#### Agamben K

### 1NC

#### Jury Nullification is part of the sovereigns project to sustain the state of exclusion – letting the populace defer the law in a perceived state of emergency only further justifies its role as a flexible tool for sovereign control to control life and engage in endless violence. They feel like they’re doing some justice but only prop up the system – this kills social change.

**Humphreys 06:**

Stephen Humphreys (Associate Progessor of International Law @ London School of Economics, Former Research Director at the International Council on Human Rights Policy in Geneva) “*Legalizing Lawlessness:* *On Giorgio Agamben’s* State of Exception” The European Journal of International Law Vol. 17 no. 3. 2006.

**Agamben rejects Schmitt’s position** and moves to displace any theory that ‘seeks to annex the state of exception immediately to the law’ or to ‘inscribe [it] indirectly in a juridical context’ and to salvage it instead as law’s ‘other’: **‘the state of exception is not a “state of law” but a space without law’**, a ‘zone of anomie’. It is not equivalent to a dictatorship, where laws continue to be made and applied (albeit non-democratically), but **one in which law is rather entirely emptied of content.** In Agamben’s analysis, Schmitt’s ‘paradoxical’ formulation – which **attempts to reinsert a legal vacuum into the legal order – is** rather **designed to privilege sovereign violence** at all costs. Agamben challenges Schmitt’s paradigm through the voice of Walter Benjamin, whose 1921 ‘Critique of Violence’ speaks of a ‘pure’ or ‘divine’ violence that is neither subject to nor preserving of law, that may appear as a flash of revolutionary transcendence and that Agamben reads as a ‘cipher for human activity’. Schmitt’s state of exception, on this reading, is a legal edifice constructed to domesticate the very possibility of non-state (or pure) violence. In sum, Benjamin and Schmitt agree on the existence of anomic violence – but they treat it differently, either as the divine violence that ‘neither makes nor preserves law, but deposes it’ or as the last frontier to be annexed by the sovereign by means of the state of exception. The legal category of the emergency, then, extends or completes law’s empire. Agamben concludes that the state of exception is therefore ‘a fictio iuris par excellence which claims to maintain the law in its very suspension’, but produces instead a violence that has ‘shed every relation to law’. While this assertion remains unsupported by empirical reference or example – indeed, this is a general problem in Agamben’s writing – it nevertheless corresponds obliquely to the emergent phenomena referred to variously as global law, the transnational rule of law, and the fragmentation of international law. Agamben extends this argument along two countervailing paths – backwards to establish parallels with Roman imperialism, and forwards towards a theory of the relation between law and anomie. The first path locates a parallel (or, possibly, origin) of the contemporary state of exception in the Roman notion of iustitium. This was the suspension of the application of law in the Roman republic, following a declaration of a state of emergency (tumultus) by the Senate, to the actions of magistrates and even citizens; the word alters its meaning with the onset of the Roman Empire, ultimately referring to a period of institutionalized chaos following the death of the emperor, pending the inauguration of a successor. The later Roman iustitium, a declaration of anomie, explicitly signals the hiatus between one sovereign legal order and the next. Indeed, the iustitium becomes an effective instrument of the emperor, to be turned on or off at will. It is in his discussion of iustitium, a state in which certain laws simply do not apply, that Agamben reclaims the state of exception as a zone not of law but of anomie, not amenable to capture by law.

#### The role of scholars should not be to model how to use the law or even how to fix it, but to liberate ourselves from it – reformism only assists sovereign power because it puts faith in the system.

Kotsko 13

Adam Kotsko “How To Read Agamben” LA Review of Books June 4th, 2013

Now may be the time to return to that Kafka story about Alexander the Great’s horse Bucephalus, entitled “The New Attorney.” (The text is available here. I recommend you take a moment to read it — it’s very short, and quite interesting.) In this brief fragment, we learn that Bucephalus has changed careers: he is no longer a warhorse, but a lawyer. What strikes Agamben about this story is that the steed of the greatest sovereign conqueror in the ancient world has taken up the study of the law. For Agamben, this provides an image of what it might look like not to go back to a previous, less destructive form of law, but to get free of law altogether: One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good…. This liberation is the task of study, or of play. And this studious play is the passage that allows us to arrive at that justice that one of Benjamin’s posthumous fragments defines as a state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical. The law will not be simply done away with, but it is used in a fundamentally different way. In place of enforcement, we have study, and in place of solemn reverence, play. Agamben believes that the new attorney is going the state of emergency one better: his activity not only suspends the letter of the law, but, more importantly, suspends its force, its dominating power. Agamben’s critical work always aims toward these kinds of strange, evocative recommendations. Again and again, we find that the goal of tracking down the paradoxes and contradictions in the law is not to “fix” it or provide cautionary tales of what to avoid, but to push the paradox even further. Agamben often uses the theological term “messianic” to describe his argumentative strategy, because messianic movements throughout history — and here Agamben would include certain forms of Christianity — have often had an antagonistic relationship to the law (primarily, but not solely, the Jewish law, or Torah). Accordingly, he frequently draws on messianic texts from the Jewish, Christian, and Islamic traditions for inspiration in his attempt to find a way out of the destructive paradoxes of Western legal thought.

**The Criminal Justice System is how sovereign power enforces their biopolitical narrative. The end result of biopower’s underlying logic is bare life and genocide.**

**Brennan 14**

Philip Khaled Brennan (researcher on human rights and biopower from the UK). “PREVENT: An Exercise in Biopower—Section One.” The Cat House. April 6th, 2014. http://cathouse.hivetimes.org.uk/2014/04/06/prevent-an-exercise-in-biopower-section-one/

The Medico-Judicial Power of Normalization With the birth of psychiatric power in the late 19th century, a new addition to the tools of power was added: medico-judicial power, or the power of normalization. A convict is no longer judged purely upon what he or she has done, but also on why the crime happened, any psychological reasons behind the crime, the level of delinquency or deviancy inherent in the convict, and the level of future threat this convict poses to society as a whole. This puts the convict in perverse danger even before they are convicted, as it is now medical power which determines what the judicial outcome should be: the convicts medical history, psychological evaluation, mental state at the time of the offence, and possible future outcomes for the convict upon release are all factored into the judgement aside from the actual fact of the offence: “First, there is the requirement that every individual who comes before the assize courts has to have been examined by a psychiatric expert. As a result, the individual never appears in court with just his crime. He arrives with the psychiatric expert’s report and comes before the court burdened with both his crime and this report. There is a question whether this measure, which is universal and obligatory for the assize courts, should also become the general rule in the criminal courts, where it is only applied in some cases, but not yet universally. The second sign of the implementation of a medico-judicial power is the existence of special courts for children in which the information given to the judge, who both investigates and judges, is essentially psychological, social, and medical. This information consequently bears much more on the context of the individual’s existence, life, and discipline than on the act for which he has been brought before the children’s court. The child is brought before a court of perversity and danger rather than before a criminal court. Equally, within the prison administration, medico-psychological services are established that are required to report upon the individual’s development while serving his sentence, that is to say, on the level of perversity and the level of danger he still represents at a given moment during his sentence, it being understood that if he has reached a sufficiently low level of danger and perversity he could be freed, at least conditionally.”2 The aim of this utilisation of medical power within the judicial process is not to cure the patient-convict, but to make them safe, to neutralise them as a future threat, to “normalize” them, and as we shall discover shortly, **the power of normalization becomes part of the justification for the murderous function of the State**. Scientific Racism and Biopower Biopower also effects sovereign power in a rather unique way, one which really ought to be remarked upon at this point. The ultimate manifestation of sovereign power was the Sovereign Ban: the power to determine who should be allowed to live, and who should be made to die. Biopower reversed this in a rather interesting way. It now determines who should be made to live and who should be allowed to die. The key determining factor in this decision is **Darwinian racism**: “This is not, then, a military, warlike, or political relationship, but a biological relationship. And the reason this mechanism can come into play is that the enemies who have to be done away with are not adversaries in the political sense of the term; they are threats, either external or internal, to the population and for the population. In the biopower system, in other words, killing or the imperative to kill is acceptable only if it results not in a victory over political adversaries, but in the elimination of the biological threat to and the improvement of the species or race. There is a direct connection between the two, In the normalizing society, race or racism is the precondition that makes killing acceptable. When you have a normalizing society, you have a power which is, at least superficially, in the first instance, or in the first line a biopower, and racism is the indispensable precondition that allows someone to be killed, that allows others to be killed. Once the State functions in the biopower mode, racism alone can justify the murderous function of the State. So you can understand the important – I almost said the vital importance – of racism to the exercise of such a power: it is the precondition for exercising the right to kill. If the power of normalization wished to exercise the old sovereign right to kill, it must become racist. And if, conversely, a power of sovereignty, or in other words, a power that has the right of life and death, wishes to work with the instruments, mechanisms, and technology of normalization, it too must become racist. When I say “killing,” I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on.”3 Foucault here goes on to illustrate how this racism is based upon a faulty view of Darwinism, vis-a-vis, the survival of the fittest. Racism has always been present within human societies, but it was during the 19th century that a more scientific form of racism evolved in colonial discourse. **The end result of this ‘new’ scientific racism is that whole groups of people can be made ‘other’**, and the killing of the same can then be justified in Darwinian terms. Giorgio Agamben goes into much detail about the effects of biopolitical racism in his book “Homo Sacer: Sovereign Power and Bare Life,” in which he traces the ontology of biopower from the Sovereign Ban to its logical end conclusion in the Holocaust perpetrated by the Third Reich in 1940s Germany. **The end result of biopower is genocide**, whether the colonial genocide of the 18th to 19th centuries, or the State hygiene genocide of the 20th century (Rwanda being the only exception as it was a throw back to the colonial genocide of former times4).

**Politics sustains itself through exclusion, there’s no hope for the aff’s reformism. The dangerous modern combination of biopolitics and bare life leads to governmental management which bedrocks in structural violence towards those that don’t fit the sovereign’s narrative of who is a proper citizen.**

**Ziarek 12**

Ewa Ziarek (Julian Park Professor of Comparative Literature at The State University of New York at Buffalo). “9. Bare Life.” Impasses of the Post-Global: Theory in the Era of Climate Change, vol. 2. 2012. http://quod.lib.umich.edu/o/ohp/10803281.0001.001/1:11/--impasses-of-the-post-global-theory-in-the-era-of-climate?rgn=div1;view=fulltext

Since bare life is included within Western democracies as their hidden inner ground and as such cannot mark their borders, modern politics is about the search for new racialized and gendered targets of exclusion, for the new living dead (130). In our own times, such targets multiply with astonishing speed and infiltrate bodies down to the cellular level: from refugees, illegal immigrants, inmates on death row subject to suicide watch, comatose patients on life support, to organ transplants and fetal stem cells. For Agamben, this inclusion of bare life within the bodies of each citizen becomes catastrophically apparent with the reversal of the democratic state into totalitarian regimes at the beginning of the 20th century. As the disasters of fascism and soviet totalitarianism demonstrate, and as the continuous histories of genocide show, by suspending political forms of life, **totalitarian regimes can reduce whole populations to disposable bare life that could be destroyed with impunity**. This is what according to Agamben constitutes **the unprecedented horror of Nazi concentration camps**: the extreme destitution and degradation of human life to bare life subject to mass extermination: “Insofar as its inhabitants were stripped of every political status and wholly reduced to bare life, the camp was also the most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation” (171). If Agamben controversially claims that camps are not just the extreme aberration of modernity but its “fundamental biopolitical paradigm” (181), which shows the “thanatopolitical face” of power (142, 150), it is because concentration camps for the first time actualize the danger implicit in Western politics, namely, the total genocide made possible by the reversal of the exception signified by homo sacer into a new thanato-political norm. Such collapse of the distinction between exception and norm, such transformation of the temporal exception into material space, together with the “absolute” and unmediated subjection of life to death, constitutes **the “supreme” political principle of genocide**.

#### The affirmative’s epistemic approach to the topic is one of maintaining sovereign power. The alternative is to reject the 1AC as an epistemic endorsement of Whatever-being – the view that life is important irrespective of qualifiers.

Caldwell 4

Anne Caldwell (Asst Professor in the Department of Political Science at the University of Louisville) Theory & Event, 7.2

Can we imagine another form of humanity, and another form of power? The bio-sovereignty described by Agamben is so fluid as to appear irresistible. Yet Agamben never suggests this order is necessary. Bio-sovereignty results from a particular and contingent history, and it requires certain conditions. Sovereign power, as Agamben describes it, finds its grounds in specific coordinates of life, which it then places in a relation of indeterminacy. What defies sovereign power is a life that cannot be reduced to those determinations: a life "that can never be separated from its form, a life in which it is never possible to isolate something such as naked life**.** " (2.3). In his earlier Coming Community, Agamben describes this alternative life as "whatever being." More recently he has used the term "forms-of-life." These concepts come from the figure Benjamin proposed as a counter to homo sacer: the "total condition that is 'man'." For Benjamin and Agamben, mere life is the life which unites law and life. That tie permits law, in its endless cycle of violence, to reduce life an instrument of its own power. The total condition that is man refers to an alternative life incapable of serving as the ground of law**.** Such a life would exist outside sovereignty. Agamben's own concept of whatever being is extraordinarily dense. It is made up of varied concepts, including language and potentiality; it is also shaped by several particular dense thinkers, including Benjamin and Heidegger. What follows is only a brief consideration of whatever being, in its relation to sovereign power.      "Whatever being," as described by Agamben, lacks the features permitting the sovereign capture and regulation of life in our tradition**.** Sovereignty's capture of life has been conditional upon the separation of natural and political life. That separation has permitted the emergence of a sovereign power grounded in this distinction, and empowered to decide on the value, and non-value of life (1998: 142). Since then, every further politicization of life, in turn, calls for "a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment" (p. 139). This expansion of the range of life meriting protection does not limit sovereignty, but provides sites for its expansion. In recent decades, factors that once might have been indifferent to sovereignty become a field for its exercise. Attributes such as national status, economic status, color, race, sex, religion, geo-political position have become the subjects of rights declarations. From a liberal or cosmopolitan perspective, such enumerations expand the range of life protected from and serving as a limit upon sovereignty. Agamben's analysis suggests the contrary. If indeed sovereignty is bio-political before it is juridical, then juridical rights come into being only where life is incorporated within the field of bio-sovereignty. The language of rights, in other words, calls up and depends upon the life caught within sovereignty: homo sacer. Agamben's alternative is therefore radical. He does not contest particular aspects of the tradition. He does not suggest we expand the range of rights available to life. He does not call us to deconstruct a tradition whose power lies in its indeterminate status.21 Instead, he suggests we take leave of the tradition and all its terms. Whatever being is a life that defies the classifications of the tradition, and its reduction of all forms of life to homo sacer. Whatever being therefore has no common ground, no presuppositions, and no particular attributes.It cannot be broken into discrete parts; it has no essence to be separated from its attributes; and it has no common substrate of existence defining its relation to others. Whatever being cannot then be broken down into some common element of life to which additive series of rights would then be attached. Whatever being retains all its properties, without any of them constituting a different valuation of life(1993: 18.9). As a result, whatever being is "reclaimed from its having this or that property, which identifies it as belonging to this or that set, to this or that class (the reds, the French, the Muslims) -- and it is reclaimed not for another class nor for the simple generic absence of any belonging, but for its being-*such*, for belonging itself." (0.1-1.2).Indifferent to any distinction between a ground and added determinations of its essence, whatever being cannot be grasped by a power built upon the separation of a common natural life, and its political specification. Whatever being dissolves the material ground of the sovereign exception and cancels its terms**.** This form of life is less post-metaphysical or anti-sovereign, than a-metaphysical and a-sovereign. Whatever is indifferent not because its status does not matter, but because it has no particular attribute which gives it more value than another whatever being. As Agamben suggests, whatever being is akin to Heidegger's Dasein. Dasein, as Heidegger describes it, is that life which always has its own being as its concern-- regardless of the way any other power might determine its status.Whatever being, in the manner of Dasein, takes the form of an "indissoluble cohesion in which it is impossible to isolate something like a bare life. In the state of exception become the rule, the life of *homo sacer*, which was the correlate of sovereign power, turns into existence over which power no longer seems to have any hold" (Agamben 1998: 153).We should pay attention to this comparison. For what Agamben suggests is that whatever being is not any abstract, inaccessible life, perhaps promised to us in the future. Whatever being, should we care to see it, is all around us, wherever we reject the criteria sovereign power would use to classify and value life**.** "In the final instance the State can recognize any claim for identity -- even that of a State identity within the State . . . What the State cannot tolerate in any way, however, is that the singularities form a community without affirming an identity, that humans co-belong without a representable condition of belonging" (Agamben 1993:85.6). At every point where we refusethe distinctions sovereigntyand the state would demand of us, the possibility of a non-state world, made up of whatever life, appears.

#### Alt solves the case – whatever-being cannot be reduced to bare life, which makes violence against it unjustifiable – without bare life, the state has no credence by which they can unequally apply the law

#### The role of the ballot is to endorse the debater who best exposes the inner workings of power – this is a foremost obligation for educations

Steele 10:

Brent Steele (Associate Professor of Political Science at the University of Kansas), Defacing Power: The Aesthetics of Insecurity in Global Politics pg 130-132, dml) [gender/ableist language modified with brackets]

When facing these dire warnings regarding the manner in which academic-intellectuals are seduced by power, what prospects exist for parrhesia? How can academic-intellectuals speak “truth to power”? It should be noted, first, that the academic-intellectual’s primary purpose should not be to re-create a program to replace power or even to develop a “research program that could be employed by students of world politics,” as Robert Keohane (1989: 173) once advised the legions of the International Studies Association. Because academics are denied the “full truth” from the powerful, Foucault states, we must avoid a trap into which governments would want intellectuals to fall (and often they do): “Putyourself in our place **and tell us what you would do**.” This is **not a question** in which one has to answer. To make a decision on any matter requires a knowledge of the facts **refused us**, an analysis of the situation we aren’t allowed to make. There’s the trap. (2001: 453) 27 This means that any alternative order we might provide, this hypothetical “research program of our own,” will also become imbued with authority and **used for mechanisms of control**, a matter I return to in the concluding chapter of this book. When linked to a theme of counterpower, academic-intellectual parrhesia suggests, instead, that the academic should use his or her pulpit, their position in society, to be a “friend” “who plays the role of a parrhesiastes, of a truth-teller” (2001: 134). 28 When speaking of then-president Lyndon Johnson, Morgenthau gave a bit more dramatic and less amiable take that contained the same sense of urgency. What the President needs, then, is an intellectual ~~father~~-confessor, who dares to remind him[/her] of **the brittleness of power**, of its arrogance and ~~blindness~~ [ignorance], of its **limits** and **pitfalls**; who tells him[/her] how empires rise, decline and fall, how power turns to folly, empires to ashes. He[/she] ought to **listen to that voice** and **tremble**. (1970: 28) The primary purpose of the academic-intellectual is therefore not to just effect a moment of counterpower through parrhesia, let alone stimulate that heroic process whereby power realizes the error of its ways. So those who are skeptical that academics ever really, regarding the social sciences, make “that big of a difference” are **miss**ing **the point**. As we bear witness to what unfolds in front of us and collectively analyze the testimony of that which happened before us, the purpose of the academic is to “**tell the story**” of what actually happens, to document and faithfully capture both history’s events and context. “The intellectuals of America,” Morgenthau wrote, “can do only one thing: live by the standard of truth that is their peculiar responsibility as intellectuals and by which men of power will ultimately be judged as well” (1970: 28). This will take time, 29 but if this happens, if we seek to uncover and practice telling the truth free from the “tact,” “**rules**,” and seduction that constrain its telling, then, as Arendt notes, “humanly speaking, no more is required, and no more can reasonably be asked, for this planet to remain a place fit for human habitation” ([1964] 2006: 233).