### 1st Off

#### OUR INTERPRETATION: The resolution asks a yes/no question as to the desirability of the United States Federal Government action. The role of the ballot should be to affirm or reject the actions and outcomes of the plan.

#### 1. THE TOPIC IS DEFINED BY THE PHRASE FOLLOWING THE COLON – THE UNITED STATES FEDERAL GOVERNMENT IS THE AGENT OF THE RESOLUTION, NOT THE INDIVIDUAL DEBATERS

Webster’s Guide to Grammar and Writing 2K

<http://ccc.commnet.edu/grammar/marks/colon.htm>

Use of a colon before a list or an explanation that is preceded by a clause that can stand by itself. Think of the colon as a gate, inviting one to go on… If the introductory phrase preceding the colon is very brief and the clause following the colon represents the real business of the sentence, begin the clause after the colon with a capital letter.

#### 2. “RESOLVED” EXPRESSES INTENT TO IMPLEMENT THE PLAN

American Heritage Dictionary 2K

[www.dictionary.com/cgi-bin/dict.pl?term=resolved](http://www.dictionary.com/cgi-bin/dict.pl?term=resolved)

To find a solution to; solve …

To bring to a usually successful conclusion

#### 3. “SHOULD” DENOTES AN EXPECTATION OF ENACTING A PLAN

American Heritage Dictionary – 2K

[www.dictionary.com]

3 Used to express probability or expectation

#### 4. THE U.S.F.G. is the three branches of government

Dictionary.com 2k6 [<http://dictionary.reference.com/browse/united+states+government>]

|  |
| --- |
| noun |
| the executive and legislative and judicial branches of the federal government of the United States |

#### Simulated national security law debates preserve agency and enhance decision-making---avoids cooption

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11, “National Security Law Pedagogy and the Role of Simulations”, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### Switch side debate is good-direct engagement, not abstract relation, with identities we do not identify with is critical to us to overcome the existential resentment we feel towards those with whom we disagree. Lack of switch-side facilitates a refusal to accept that our position is within question

Glover 10

[Robert, Professor of Political Science at University of Connecticut, Philosophy and Social Criticism, “Games without Frontiers?: Democratic Engagement, Agonistic Pluralism, and the Question of Exclusion”, Vol. 36, p. asp uwyo//amp]

In this vein, Connolly sees the goal of political engagement as securing a positive ‘ethos of engagement’ in relation to popular movements which alter existing assumptions, that is, a positive attitude towards attempts at pluralization. Connolly suggests we do so through thecultivation of two essential virtues: agonistic respect and critical responsiveness. 88 Agonistic respect is defined as a situation whereby each political actor arrives at an appreciation for the fact that their own self-definition is bound with that of others, as well as recognition of the degree to which each of these projections is profoundly contestable. 89 While Connolly notes that agonistic respect is a ‘kissing cousin’ of liberal tolerance, he distinguishes it by saying that the latter typically carries ‘the onus of being at the mercy of a putative majority that often construes its own position to be beyond question.’ 90 Thus, agonistic respect is a reciprocal democratic virtue meant to operate across relations of difference, and Connolly deploys it as a regulative ideal for the creation agonistic democratic spaces. 91 In a somewhat related way, the virtue of ‘critical responsiveness’ also attempts to move beyond liberal tolerance. 92 Critical responsiveness entails ‘ careful listening and presumptive generosity to constituencies struggling to move from an obscure or degraded subsistence below the field of recognition, justice, obligation, rights, or legitimacy to a place on one or more of those registers.’ 93 Critical responsiveness is not pity, charity, or paternalism but implies an enhanced degree of concern for others, driven by the cultivation of reciprocal empathic concern 21 for that which you are not. 94 This attitude cannot be developed in an abstract relation to these new and existing forms of radical cultural, political, religious, and philosophical difference. Critical responsiveness above all requires that one ‘get[s] a whiff of experiences heretofore alien to [us]’, recognizing that while this may be unsettling or cause discomfort, direct engagement is the means by which you, ‘work tactically on yourself and others to overcome existential resentment of this persistent condition of human being.’

### 2nd Off

**Emphasis on the ethics of the Other and representation is toothless – this facile leftism is a recipe for political irrelevance and capitalist domination. – green highlighting**

Paul **Smith**, Professor of Cultural Studies at George Mason University, **2004**, symploke, Vol. 12, No. 1-2, p. 259-260

What all this amounts to, as I'm sure many other commentators have seen and remarked, is that **Butler's thinking is essentially that of good old American liberalism leavened with a measure of imperfectly digested French** structuralism and **post-structuralism. The first casualty** in that American tradition **has always been political economy and history; they disappear even if they are ritually invoked in some polite way**. The problem there, as I've suggested, is that real conditions and conjunctures cannot be fully understood. A second traditional characteristic is what might be called a creeping universalism, where the very fact of speaking from within the American context soon persuades the speaker that there is a "we" out there that shares assumptions and perceptions. An attentive reader of Butler's essays here will be easily able to track the mutations of the referent when she uses the pronoun "we." Even where her point is to argue for inclusivity, or for the extension of the boundaries of the human, it's clear that the initial vantage point is the American human. A third characteristic of America liberal discourse is its strain of religiosity. Butler's final chapter here, the only previously unpublished essay in the book, concentrates on Emmanuel Lévinas, and it exhibits that trait. The essay is intended to underline the philosophical basis of the book's general discussion of the human and it is from Lévinas that Butler gets her title, Precarious Life. For Lévinas the word précaire fully implicates its etymology in the Latin word precari, an interestingly intransitive verb meaning to pray. The suggestion in Lévinas is that the Other is finally the divinity to whom we must pray and upon whom our existence depends in a supplicatory way. Butler's text doesn't explicitly take on this thicker meaning of "precarious," but the pressure that the word exerts on her text produces a glimpse of the religiosity that lurks behind all her schemas of interrelational identity, or of mourning and melancholia, and of course of "the human." Like all liberal discourse **Butler's essays have power** and here they identify and assault some of the worst symptoms of post-9/11 America. Their tone is largely outraged and militant, and the essays are occasionally courageous and biting. **But it would be a mistake**, I think, **to take them as much more than a kind of bien pensant liberalism. It's clear that liberalism has always acted as the loyal opposition, pressing for its right to dissent and question, but never finally questioning or dissenting from the very system that has produced both it and its master**. Indeed, **the condition of liberalism could be the dictionary definition of precariousness itself: utterly dependent on the system and its rules, always in a supplicatory or petitioning relation to it, wanting to have its voice heard but certainly never willing to overthrow it. Liberalism is**, in that sense, **not unlike the "embedded" journalists working hand in hand with the military in Iraq**. All of which brings up the question that Butler's final chapter opens and closes with: what is the role and the use of cultural criticism in these times? Butler's answer is modest and limited. **What we need, she claims, is to sustain the project of the humanities and cultural criticism by trying to ensure that dissenting voices are heard within American democracy**; those voices will bring "us" back to find "the human where we do not expect to find it, in its frailty and at the limits of its capacity to make sense" (151). In my view, **it's crucial to resist this strain of "cultural criticism." That's not because it's unnecessary to attack the same targets as Butler attacks**—we cannot not attack those targets. **But rather it's because the way of thinking—the philosophical tradition, indeed—that underpins her assaults is ultimately anything but radical. Cultural criticism would indeed be in a precarious state if this liberalism were its proper and uncontested location**.

**THE DETERMINISM OF CAPITAL IS RESPONSIBLE FOR THE INSTRUMENTALIZATION OF ALL LIFE—THIS LOGIC MOBILIZES AND ALLOWS FOR THE 1AC’S SCENARIOS IN THE FIRST PLACE**

**DYER-WITHERFORD** (professor of Library and Info. Sciences at the U of Western Ontario) **1999**   
[Nick. Cyber Marx: Cycles and Circuits of Struggle in High Technology Capitalism.]

**For capitalism, the use of machines as organs of “will over nature” is an imperative.** The great insight of the Frankfurt School—an insight subsequently improved and amplified by feminists and ecologists—was that **capital’s dual project of dominating both humanity and nature was intimately tied to the cultivation of “instrumental reason” that systematically objectifies, reduces, quantifies and fragments the world for the purposes of technological control.** Business’s systemic need to cheapen labor, cut the costs of raw materials, and expand consumer markets gives it an inherent bias toward the piling-up of technological power. **This priority—enshrined in phrases such as “progress,” “efficiency,” “productivity,” “modernization,” and “growth”—assumes an automatism that is used to override any objection or alternative, regardless of the environmental and social consequences. Today, we witness global vistas of toxification, deforestation, desertification, dying oceans, disappearing ozone layers, and disintegrating immune systems, all interacting in ways that perhaps threaten the very existence of humanity and are undeniably inflicting social collapse, disease, and immiseration across the planet.** The degree to which this project of mastery has backfired is all too obvious.

**The alternative is to reject the 1AC’s politics of grief in favor of the method of structural/historical criticism that is the 1NC.**

**METHOD IS THE FOREMOST POLITICAL QUESTION BECAUSE ONE MUST UNDERSTAND EXISTING SOCIAL TOTALITY BEFORE ONE CAN HOW TO ACT—GROUNDING THE SITES OF POLITICAL CONTESTATION OUTSIDE OF LABOR MERELY SERVE TO HUMANIZE CAPITAL AND PREVENT A TRANSITION BEYOND OPPRESSION**

**TUMINO** (Prof. English @ Pitt) **2001**

[Stephen, “What is Orthodox Marxism and Why it Matters Now More than Ever”, **Red Critique**, p. online //wyo-tjc]

**Any effective political theory will have to do at least two things: it will have to offer an integrated understanding of social practices and, based on such an interrelated knowledge, offer a guideline for praxis**. My main argument here is that among all contesting social theories now, **only Orthodox Marxism has been able to produce an integrated knowledge of the existing social totality and provide lines of praxis that will lead to building a society free from necessity**. But first I must clarify what I mean by Orthodox Marxism. Like all other modes and forms of political theory, the very theoretical identity of Orthodox Marxism is itself contested—not just from non-and anti-Marxists who question the very "real" (by which they mean the "practical" as under free-market criteria) existence of any kind of Marxism now but, perhaps more tellingly, from within the Marxist tradition itself. I will, therefore, first say what I regard to be the distinguishing marks of Orthodox Marxism and then outline a short polemical map of contestation over Orthodox Marxism within the Marxist theories now. I will end by arguing for its effectivity in bringing about a new society based not on human rights but on freedom from necessity. I will argue that **to know contemporary society—and to be able to act on such knowledge—one has to first of all know what makes the existing social totality**. I will argue that **the dominant social totality is based on inequality—not just inequality of power but inequality of economic access** (which then determines access to health care, education, housing, diet, transportation, . . . ). **This systematic inequality cannot be explained by gender, race, sexuality, disability, ethnicity, or nationality. These are all secondary contradictions and are all determined by the fundamental contradiction of capitalism** which is inscribed in the relation of capital and labor. All **modes** of Marxism **now explain social inequalities primarily on the basis of these secondary contradictions and in doing so**—and this is my main argument—**legitimate capitalism**. Why? **Because such arguments authorize capitalism without gender, race, discrimination and thus accept economic inequality as an integral part of human societies. They accept a sunny capitalism—a capitalism beyond capitalism. Such a society, based on cultural equality but economic inequality, has always been the not-so-hidden agenda of the bourgeois left—whether it has been called "new left," "postmarxism," or "radical democracy**." This is, by the way, the main reason for its popularity in the culture industry—from the academy (Jameson, Harvey, Haraway, Butler,. . . ) to daily politics (Michael Harrington, Ralph Nader, Jesse Jackson,. . . ) to. . . . **For all, capitalism is here to stay and the best that can be done is to make its cruelties more tolerable, more humane**. **This humanization (not eradication) of capitalism is the sole goal of ALL contemporary lefts** (marxism, feminism, anti-racism, queeries, . . . ). **Such an understanding of social inequality is based on the fundamental understanding that the source of wealth is human knowledge and not human labor. That is, wealth is** produced by the human mind and is thus **free from the actual objective conditions that shape the historical relations of labor and capital. Only Orthodox Marxism recognizes the historicity of labor and its primacy as the source of all human wealth**. In this paper I argue that **any emancipatory theory has to be founded on recognition of the priority of Marx's labor theory of value and not repeat the technological determinism of** corporate theory ("**knowledge work") that masquerades as social theory**.

### 3rd Off

#### Al Qaeda is weak now but could recover if the US allows them the opportunity

McLaughlin 13 (John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution, ¶ 06:00 AM ET¶ Terrorism at a moment of transition7/12, http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/)

A third major trend has to do with the debate underway among terrorists over tactics, targets, and ways to correct past errors.¶ On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the United States, as Pakistan’s Tehrik e Taliban did in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, many of the groups are becoming intrigued by the possibility of scoring gains against regional governments that are now struggling to gain or keep their balance – opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ Documents from al Qaeda in the Islamic Maghreb, discovered after French forces chased them from Mali, reveal awareness that they were too harsh on local inhabitants, especially women. They also recognized that they need to move more gradually and provide tangible services to populations – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion and division in the movement or, more likely, extend its life and impart new momentum.¶ So if we are ever tempted to lower our guard in debating whether and when this war might end, we should take heed of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "It needs but one foe to breed a war, not two ..."

#### Continued indefinite detention key to winning the war on terror

Hodgkinson ‘12

[Sandra L. Hodgkinson, former Chief of Staff for Deputy Secretary of Defense William J. Lynn, III and Deputy Assistant Secretary of Defense for Detainee Affairs and Distinguished Visiting Research Fellow at National Defense University, “Executive Power in a War Without End: Goldsmith, the Erosion of Executive Authority on Detention, and the End of the War on Terror,” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW VOL. 45, Fall 2012, [http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf //](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf%20//) wyo-ch]

There is no such thing as a war without end. All wars come to an end, even though it may be hard to predict when that end will be. When President Woodrow Wilson first coined the phrase “the war to end all wars” when speaking to Congress about World War I39 or when President Roosevelt referred to World War II as the “Long War,”40 neither president could easily predict when the war would end. At some level of destruction, some level of defeat, or some level of fighting fatigue, one way or another, wars end. In a classic state on-state conflict, the typical ways to end a war are through a peace treaty, defeat, or surrender.41 World War I ended with the Treaty of Versailles,42 while World War II ended with Germany and Japan surrendering.43 Generally, upon conclusion of the war, it is presumed that most, if not all, members of the country’s regular armed forces will lay down their arms and comply with the outcome of the war. This, however, is not always the case. Many modern conflicts have evolved into protracted insurgencies when non-government controlled forces are not ready to give up the fight, and are able to continue to fight. The recent example of Iraq is illustrative, as Iraqi insurgents have continued to destabilize the country long after the official war has ended.44 Northern Ireland is another example of a country where the fighting continued long after the peace process was in place.45 There is a path to victory for the United States in this war against the transnational non-state actor al-Qaeda, even if every member of al-Qaeda does not lay down his arms in surrender or acknowledge defeat. There are four steps on this path to victory. First, the United States and its allies must kill or capture the senior al-Qaeda leadership. We are doing that. The point regarding kill or capture is critical, as a state cannot have a policy that requires it to kill an enemy who surrenders.46 There must always be a detention option available, which is why military detention must remain a legitimate tool for use in this and future wars.47 Drone strikes are a principal tool being used to kill senior al-Qaeda leadership who are not encountered directly on the traditional kinetic battlefield and are a legitimate use of force under the law of armed conflict.48 Second, the United States and its allies must cut off al-Qaeda’s methods of travel. We have been working with allies consistently on this issue since September 11, 2001, through a vast array of terrorist watch lists, which identify terrorists and prevent them from traveling, particularly to areas where they may pose a threat to United States, allied forces, or other personnel.49 Third, the United States and its allies must cut off al-Qaeda’s funding sources. We have been working with allies to freeze assets associated with terrorism in banks around the world, while at the same time creating new laws that criminalize financial support to terrorists.50 The United Nations has called on countries to cut off terrorist means and methods of travel, and their funding.51 Lastly, the United States and NATO allies will have to continue efforts to “win the peace” in Afghanistan and elsewhere through continued counter-insurgency efforts, rehabilitation and reintegration programs, and developmental assistance and funding.52 Achieving these objectives will not make every member of al Qaeda and their affiliated groups lay down their weapons, but it will make their ability to act on a global scale in the way that they did on 9/11 and the years following much more difficult. They will become, in essence, splintered or localized terrorist groups, with the ability to certainly carry out harm and terrorist threats on a more localized scale, but not on the same global scale on which al-Qaeda has operated. As a result, they will be more similar to the other terrorist groups in the world that the United States is currently not at war with, such as Hamas, Hezbollah, and FARC, despite the fact that al Qaeda could continue to be a threat, as these groups have been for decades and continue to be.53 However, the organization will no longer be a terrorist organization which behaves like a state actor engaged in a military conflict, and as a result, the United States will no longer be at war. As a matter of law and policy, the United States has been at war with al-Qaeda, the Taliban, and their affiliates and associates responsible for the attacks of 9/11.54 The early policy statements of the Bush Administration that we were in a “War on Terror” were policy statements, rather than statements of a legal nature,55 as the war was always confined to the groups that “planned, authorized, committed or aided” the 9/11 attacks as per the AUMF.56 Some have argued that both the Bush and Obama Administrations have fairly liberally interpreted this authority.57 It is the “warlike” characteristic of al-Qaeda’s attack and the AUMF that supported the U.S. response that gave both administrations the legitimacy that they did have to treat members of these forces as enemy combatants, killing them on the battlefield and in other types of targeted strikes. When al-Qaeda is no longer behaving like a military enemy, we should continue to treat them as we treat other terrorist groups around the world—using traditional methods of law enforcement. Achieving this military victory over al-Qaeda has another extremely significant implication for the United States. It will have to begin an orderly drawdown of the detainees remaining at Guantanamo Bay, consistent with the international law of war.58 In Iraq, during 2008–2009, the United States was able to drawdown nearly 25,000 detainees predominantly from the facilities in Camp Bucca and Camp Cropper over the course of about eighteen months as the conflict was ending.59 While it was a challenging process, it was achieved in an orderly and timely manner consistent with the laws of war. There are some people that would argue that we should keep the detainees at Guantanamo Bay locked away forever, or at least as long as one or every one of these detainees poses a threat to us.60 The detainees at Guantanamo Bay are not being held under a security detention framework, which would make their individual threat level relevant to an individualized determination. Instead, they are held under the law of war, so when that war is over, they must be repatriated or released.61 They may be tried for crimes they committed during the war, either at military commissions, Article III courts, or by host nations.62 Unless some new security detention framework is developed, which seems unlikely at present, the detainees who have not been tried and convicted must be repatriated or released consistent with every other war in history.

#### Terrorist retaliation causes nuclear war – draws in Russia and China

Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, 2010 (“After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. t may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response.

### Case

#### The Aff misses the point—THE CAMPS ARE NOT THE PERMANENT RENDERING OF THE EXCEPTION OUTSIDE OF LAW, BUT THE EXCESS OF LAW ITSELF

JOHNS (Univ. of Sydney, Faculty of Law) 2006

[Fleur, “Guantanamo Bay and the Annihilation of the Exception”, European Journal of International Law, Vol. 16, No. 4 //wyo-tjc]

Is Guantánamo Bay, Cuba, as one scholar has described it, an ‘anomalous zone’?1 In international legal terms, does Guantánamo Bay embody law’s absence, suspension or withdrawal – a ‘black hole’, as the English Court of Appeal has stated?2 Is it a space that international law ‘proper’ is yet to fill and should be implored to fill – a jurisdiction maintained before the law, against the law or in spite of the law? These are some of the questions with which I began the research from which this article emanates. I commenced, too, with a sense of unease with the responses to these questions that may be elicited from the surrounding international legal literature. Implicit or explicit in most international legal writing on Guantánamo Bay is a sense that it represents an exceptional phenomenon that might be overcome by having international law scale the heights of the Bush administration’s stonewalling. Guantánamo Bay’s presence and persistence on the international legal scene, such accounts imply, may be understood as a singular, grotesque instance of law’s breakdown – an insurgence of ‘utter lawlessness’ in the words of Lord Steyn of the House of Lords.3 Of this, I am not so sure. By my reading, the plight of the Guantánamo Bay detainees is less an outcome of law’s suspension or evisceration than of elaborate regulatory efforts by a range of legal authorities. The detention camps of Guantánamo Bay are above all works of legal representation and classification. They are spaces where law and liberal proceduralism speak and operate in excess.4 This article will probe this intuition by examining law’s efforts in constituting the jurisdictional order of the Guantán amo Bay Naval Base (and, more specifically, Camps Delta and America at that Base). It will consider, in particular, the claim that the jurisdictional order of Guantánamo Bay renders permanent a state of the exception, in the sense (derived from the work of Carl Schmitt) of a space that ‘defies codification’ and subjects its occupants to the unfettered exercise of sovereign discretion.5 Such a claim has been put forward (usually without an express invocation of Schmitt) by a range of international legal commentators.6 It has also been famously put forward, with distinct and in many ways divergent implications, in the writings of Italian philosopher Giorgio Agamben. This article argues against that characterization, in both its legal scholarly and its Agamben-esque forms. It will be contended here that understanding Guantánamo Bay as a domain of sovereign exception (and, as such, of political decision-making) in a Schmittian sense is a misnomer. Rather, Guantánamo Bay may be more cogently read as the jurisdictional outcome of exhaustive attempts to domesticate the political possibilities occasioned by the experience of exceptionalism – that is, of operating under circumstances not pre-codified by pre-existing norms. Far from emboldening sovereign and non-sovereign forms of political agency under conditions of radical doubt, the legal regime of Guantánamo Bay is dedicated to producing experiences of having no option, no doubt and no responsibility. Accordingly, in Schmittian terms, the contemporary legal phenomenon that is Guantánamo Bay may be read as a profoundly anti-exceptional legal artefact. The normative regime of Guantánamo Bay is one intensely antithetical to the forms of decisional experience contemplated by Schmitt in Political Theology and to modes of decisional responsibility articulated by other writers before and since.7 It is by reason of its norm-producing effects in this respect, I would argue, that the legal regime of the Guantánamo Bay detention camps and its replication beyond Cuba merit interrogation and resistance.

#### Their demand detainees are released and returned to the normal state cause a less than radical politics that solves none of their impacts—legal fetishism reinscribes governmentality

NEOCLEOUS (Politics & History @ Brunel University) 2006

[Mark, “the Problem with Normality”, Alternatives, no. 31 //wyo-tjc]

To criticize the use of emergency powers in terms of a suspension of the law, then, is to make the mistake of counterpoising normality and emergency, law and violence. In separating “normal” from “emergency,” with the latter deemed “exceptional,” this approach parrots the conventional wisdom that posits normalcy and emergency as two discrete and separable phenomena. This essentially liberal paradigm assumes that there is such a thing as “normal” order governed by rules, and that the emergency constitutes an “exception” to this normality. “Normal” here equates with the separation of powers, entrenched civil liberties, an ongoing debate about public policy and law, and the rule of law, while “emergencies” are thought to require strong executive rule, little time for discussion, and are premised on the supposedly necessary suspension of the law and thus the discretion to suspend key liberties and rights. But this rests on two deeply ideological assumptions: first, the assumption that emergency rule is aberrational; and, second, an equation of the emergency/nonemergency dichotomy with a distinction between constitutional and nonconstitutional action. Thus liberalism seeks to separate emergency rule from the normal constitutional order, thereby preserving the Constitution in its pristine form while providing the executive with the power to act in an emergency.47 But the historical evidence suggests that emergency powers are far from exceptional; rather, they are an ongoing aspect of normal political rule. Emergency, in this sense, is what emerges from the rule of law when violence needs to be exercised and the limits of the rule of law overcome. The genealogy of “emergency” is instructive here. “Emergency” has its roots in the idea of “emerge.” The Oxford English Dictionary suggests that “emerge” connotes “the rising of a submerged body out of the water” and “the process of coming forth, issuing from concealment, obscurity, or confinement.” Both these meanings of “emerge” were once part of the meaning of “emergency,” but the first is now rare and the second obsolete. Instead, the modern meaning of “emergency” has come to the fore, namely a sudden or unexpected occurrence demanding urgent action and, politically speaking, the term used to describe a condition close to war in which the normal constitution might be suspended. But what this tells us is that in “emergency” lies the idea of something coming out of concealment or issuing from confinement by certain events. This is why “emergency” is a better category than exception: Where “emergency” has this sense of “emergent,” exception instead implies a sense of ex capere, that is, of being taken outside. Far from being outside the rule of law, emergency powers emerge from within it. They are thus as important as the rule of law to the political management of the modern state. There is, however, an even wider argument to be made. The idea that the permanent emergency involves a suspension of the law encourages the idea that resistance must involve a return to legality, a return to the normal mode of governing through the rule of law. But this involves a serious misjudgment in which it is simply assumed that legal procedures, both international and domestic, are designed to protect human rights from state violence. Law itself comes to appear largely unproblematic. What this amounts to is what I have elsewhere called a form of legal fetishism, in which law becomes a universal answer to the problems posed by power. Law is treated as an independent or autonomous reality, explained according to its own dynamics. This produces the illusion that law has a life of its own, abstracting the rule of law from its origins in class domination and oppression and obscuring the ideological mystification of these processes in the liberal trumpeting of the rule of law.48 To demand the return to the “rule of law” is to seriously misread the history of the relation between the rule of law and emergency powers and, consequently, to get sucked into a less-than-radical politics in dealing with state violence. Part of what I am suggesting is that emergency measures, as state violence, are part of the everyday exercise of powers, working alongside and from within rather than against the rule of law, as part of a unified political strategy in the fabrication of social order.

#### No impact—liberal democracy solves their governmentality claims

Heins 05

Heins, Vis Prof Poli Sci @ Concordia U and Senior Fellow at the Institute for Social Research in Frankfurt, 2K5 (Volker, “Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy,” 6 German Law Journal No. 5, May, http://www.germanlawjournal.com/article.php?id=598)

Agamben is not interested in such weighing of costs and benefits because he assumes from the outset that taking care of the survival needs of people in distress is simply the reverse side of the modern inclination to ignore precisely those needs and turn life itself into a tool and object of power politics. By way of conclusion, I will indicate briefly how his view differs from two other, often no less shattering critiques of modern humanitarianism. Martti Koskenniemi warned that humanitarian demands and human rights are in danger of degenerating into "mere talk."[47] The recent crisis in Darfur, Sudan, can be cited as an example for a situation in which the repeated invocation of human rights standards and jus cogens norms, like those articulated in the Genocide Convention, might ultimately damage those norms themselves if states are unwilling to act on them.[48] This criticism implies that human rights should be taken seriously and applied in a reasonable manner. Both David Kennedy and Oona Hathaway have gone one step further by taking issue even with those who proved to be serious by joining treaties or engaging in advocacy. In a controversial quantitative study, Hathaway contended that the ratification of human rights treaties by sets of given countries not only did not improve human rights conditions on the ground, but actually correlated with increasing violations.[49] In a similar vein, David Kennedy radicalized Koskenniemi's point by arguing that human rights regimes and humanitarian law are rather part of the problem than part of solution, because they "justify" and "excuse" too much.[50] To some extent, this is an effect of the logic of legal reasoning: marking a line between noncombatants and combatants increases the legitimacy of attacking the latter, granting privileges to lawful combatants delegitimizes unlawful belligerents and dramatically worsens their status. On the whole, Kennedy is more concerned about the dangers of leaving human rights to international legal elites and a professional culture which is blind for the mismatch between lofty ideals and textual articulations on the one side, and real people and problems on the other side.[51] Whereas these authors reveal the "dark sides" of overly relying on human rights talk and treaties, the moral fervor of activists or the routines of the legal profession, Agamben claims that something is wrong with human rights as such, and that recent history has demonstrated a deep affinity between the protection and the infringement of these rights. Considered in this light, the effort of the British aid organization Save the Children, for instance, to help children in need both in Britain and abroad after World War I —faithful to George Bernard Shaw's saying, "I have no enemies under seven"—is only the flip side of a trend to declare total war on others regardless of their age and situation. This assertion clearly goes far beyond the voices of other pessimists. Agamben's work is understandable only against the backdrop of an entirely familiar mistrust of liberal democracy and its ability to cultivate nonpartisan moral and legal perspectives. According to Agamben, democracy does not threaten to turn into totalitarianism, but rather both regimes smoothly cross over into one another since they ultimately rest on the same foundation of a political interpretation of life itself.[52] Like Carl Schmitt, Agamben sees the invocation of human rights by democratic governments as well as the "humanitarian concept of humanity"[53] as deceptive manouvers or, at least, as acts of self-deception on the part of the liberal bourgeois subject. The difference between Agamben and Schmitt lies in the fact that Schmitt fought liberal democracy in the name of the authoritarian state, while Agamben sees democracy and dictatorship as two equally unappealing twins. Very much unlike Schmitt, the Italian philosopher confronts us with a mode of thinking in vaguely felt resemblances in lieu of distinctly perceived differences. Ultimately, he offers a version of Schmitt's theory of sovereignty that changes its political valence and downplays the difference between liberal democracy and totalitarian dictatorship—a difference about which Adorno once said that it "is a total difference. And I would say," he added, "that it would be abstract and in a problematic way fanatical if one were to ignore this difference."[54]

#### AGAMBEN IS WRONG… BIOPOWER DOESN’T CAUSE EXCEPTION OR VIOLENCE, BUT MAINTAINS LIFE

Ojakangas 05

[Mike, Helsinki Collegium for Advanced Studies, “Impossible Dialogues on Bio-Power: Agamben and Foucault,” Foucault Studies 2 (5-28), www.foucault-studies.com/no2/ojakangas1.pdf, acc. 9-24-06//uwyo-ajl]

In fact, the history of modern Western societies would be quite incomprehensible without taking into account that there exists a form of power which refrains from killing but which nevertheless is capable of directing people’s lives. The effectiveness of bio-power can be seen lying precisely in that it refrains and withdraws before every demand of killing, even though these demands would derive from the demand of justice. In biopolitical societies, according to Foucault, capital punishment could not be maintained except by invoking less the enormity of the crime itself than the monstrosity of the criminal: “One had the right to kill those who represented a kind of biological danger to others.” However, given that the “right to kill” is precisely a sovereign right, it can be argued that the bio-political societies analyzed by Foucault were not entirely bio-political. Perhaps, thereneither has been nor can be a society that is entirely bio-political. Nevertheless, the fact is that present-day European societies have abolished capital punishment. In them, there are no longer exceptions. It is the very “right to kill” that has been called into question. However, it is not called into question because of enlightened moral sentiments, but rather because of the deployment of bio-political thinking and practice. For all these reasons, Agamben’s thesis, according to which the concentration camp is the fundamental bio-political paradigm of the West, has to be corrected. The bio-political paradigm of the West is not the concentration camp, but, rather, the present-day welfare society and, instead of homo sacer, the paradigmatic figure of the bio-political society can be seen, for example, in the middle-class Swedish social-democrat. Although this figure is an object – and a product – of the huge bio-political machinery, it does not mean that he is permitted to kill without committing homicide. Actually, the fact that he eventually dies, seems to be his greatest “crime” against the machinery. (In bio-political societies, death is not only “something to be hidden away,” but, also, as Foucault stresses, the most “shameful thing of all”. ) Therefore, he is not exposed to an unconditional threat of death, but rather to an unconditional retreat of all dying. In fact, the bio-political machinery does not want to threaten him, but to encourage him, with all its material and spiritual capacities, to live healthily, to live long and to live happily – even when, in biological terms, he “should have been dead longago”. This is because biopower is not bloody power over bare life for its own sake but pure power over all life for the sake of the living. It is not power but the living, the condition of all life – individual as well as collective – that is the measure of the success of bio-power.

#### A) TURNS Case—

#### The aff’s ATTEMPT TO REPROJECT LAW INTO THE WAR ON TERROR PRESUMES LAW IS THE ABSENCE OF THE EXCEPTION, MISTAKING THE INTRINSIC LINK BETWEEN LAW AND SOVEREIGNTY. THIS RENDERS SOVEREIGN POWER INVISIBLE, ALLOWING FAR MORE INSIDIOUS EXTENSIONS OF THE STATE OF EXCEPTION

KOHN (Prof. Poli Sci at Univ. Florida) 2006

[Margaret, “Bare Life and the Limits of Law”, Theory & Event, Vol. 9, No. 2 //wyo-tjc]

Agamben's critique of the USA Patriot Act, at least initially seems to bare a certain resemblance to the position taken by ACLU-style liberals in the United States. When he notes that "detainees" in the war on terror are the object of pure de facto rule and compares their legal status to that of Holocaust victims, he implicitly invokes a normative stance that is critical of the practice of turning juridical subjects into bare life, e.g. life that is banished to a realm of potential violence. For liberals, "the rule of law" involves judicial oversight, which they identify as one of the most appropriate weapons in the struggle against arbitrary power. Agamben makes it clear, however, that he does not endorse this solution. In order to understand the complex reasons for his rejection of the liberal call for more fairness and universalism we must first carefully reconstruct his argument.¶ State of Exception begins with a brief history of the concept of the state of siege (France), martial law (England), and emergency powers (Germany). Although the terminology and the legal mechanisms differ slightly in each national context, they share an underlying conceptual similarity. The state of exception describes a situation in which a domestic or international crisis becomes the pretext for a suspension of some aspect of the juridical order. For most of the bellicose powers during World War I this involved government by executive decree rather than legislative decision. Alternately, the state of exception often implies a suspension of judicial oversight of civil liberties and the use of summary judgment against civilians by members of the military or executive.¶ Legal scholars have differed about the theoretical and political significance of the state of exception. For some scholars, the state of exception is a legitimate part of positive law because it is based on necessity, which is itself a fundamental source of law. Similar to the individual's claim of self-defense in criminal law, the polity has a right to self-defense when its sovereignty is threatened; according to this position, exercising this right might involve a technical violation of existing statutes (legge) but does so in the name of upholding the juridical order (diritto). ¶ The alternative approach, which was explored most thoroughly by Carl Schmitt in his books Political Theology and Dictatorship, emphasizes that declaring the state of exception is the perogative of the sovereign and therefore essentially extra-juridical. For Schmitt, the state of exception always involves the suspension of the law, but it can serve two different purposes. A "commissarial dictatorship" aims at restoring the existing constitution and a "sovereign dictatorship" constitutes a new juridical order. Thus, the state of exception is a violation of law that expresses the more fundamental logic of politics itself. Following Derrida, Agamben calls this force-of-law.¶ What exactly is the force-of-law? Agamben suggests that the appropriate signifier would be force-of-law, a graphic reminder of the fact that the concept emerges out of the suspension of law. He notes that it is a "mystical element, or rather a fictio by means of which law seeks to annex anomie itself." It expresses the fundamental paradox of law: the necessarily imperfect relationship between norm and rule. The state of exception is disturbing because it reveals the force-of-law, the remainder that becomes visible when the application of the norm, and even the norm itself, are suspended.¶ At this point it should be clear that Agamben would be deeply skeptical of the liberal call for more vigorous enforcement of the rule of law as a means of combating cruelties and excesses carried out under emergency powers. His brief history of the state of exception establishes that the phenomenon is a political reality that has proven remarkably resistant to legal limitations. Critics might point out that this descriptive point, even if true, is no reason to jettison the ideal of the rule of law. For Agamben, however, the link between law and exception is more fundamental; it is intrinsic to politics itself. The sovereign power to declare the state of exception and exclude bare life is the same power that invests individuals as worthy of rights. The two are intrinsically linked. The disturbing implication of his argument is that we cannot preserve the things we value in the Western tradition (citizenship, rights, etc.) without preserving the perverse ones. ¶ Agamben presents four theses that summarize the results of his genealogical investigation. (1) The state of exception is a space devoid of law. It is not the logical consequence of the state's right to self-defense, nor is it (qua commissarial or sovereign dictatorship) a straightforward attempt to reestablish the norm by violating the law. (2) The space devoid of law has a "decisive strategic relevance" for the juridical order. (3) Acts committed during the state of exception (or in the space of exception) escape all legal definition. (4) The concept of the force-of-law is one of the many fictions, which function to reassert a relationship between law and exception, nomos and anomie. ¶ The core of Agamben's critique of liberal legalism is captured powerfully, albeit indirectly, in a quote from Benjamin's eighth thesis on the philosophy of history. According to Benjamin, (t)he tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must attain a concept of history that accords with this fact. § Marked 16:52 § Then we will clearly see that it is our task to bring about the real state of exception, and this will improve our position in the struggle against fascism. (57)¶ Here Benjamin endorses the strategy of more radical resistance rather than stricter adherence to the law. He recognizes that legalism is an anemic strategy in combating the power of fascism. The problem is that conservative forces had been willing to ruthlessly invoke the state of exception in order to further their agenda while the moderate Weimar center-left was paralyzed; frightened of the militant left and unwilling to act decisively against the authoritarian right, partisans of the rule of law passively acquiesced to their own defeat. Furthermore, the rule of law, by incorporating the necessity of its own dissolution in times of crisis, proved itself an unreliable tool in the struggle against violence.¶ From Agamben's perspective, the civil libertarians' call for uniform application of the law simply denies the nature of law itself. He insists, "From the real state of exception in which we live, it is not possible to return to the state of law. . ." (87) Moreover, by masking the logic of sovereignty, such an attempt could actually further obscure the zone of indistinction that allows the state of exception to operate. For Agamben, law serves to legitimize sovereign power. Since sovereign power is fundamentally the power to place people into the category of bare life, the law, in effect, both produces and legitimizes marginality and exclusion.

#### Turn’s case- aff’s legal apologism extends processes they oppose and destroys critical energies necessary for sources of oppression and violence

JOHNS (Univ. of Sydney, Faculty of Law) 2006

[Fleur, “Guantanamo Bay and the Annihilation of the Exception”, European Journal of International Law, Vol. 16, No. 4 //wyo-tjc]

In arguing against Agamben and others that the experience of the exception anticipated by Schmitt is in retreat at the Guantánamo Bay Naval Base, it is important to acknowledge the extent to which the legal order of Guantánamo Bay often looks and sounds like a domain operating as one of ‘pure’ sovereign discretion and thus exceptionalism. Lawyers for the US Justice Department have asserted that the US President has unlimited discretion to determine the appropriate means for interrogating enemy combatants detained at Guantánamo Bay and elsewhere.97 Likewise, counsel for the US Government contended, before the US Supreme Court, that ‘[a] commander’s wartime determination that an individual is an enemy combatant is a quintessentially military judgment, representing a core exercise of the Commander-in-Chief authority’.98 By assuming the affect of exceptionalism, the normative order of Guantánamo Bay has soaked up critical energies with considerable effectiveness, for it is the exception that rings liberal alarm bells. Accordingly, the focus falls on less than 600 persons being abused in Cuba, rather than upon the millions subjected to endemic sexual, physical and substance abuse in prisons across the democratic world. In a similar way, attention is captured by the violation of rights of asylum-seekers, rather than by the over-representation of immigrants in the most informal and vulnerable sectors of the contemporary economy.99 For detention decisions taken at Guantánamo Bay to correspond to Schmitt’s understanding of the exception, however, ‘[t]he precondition as well as the content of jurisdictional competence in such a case must necessarily be unlimited’. ‘From the liberal constitutional point if view’, Schmitt wrote, ‘there would be no jurisdictional competence at all. The most guidance the constitution can provide is to indicate who can act in such a case.’100 Yet in respect of Guantánamo Bay, both the content and competence of the US executive is repeatedly cast as pre-codified in presidential and governmental statements. At times, the ‘code’ is said to be that of ‘freedom’, ‘democracy’ or ‘justice’.101 At other times, it is that of God.102 On still further occasions, constitutional norms are invoked to frame a decision.103 The acts of the would-be sovereign, in each case, are characterized by repeated references to some higher source of competence and direction, overt deference to a pre-determined programme in the course of implementation, and insistence upon the conduit or vessel-like status of executive authority. A little lower down the hierarchy, Secretary of the Navy Gordon England, speaking about the annual administrative review process at a press briefing on 23 June 2004, conceded: ‘[T]here’s no question there’s judgment involved. I doubt if many of these are black and white cases. I would expect most are going to be gray’. When pressed to define his role in the process, he confirmed that he was the one to make the final decision regarding release, transfer or continued detention in respect of each detainee, in the wake of an Administrative Review Board assessment. ‘I operate and oversee, organise the process, and I also make the ultimate decision’, he stated.104 Secretary England went on, however, to convey an impression of this judgment as one cabined by broad policy directives, notions of reasonableness, and the institutional demand for standardization: ‘[W]e do have some guidelines; . . . the boards do have some guidelines’, he assured the audience, ‘[e]very board doesn’t have a different standard’. He continued: ‘[I]t will be a judgment based on facts, data available . . . the best decision a reasonable person can make in this situation’. ‘[I]t’s what is the situation today and going forward in terms of a threat to America. And that is what we will decide, and that’s what the decision will be based on’.105 From expressing the decision he would be taking in personal, case-specific terms, Secretary England thus moved rapidly into the mode of generalization, depersonalization and necessity. ‘His’ decision became ‘the’ decision of the reasonable person, made not to assess the individual detainee’s responsibility, but rather to assess his or her proximity to a generalized ‘threat to America’. Such an approach is also discernible in the Military Order issued by President Bush in 2001, pursuant to which the Military Commissions were convened before which Guantánamo Bay detainees were, until their suspension in November 2004, in the process of being tried. The ‘findings’ upon which the jurisdiction created by that order is predicated cast the steps taken thereby as inexorable reactions to a state of affairs of immeasurable proportions and persistent duration. Attacks by international terrorists are said to have ‘created a state of armed conflict that requires the use of the United States Armed Forces’.106 Likewise, it is said to be ‘necessary for individuals subject to [the] order . . . to be detained’, just as the issuance of the order itself is stated to be ‘necessary to meet the emergency’.107 Although expressed in terms of ‘an extraordinary emergency’, this order frames the Presidential decisions embodied in its text as matters of exigency – in other words, as non-decisions – dictated by a ‘state of armed conflict’. The only acknowledgement of discretion is buried in the final paragraph of the order’s ‘findings’, where the President is said to have ‘determined that an extraordinary emergency exists for national defense purposes’. The exercise of sovereign discretion is, accordingly, cast as a derivative matter: a question of classification after the fact. One could, of course, read these claims as exercises in public relations, designed to cloak the deployment of unfettered sovereign power in the guise of liberal proceduralism. Yet regardless of how one might characterize the ‘real’ intent behind the military mandates governing Guantánamo Bay, the experience of decision-making reported by figures such as Secretary England seems, to a significant degree, to be one of deferral and disavowal – as though his job were more a matter of implementation than decision. Speaking of the determination, by the Combatant Status Review Tribunal, that one of the first 30 detainees to be heard by the Tribunal was not, in fact, an ‘enemy combatant’, Secretary England explained: ‘[I]n this case we – we set up a process, we’re following that process, we’re looking at all the data . . . Determinations were made he was an enemy combatant. We now have set up another process; more data is available. Time has gone by. . . I believe the process is doing what we asked the process to do, which is to look at the data as unbiased as you can, from a reasonable person point of view. . . and I believe the process is working . . . ’108¶ This is not the language of Schmittian exceptionalism. Rather, it is suggestive of efforts to construct a series of normatively airtight spaces in which the prospect of agonizing over an impossible decision may be delimited and, wherever possible, avoided. As such, the jurisdiction created at Guantánamo Bay is constituted, in Schmittian terms, in the liberal register of the norm (indeed, an overdetermined version thereof).109 This brings me to my final point, which is to sketch a reading of Schmitt whereby the experience of exceptional decisionism that his work evokes may be de-linked from the notion of self-founding, all-encompassing sovereignty and, as such, deployed against the centralization of political authority. I wish to suggest, moreover, that the political possibilities attendant upon such a de-frocked, wayward sense of the exceptional are ripe for reinvigoration in resistance to the initiatives being undertaken at Guantánamo Bay. The legally sanctioned, indefinite detention of persons at Guantánamo Bay might be countered not through a return to the normative, but through an insistence upon the prevalence of the exception in these terms.

**Preventing extinction is the highest ethical priority – we should take action to prevent the Other from dying FIRST, only THEN can we consider questions of value to life**

Paul **Wapner**, associate professor and director of the Global Environmental Policy Program at American University, Winter **2003**, Dissent, online: http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm

All attempts to listen to nature are social constructions-except one**. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existenc**e. As I have said, postmodernists accept that **there is a physical substratum to the phenomenal world even if they argue about the different meanings we ascribe to it. This acknowledgment of physical existence is crucial. We can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character**. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But **we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world**-in all its diverse embodiments-**must be seen by eco-critics as a fundamental good. Eco-critics must be supporters,** in some fashion, **of environmental preservation. Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity**. In fact, **if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative** and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives." Nonetheless**, I can't see how postmodern critics can do otherwise than accept the value of preserving the** nonhuman **world**. The nonhuman **is the extreme "other"; it stands in contradistinction to humans** as a species**. In understanding the constructed quality of human experience and** the dangers of reification, postmodernism inherently advances an ethic of **respecting the "other.**" At the very least, respect **must involve ensuring that the "other"** actually **continues to exist.** In our day and age, **this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth'**s diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### Consequentialism is key to ethical decision making, because it ensures beings are treated as equal—any other approach to ethics is arbitrary because it considers one’s preferences as more important than others

Lillehammer, 2011

[Hallvard, Faculty of Philosophy Cambridge University, “Consequentialism and global ethics.” Forthcoming in M. Boylan, Ed., Global Morality and Justice: A Reader, Westview Press, Online, <http://www.phil.cam.ac.uk/teaching_staff/lillehammer/Consequentialism_and_Global_Ethics-1-2.pdf>] /Wyo-MB

Contemporary discussions of consequentialism and global ethics have been marked by a focus on examples such as that of the shallow pond. In this literature, distinctions are drawn and analogies made between different cases about which both the consequentialist and his or her interlocutor are assumed to have a more or less firm view. One assumption in this literature is that progress can be made by making judgements about simple actual or counterfactual examples, and then employing a principle of equity to the effect that like cases be treated alike, in order to work out what to think about more complex actual cases. It is only fair to say that in practice such attempts to rely only on judgements about simple cases have a tendency to produce trenchant stand-offs. It is important to remember, therefore, that for some consequentialists the appeal to simple cases is neither the only, nor the most basic, ground for their criticism of the ethical status quo. For some of the historically most prominent consequentialists the evidential status of judgements about simple cases depends on their derivability from basic ethical principles (plus knowledge of the relevant facts). Thus, in The Methods of Ethics, Henry Sidgwick argues that ethical thought is grounded in a small number of self-evident axioms of practical reason. The first of these is that we ought to promote our own good. The second is that the good of any one individual is objectively of no more importance than the good of any other (or, in Sidgwick’s notorious metaphor, no individual’s good is more important ‘from the point of view of the Universe’ than that of any other). The third is that we ought to treat like cases alike. Taken together, Sidgwick takes these axioms to imply a form of consequentialism. We ought to promote our own good. Yet since our own good is objectively no more important than the good of anyone else, we ought to promote the good of others as well. And in order to treat like cases alike, we have to weigh our own good against the good of others impartially, all other things being equal. iv It follows that the rightness of our actions is fixed by what is best for the entire universe of ethically relevant beings. To claim otherwise is to claim for oneself and one’s preferences a special status they do not possess. When understood along these lines, consequentialism is by definition a global ethics: the good of everyone should count for everyone, no matter their identity, location, or personal and social attachments, now or hereafter. v Some version of this view is also accepted by a number of contemporary consequentialists, including Peter Singer, who writes that it is ‘preferable to proceed as Sidgwick did: search for undeniable fundamental axioms, [and] build up a moral theory from them’ (Singer 1974, 517; Singer 1981). For these philosophers the question of our ethical duties to others is not only a matter of our responses to cases like the shallow pond. It is also a matter of whether these responses cohere with an ethics based on first principles. If you are to reject the consequentialist challenge, therefore, you will have to show what is wrong with those principles.

**Failure to calculate is worse—leads to inaction that causes totalitarianism**

**Campbell ‘98**

[David, Int’l Relations Prof @ UM, National Deconstruction: Violence, Identity, and Justice in Bosnia, Minneapolis: University of Minnesota Press, 1998, 186]

The undecidable within the decision does not, however, prevent the decision nor avoid its urgency. As Derrida observes, “a just decision is always required immediately, ‘right away.’” This necessary haste has unavoidable consequences because **the pursuit of “infinite information and the unlimited knowledge of conditions**, rules or hypothetical imperatives that could justify it” **are unavailable in the crush of time**. Nor can the crush of time be avoided, even by unlimited time, “because the moment of decision as such always remains a finite moment of urgency and precipitation.” The decision is always “structurally finite,” it a”always marks the interruption of the juridico- or ethico- or politico-cognitive deliberation that precedes it, that must precede it.” That is why, invoking Kierkegaard, Derrida, declares that “the instant of decision is a madness.” The finite nature of the decision may be a “madness” in the way it renders possible the impossible, the infinite character of justice, but Derrida argues for the necessity of this madness. Most importantly, Derrida argues for the necessity of this madness. Most importantly, although Derrida’s argument concerning the decision has, to this pint, been concerned with an account of the procedure by which a decision is possible, it is with respect to the ncessity of the decision that Derrida begins to formulate an account of the decision that bears upon the content of the decision. In so doing, Derrida’s argument addresses more directly – more directly, I would argue than is acknowledged by Critchley – the concern that for politics (at least for a progressive politics) one must provide an account of the decision to combat domination. That **undecidability** resides within the decision, Derrida argues, “that justice exceeds law and calculation, that the unpresentable exceeds the determinalbe cannot and **should not serve as alibi for staying out of juridico-political battles, within an institution or a state**, or between institutions or states and others.” Indeed, “**incalculable justice requires us to calculate**.” From where do these insistences come? What is behind, what is animating, these imperatives? It is both the character of infinite justice as a heteronomic relationship to the other, a relationship that because of its undecidability multiplies responsibility, and the fact that “**left to itself, the incalculable** and given (donatrice) idea of justice is always very close to the bad, even to the worst, for **it can always be reappropriated by the most perverse calculation.**” The necessity of calculating the incalculable thus responds to a duty a duty that inhabits the instant of madness and compels the decision to avoid “the bad,” the “perverse calculation,” even the worst.” This is **the** duty that also dwells with deconstructive thought **and makes it the starting point, the “at least necessary condition,” for the organization of resistance to totalitarianism** in all its forms. And it is a duty that responds to practical political concerns when we recognize that Derrida names the bad, the perverse, and the worst as those violences “we recognize all too well without yet having thought them through, the crimes of xenophobia, racism, anti-Semitism, religious or nationalist fanaticism.”

#### There is always value to life, it is subjective—can’t determine for others

Schwartz 2004

[“A Value to Life: Who Decides and How?” www.fleshandbones.com/readingroom/pdf/399.pdf]

Those who choose to reason on this basis hope that if the quality of a life can be measured then the answer to whether that life has value to the individual can be determined easily. This raises special problems, however, because the idea of quality involves a value judgement, and value judgements are, by their essence, subject to indeterminate relative factors such as preferences and dislikes. Hence, quality of life is difficult to measure and will vary according to individual tastes, preferences and aspirations. As a result, no general rules or principles can be asserted that would simplify decisions about the value of a life based on its quality. Nevertheless, quality is still an essential criterion in making such decisions because it gives legitimacy to the possibility that rational, autonomous persons can decide for themselves that their own lives either are worth, or are no longer worth, living. To disregard this possibility would be to imply that no individuals can legitimately make such value judgements about their own lives and, if nothing else, that would be counterintuitive. 2 In our case, Katherine Lewis had spent 10 months considering her decision before concluding that her life was no longer of a tolerable quality. She put a great deal of effort into the decision and she was competent when she made it. Who would be better placed to make this judgement for her than Katherine herself? And yet, a doctor faced with her request would most likely be uncertain about whether Katherine’s choice is truly in her best interest, and feel trepidation about assisting her. We need to know which considerations can be used to protect the patient’s interests. The quality of life criterion asserts that there is a difference between the type of life and the fact of life. This is the primary difference between it and the sanctity criterion discussed on page 115. Among quality of life considerations rest three assertions: 1. there is relative value to life 2. the value of a life is determined subjectively 3. not all lives are of equal value. Relative value The first assertion, that life is of relative value, could be taken in two ways. In one sense, it could mean that the value of a given life can be placed on a scale and measured against other lives. The scale could be a social scale, for example, where the contributions or potential for contribution of individuals are measured against those of fellow citizens. Critics of quality of life criteria frequently name this as a potential slippery slope where lives would be deemed worthy of saving, or even not saving, based on the relative social value of the individual concerned. So, for example, a mother of four children who is a practising doctor could be regarded of greater value to the community than an unmarried accountant. The concern is that the potential for discrimination is too high. Because of the possibility of prejudice and injustice, supporters of the quality of life criterion reject this interpersonal construction in favour of a second, more personalized, option. According to this interpretation, the notion of relative value is relevant not between individuals but within the context of one person’s life and is measured against that person’s needs and aspirations. So Katherine would base her decision on a comparison between her life before and after her illness. The value placed on the quality of a life would be determined by the individual depending on whether he or she believes the current state to be relatively preferable to previous or future states and whether he or she can foresee controlling the circumstances that make it that way. Thus, the life of an athlete who aspires to participate in the Olympics can be changed in relative value by an accident that leaves that person a quadriplegic. The athlete might decide that the relative value of her life is diminished after the accident, because she perceives her desires and aspirations to be reduced or beyond her capacity to control. However, if she receives treatment and counselling her aspirations could change and, with the adjustment, she could learn to value her life as a quadriplegic as much or more than her previous life. This illustrates how it is possible for a person to adjust the values by which they appraise their lives. For Katherine Lewis, the decision went the opposite way and she decided that a life of incapacity and constant pain was of relatively low value to her. It is not surprising that the most vociferous protesters against permitting people in Katherine’s position to be assisted in terminating their lives are people who themselves are disabled. Organizations run by, and that represent, persons with disabilities make two assertions in this light. First, they claim that accepting that Katherine Lewis has a right to die based on her determination that her life is of relatively little value is demeaning to all disabled people, and implies that any life with a severe disability is not worth Write a list of three things that make living. Their second assertion is that with proper help, over time Katherine would be able to transform her personal outlook and find satisfaction in her life that would increase its relative value for her. The first assertion can be addressed by clarifying that the case of Katherine Lewis must not be taken as a general rule. Deontologists, who are interested in knowing general principles and duties that can be applied across all cases would not be very satisfied with this; they would prefer to be able to look to duties that would apply in all cases. Here, a case-based, context-sensitive approach is better suited. Contextualizing would permit freedom to act within a particular context, without the implication that the decision must hold in general. So, in this case, Katherine might decide that her life is relatively valueless. In another case, for example that of actor Christopher Reeve, the decision to seek other ways of valuing this major life change led to him perceiving his life as highly valuable, even if different in value from before the accident that made him a paraplegic. This invokes the second assertion, that Katherine could change her view over time. Although we recognize this is possible in some cases, it is not clear how it applies to Katherine. Here we have a case in which a rational and competent person has had time to consider her options and has chosen to end her life of suffering beyond what she believes she can endure. Ten months is a long time and it will have given her plenty of opportunity to consult with family and professionals about the possibilities open to her in the future. Given all this, it is reasonable to assume that Katherine has made a well-reasoned decision. It might not be a decision that everyone can agree with but if her reasoning process can be called into question then at what point can we say that a decision is sound? She meets all the criteria for competence and she is aware of the consequences of her decision. It would be very difficult to determine what arguments could truly justify interfering with her choice. The second assertion made by supporters of the quality of life as a criterion for decisionmaking is closely related to the first, but with an added dimension. This assertion suggests that the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life. The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgement in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.

#### Refusal to defend the consequences of the plan replicates a totalitarian disregard for life – they sacrifice political responsibility on the altar of morality, which turns the case.

Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University, Summer 2002, Social Research, “Hannah Arendt on human rights and the limits of exposure, or why Noam Chomsky is wrong about the meaning of Kosovo”

What does Arendt mean here? She does not attribute primary responsibility, either causal or moral, for the rise of totalitarianism to these intellectuals, who were basically without power. But she does imply that they were guilty of a serious intellectual and indeed ethical failure, connected to the fact that while brilliant they were also cynical. Disgusted with bourgeois hypocrisy and its double standards, they abandoned standards altogether. Revolted by the impoverishment of social relationships, they abandoned all sense of genuine solidarity with fellow citizens or human beings. It was not simply that they lacked any clear sense of the actual consequences of their rage against liberalism. They also failed to offer, or to stand by, any moral values. They were enemies of hypocrisy rather than partisans of liberty. They lacked any "sense of reality"--any sense of their responsibility for the common world § Marked 16:54 § inhabited by men and women, and any sense of the role of their own ideas as potential sources of human good or evil. The theme of the conjunction of intellect and evil recurs again in the concluding sections of Origins, this time in connection not with the irresponsibility of intellectuals as such, but with the relentless logic of totalitarian ideologies. There is, she argues, not simply a dogmatism but a cruelty inherent in the totalistic explanations furnished by such ideologies. Such cruelty derives from the complete independence of totalitarian ideologies from "all experience." Totalitarian thinking reduces all that is unique, novel, or contingent to the simple terms of its own purported truth. All experience becomes reducible to the terms of that truth, and is forced, not simply politically but also intellectually, to conform to these terms. This accounts for what Arendt considers the most terrifying feature of totalitarian thought, its "stringent logicality." Ideological thinking, she argues, "orders facts into an absolutely logical procedure which starts from an axiomatically accepted premise, deducing everything else from it; that is, it proceeds with a consistency that exists nowhere in the realm of reality" (Arendt, 1973: 471). The ideologue, Arendt maintains, demands a consistency that is inconsistent with "the realm of reality." She does not deny that logic is a method of ordering concepts, or that consistency may be an intellectual virtue. But she maintains that such consistency is not and cannot be a defining quality of the world. The world is too complex, too pluralistic, to admit such consistency. It consists of the disparate experiences, beliefs, and convictions of diverse individuals and groups. And it consists of complex situations that admit of difficult and often tragic choices. The demand for consistency in such a world is too monistic. It is an intellectual conceit--and a conceit specific to intellectuals--to imagine that inconsistency or contradiction is the world's most profound problem, and that the resolution of such inconsistency by logical methods is the most important intellectual-cum-political task. For the elimination of inconsistency may well threaten the elimination of situational ambiguities and differences of opinion that are endemic to the human condition. And, more to the point, the world's most profound problem is not inconsistency or ambiguity or even hypocrisy. It is the infliction of harm and suffering on humans by other humans, and the consequent denial of elemental human dignity to the vulnerable and dispossessed. It is, in short, the denial of freedom to human beings. The "stringent logicality" of ideological thinking not only fails to make this suffering a primary concern; it actually exacerbates this suffering, through its own cruel lack of political responsibility, and through its tendency to gravitate toward cruel and unsavory causes that seem noble because of their relentless ideological consistency (see Shklar, 1984). I want to be clear about this. Arendt is talking about totalitarian ideologies, principally Nazism and Stalinism. She is not arguing that all of those who turn "logicality" into a supreme virtue are quasi totalitarians. But in criticizing totalitarian modes of thinking, she also makes a more general point: that "strict logicality," whatever its intellectual merits, can be hostile to other and more important human values. Intellectuals, she believes, are peculiarly liable to ignore this, for they often inhabit an imaginary world of pure ideality, in which ideas, especially their own ideas, predominate. This is the peculiar unworldliness of the intellectual. It is the source of much brilliance. But if intellectuals want to be social critics then they must become worldly, They must appreciate the irreducible complexity and plurality of the world (see Arendt, 1971: 50-54).

**Government action shouldn’t be subject to the same ethical rules that apply to individuals because of the duty to provide for an entire society. The most ethical mode of policymaking is one that recognizes necessary sacrifices for the common good.**

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**Minimizing governmental harm** is no simple matter. It **involves complex calculations and the interweaving of policies** of inaction with policies of civil, criminal, and regulatory action**. However one thinks these processes ideally should work** in detail, this conclusion comports well with broadly liberal [268](http://web.lexis-nexis.com/universe/document?_m=668ab52fcf195df459761ba6412684ee&_docnum=1&wchp=dGLbVlb-zSkVA&_md5=8f7d87cdf8313249d86c8d417ee6dcb6#n268) notions of proper governmental action. The distributive exemption claims that **the desirable role for government is to attempt to provide for the general welfare as consequentially calculated, while taking into account the cost of governmental intervention. Deontological principles of good standing have** [\*958]  thus **explained why the state is permitted to do that which would be deontologically impermissible for individuals to do**. In short**, an exception to deontology has swallowed up the rule with respect to state action.**