statement of nihilism and the major intellectual influences upon it. The best and most complete exposition of the nihilist critique of law was written by Joseph Singer in a recent article in the Yale Law Journal.10 His article is the most philosophically sophisticated and judicious work to date. Singer states that he relies heavily on the analysis of the philosophers Richard Bernstein, Michael Sandel, and Roberto Unger,11 but he acknowledges that he owes his greatest intellectual debt to Richard Rorty, 12 a scholar who identifies his own position with pragmatism. 13 I focus on the relationship between Singer and Rorty not only because Singer claims that Rorty has had the greatest influence on his thought, but also because Rorty is the closest in spirit to Singer.14 For example, Bernstein,15 Sandel,16 and Unger17 all allow rationality and shared values larger roles in political and moral argument than does Rorty. If Singer is too much of an irrationalist for Rorty, then a fortiori Singer is too much of an irrationalist for the others. 18

#### Agamben’s rejection of all law as inherently violent is based on misreadings of political theory and false generalizations – not all law is violent, and we shouldn’t assume that it is

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28. All this explains why Agamben chooses to focus on the decisionistic tradition (Hobbes, Heidegger, Schmitt). With it, he wants to isolate the pure essences of all juridical orders and thus highlight the essential violence structuring traditional politics. Since the law essentially appears as a production and capture of bare life, the political order that enunciates and maintains the law is essentially violent, always threatening the bare life it has produced with total annihilation. Auschwitz is the real outcome of all normative orders. 29. The problem with this strategic use of the decisionistic tradition is that it does not do justice to the complex relationship that these authors establish between violence and normativity, that is, in the end the very normative nature of their theories. In brief, they are not saying that all law is violent, in essence or in its core, rather that law is dependent upon a form of violence for its foundation. Violence can found the law, without the law itself being violent. In Hobbes, the social contract, despite the absolute nature of the sovereign it creates, also enables individual rights to flourish on the basis of the inalienable right to life (see Barret-Kriegel 2003: 86). 30. In Schmitt, the decision over the exception is indeed "more interesting than the regular case", but only because it makes the regular case possible. The "normal situation" matters more than the power to create it since it is its end (Schmitt 1985: 13). What Schmitt has in mind is not the indistinction between fact and law, or their intimate cohesion, to wit, their secrete indistinguishability, but the origin of the law, in the name of the law. This explains why the primacy given by Schmitt to the decision is accompanied by the recognition of popular sovereignty, since the decision is only the expression of an organic community. Decisionism for Schmitt is only a way of asserting the political value of the community as homogeneous whole, against liberal parliamentarianism. Also, the evolution of Schmitt’s thought is marked by the retreat of the decisionistic element, in favour of a strong form of institutionalism. This is because, if indeed the juridical order is totally dependent on the sovereign decision, then the latter can revoke it at any moment. Decisionism, as a theory about the origin of the law, leads to its own contradiction unless it is reintegrated in a theory of institutions (Kervégan 1992). 31. In other words, Agamben sees these authors as establishing a circularity of law and violence, when they want to emphasise the extra-juridical origin of the law, for the law’s sake. Equally, Savigny’s polemic against rationalism in legal theory, against Thibaut and his philosophical ally Hegel, does not amount to a recognition of the capture of life by the law, but aims at grounding the legal order in the very life of a people (Agamben 1998: 27). For Agamben, it seems, the origin and the essence of the law are synonymous, whereas the authors he relies on thought rather that the two were fundamentally different.

#### Agamben’s argument that the state and terrorism justify each other is dangerous---he fails to understand the realities of modern terrorism, in which the terrorist is the opposite of homo sacer

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The issue at the center of Giorgio Agamben's book Homo Sacer: Sovereign Power and Bare Life (1995), that of the relation of bare life to politics and the law, has, in the ten years since the book's appearance, been propelled so forcefully into the foreground by events on the world political stage that Agamben's central figure has taken on an uncanny actuality.' The images broadcast around the world of Guantanamo Bay appear like visualizations of the homo sacer, the definition of which is he who "may be killed and yet not sacrificed."^ Even more so are the photographs from Abu Ghraib, in which the bodies of the prisoners seem like the resurrections of those living statues that Agamben compares with the homo sacer ^ The Iraq policy of George W. Bush has provided a textbook example of Agamben's theory of the state of exception, which he develops from his reading of Carl Schmitt, and which describes the intimate relationship of sovereign power and bare life." Indeed, Agamben has recently interpreted the American prison camp in the light of this thesis: the camp should be seen as "the 'Nomos' of the Modem," i.e., the signum of the new world order, for which he takes the extermination camps of the Nazis as the historical prototype.' His more recent statements, however, also reveal the limits of this theoretical model, which, by extending Carl Schmitt's theory of sovereignty into the biopolitical sphere, has allowed Agamben to bring together geopolitics and biopolitics.\* The limits of his theory become evident at the point where he describes "the new American world order" as a strategic "fusion of the two paradigms of the state of exception and the civil war"; he then concludes that "in this perspective, terrorism and the state ultimately form a single system with two faces, in which each of the elements not only serves to justify the actions of the other, but each even becomes indistinguishable from the other." If Agamben here—post- September 11 and the Iraq war—^transposes what he describes in his book as the "symmetry.. .between the body of the sovereign and that of homo sacer" onto the relation between the state and terrorism, then not just the prisoners, but terrorism as well has taken the place of the homo sacer in his interpretation.' What's especially problematic here is the claim that the state and terrorism become indistinguishable. This claim serves to focus our attention on a blind spot that is symptomatic of the intellectual discourse on September 11 and the Iraq war in general. Preoccupied by U.S. politics, the theoretical efforts toward generating a critique of violence or an application of political theology to contemporary events are, for the most part, blind to the new forms of terroristic violence and their analysis. It is obvious that these present a much more difficult challenge to the attempts to analyze the new world order. In this context the question posed in Homo Sacer concerning the relation between politics and bare life is a crucial one. It is a question that has, notably, taken on concrete form not only in the pictures of the prisoners but also in the figure of the suicide bomber, who has come more and more to occupy the scenes of intemational debate and military conflict. However, the suicide bomber who sacrifices his own life in the battle against the "enemy" or occupying forces and who defines himself as a martyr, or the terrorist who uses his own body as a weapon in order to destroy his opponent: this figure actually appears as the precise counter-image of the homo sacer. For while the latter represents bare life that may be killed but not sacrificed, the former embodies a life that sacrifices itself in order to kill.' Through this act, the life defines itself as more and other than bare life, since it posits itself as consecrated or sanctified, and is mediated by images that draw on the traditional iconography of passion and martyrdom. In this sense, the figure of the suicide bomber is not only a counter-image to the homo sacer, it also contradicts the close association of bare life and "sovereign power," which Agamben's ''nomos of the modem" characterizes as the state of exception. The figure of the martyr and terrorism with a religious face cannot, in my view, be grasped within the horizon of the theory of sovereignty, nor with the help of Schmitt's Theory of the Partisan [Theorie des Partisanen], although here Schmitt analyzes the tendency within twentieth-century history towards the dissolution of the rules for the conduct of war within the jus publicum Europaeum, which he identifies as the age of "contained wars," This ended when the conventional figure of the partisan, as the illegal complement to the army, had been substituted by the phenomena of "world-wide civil war" and the technologically equipped "industry-partisan," and when the concrete, declared enemy had been replaced by an absolute enemy. However, the Theory of the Partisan, published by this most prominent author of political theology in 1963, failed to take any account of religio-cultural issues and therefore cannot offer any assistance in the examination of the religious symbolism and cultural motivation of the current terrorist violence. Moreover, the question arises as to whether the political theology of the state of exception is necessarily blind to theological explanations of violence to the extent that these do not conform to the framework of sovereignty theory. This question points to the significance and place of religion(s) and to the relation between religious violence and state force in political theology. Since the martyr is a resurrection from the pre-secular age, there is also a question of secularization involved.

## 1AR

### Case

#### Preventing death is the first ethical priority – it’s the only impact you can’t recover from.

Zygmunt **Bauman,** University of Leeds Professor Emeritus of Sociology, 1995, Life In Fragments: Essays In Postmodern Morality, p. 66-71

The being‑for is like living towards‑the‑future: a being filled with anticipation, a being aware of the abyss between future foretold and future that will eventually be; it is this gap which, like a magnet, draws the self towards the Other,as it draws life towards the future, making life into an activity of overcoming, transcending, leaving behind. The self stretches towards the Other, as life stretches towards the future; neither can grasp what it stretches toward, but it is in this hopeful and desperate, never conclusive and never abandoned stretching‑toward that the self is ever anew created and life ever anew lived. In the words of M. M. Bakhtin, it is only in this not‑yet accomplished world of anticipation and trial, leaning toward stubbornly an‑other Other, that life can be lived ‑ not in the world of the `events that occurred'; in the latter world, `it is impossible to live, to act responsibly; in it, I am not needed, in principle I am not there at all." Art, the Other, the future: what unites them, what makes them into three words vainly trying to grasp the same mystery, is the modality of possibility. A curious modality, at home neither in ontology nor epistemology; itself, like that which it tries to catch in its net, `always outside', forever `otherwise than being'. The possibility we are talking about here is not the all‑too‑familiar unsure‑of‑itself, and through that uncertainty flawed, inferior and incomplete being, disdainfully dismissed by triumphant existence as `mere possibility', `just a possibility'; possibility is instead `plus que la reahte' ‑ both the origin and the foundation of being. The hope, says Blanchot, proclaims the possibility of that which evades the possible; `in its limit, this is the hope of the bond recaptured where it is now lost."' The hope is always the hope of *being fu filled,* but what keeps the hope alive and so keeps the being open and on the move is precisely its *unfu filment.* One may say that the paradox *of hope* (and the paradox of possibility founded in hope) is that it may pursue its destination solely through betraying its nature; the most exuberant of energies expends itself in the urge towards rest. Possibility uses up its openness in search of closure. Its image of the better being is its own impoverishment . . . The togetherness of the being‑for is cut out of the same block; it shares in the paradoxical lot of all possibility. It lasts as long as it is unfulfilled, yet it uses itself up in never ending effort of fulfilment, of recapturing the bond, making it tight and immune to all future temptations. In an important, perhaps decisive sense, it is selfdestructive and self‑defeating: its triumph is its death. The Other, like restless and unpredictable art, like the future itself, is a *mystery.* And being‑for‑the‑Other, going towards the Other through the twisted and rocky gorge of affection, brings that mystery into view ‑ makes it into a challenge. That mystery is what has triggered the sentiment in the first place ‑ but cracking that mystery is what the resulting movement is about. The mystery must be unpacked so that the being‑for may focus on the Other: one needs to know what to focus on. (The `demand' is *unspoken,* the responsibility undertaken is *unconditional;* it is up to him or her who follows the demand and takes up the responsibility to decide what the following of that demand and carrying out of that responsibility means in practical terms.) Mystery ‑ noted Max Frisch ‑ (and the Other is a mystery), is an exciting puzzle, but one tends to get tired of that excitement. `And so one creates for oneself an image. This is a loveless act, the betrayal." Creating an image of the Other leads to the substitution of the image for the Other; the Other is now fixed ‑ soothingly and comfortingly. There is nothing to be excited about anymore. I know what the Other needs, I know where my responsibility starts and ends. Whatever the Other may now do will be taken down and used against him. What used to be received as an exciting surprise now looks more like perversion; what used to be adored as exhilarating creativity now feels like wicked levity. Thanatos has taken over from Eros, and the excitement of the ungraspable turned into the dullness and tedium of the grasped. But, as Gyorgy Lukacs observed, `everything one person may know about another is only expectation, only potentiality, only wish or fear, acquiring reality only as a result of what happens later, and this reality, too, dissolves straightaway into potentialities'. Only death, with its finality and irreversibility, puts an end to the musical‑chairs game of the real and the potential ‑ it once and for all closes the embrace of togetherness which was before invitingly open and tempted the lonely self." `Creating an image' is the dress rehearsal of that death. But creating an image is the inner urge, the constant temptation, the *must* of all affection . . . It is the loneliness of being abandoned to an unresolvable ambivalence and an unanchored and formless sentiment which sets in motion the togetherness of being‑for. But what loneliness seeks in togetherness is an end to its present condition ‑ an end to itself. Without knowing ‑ without being capable of knowing ‑ that the hope to replace the vexing loneliness with togetherness is founded solely on its own unfulfilment, and that once loneliness is no more, the togetherness ( the being‑for togetherness) must also collapse, as it cannot survive its own completion. What the loneliness seeks in togetherness (suicidally for its own cravings) is the foreclosing and pre‑empting of the future, cancelling the future before it comes, robbing it of mystery but also of the possibility with which it is pregnant. Unknowingly yet necessarily, it seeks it all to its own detriment, since the success (if there is a success) may only bring it back to where it started and to the condition which prompted it to start on the journey in the first place. The togetherness of being‑for is always in the future, and nowhere else. It is no more once the self proclaims: `I have arrived', `I have done it', `I fulfilled my duty.' The being‑for starts from the realization of the bottomlessness of the task, and ends with the declaration that the infinity has been exhausted. This is the tragedy of being‑for ‑ the reason why it cannot but be death‑bound while simultaneously remaining an undying attraction. In this tragedy, there are many happy moments, but no happy end. Death is always the foreclosure of possibilities, and it comes eventually in its own time, even if not brought forward by the impatience of love. The catch is to direct the affection to staving off the end, and to do this against the affection's nature. What follows is that, if moral relationship is grounded in the being-for togetherness (as it is), then it can exist as a project, and guide the self's conduct only as long as its nature of a project (a not yet-completed project) is not denied. Morality, like the future itself, is forever not‑yet. (And this is why the ethical code, any ethical code, the more so the more perfect it is by its own standards, supports morality the way the rope supports the hanged man.) It is because of our loneliness that we crave togetherness. It is because of our loneliness that we open up to the Other and allow the Other to open up to us. It is because of our loneliness (which is only belied, not overcome, by the hubbub of the being‑with) that we turn into moral selves. And it is only through allowing the togetherness its possibilities which only the future can disclose that we stand a chance of acting morally, and sometimes even of being good, in the present.

#### Extinction risks outweigh your impacts

Nick Bostrom, PhD and Professor at Oxford University, March, 2002

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It’s dangerous to be alive and risks are everywhere. Luckily, not all risks are equally serious. For present purposes we can use three dimensions to describe the magnitude of a risk: scope, intensity, and probability. By “scope” I mean the size of the group of people that are at risk. By “intensity” I mean how badly each individual in the group would be affected. And by “probability” I mean the best current subjective estimate of the probability of the adverse outcome.[[1]](http://www.nickbostrom.com/existential/risks.html" \l "_ftn1#_ftn1" \o ") 1.1         A typology of risk We can distinguish six qualitatively distinct types of risks based on their scope and intensity (figure 1). The third dimension, probability, can be superimposed on the two dimensions plotted in the figure. Other things equal, a risk is more serious if it has a substantial probability and if our actions can make that probability significantly greater or smaller.   “Personal”, “local”, or “global” refer to the size of the population that is directly affected; a global risk is one that affects the whole of humankind (and our successors). “Endurable” vs. “terminal” indicates how intensely the target population would be affected. An endurable risk may cause great destruction, but one can either recover from the damage or find ways of coping with the fallout. In contrast, a terminal risk is one where the targets are either annihilated or irreversibly crippled in ways that radically reduce their potential to live the sort of life they aspire to. In the case of personal risks, for instance, a terminal outcome could for example be death, permanent severe brain injury, or a lifetime prison sentence. An example of a local terminal risk would be genocide leading to the annihilation of a people (this happened to several Indian nations). Permanent enslavement is another example. 1.2         Existential risks In this paper we shall discuss risks of the sixth category, the one marked with an X. This is the category of global, terminal risks. I shall call these existential risks. Existential risks are distinct from global endurable risks. Examples of the latter kind include: threats to the biodiversity of Earth’s ecosphere, moderate global warming, global economic recessions (even major ones), and possibly stifling cultural or religious eras such as the “dark ages”, even if they encompass the whole global community, provided they are transitory (though see the section on “Shrieks” below). To say that a particular global risk is endurable is evidently not to say that it is acceptable or not very serious. A world war fought with conventional weapons or a Nazi-style Reich lasting for a decade would be extremely horrible events even though they would fall under the rubric of endurable global risks since humanity could eventually recover. (On the other hand, they could be a local terminal risk for many individuals and for persecuted ethnic groups.)