# Rights K

## Agamben K

### Generic 1NC K 2.0

#### Rights are means of exclusion and naïve security. Rights are a legal construct that can’t exist outside the state. However, the law controls itself; there is no higher control than the state itself. The state is its own sovereign, withholding the ability to strip anyone of rights to bare life at any time.

Anthony Downey 02. “Zones of Indistinction: Giorgio Agamben’s ‘Bare Life’ and the Politics of Aesthetics”. 2002. RC

**“Lives lived on the margins of social**, political, cultural, economic and geographical **borders are lives half lived.** Denied access to legal, economic and political redress, **these lives exist in a limbo**-like **state that is** largely **preoccupied with** acquiring and **sustaining the essentials of life. The refugee, the political prisoner**, the disappeared, **the victim of torture**, the dispossessed – **all have been excluded**, to different degrees, **from the** fraternity of the **social sphere, appeal to the safety net of the nation-state and recourse to international law. They have been outlawed**, so to speak, placed **beyond recourse to law** and yet still in a precarious relationship to law itself. Although there is a significant degree of familiarity to be found in these sentiments, there is an increasingly notable move both in the political sciences and in cultural studies to view such subject posi- tions not as the exception to modernity but its exemplification. Which brings us to a far more radical proposal: what if the fact of **discrimina- tion**, in all its injustice and strategic forms of exclusion, **is the point at which we find not so much an imperfect** modern **subject** – a subject existing in a ‘sub-modern’ phase that has yet to realise its potential – **as we do the exemplary** modern **subject**? What if **the refugee, the political prisoner**, the disappeared, **the victim of torture**, the dispossessed **are not only constitutive of modernity but its emblem**atic subjects? It is with such points in mind that Italian philosopher Giorgio Agamben has developed a theory of marginalisation that goes beyond the binary distinctions to be had in dichotomies such as inside/outside, centre/margins, inclusion/exclusion. In albeit abbreviated terms for now, Agamben is interested in lives lived on the margins of social, political, juridical and biological representation, not for their exceptional qualities but for their exemplary status: the manner in which **they are both representative of modernity and a**n admonitory **warning to the ontological basis of the modern political subject. Modernity’s exceptions**, he argues, **predicate its social structure and political reasoning. The exemplary figure of that exceptionalism** in historical terms **is homo sacer, a**n obscure **figure of Roman law who**, although once a citizen, **is reduced to ‘bare life’ by sovereign decree and deprived of basic rights** such as representation before the law.1 **Homo sacer**, the sacred and therefore separate man – he who is set apart from others by law – is, for Agamben, the increasingly nascent figure of our times; a time in which **we are witnessing the effective re-emergence of sovereign forms of power and the concomitant production of ‘bare life’ as a constituent element in the democratic order.** It is to Agamben’s credit that he does not propose a discrete topology of victimhood in his thesis; rather, he is suggesting that the discretionary ability of the sovereign state to bring the weight of its unmediated power to bear upon the body of its subjects is an inherent part of living in a democracy. In Agamben’s eyes, in fine, **we are not only all potentially homo sacer** (homines sacri) **and the** de facto **bearers of ‘bare life’** **but** this exceptional figure augurs **a** ‘coming **community’ that is based** not **on** rights as such **but the suspension of rights.”**

#### Rights are always conditional. The state holds the power to strip rights and give rights to those deemed fit—the aff can literally never happen since the state can’t guarantee a right.

Giorgio Agamben 12 (Italian continental philosopher best known for his work investigating the concepts of the state of exception, form-of-life and homo sacer. The concept of biopolitics informs many of his writings). “Beyond Human Rights”. 2012. http://novact.org/wp-content/uploads/2012/09/Beyond-Human-Rights-by-Giorgio-Agamben.pdf RC

“The reasons for such impotence lie not only in the selfishness and blindness of bureaucratic apparatuses, but also in the very ambiguity of the fundamental notions regulating the inscription of the native (that is, of life) in the juridical order of the nation-state. Hannah Arendt titled the chapter of her book Imperialism that concerns the refugee problem ‘The Decline of the Nation State and the End of the Rights of Man’. 2 One should try to take seriously this formulation, which indissolubly links the fate of the Rights of Man with the fate of the modern nation-state in such a way that the waning of the latter necessarily implies the obsolescence of the former. Here **the paradox is that precisely the figure that should have embodied human rights** more than any other – namely, the refugee – **marked instead the radical crisis of the concept. The conception of human rights based on the supposed existence of a human being as such**, Arendt tells us, **proves to be untenable as soon as those who profess it find themselves confronted for the first time with people who have** really **lost every quality and** every specific **relation except for the pure fact of being human.** 3 **In the** system of the **nation-state**, so called sacred and inalienable **human rights are** revealed to be **without any protection precisely when it is no longer possible to conceive of them as rights of the citizens of a state.** This is implicit, after all, in the ambiguity of the very title of the 1789 Déclaration des droits de l’homme et du citoyen, in which it is unclear whether the two terms are to name two distinct realities or whether they are to form, instead, a hendiadys in which the first term is actually always already contained in the second. That there is no autonomous space in the political order of the nation-state for something like the pure human in itself is evident at the very least from the fact that, even in the best of cases, **the status of refugee has always been considered a temporary condition** that ought to lead either to naturalization or to repatriation. **A stable statute for the human in itself is inconceivable in the law of the nation-state.”**

#### They assume that politics can control the law. This fiction ignores that the sovereign controls it self with the power to create a state of exception clearing the way for genocide.

Anthony Downey 02. “Zones of Indistinction: Giorgio Agamben’s ‘Bare Life’ and the Politics of Aesthetics”. 2002. RC

**“The** ongoing **politicisation of life** today **demands that** a series of **decisions be made about the** delimitation of the **threshold beyond which life ceases to be politically relevant** – where life becomes ‘bare life’. **These thresholds**, moreover, **need to be redrawn from epoch to epoch; so much so that every society modulates the limit of the threshold. The camp was the limit in Nazi Germany** at a particular moment in time; however, as Agamben argues, ‘**every society** – even the most modern – **decides who its “sacred [people]** men” **will be**’ (HS 139). **Politics**, in the context of the camp, **concerned itself with that which was apparently unpolitical** – **‘bare life’ and its abandonment by the political community** – and the implications of this reach beyond the singular abjection of the camps: If this is true, **if the** essence of the **camp consists in** the materialization of the **state of exception** and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction, **then** we must admit that **we find ourselves virtually in the presence of a camp every time such a structure is created, independent of the kinds of crime that are committed there and whatever its denomination and specific topography.** (HS 174)”

#### The alternative is t0 play with the law—when the law asks us to engage, we should “prefer not to”. We take the potentiality of the law and render it inoperative.

Arne De Boever 06 (PhD Columbia, 2009, teaches American Studies in the School of Critical Studies at the California Institute of the Arts). “Overhearing Bartleby: Agamben, Melville, and Inoperative Power”. PARRHESIA. RC

In “Bartleby, or On Contingency,” **Agamben reads Bartleby** as “the last, exhausted figure” of what Avicenna refers to **as “a complete** or perfect **potentiality that belongs to the scribe who is in full possession of the art of writing in the moment in which he [but] does not write.”**9 Later on in the essay, it becomes clear what Bartleby’s ending or exhaustion consist in: **the scrivener’s potentiality is at the same time potentiality for the opposite.** The formula **“prefer not to” does not consent; but it doesn’t** simply **refuse either.** According to Agamben, **it refers to something “whose opposite could have happened in the very moment in which it happened.”**10 Bartleby is ultimately not a figure of potentiality, but of a specific mode of potentiality – potentiality that is, at the same time, potentiality for the opposite. Agamben refers to this potentiality as contingency. In the final pages of the essay, he characterizes Bartleby as a messianic figure who has come “to save what was not.” He emphasizes, however, that unlike Jesus, **“Bartleby comes not to bring a new** table of the **Law but** […] **to** fulfill the Torah by **destroying it from top to bottom.”**11 The essay on contingency shows Agamben struggling with ideas that he will express much more clearly later on, in his commentary on Saint Paul’s Letter to the Romans, The Time that Remains [2000].12 In this book, but also for example in his State of Exception [2003],13 it becomes clear that Agamben’s thought is not a thought that aims to destroy the law. **What opens up** a passage towards **justice** in these works, **is** rather **the law’s “deactivation and inactivity** [inoperosità] – **that is, another use of the law** [emphasis mine].”14 But what does Agamben mean by this other use of the law? Can this inoperativity (“inoperosità”) fully be understood within the limits of legal thought or political science? I want to address these questions by having a closer look at Agamben’s argument on human rights.

#### This is not a rejection of the law—it is more of a “trolling” of the law. We remain under to law but at the same render it inoperative. This is the only appropriate use of the law.

Arne De Boever 2 (PhD Columbia, 2009, teaches American Studies in the School of Critical Studies at the California Institute of the Arts). “Overhearing Bartleby: Agamben, Melville, and Inoperative Power”. PARRHESIA. RC

Once again, Bartleby’s subversion of the space of the law office becomes particularly interesting when it is articulated politically. In the end, the problem that **Bartleby** poses to the narrator is a magnified version of his invitation to go beyond the horizon of communication; he **would like to remain within the protective realm of the** law-**office without giving the office anything in return** other than the mere, material fact of his life, his being. **Bartleby’s demand**, an appeal to an extraordinary generosity on the side of the narrator, **is to be allowed to remain unconditionally within the protective space of the** law-**office**. **Bartleby interrupts the service economy of the** law-**office, not** in order **to destroy the** law-**office but to invite another use of it.** As I’ve pointed out above, Agamben suggests something along similar lines: in his recent discussion of Benjamin’s reading of Franz Kafka, he argues that for Benjamin, “[w]hat opens up a passage toward justice is not the annulling of the law, but its deactivation and dereliction – which is to say, another use of [the law].”30 Although the narrator may not have learned Bartleby’s lesson as a lawyer, I would argue that he did learn it as a narrator: the prologue and epilogue to the story push the text precisely toward the kind of deactivation and dereliction that Benjamin is talking about. **Melville’s story [He] reveals itself here as another use of the law, as an inoperative use of the law.**

#### Instead the judge should use their ballot as a means of pushing counter-narratives to unveil and demystify the power of the sovereign—it’s the hope that we have for meaningful change that spills over this debate round. The judge as critical educator has an obligation to question the AC’s operation.

Ayten Gündoğdu 12 (Department of Political Science, Barnard College-Columbia University). “Potentialities of human rights: Agamben and the narrative of fated necessity”. 2012. http://www.palgrave-journals.com/cpt/journal/v11/n1/full/cpt201045a.html RC

“In his analysis of biopolitical sovereignty**, Agamben provides us with** what might be **called a counternarrative of Western politics with the** explicitly stated **goal of ‘unveiling’** or ‘unmasking’ **what has become mystified**, hidden, secret or invisible, particularly **with** the prevalence of contractarian accounts of **political power** (1998, p. 8; 2005, p. 88). **Agamben describes this** critical **task in terms of** ‘disenchantment’, or the ‘patient work’ of **unmasking the fiction** or myth **that** covers up and **sustains the violence of sovereignty** (2005, p. 88). **What underlies this urge to demystify** and unveil **is a particular understanding of myth as a** deceptive **narrative naturalizing** and legitimizing **violence in the name of** the preservation of **life.** I use **the** term **‘counternarrative’** to call attention to what Agamben's account aims to do6: This **is a critical analysis**, as Agamben himself insists, **that** does not offer ‘historiographical theses or reconstructions’ but instead **treats** some **historical phenomena as ‘paradigms’** so as **to ‘make** intelligible **a broader historical-problematic context;’** to do this, it proceeds at ‘a historico-philosophical level’ (1998, p. 11; 2009, p. 9). In that sense, **it is not an account that claims historical accuracy** or factual verifiability. This is a crucial point that is sometimes overlooked by Agamben's critics who call into question his inaccurate treatment of historical phenomena such as the concentration camps.7 In addition, ‘counternarrative’ draws our attention to the inventive dimensions of Agamben's endeavor; as one of his critics aptly (though disapprovingly) puts it, ‘Agamben does not discover a concealed biopolitical paradigm stretching back to fourth-century Athens; rather he invents one’ (Finlayson, 2010, p. 116). The invention of **a counternarrative** of Western politics involves literary devices (e.g. hyperbole), which **aim[s] to provoke the readers** and persuade them **to abandon** any **politics centered on modern concepts such as sovereignty, [and] rights** and citizenship (LaCapra, 2007; cf. de la Durantaye, 2009). In analyzing Agamben's account as a ‘counternarrative’, I aim to attend to the goals that it sets for itself. It is these goals – particularly the goal of freeing human potentialities from myths that render the contingent necessary and mask other possibilities – that provide the starting point for my critical engagement with Agamben. Instead of resorting to an ‘outside’ – whether this be an alternative historical account or another theoretical tradition – I aim to read Agamben on his own terms, and suggest that as he tries to free human potentialities from contractarian myths, he might be entrapping them in another myth that ends up casting the contingent as necessary. **Agamben's counternarrative** of Western politics **aims to uncover what has become hidden** or invisible **with ‘our** modern habit of representing the political realm in **terms of** citizens’ **rights**, free will, and social contracts’ (1998, p. 106). Its main target is the contractarian accounts of sovereign power. As he identifies the production of bare life as the originary or foundational activity grounding sovereign power (1998, pp. 6, 83), he particularly aims to question the social contractarian ‘myth’ that covers up sovereign violence (1998, p. 109). After unveiling the foundational myths of Western politics, Agamben concludes that **we cannot effectively respond to** ‘the bloody **mystification of a new planetary order’ if we let these myths continue to obstruct our political imagination** (1998, p. 12). With his counternarrative presenting a catastrophic view of the historical present – a view that emphasizes how **exception has become the rule, camp has become the paradigmatic structure organizing political space, and we have all virtually become homines sacri** (1998, pp. 38, 176, 111) – Agamben aims to convince his readers of the need to think of a ‘nonstatal and nonjuridical politics and human life’ (2000, p. 112). **This new politics requires the renunciation of** concepts associated with sovereignty – for example, **state, rights, citizenship. The** contemporary **predicament cannot be remedied by** a return to **conventional political** categories and **institutions**, Agamben suggests, **since these are deeply involved in the creation of this catastrophe in the first place.** Almost anticipating his critics who would be puzzled by his renunciation of rights and rule of law at a time when the problem of legal dispossession increasingly threatens populations around the world, he explicitly states that the **response to the current** permanent **state of exception cannot consist in confining it within constitutional boundaries and reaffirming** the primacy of **legal norms and rights** (2005, p. 87).8 As legal norms and **rights are ultimately grounded in the originary violence of separating a bare life, legal dispossession is already inscribed in them as an inescapable condition.** Neither the liberal remedy of reasserting the rule of law, nor the Derridean strategy of ‘infinite negotiations’ with a law that is in force without any significance, are viable options (2005, p. 87; 1998, p. 54). Both are futile, if not lethally dangerous, endeavors.9 **The only politically tenable option**, Agamben contends, **is to move out of sovereignty with ‘a complicated** and patient **strategy’ of getting the ‘door of the Law closed forever’** (1998, pp. 54, 55)

### old version

#### Rights don’t exist and the aff will never happen—rights are merely a fiction that we create put on us as a means of feeling safe. However, the state is everywhere and can create a zone of indistinction at anytime. Western politics and legal systems are predicated on this state of exception. We are defined by it.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

More than this inclusion by exclusion, **sovereign power** in the West **is constituted by its ability to suspend itself in a state of exception, or ban**: "The originary relation of law to life is not appli- cation but abandonment."15 **The paradox of sovereignty is that the sovereign is at the same time inside and outside the sovereign order: the sovereign can suspend the law. What defines the rule of law is the state of exception** when law is suspended. **The very space in which juridical order can have validity is created and de- fined through** the sovereign **exception.** However, the exception that defines the structure of sovereignty is more complex than the inclusion of what is outside by means of an interdiction.16 **It is not just a question of creating a distinction between inside and out- side: it is the tracing of a threshold between the two, a location where inside and outside enter into a zone of indistinction. It is this state of exception**, or the zone of indistinction between inside and outside, **that makes the modern juridical order of the West possible.**

#### Rights are always conditional—they are a means of deciding who to include and exclude. The aff can never be guaranteed since rights are predicated on bare life which allows for anything to happen.

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#### The state of exception opens up space for the worst atrocities imaginable—the state deems the human as non-human, clearing the way for genocide.

Jenny Edkins 2 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

**The camp is exemplary as a location of a zone of indistinction.** **Although** in general **the camp is set up** precisely **as** part of **a** state of **emergency** or martial law, **under Nazi rule this becomes not so much a state of exception** in the sense of an external and provi- sional state of danger as **[but] a means of establishing the Nazi state itself. The camp is "the space opened up when the state of exception begins to become[s] the rule."**17 **In the camp, the distinction between** the rule of **law and chaos disappears: decisions about life and death are entirely arbitrary, and everything is possible.** A zone of indistinction appears between outside and inside, exception and rule, licit and illicit. What happened in the twentieth century in the West, and paradigmatically since the advent of the camp, was that the space of the state of exception transgressed its bound- aries and started to coincide with the normal order. The zone of indistinction expanded from a space of exclusion within the nor- mal order to take over that order entirely. **In the concentration camp, inhabitants are stripped of every political status, and the arbitrary power of the camp attendants confronts nothing but what Agamben calls bare life, or homo sacer, a creature who can be killed but not sacrificed.**18 This figure, an essential figure in modern politics, is constituted by and constitu- tive of sovereign power. **Homo sacer is produced by the sovereign ban and is subject to two exceptions: he is excluded from human law (killing him does not count as homicide) and he is excluded from divine law** (killing him is not a ritual killing and does not count as sacrilege). **He is set outside human jurisdiction without being brought into the realm of divine law.** This double exclusion of course also counts as a double inclusion: **"homo sacer belongs to God in the form of unsacrificability and is included in the com- munity in the form of being able to be killed."**19 This exposes homo sacer to a new kind of human violence such as is found in the camp and constitutes the political as the double exception: the ex- clusion of both the sacred and the profane.

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Its main target is the contractarian accounts of sovereign power. As he identifies the production of bare life as the originary or foundational activity grounding sovereign power (1998, pp. 6, 83), he particularly aims to question the social contractarian ‘myth’ that covers up sovereign violence (1998, p. 109). After unveiling the foundational myths of Western politics, Agamben concludes that **we cannot effectively respond to** ‘the bloody **mystification of a new planetary order’ if we let these myths continue to obstruct our political imagination** (1998, p. 12). With his counternarrative presenting a catastrophic view of the historical present – a view that emphasizes how **exception has become the rule, camp has become the paradigmatic structure organizing political space, and we have all virtually become homines sacri** (1998, pp. 38, 176, 111) – Agamben aims to convince his readers of the need to think of a ‘nonstatal and nonjuridical politics and human life’ (2000, p. 112). **This new politics requires the renunciation of** concepts associated with sovereignty – for example, **state, rights, citizenship. The** contemporary **predicament cannot be remedied by** a return to **conventional political** categories and **institutions**, Agamben suggests, **since these are deeply involved in the creation of this catastrophe in the first place.** Almost anticipating his critics who would be puzzled by his renunciation of rights and rule of law at a time when the problem of legal dispossession increasingly threatens populations around the world, he explicitly states that the **response to the current** permanent **state of exception cannot consist in confining it within constitutional boundaries and reaffirming** the primacy of **legal norms and rights** (2005, p. 87).8 As legal norms and **rights are ultimately grounded in the originary violence of separating a bare life, legal dispossession is already inscribed in them as an inescapable condition.** Neither the liberal remedy of reasserting the rule of law, nor the Derridean strategy of ‘infinite negotiations’ with a law that is in force without any significance, are viable options (2005, p. 87; 1998, p. 54). Both are futile, if not lethally dangerous, endeavors.9 **The only politically tenable option**, Agamben contends, **is to move out of sovereignty with ‘a complicated** and patient **strategy’ of getting the ‘door of the Law closed forever’** (1998, pp. 54, 55)

#### Any attempt to make political change requires that the we take into account the states power to declare a state of exception. This begins with an analysis of bare life.

Jenny Edkins 3 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

**This move of biological life to the center of the political scene** in the West **leads to a transformation of the political realm** itself, **one that** effectively **constitutes its depoliticization**. That depoliti- cization takes place side by side with the politicization of bare life. **Bare life is politicized and political life disappears. This irony is explained by the way** the link forged in modernity between **poli- tics** and bare life, a link that underpins ideologies from the right and the left, **has been ignored.** As Agamben says, "if politics today seems to be passing through a lasting eclipse, this is because **politics has failed to reckon with this foundational event of modernity**. . . . **Only a reflection that** . . . **interrogates the link between bare life and politics** . . . **will** be able to **bring the political out of** its **con- cealment**."**20 Any attempt to rethink the political space** of the West **must begin with an awareness of the impossibility of the classical distinction between private life and political existence and exam- ine the zones of indistinction** into which the oppositions that pro- duced modern politics in the West - inside/outside, right/left, public/private - have dissolved. Agamben proposes that "it is on the basis of these uncertain and nameless terrains, these difficult zones of indistinction, that the ways and forms of a new politics must be thought."21 **In the zone of indistinction, a claim to a po- litically qualified life can no longer be effective as such.**

### Link—Fiat

#### They assume that politics can control the law. This fiction ignores that the sovereign controls it self with the power to create a state of exception clearing the way for genocide.

Anthony Downey 02. “Zones of Indistinction: Giorgio Agamben’s ‘Bare Life’ and the Politics of Aesthetics”. 2002. RC

**“The** ongoing **politicisation of life** today **demands that** a series of **decisions be made about the** delimitation of the **threshold beyond which life ceases to be politically relevant** – where life becomes ‘bare life’. **These thresholds**, moreover, **need to be redrawn from epoch to epoch; so much so that every society modulates the limit of the threshold. The camp was the limit in Nazi Germany** at a particular moment in time; however, as Agamben argues, ‘**every society** – even the most modern – **decides who its “sacred [people]** men” **will be**’ (HS 139). **Politics**, in the context of the camp, **concerned itself with that which was apparently unpolitical** – **‘bare life’ and its abandonment by the political community** – and the implications of this reach beyond the singular abjection of the camps: If this is true, **if the** essence of the **camp consists in** the materialization of the **state of exception** and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction, **then** we must admit that **we find ourselves virtually in the presence of a camp every time such a structure is created, independent of the kinds of crime that are committed there and whatever its denomination and specific topography.** (HS 174)”

### Link—State Reliance/Rights

#### Rights are means of exclusion and naïve security. They are a method for integrating people into the biopolitical sphere in which they depend on the state.

David M. Seymour 13 (legal scholar). “The Purgatory of the Camp: Political Emancipation and the Emancipation of the Political”. Google Books, 2013. RC

**The idea of political sovereignty creating order ‘behind the backs’ of formal equality** expressed **through the praxis of rights, is a familiar trope in much recent thinking.**25 However, Agamben’s treatment of **this idea appears in a more radical guise.** For Agamben, **rights are presented as unmediated expressions of the ordering of the biopolitical administrative nature of political sovereignty and, as such, they are no more than the vehicle through which the sovereign [decides] decision on the exception** **(who** is **to** be **include**d within **and exclude**d **from the body politic**) **is given form.** In this context **Agamben treats rights as playing a vital role in sovereignty’s capture of life and the decision made or inscribed upon it. Rights become** not challenges or limits to sovereign power (as expressed in liberal political thought), but **expressions of the biopolitical decision itself**:26 It is almost as if, starting from a certain point, **every political event were double-sided**: the spaces, the liberties, and **the rights won by individuals** in their conflicts with central powers, always simultaneously **prepared a tacit but [an] increasing inscription of individuals’ lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves.**27 At the centre of this discussion is the manner in which **rights articulate modern sovereignty’s capture of** (natural) **life:** Declarations of **rights represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state.** The same bare life that in the ancient régime was politically neutral and belonged to God as creaturely life and in the classical world (at least apparently) clearly distinguished as zoé from political life (bios) now fully enters into the structure of the state and even becomes the earthly foundation of the state’s legitimacy and sovereignty.28 Modern declarations of rights, therefore, are said to draw together and express in unmediated biopolitical fashion almost all the revolutionary concepts of modern political emancipation: state, nation, citizen and subject: The fiction implicit here is that birth immediately becomes nation such that there can be no interval of separation between the two terms. **Rights are attributed to man** (or originate in him) **solely to the extent that man is the vanishing ground** (who must never come to life as such) **of the citizen.**29 This depiction of rights, therefore, directly places them within the armoury of administrative biopolitical sovereign ordering. **Rights serve only as a means of deciding on inclusion within and exclusion from the political category of political life, the nation**, (bios). **In capturing** (natural) **life within an unmediated connection with ‘nature’ through the concept of rights, biopolitical administrative sovereignty captures the (natural) world.** Nature, the world, comes under the domination of a sovereignty, an emancipation of the political from within the ascendancy of political emancipation.

#### The nature of the state is that it abandons people. It is not a question of if or when, rather we are all bearers of bare life.

Diken and Laustsen 02 -- Bülent Diken (Lancaster University) and Carsten Bagge Laustsen (University of Copenhagen). “Zones of Indistinction: Security, Terror, and Bare Life”. Sage Publications, 2002, Vol. 5, no. 3, 290-30. RC

**Sovereignty works through** an act of **abandoning subjects, reducing them to bare life.** The **homo sacer and the sovereign are** two **symmetrical** figures: **“The sovereign is the one with respect to whom all [people] men are potentially hominess sacri, and homo sacer is the one with respect to whom all men act as sovereigns**” (Agamben, 1998, p. 84). **Bare life is not necessarily a life stripped** down **to** its **biological existence**, although the Muselmänner living in the camps are reduced to just that (Agamben, 1999, pp. 41-86). **Bare life is the life of the homo sacer, of those who can be killed without sacrifice** (Agamben, 1998, pp. 8). The homo sacer is neither human nor divine. **The life of the homo sacer belongs to humans in so far as it cannot be sacrificed and does not belong to it in so far as it can be killed without the commission of homicide** (Agamben, 1998, pp. 71-74, 81-85). The homo sacer is inscribed in a zone of indistinction situated between the zoe¤?, the natural life common to humans, Gods, and animal, and the bios which is the life proper to humans.

### Link—Western Politics

#### Western politics and legal systems are predicated on the state of exception.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

More than this inclusion by exclusion, **sovereign power** in the West **is constituted by its ability to suspend itself in a state of exception, or ban**: "The originary relation of law to life is not appli- cation but abandonment."15 **The paradox of sovereignty is that the sovereign is at the same time inside and outside the sovereign order: the sovereign can suspend the law. What defines the rule of law is the state of exception** when law is suspended. **The very space in which juridical order can have validity is created and de- fined through** the sovereign **exception.** However, the exception that defines the structure of sovereignty is more complex than the inclusion of what is outside by means of an interdiction.16 **It is not just a question of creating a distinction between inside and out- side: it is the tracing of a threshold between the two, a location where inside and outside enter into a zone of indistinction. It is this state of exception**, or the zone of indistinction between inside and outside, **that makes the modern juridical order of the West possible.**

### Link—Refugee/Safe Camps

#### The aff’s special treatment of refugees of overlooks the way that they can become bare life at any moment.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

**Refugee camps were eventually set up** in Macedonia not by the UNHCR but **by NATO. The camps were sanctuaries, "specially designated safe areas**, policed by NATO troops and funded by the in- ternational community."67 British, Dutch, French, and German troops from the **NATO** forces **erected tents and installed water facilities** supplied by Oxfam.68 **They** also **erected wire fencing**: 3.5 km of fencing at Brazda camp.69 US Marines distributed food from UNHCR trucks at NATO's Stenkovec camp.70 When NATO established a Refugee Co-ordination Center at its headquarters in Mons, the Russians lodged a complaint in the United Nations that the UNHCR was coming under NATO control. In the camps, **NATO was everything, "the provider of food, water and shelter; the guarantor of peace and security."**71 The NATO military were the camp guards. The inaction of the UNHCR was said to have arisen from NATO's unwillingness to antagonize the Macedonian government, expressed through NATO members on the Security Council. But **it left the refugee camps without legal status under international refugee law.**72 According to Daniel Puillet-Breton, of Action Against Hunger, "**the government** [of Macedonia] **has given a humanitarian status to these people, rather than a refugee status**. . . . **They have no civil rights, no human rights, no access to health services or legal advice**."73 For refugees airlifted out of Macedonia, with no say over their destination, army camps and prisons were considered suitable accommodation.74 Twenty thou- sand refugees were to be housed in a prison camp at the US naval base at Guantanamo Bay in Cuba; the camp did have shops and a McDonald's, but it was "surrounded by high metal fences fes- tooned in barbed wire."75 **The refugees had nothing but bare life: they were homines sacri.**

### Link—Securitization/Terror

#### And, the aff’s focus on protecting society through the use of the state justifies endless intervention and creating the state of exception in the name of preserving society.

Diken and Laustsen 02 -- Bülent Diken (Lancaster University) and Carsten Bagge Laustsen (University of Copenhagen). “Zones of Indistinction: Security, Terror, and Bare Life”. Sage Publications, 2002, Vol. 5, no. 3, 290-30. RC

Forms of life and forms of security are interrelated; **security creates society as much as society creates security** (see Dillon & Reid, 2001). **Yet, in contemporary society**, this relationship is overlooked while **it is firmly held that it is a “moral duty” to wage war against terror**, whose definition, however, remains obscenely indistinct (e.g., Bin Laden: created by CIA and wanted by FBI). The threat against civic culture is, therefore, janus faced: **Terrorism and the** (trans)**politics of security must be thought of together.** Both operate in a smooth space, both speak the language of deterrence (“if you do not . . . ”), and both are inherently opposed to the law. **Security can easily turn into a perversion**: terror: “**The thought of security bears within it an essential risk. A state which has security as its sole task and source of legitimacy is a fragile organism; it can always be provoked by terrorism to become itself terroristic”** (Agamben, 2001, p. 45). **When the police and politics merge, and when the difference between terror and state disappears in obscenity, they start to justify each other, terrorizing the political itself** by transforming it into a hostage: **the state of emergency.** Significantly in this context, the **discourse of security conceptualizes the “networks of terror” in timeless frames devoid of casual explanations and seeks an “infinite” justice fit for the smooth network space. Postpolitical governance** attempts to control disorder through risk management. In other words, it **does not seek political solutions to political problems, and in the absence of a**n original **political strategy** . . . **the state becomes desocialized.** It no longer works on the basis of political will, but instead on the basis of intimidation, dissuasion, simulation, provocation or spectacular solicitation. This is the transpolitical reality behind all official policies: a cynical bias towards the elimination of the social. (Baudrillard, 1993, p. 79) When blackmail, intended as a preemptive form of action (where is the next war going to take place to prevent war?), becomes the law, “society” implodes into the state, and thus both ordinary and political violence turn into terror. **The camp is symptomatic of the fields of both security and terror.**

### Impact—Genocide

#### The state of exception opens up space for the worst atrocities imaginable—the state deems the human as non-human, clearing the way for genocide.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

**The camp is exemplary as a location of a zone of indistinction.** **Although** in general **the camp is set up** precisely **as** part of **a** state of **emergency** or martial law, **under Nazi rule this becomes not so much a state of exception** in the sense of an external and provi- sional state of danger as **[but] a means of establishing the Nazi state itself. The camp is "the space opened up when the state of exception begins to become[s] the rule."**17 **In the camp, the distinction between** the rule of **law and chaos disappears: decisions about life and death are entirely arbitrary, and everything is possible.** A zone of indistinction appears between outside and inside, exception and rule, licit and illicit. What happened in the twentieth century in the West, and paradigmatically since the advent of the camp, was that the space of the state of exception transgressed its bound- aries and started to coincide with the normal order. The zone of indistinction expanded from a space of exclusion within the nor- mal order to take over that order entirely. **In the concentration camp, inhabitants are stripped of every political status, and the arbitrary power of the camp attendants confronts nothing but what Agamben calls bare life, or homo sacer, a creature who can be killed but not sacrificed.**18 This figure, an essential figure in modern politics, is constituted by and constitu- tive of sovereign power. **Homo sacer is produced by the sovereign ban and is subject to two exceptions: he is excluded from human law (killing him does not count as homicide) and he is excluded from divine law** (killing him is not a ritual killing and does not count as sacrilege). **He is set outside human jurisdiction without being brought into the realm of divine law.** This double exclusion of course also counts as a double inclusion: **"homo sacer belongs to God in the form of unsacrificability and is included in the com- munity in the form of being able to be killed."**19 This exposes homo sacer to a new kind of human violence such as is found in the camp and constitutes the political as the double exception: the ex- clusion of both the sacred and the profane.

#### And, the camp is everywhere—it is ingrained into the very logic of sovereignty such that we are confronted with the camp every single day.

Andrew Robinson 11. “In Theory Giorgio Agamben: the state and the concentration camp”. Cease Fire Magizine, January 7, 2011. <https://ceasefiremagazine.co.uk/in-theory-giorgio-agamben-the-state-and-the-concentration-camp/> RC

**The** Nazi **Holocaust marks a** second **turning point in which the horrors of the camp are revealed** in all their monstrosity. The **Holocaust happened** when and where it did **for contingent**, historical **reasons, but its real causes were the creation of a particular kind of space, the ‘camp’, where people were defined as having lives not worth living**, and as being vulnerable to being killed with impunity. **Auschwitz** is the high point of the logic of sovereignty, showing its ontological nature in its realisation: it **shows where the combination of biopolitics and sovereignty leads**. Auschwitz marks the point of no return which reveals the nature of sovereignty for what it really is. **It** thus **marks the starting point for a new politics.** **This** new politics **is** not just **about** opposing Nazis specifically, but **fighting the logic of sovereignty which generated the Holocaust.** According to Agamben, the camp doesn’t just exist in Nazi Germany, or even in totalitarian regimes. **The camp exists**, potentially at least, **wherever there are states. It is built into the logic of political sovereignty.** It is permanently possible in the spaces of exception which states constantly create. **Whether or not people in these spaces are** actually **killed does not depend on any legal protection** (which is either nonexistent or ineffective), **but entirely on the whims or ethics of the agents of the state who are exercising its sovereign power.** It exists particularly strongly in contemporary states, because the logic of sovereignty has unfolded to a certain point (Agamben seems to think of the changes in the state over time as something akin to a sapling growing into a giant, fully developed tree). Agamben famously claims that the camp is the nomos of modernity – the moment of naming, of recognition and derecognition, which creates the power (and autonomy) of the modern state. **While it is peculiarly modern, the camp also marks the fulfilment of the internal development of sovereignty.**

### Impact—Musselman/V2L

#### The end result of the aff is the Musselman—this is a person whose ontological basis has been reduced to biological existence. They exist only as a body with no will to live.

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The second is a zone of indistinction that appears in some of Agamben's figures of contemporary biopolitics. **The figures that dominate Agamben's analysis**, such as the bandit and homo sacer, **are products of the juridical suspension of the law.** In his account of contemporary biopolitics, however, **Agamben introduces figures such as the** overcomatose Karen Quinlan, who is kept "just alive" through medical interventions, separating her biological life "from the form of life that bore the name Karen Quinlan,"40 and the **Musselman, the inhabitant of the concentration camp who was "giving up and had been given up by his comrades**, (who) **no longer had room in his consciousness for the contrasts good or bad**, noble or base, intellectual or unintellectual. **He was a staggering corpse, a bundle of physical functions in its last convulsions."**41 A figure such as homo sacer is aneu logou, deprived of the way of life in which speech makes sense, "bare life" only from the perspective of the legal order. By contrast, **what is at stake in figures such as the Musselman is not only a juridical abandonment, but an individual reduced by power to the ontological fact of their biological existence.** Ernesto Laclau has criticized Agamben for a confused application of the term zoe, arguing that figures such as the bandit "clearly exceeds" bare life.42 For Laclau, the bandit retains a capacity for antagonistic social practices that is absent from a figure of "pure zoe" such as the musselman, who has been deprived of all agency by power. Laclau is correct to point to this distinction, and to assert that Agamben's use of the term "bare life" is vague. That Agamben himself is cognizant of the distinction between the two levels is, however, illustrated by his assertion that the biopolitics of the Nazi state inscribed a series of caesura in the political body, so that **"the non-Aryan passes into the Jew. The Jew into the deportee, the deportee into the prisoner, until the biopolitical caesuras reach their final limit in the camp. This limit is the Musselmann**... the final substance to be isolated in the biological continuum."43 While the divisions of the juridical order (Jew/deportee/prisoner) have their juridical limit in the camp, which is a space of anomie or exception, **the final limit or biopolitical caesura is the Musselman**, the figure of subjective destitution.

### More Alt Stuff

#### To “prefer not to” is a means of escaping the dependency of the law. It is not that we try to solve it through the use of another law or right, but rather we exert ourselves as independent of the law all together. This is the inoperativity of the law.

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What is the power of Bartleby’s phrase—‘I would prefer not to’—that it could create such resentment, while absolutely immobilising his employer? In recent years, Bartleby has been depicted as everything from a beautiful soul, who must ‘continuously tread on the verge of suicide’ (Hardt and Negri 2000, p. 302) to a ‘new Christ’ (Deleuze 1998, p. 90). In this paper, I will reflect on the reading offered by Giorgio Agamben, for whom Bartleby’s ‘I would prefer not to’ is ‘the strongest objection against the principle of sovereignty’ (Agamben 1998, p. 48). While understanding this claim will require an examination of Agamben’s reading of Aristotle’s metaphysics, I would like to read Bartleby’s enigmatic formula in the context of his work as a scrivener, a legal scribe. What, I will ask, does the statement, ‘I would prefer not to’ do to the law? What does it mean **to ‘prefer not’** when the law is in question? For Bartleby, it **means**, firstly, **a withdrawal from the work of** copying that makes up the daily routine of **the legal firm** in which he is employed. While, **at first, Bartleby copied ‘by sunlight and candlelight’, he soon ceases his work. He no longer writes—he prefers not to, and he repeats his single formula** in response to all his employer’s requests. ‘It is not seldom the case’, this employer muses, ‘that, when a man is browbeaten in some unprecedented and violently unreasonable way, he begins to stagger in his own plainest faith. He begins, as it were, to vaguely surmise that, wonderful as it may well be, all the justice and all the reason is on the other side’ (Melville 1997, p. 35). In a broader sense then, **Bartleby’s gesture**, in Agamben’s reading, **challenges our faith in the law’s capacity to embody and administer justice.** If Bartleby presents a challenge to the law, however, the nature of this challenge is not easy to categorise. **Bartleby does not copy the law, but neither** does he **oppose it in the name of another law**, a natural law, or a more just law that could be instituted **in its place. He is neither an exemplar of civil disobedience, nor a revolutionary. He does not actively resist; he simply prefers not to.** This, I will suggest, is precisely what draws Agamben to this scribe who has stopped writing. **In Bartleby, Agamben sees an approach to the law that escapes the dialectic of constituent power and constituting power, and makes possible an escape from sovereignty.** While Agamben’s account of sovereign power has been the subject of much critical engagement, his more enigmatic suggestion that the law is in need of fulfilment has received less attention.1 In what follows, I will examine Agamben’s reading of Bartleby, in order to elucidate this unconventionally antinomian aspect of his thought. To do this, I will reflect on the ‘philosophical constellation’ in which Agamben places Bartleby (that of Aristotle’s Metaphysics) and interpret his formula in the context of an examination of a potentiality that is, most importantly, the potentiality of the law.

#### And, to “prefer not to” is a way of opening up space in the law by refusing to give an affirmation or negation of the law. We refuse to re-inscribe the narrative that the law can help us.

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Two key things are at stake in this attempt to assure the actuality of potentiality: **first**ly, **if we are always able to be other than we are, this destabilises the attempt to found state power on the representation of a fixed substantive identity. Second**ly, **the re-potentialisation of the past, by granting possibility to what is or has been, disrupts the tradition, and its codification in law, that is premised on the erasure and forgetting** **of** manifold **un-actualised possibilities**. It is here that Agamben positions Bartleby. **In the formula ‘I would prefer not to’, he sees a liminal zone suspended between affirmation and negation, being and nonbeing, predicated on the renunciation of any will or reason to choose either option.** Thus, **Bartleby**, he argues, **conducts** an experiment in what can either be or not be, **an experiment in potentiality** itself, **which requires the overturning of the principle of the irrevocability of the past**. If conducting such an experiment makes Bartleby a new Messiah, Agamben argues (in what is the most original, if also the least textually grounded aspect of his reading of Melville’s story) this is because it ‘inaugurates an absolutely novel quastio disputata, that of ‘‘past contingents’’’(Agamben 1999, p. 267). Thus while, for Deleuze, Bartleby is ‘the new Christ’ (Deleuze 1998, p. 90), Agamben’s **Bartleby comes** ‘not to redeem what was, but to save what was not’, **to redeem** those broken promises, **unrealised potentials and forgotten struggles that are covered over by tradition and law, by renouncing the copying that presupposes and repeatedly affirms their forgetting** (Agamben 1999, p. 270). Thus, Bartleby, in Agamben’s reading, responds to what in Time That Remains, he terms the ‘messianic modality’—exigency. In exigency, Agamben locates the demand of the forgotten, but this demand is not simply to be remembered and inserted into a new tradition, nor to be frozen in commemoration, but ‘to remain with us and be possible for us in some manner’ (Agamben 2005, p. 41). **The messianic modality**, which Agamben finds in Bartleby, **is thus one in which potentiality does not precede actuality but follows it, restoring it to contingency and enabling the forgotten to act on the present.**

### Framing—Rethinking the Political

#### Any attempt to make political change requires that the we take into account the states power to declare a state of exception. This begins with an analysis of bare life.

Jenny Edkins 2000 (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. RC

**This move of biological life to the center of the political scene** in the West **leads to a transformation of the political realm** itself, **one that** effectively **constitutes its depoliticization**. That depoliti- cization takes place side by side with the politicization of bare life. **Bare life is politicized and political life disappears. This irony is explained by the way** the link forged in modernity between **poli- tics** and bare life, a link that underpins ideologies from the right and the left, **has been ignored.** As Agamben says, "if politics today seems to be passing through a lasting eclipse, this is because **politics has failed to reckon with this foundational event of modernity**. . . . **Only a reflection that** . . . **interrogates the link between bare life and politics** . . . **will** be able to **bring the political out of** its **con- cealment**."**20 Any attempt to rethink the political space** of the West **must begin with an awareness of the impossibility of the classical distinction between private life and political existence and exam- ine the zones of indistinction** into which the oppositions that pro- duced modern politics in the West - inside/outside, right/left, public/private - have dissolved. Agamben proposes that "it is on the basis of these uncertain and nameless terrains, these difficult zones of indistinction, that the ways and forms of a new politics must be thought."21 **In the zone of indistinction, a claim to a po- litically qualified life can no longer be effective as such.**

### Framing—Counter Narratives

#### Instead the judge should use their ballot as a means of pushing counter-narratives to unveil and demystify the power of the sovereign—it’s the hope that we have for meaningful change that spills over this debate round. The judge as critical educator has an obligation to question the AC’s operation.

Ayten Gündoğdu 12 (Department of Political Science, Barnard College-Columbia University). “Potentialities of human rights: Agamben and the narrative of fated necessity”. 2012. http://www.palgrave-journals.com/cpt/journal/v11/n1/full/cpt201045a.html RC

“In his analysis of biopolitical sovereignty**, Agamben provides us with** what might be **called a counternarrative of Western politics with the** explicitly stated **goal of ‘unveiling’** or ‘unmasking’ **what has become mystified**, hidden, secret or invisible, particularly **with** the prevalence of contractarian accounts of **political power** (1998, p. 8; 2005, p. 88). **Agamben describes this** critical **task in terms of** ‘disenchantment’, or the ‘patient work’ of **unmasking the fiction** or myth **that** covers up and **sustains the violence of sovereignty** (2005, p. 88). **What underlies this urge to demystify** and unveil **is a particular understanding of myth as a** deceptive **narrative naturalizing** and legitimizing **violence in the name of** the preservation of **life.** I use **the** term **‘counternarrative’** to call attention to what Agamben's account aims to do6: This **is a critical analysis**, as Agamben himself insists, **that** does not offer ‘historiographical theses or reconstructions’ but instead **treats** some **historical phenomena as ‘paradigms’** so as **to ‘make** intelligible **a broader historical-problematic context;’** to do this, it proceeds at ‘a historico-philosophical level’ (1998, p. 11; 2009, p. 9). In that sense, **it is not an account that claims historical accuracy** or factual verifiability. This is a crucial point that is sometimes overlooked by Agamben's critics who call into question his inaccurate treatment of historical phenomena such as the concentration camps.7 In addition, ‘counternarrative’ draws our attention to the inventive dimensions of Agamben's endeavor; as one of his critics aptly (though disapprovingly) puts it, ‘Agamben does not discover a concealed biopolitical paradigm stretching back to fourth-century Athens; rather he invents one’ (Finlayson, 2010, p. 116). The invention of **a counternarrative** of Western politics involves literary devices (e.g. hyperbole), which **aim[s] to provoke the readers** and persuade them **to abandon** any **politics centered on modern concepts such as sovereignty, [and] rights** and citizenship (LaCapra, 2007; cf. de la Durantaye, 2009). In analyzing Agamben's account as a ‘counternarrative’, I aim to attend to the goals that it sets for itself. It is these goals – particularly the goal of freeing human potentialities from myths that render the contingent necessary and mask other possibilities – that provide the starting point for my critical engagement with Agamben. Instead of resorting to an ‘outside’ – whether this be an alternative historical account or another theoretical tradition – I aim to read Agamben on his own terms, and suggest that as he tries to free human potentialities from contractarian myths, he might be entrapping them in another myth that ends up casting the contingent as necessary. **Agamben's counternarrative** of Western politics **aims to uncover what has become hidden** or invisible **with ‘our** modern habit of representing the political realm in **terms of** citizens’ **rights**, free will, and social contracts’ (1998, p. 106). Its main target is the contractarian accounts of sovereign power. As he identifies the production of bare life as the originary or foundational activity grounding sovereign power (1998, pp. 6, 83), he particularly aims to question the social contractarian ‘myth’ that covers up sovereign violence (1998, p. 109). After unveiling the foundational myths of Western politics, Agamben concludes that **we cannot effectively respond to** ‘the bloody **mystification of a new planetary order’ if we let these myths continue to obstruct our political imagination** (1998, p. 12). With his counternarrative presenting a catastrophic view of the historical present – a view that emphasizes how **exception has become the rule, camp has become the paradigmatic structure organizing political space, and we have all virtually become homines sacri** (1998, pp. 38, 176, 111) – Agamben aims to convince his readers of the need to think of a ‘nonstatal and nonjuridical politics and human life’ (2000, p. 112). **This new politics requires the renunciation of** concepts associated with sovereignty – for example, **state, rights, citizenship. The** contemporary **predicament cannot be remedied by** a return to **conventional political** categories and **institutions**, Agamben suggests, **since these are deeply involved in the creation of this catastrophe in the first place.** Almost anticipating his critics who would be puzzled by his renunciation of rights and rule of law at a time when the problem of legal dispossession increasingly threatens populations around the world, he explicitly states that the **response to the current** permanent **state of exception cannot consist in confining it within constitutional boundaries and reaffirming** the primacy of **legal norms and rights** (2005, p. 87).8 As legal norms and **rights are ultimately grounded in the originary violence of separating a bare life, legal dispossession is already inscribed in them as an inescapable condition.** Neither the liberal remedy of reasserting the rule of law, nor the Derridean strategy of ‘infinite negotiations’ with a law that is in force without any significance, are viable options (2005, p. 87; 1998, p. 54). Both are futile, if not lethally dangerous, endeavors.9 **The only politically tenable option**, Agamben contends, **is to move out of sovereignty with ‘a complicated** and patient **strategy’ of getting the ‘door of the Law closed forever’** (1998, pp. 54, 55)

Whatever being alternative:

“The Coming Community”; Read the first 3 chapters, read the chapter about bartylble

He doesn’t want specific categories

Whatever means that anything, matter should not depend on who you are, nor be universal

Love; you don’t love just one aspect, but you also don’t love everyone universally.

There is not a good description of the alternative, not very articulate

The mousel man is a figure that agamben talks about. They are people in the holocaust who are biologically alive, but don’t have a will to live. Agamben wants a world when the world still matters.

Rights presume a subject with rights bearing qualities.

Package link-impact-alt story in the 2NR.

Disagree with its characterization as a right

Another link you can generate

The state always values people conditionally

Inoperativity: Bartleby, rendering the law inoperative is what is good, this is the only good use of the law, to play with the law like a child plays with toys

“overhearing Bartleby:…”

a more concrete alternative for the whatever being, inoperativity is method for achieving the coming community

### CLS K

#### Rights discourse is counter productive—it sets a minimum allowing for the social structure that perpetuates the problem to go unnoticed. If all we needed was a quick legal remedy, then racism would’ve ended in 1964.

CCLS NO DATE. “Critical Perspectives on Rights”. Conference On Critical Legal Studies, NO DATE. RC

Robert Gordon similarly argues that even noted **legal victories for blacks, for labor, for the poor, and for women did not succeed in** fundamentally **altering the social power structure.** "The labor movement secured the vitally important legal right to organize and strike, at the cost of fitting into a framework of legal regulation that certified the legitimacy of managements making most of the important decisions about the conditions of work." Robert Gordon, "Some Critical Theories of law and Their Critics," in The Politics of Law 647 (David Kairys ed., third edition, Basic Books: New York, 1998). Moreover, **rights are double-edged**, as demonstrated in the content of civil rights. "**Floor entitlements can be turned into ceilings** (you’ve got your rights, but that’s all you’ll get). **Formal rights without practical enforceable content are easily substituted for real benefits.** Anyway, **the powerful can always assert counterrights** (to vested property, **to differential treatment according to "merit," to association with one’s own kind**) to the rights of the disadvantaged. **"Rights" conflict and the conflict cannot be resolved by appeal to rights."** Id., at 657-68. The content of contemporary American rights in particular must be understood as failing to advance progressive causes. Current constitutional doctrine, for example, heavily favors so-called negative liberties (entitlements to be free of government interference) over positive liberties (entitlements to government protection or aid) and thus reinforces the pernicious "public/private" distinction. That distinction implies that neither government nor society as a whole are responsible for providing persons with the resources they need to exercise their liberties, and indeed, any governmental action risks violating private liberties. Current freedom of speech doctrine accords protection to commercial speech and pornography, limits governmental regulation of private contributions to political campaigns, and forbids sanctions for hate speech. Such rules operate in the often-stirring language of individual freedom, but their effect is more likely to be regressive than progressive.

#### Rights are arbitrarily suspended—courts prove.

CCLS 2. “Critical Perspectives on Rights”. Conference On Critical Legal Studies, NO DATE. RC

As Mark Tushnet puts it, "nothing whatever follows from a court’s adoption of some legal rule (except insofar as the very fact that a court has adopted the rule has some social impact the ideological dimension with which the critique of rights is concerned.) Progressive **legal victories occur**, according to the indeterminacy thesis, **because of the surrounding social circumstances.**" At least as they figure in contemporary American legal discourse, **rights cannot provide answer to real cases because they are cast at high levels of abstraction without clear application** to particular problems and because different rights frequently conflict or present gaps. Often, **judges try to resolve conflicts by attempting to "balance" individual rights against relevant "social interests"** or by assessing the relative weight of two or more conflicting rights. These methods seem more revealing of individual judicial sensibilities and political pressures than specific reach of specific rights. Moreover, central **rights are** themselves **internally incoherent**. The right to freedom of contract, for example, combines freedom with control: people should be free to bind themselves to agreements: the basic idea is private ordering. But **the law’s reliance on courts to enforce contracts reveals the doctrine’s grant of power to the government to decide which agreements to enforce**, and indeed what even counts as an agreement. Even more basically, freedom of contract implies that the freedom of both sides to the contract can be enhanced and protected, and yet no one stands able to know what actually was in the minds of parties on both sides. Resort to notions of objective intent and formalities replace commitment to the freedom of the actual parties.