#### The only War Power authority is the ability to MAKE MILITARY DECISIONS

Bajesky 13 (2013¶ Mississippi College Law Review¶ 32 Miss. C. L. Rev. 9¶ LENGTH: 33871 words ARTICLE: Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers NAME: Robert Bejesky\* BIO: \* M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown). The author has taught international law courses for Cooley Law School and the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami.)

A numerical comparison indicates that the Framer's intended for Congress to be the dominant branch in war powers. Congressional war powers include the prerogative to "declare war;" "grant Letters of Marque and Reprisal," which were operations that fall short of "war"; "make Rules for Government and Regulation of the land and naval Forces;" "organize, fund, and maintain the nation's armed forces;" "make Rules concerning Captures on Land and Water," "raise and support Armies," and "provide and maintain a Navy." [n25](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n25) In contrast, the President is endowed with one war power, named as the Commander-in-Chief of the Army and Navy. [n26](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n26)¶ The Commander-in-Chief authority is a core preclusive power, predominantly designating that the President is the head of the military chain of command when Congress activates the power. [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n27) Moreover, peripheral Commander-in-Chief powers are bridled by statutory and treaty restrictions [n28](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n28) because the President "must respect any constitutionally legitimate restraints on the use of force that Congress has enacted." [n29](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n29) However, even if Congress has not activated war powers, the President does possess inherent authority to expeditiously and unilaterally react to defend the nation when confronted with imminent peril. [n30](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n30) Explicating the intention behind granting the President this latitude, Alexander Hamilton explained that "it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n31) The Framers drew a precise distinction by specifying that the President was empowered "to repel and not to commence war." [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n32)

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Their silence on LGBTQ immigrant detention is a performance of hetero-normativity that must be rejected

Sanchez, 14 -- Truthout staff, Fullbright Scholar

[Erika, "Left Out of the Narrative: LGBTQ undocumented detainees," Truthout, 2-18-14, www.windycitymediagroup.com/lgbt/Left-Out-of-the-Narrative-LGBTQ-undocumented-detainees/46265.html, accessed 2-21-14]

Left Out of the Narrative: LGBTQ undocumented detainees Undocumented LGBTQ people are caught in a double bind of belonging neither in white mainstream LGBTQ narrative nor in the mainstream immigrant narrative. The consequences can range from difficult to deadly. On Halloween of 2011, Eddy ( who, for his personal safety prefers his last name not be disclosed ), an undocumented immigrant from Chiapas, Mexico, living in Texas, was stopped by a police officer for passing a yellow light. Eddy, who has lived in the United States for most of his life, never imagined he would be in custody for 61 days because of a routine traffic stop. Eddy says that he passed the sobriety test. But when he was asked for his license, he could not provide one because he was undocumented. When they reached the headquarters, he also demanded a blood test to further prove he was not driving under the influence. After his arrest, Eddy says he was transferred to Harris County Jail, where he was held for 45 days. He was then taken to an immigration detention center in Houston. During the intake process, he says one of the questions was "Are you gay?" Because he answered yes, he says he was put in isolation for one week. The detention officials claimed it was for his own safety. Other people were placed in solitary confinement because of aggressive acts or because they wanted to commit suicide. Eddy was placed there only because he was gay. "I think they put me there out of fear. That was unjustified," Eddy says. "It was the hardest moment of my life. I thought I was really going to go insane." After his attorney contacted the warden, Eddy says that they removed him from isolation, and the warden warned him against having sex with anyone. According to Eddy, the warden said to him: "If you do get in trouble, we can't guarantee that we're going to protect you." He remained in general population for three weeks until his blood tests came back and cleared him of driving under the influence. At that point, he was released on bail. Eddy's experience, unfortunately, is not unusual. A 2013 report by American Progressfound that many facilities place lesbian, gay, bisexual, trans and queer ( LGBTQ ) immigrants in administrative segregation, or solitary confinement, supposedly in response to concerns of sexual assault and harassment. LGBTQ immigrants held in immigration detention facilities are 15 times more likely to be sexually assaulted than their heterosexual counterparts. According to the report, solitary confinement can lead to a variety of psychological problems, including hyper-sensitivity to external stimuli, hallucinations, panic attacks, obsessive thoughts and paranoia. Clement Lee, an attorney at the Immigration Equality Center who provides representation for LGBTQ asylum seekers, says that in some extreme cases, trans women are placed in solitary confinement for months at a time. "Many detention centers don't know how to house trans people. They almost always segregate them according to gender assignment given at birth," Lee says. "Many of our transgender women [housed in men's prisons] face increased danger of sexual violence from both staff and detainees." Lee says that the detention centers address these problems by putting people in administrative isolation. These hostile environments can lead to depression and other emotional issues. In 2011, Jonathan Perez, co-founder of Immigrant Youth Coalition, decided to bepurposefully detained to highlight the injustice of the Secure Communities Program. While in a detention center in Louisiana, he says he witnessed some of the more "feminine" men being harassed by fellow detainees. Perez says this experience caused him to become depressed and stay in bed all day. "I didn't want to face it," he says. "Whether we realize it or not, we experience out oppression all the time. In general, I think it's scary because you don't know what you're going to face in these places. It's inhumane to be detained." In addition to harassment and isolation, another obstacle many LGBTQ-identified detainees face is lack of access to HIV medication. The National Immigrant Justice Center has found that HIV-positive individuals detained by Immigration and Customs Enforcement ( ICE ) were harassed and mistreated and had a difficult time accessing HIV medication. Lee says that sometimes people who have HIV hesitate to disclose it out of fear, which can lead to a lapse in medication. These lapses can be deadly. In 2007,Victoria Arellano, a Mexican HIV-positive transgender woman, died after being denied her medication and medical attention at the detention center in San Pedro, California. Some trans detainees are also not allowed to receive hormone therapy while in custody, particularly when they don't have a previous prescription. Immigration Equality has found that medical staffs at detention facilities don't screen for or evaluate the need for transition-related care. According to the group's web site, "Due to the increased stressors that detainees live under, even if an individual did not take hormones or struggled with their GID [Gender Identity Disorder] before entering detention, their experience in detention may lead them to experience more intense feelings of gender discordance and necessitate treatment." "Hormones are integral to expressing their gender identity, and that's something they should be able to receive," Lee says. Rachel Ann Lewis, assistant professor in the Women and Gender Studies Program at George Mason University, says that when it comes to asylum petitions based on LGBTQ identity, there is a real emphasis on **visible performance** of sexuality, which can also be dangerous while in detention. Many have to make the difficult choice to "perform" their gender identity or sexuality for their petition for asylum and risk being harassed in detention. Collecting evidence of their membership to particular group can be dangerous and difficult for some LGBTQ detainees, Lee adds. Many asylum-seekers, for instance, lack evidence because they've made efforts to conceal their sexuality out of fear of persecution in their home countries. In addition to the danger faced in detention centers, Lewis points out that asylum seekers cannot work, which forces many to be homeless. As a result, Lee says, many have to resort to criminalized conduct, such as shoplifting and sex work, to survive. Lulu Martinez, who immigrated from Mexico City at the age of 3, also infiltrated a detention center as an act of civil disobedience. She says that queer undocumented people there are caught in a double bind of belonging neither in white mainstream queer narrative nor in the mainstream immigrant narrative. When it comes to immigration reform, she believes legislators should be "acknowledging a broader language that allows for more inclusion." While immigration reform hangs in the balance, the issue of detention abuse is just as relevant as ever and LGBTQ activists must continue to fight for visibility. According to The Center for American Progress, the Department of Homeland Security currently holds more than twice as many immigrants in detention each day as INS did during the entirety of 1998. Marcela Espinoza, an undocumented lesbian woman who participated in Dream 30,fled her home in Michoacan and petitioned for asylum in October 2013. She was detained in El Paso. She is requesting asylum due to "credible fear" because of her sexuality and the violence she witnessed in her home state. "Sometimes we don't have visibility in these spaces," she says. "There's always a heteronormative way of talking about immigration," she says. "We need that visibility. We need to be talking about these things. That's what we're trying to expose.

#### AND their appeal to the Court creates exclusion through inclusion- crafts a normative definition of queerness that is used to exclude

**Yount, 9.--** Masters in Sociology,(Porscha, “Denying Queer Realities: Scripting the Normative Homo.” East Tennessee State University, ProQuest)

By scripting the way individuals are supposed to interact with institutions and with each other, these organizations are **script**ing **a normative homo ideal** that they hope will be easily granted legitimacy by the dominant culture. The normative homo does not challenge the status quo; instead, he or she seeks to be included in mainstream culture regardless of his or her sexual identity. The normative homo believes that social change can be achieved through institutions and that policies provide him or her with security, safety, and protection. The normative homo believes that marriage is the only solution to the problems LGBT people face, and that with the legalization of same-sex marriage will come an end to discrimination against and stigma attached to LGBT people. The normative homo believes that justice is achieved through the court system, that fairness is when policies apply to everyone equally, and that during times of war it is unpatriotic to question the legitimacy of military violence. The normative homo also believes that gender and sexual identities are authentic and consistent. Because the normative homo ascribes to these beliefs and ideals, he or she is located within the inner boundary drawn between easily legitimated identities and problematic identities. The normative homo is not bisexual or transgender because he or she would never challenge the gender binary or the idea that identity is authentic and immutable. The normative homo is not a butch lesbian or an effeminate gay man because butch lesbians and effeminate gay men break gender stereotypes and present an image of gay and lesbian identity that is unpalatable to mainstream culture unless presented in popular culture as a comedic interlude. The normative homo is the product of multiple exclusions—he or she is what is left when everyone else has been shoved aside. Much like the final construction of the lesbian feminist subculture, the normative homo is part of a purified gay and lesbian community (Nataf 2006). The normative homo is what is left—a gender-conforming gay or lesbian individual who does not seek to challenge normative frames. The organizations included in this study repeatedly refused to take opportunities to challenge the status quo and often followed potentially non-normative frames by reinforcing normative frameworks. They all argued that their efforts to achieve social change would succeed if they can take the lead in working through existing institutions to make small changes that will trickle down to the masses. They also argued that marriage is not just a solution to problems faced by LGBT individuals, but that only marriage will fix our problems. Like other social movements, they invoke higher causes to justify their visions of the future and consequently reinforce narrowly defined normative ideas about justice, fairness, and patriotism. By erasing bisexuality in the context of marriage, family, parenting, aging, and the military, these organizations further reinforced the idea that bisexuality is simply an indiscretion of youth. Marriage, parenting, aging, and joining the military are normatively conceptualized as part of a maturation process. If bisexuality does not exist in these contexts—and, indeed, these organizations erased the existence of bisexuality in these contexts—then it is constructed as a youthful indiscretion or lapse in maturity. Although these organizations claimed to represent the LGBT movement and positioned themselves as movement leaders, they did so at the cost of their bisexual members’ status as adult citizens. In order to take full advantage of one’s citizenship rights, one must be an adult. Because bisexuality is excluded from consideration when these organizations discuss “adult concerns” like marriage and parenting, they participate in denying citizenship to bisexuals and actively produce bisexuals as non-citizens—or just bad queers.

#### Heteronormative politics makes systematic extermination of the Other inevitable

**Yep, 4**. -- Professor of Communication Studies at San Francisco State University,(Gust A., Ph.D. in Communication., *Queer Theory and Communication: From Disciplining Queers to Queering the Discipline(s)*, pg. 18).

In this passage, Simmons vividly describes the devastating persuasiveness of hatred and violence in her daily life based on being seen, perceived, labeled, and treated as an “Other.” This process of othering creates individuals, groups, and communities that are deemed to be less important, less worthwhile, less consequential, less authorized, and less human based on historically situated markers of social formation such as race, class, gender, sexuality, ability, and nationality. Othering and marginalization are results of an “invisible center” (Ferguson, 1990, p.3). The authority, position, and power of such a center are attained through normalization in an ongoing circular movement. Normalization is the process of constructing, establishing, producing, and reproducing a taken-for-granted and all-encompassing standard used to measure goodness, desirability, morality, rationality, superiority, and a host of other dominant cultural values. As such, normalization becomes one of the primary instruments of power in modern society (Foucault, 1978/1990). Normalization is a symbolically, discursively, psychically, psychologically, and materially violent form of social regulation and control, or as Warner (1993) more simply puts it, normalization is “the site of violence” (p.xxvi). Perhaps one of the most powerful forms of normalization in Western social systems is heteronormativity. Through heteronormative discourses, abject and abominable bodies, souls, persons, and life forms are created, examined, and disciplined through current regimes of knowledge and power (Foucault, 1978/1990). Heteronormativity, as the invisible center and the presumed bedrock of society, is the quintessential force creating, sustaining, and presumed bedrock of society, is the quintessential force creating, sustaining, and perpetuating the erasure, marginalization, disempowerment, and oppression of sexual others. Heternormativity is ubiquitous in all spheres of social life yet remains largely invisible and elusive. According to Berlant and Warner (in Warner, 2002), heteronormativity refers to: "the institutions, structures of understanding, and practical orientations that make heterosexuality seem not only coherent – that is, organized as a sexuality – but also a privileged. Its coherence is always provisional, and its privilege can take several (sometimes cotradictory) forms: unmarked as the basic idiom of the personal and the social; of marked as natural state; or projected as an ideal or moral accomplishment. It consists less of norms that could be summarized as a body of doctrine than of a sense of rightness produced in contradictory manifestations – often unconscious, immanent to practive or to institutions. (pg 309, my emphasis). Heteronormativity makes heterosexuality hegemonic through the process of normalization. Although it is experienced consciously or unconsciously and with different degrees of pain and suffering, this process of normalization is a site of violence in the lives of women, men, and transgenders – across the spectrum of sexualities – in modern Western Societies. Not unlike the experiences of children who must learn to survive in an emotionally and physically abusive environment where violence is the recipe for daily existence (Miller, 1990), 1991, 1998, 2001), individuals living in the heteronormative regime used to learn to conform, ignore, and banish their suffering to survive. The process of coping by repressing the pain and identifying with the perpetrator is, in my view, a powerful mechanism for heteronormativity to perpetuate itself in current forms of social organization. Drawing from the work of feminists and womanists, critical scholars, and mental health researchers, I identify and examine the injurious and violent nature of heteronormativity in this section. For purposes of discussion, I focus on the violence of heteronormativity enacted upon: (a) women inside the heteronormative borders, (b) men inside the heteronormative borders, (c) lesbian, gay, bisexual, transgendered, and queer people and (d) individuals living at the intersections of race, class, gender, and sexuality.

#### The alternative is to embrace queerness as the anticitizen- there can be no immigration reform, we must queer citizenship to undermine the foundations of the oppressive nation-state.

**Brandzel, 5**. PhD candidate at the U of Minnesota,(Amy L., “Queering Citizenship”, GLQ: A Journal of Lesbian and Gay Studies, Vol 11, No. 2).

I describe such events as conferring gay and lesbian rather than queer citizenship because I believe that "queer" and "citizen" are antithetical concepts. I am proposing that queers, especially those who are privileged and well off enough to do so, should refuse citizenship and actively subvert the normalization, legitimization, and regulation that it requires. In claiming that queer is anticitizen, I am referencing a more nuanced understanding of what it means to be a citizen. To be a citizen is not simply a matter of enjoying a specific legal status; it includes the wide variety of practices and imaginings required by citizenship. That is, one must imagine oneself as a citizen as well as be imagined by the American citizenry as a member of it. "Citizenship for Asian Americans in the form of legal status or rights," Leti Volpp notes, advancing a similar claim, "has not guaranteed that Asian Americans will be understood as citizen-subjects or will be considered to subjectively stand in for American citizenry. . . . While in the contemporary moment Asian Americans may be perceived as legitimate recipients of formal rights, there is discomfort associated with their being conceptualized as political subjects whose activity constitutes the American nation."[73](http://muse.jhu.edu/journals/journal_of_lesbian_and_gay_studies/v011/11.2brandzel.html#FOOT73) Historically, Asian Americans have been deemed, in legal and popular discourses, as always already aliens and outsiders to U.S. community practices and political rights. Throughout U.S. history they have been figured as abjected citizens and, as such, have withstood egregious discriminations and harms that continue to this day. I want to [End Page 197] apply Volpp's insight to queers, but by no means to diminish the substantial harms suffered by Asian Americans through U.S. orientalism or to equate Asian American with queer experience. While an intersectional queer critique aims to make connections among practices, experiences, and identifications, it must not equalize these experiences or treat them as if they were the same. In fact, a central argument of this essay has been that citizenship displaces nonwhite, nonheterosexual, nonmale peoples via intersections of normativities, but it does so in very different and meaningful ways. **A radical queer critique of citizenship has a stake not in saving it** or in redefining it **but in undermining its production** and promotion of normativity. Queers are seen as oppositional and/or antagonistic to U.S. community-building practices and institutions. In the American imaginary, they often epitomize indulgence and selfishness, traits seen as extensions of their excessive sexual identifications. While queers do not choose to be positioned outside or in opposition to U.S. citizenship, their positioning can and should be used to critique normative citizenship practices and institutions. Queerness as an identification and a politics allows for a reflective stance that can represent the paradox of citizenship: that the great umbrella of American ideals does not shelter everyone. It allows for a position from which we, as deviants, can work to undermine and expose—that is, queer—the normativities of citizenship. Queer citizenship requires a critique of citizenship, of the nation-state, of normalization and heteronormativity. To queer citizenship, then, we need to work to conceive a citizenship that does not require universalization, false imaginaries, or immersion in and acceptance of the progress narratives of U.S. citizenship. At a time when immigrants are terrorized, when hate crimes are on the rise, when wars are waged to extend the U.S. empire and are excused through racialized and gendered imagery as well as through the supposedly benevolent desire to spread American ways of life (such as "citizenship" and "democracy"), we cannot afford to participate in any colonial rhetorics or orthodox appeals. Queer citizenship requires a constant critique not only of the break between queer and normative citizens but of the boundary maintenance inherit in citizenship. If the history of citizenship is in fact the history of normalization, of legitimization, of differentiation, then to queer citizenship would transform these practices radically. A queer citizenry would refuse to participate in the prioritizing of one group or form of intimacy over another; it would refuse to participate in the differentiation of peoples, groups, or individuals; it would refuse citizenship altogether.

#### Legal solutions merely mask sovereign power and legitimatize exclusion

Kohn, 6 -- University of Florida political science assistant professor

[Margaret, "Bare Life and the Limits of the Law," Theory & Event, 9:2, 2006, muse.jhu.edu/journals/theory\_and\_event/v009/9.2kohn.html, accessed 9-12-13, mss]

Giorgio Agamben is best known for his provocative suggestion that the concentration camp – the spatial form of the state of exception - is not exceptional but rather the paradigmatic political space of modernity itself.  When Agamben first made this claim in Homo Sacer (1995), it may have seemed like rhetorical excess. But a decade later in the midst of a permanent war on terror, in which suspects can be tried by military tribunals, incarcerated without trial based on secret evidence, and consigned to extra-territorial penal colonies like Guantanamo Bay, his characterization seems prescient. The concepts of bare life, sovereignty, the ban, and the state of exception, which were introduced in Homo Sacer, have exerted enormous influence on theorists trying to make sense of contemporary politics. Agamben recently published a new book entitled State of Exception that elaborates on some of the core ideas from his earlier work. It is an impressive intellectual history of emergency power as a paradigm of government. The book traces the concept from the Roman notion of iustitium through the infamous Article 48 of the Weimar constitution to the USA Patriot Act. Agamben notes that people interned at Guantanamo Bay are neither recognized as prisoners of war under the Geneva Convention nor as criminals under American law; as such they occupy a zone of indeterminacy, both legally and territorially, which, according to Agamben, could only be compared to the Jews in the Nazi Lager (concentration camps) (4). Agamben's critique of the USA Patriot Act, at least initially seems to bare a certain resemblance to the position taken by ACLU-style liberals in the United States. When he notes that "detainees" in the war on terror are the object of pure de factorule and compares their legal status to that of Holocaust victims, he implicitly invokes a normative stance that is critical of the practice of turning juridical subjects into bare life, e.g. life that is banished to a realm of potential violence. For liberals, "the rule of law" involves judicial oversight, which they identify as one of the most appropriate weapons in the struggle against arbitrary power. Agamben makes it clear, however, that he does not endorse this solution. In order to understand the complex reasons for his rejection of the liberal call for more fairness and universalism we must first carefully reconstruct his argument. State of Exception begins with a brief history of the concept of the state of siege (France), martial law (England), and emergency powers (Germany). Although the terminology and the legal mechanisms differ slightly in each national context, they share an underlying conceptual similarity. The state of exception describes a situation in which a domestic or international crisis becomes the pretext for a suspension of some aspect of the juridical order. For most of the bellicose powers during World War I this involved government by executive decree rather than legislative decision. Alternately, the state of exception often implies a suspension of judicial oversight of civil liberties and the use of summary judgment against civilians by members of the military or executive. Legal scholars have differed about the theoretical and political significance of the state of exception. For some scholars, the state of exception is a legitimate part of positive law because it is based on necessity, which is itself a fundamental source of law. Similar to the individual's claim of self-defense in criminal law, the polity has a right to self-defense when its sovereignty is threatened; according to this position, exercising this right might involve a technical violation of existing statutes (legge) but does so in the name of upholding the juridical order (diritto). The alternative approach, which was explored most thoroughly by Carl Schmitt in his books Political Theology and Dictatorship, emphasizes that declaring the state of exception is the perogative of the sovereign and therefore essentially extra-juridical. For Schmitt, the state of exception always involves the suspension of the law, but it can serve two different purposes. A "commissarial dictatorship" aims at restoring the existing constitution and a "sovereign dictatorship" constitutes a new juridical order. Thus, the state of exception is a violation of law that expresses the more fundamental logic of politics itself. Following Derrida, Agamben calls this force-of-law. What exactly is the force-of-law? Agamben suggests that the appropriate signifier would be force-of-law, a graphic reminder of the fact that the concept emerges out of the suspension of law. He notes that it is a "mystical element, or rather a fictio by means of which law seeks to annex anomie itself." It expresses the fundamental paradox of law: the necessarily imperfect relationship between norm and rule. The state of exception is disturbing because it reveals the force-of-law, the remainder that becomes visible when the application of the norm, and even the norm itself, are suspended. At this point it should be clear that Agamben would be deeply skeptical of the liberal call for more vigorous enforcement of the rule of law as a means of combating cruelties and excesses carried out under emergency powers. His brief history of the state of exception establishes that the phenomenon is a political reality that has proven remarkably resistant to legal limitations. Critics might point out that this descriptive point, even if true, is no reason to jettison the ideal of the rule of law. For Agamben, however, the link between law and exception is more fundamental; it is intrinsic to politics itself. The sovereign power to declare the state of exception and exclude bare life is the same power that invests individuals as worthy of rights. The two are intrinsically linked. The disturbing implication of his argument is that we cannot preserve the things we value in the Western tradition (citizenship, rights, etc.) without preserving the perverse ones. Agamben presents four theses that summarize the results of his genealogical investigation. (1) The state of exception is a space devoid of law. It is not the logical consequence of the state's right to self-defense, nor is it (qua commissarial or sovereign dictatorship) a straightforward attempt to reestablish the norm by violating the law. (2) The space devoid of law has a "decisive strategic relevance" for the juridical order. (3) Acts committed during the state of exception (or in the space of exception) escape all legal definition. (4) The concept of the force-of-law is one of the many fictions, which function to reassert a relationship between law and exception, nomos andanomie. The core of Agamben's critique of liberal legalism is captured powerfully, albeit indirectly, in a quote from Benjamin's eighth thesis on the philosophy of history. According to Benjamin, (t)he tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must attain a concept of history that accords with this fact. Then we will clearly see that it is our task to bring about the real state of exception, and this will improve our position in the struggle against fascism. (57) Here Benjamin endorses the strategy of more radical resistance rather than stricter adherence to the law. He recognizes that legalism is an anemic strategy in combating the power of fascism. The problem is that conservative forces had been willing to ruthlessly invoke the state of exception in order to further their agenda while the moderate Weimar center-left was paralyzed; frightened of the militant left and unwilling to act decisively against the authoritarian right, partisans of the rule of law passively acquiesced to their own defeat. Furthermore, the rule of law, by incorporating the necessity of its own dissolution in times of crisis, proved itself an unreliable tool in the struggle against violence. From Agamben's perspective, the civil libertarians' call for uniform application of the law simply denies the nature of law itself. He insists, "From the real state of exception in which we live, it is not possible to return to the state of law. . ." (87) Moreover, by masking the logic of sovereignty, such an attempt could actually further obscure the zone of indistinction that allows the state of exception to operate. For Agamben, law serves to legitimize sovereign power. Since sovereign power is fundamentally the power to place people into the category of bare life, the law, in effect, both produces and legitimizes marginality and exclusion.

#### Sanitization of US policy leads to endless violence and imperialism – turns case

Bacevich, 5 -- Boston University international relations professor

[A. J., retired career officer in the United States Army, former director of Boston University's Center for International Relations (from 1998 to 2005), The New American Militarism: How Americans Are Seduced by War, 2005 accessed 9-4-13, mss]

Today as never before in their history Americans are enthralled with military power. The global military supremacy that the United States presently enjoys--and is bent on perpetuating-has become central to our national identity. More than America's matchless material abundance or even the effusions of its pop culture, the nation's arsenal of high-tech weaponry and the soldiers who employ that arsenal have come to signify who we are and what we stand for. When it comes to war, Americans have persuaded themselves that the United States possesses a peculiar genius. Writing in the spring of 2003, the journalist Gregg Easterbrook observed that "the extent of American military superiority has become almost impossible to overstate." During Operation Iraqi Freedom, U.S. forces had shown beyond the shadow of a doubt that they were "the strongest the world has ever known, . . . stronger than the Wehrmacht in r94o, stronger than the legions at the height of Roman power." Other nations trailed "so far behind they have no chance of catching up. ""˜ The commentator Max Boot scoffed at comparisons with the German army of World War II, hitherto "the gold standard of operational excellence." In Iraq, American military performance had been such as to make "fabled generals such as Erwin Rommel and Heinz Guderian seem positively incompetent by comparison." Easterbrook and Booz concurred on the central point: on the modern battlefield Americans had located an arena of human endeavor in which their flair for organizing and deploying technology offered an apparently decisive edge. As a consequence, the United States had (as many Americans have come to believe) become masters of all things military. Further, American political leaders have demonstrated their intention of tapping that mastery to reshape the world in accordance with American interests and American values. That the two are so closely intertwined as to be indistinguishable is, of course, a proposition to which the vast majority of Americans subscribe. Uniquely among the great powers in all of world history, ours (we insist) is an inherently values-based approach to policy. Furthermore, we have it on good authority that the ideals we espouse represent universal truths, valid for all times. American statesmen past and present have regularly affirmed that judgment. In doing so, they validate it and render it all but impervious to doubt. Whatever momentary setbacks the United States might encounter, whether a generation ago in Vietnam or more recently in Iraq, this certainty that American values are destined to prevail imbues U.S. policy with a distinctive grandeur. The preferred language of American statecraft is bold, ambitious, and confident. Reflecting such convictions, policymakers in Washington nurse (and the majority of citizens tacitly endorse) ever more grandiose expectations for how armed might can facilitate the inevitable triumph of those values. In that regard, George W. Bush's vow that the United States will "rid the world of evil" both echoes and amplifies the large claims of his predecessors going at least as far back as Woodrow Wilson. Coming from Bush the war- rior-president, the promise to make an end to evil is a promise to destroy, to demolish, and to obliterate it. One result of this belief that the fulfillment of America's historic mission begins with America's destruction of the old order has been to revive a phenomenon that C. Wright Mills in the early days of the Cold War described as a "military metaphysics"-a tendency to see international problems as military problems and to discount the likelihood of finding a solution except through military means. To state the matter bluntly, Americans in our own time have fallen prey to militarism, manifesting itself in a romanticized view of soldiers, a tendency to see military power as the truest measure of national greatness, and outsized expectations regarding the efficacy of force. To a degree without precedent in U.S. history, Americans have come to define the nation's strength and well-being in terms of military preparedness, military action, and the fostering of (or nostalgia for) military ideals? Already in the 19905 America's marriage of a militaristic cast of mind with utopian ends had established itself as the distinguishing element of contemporary U.S. policy. The Bush administrations response to the hor- rors of 9/11 served to reaffirm that marriage, as it committed the United States to waging an open-ended war on a global scale. Events since, notably the alarms, excursions, and full-fledged campaigns comprising the Global War on Terror, have fortified and perhaps even sanctified this marriage. Regrettably, those events, in particular the successive invasions of Afghanistan and Iraq, advertised as important milestones along the road to ultimate victory have further dulled the average Americans ability to grasp the significance of this union, which does not serve our interests and may yet prove our undoing. The New American Militarism examines the origins and implications of this union and proposes its annulment. Although by no means the first book to undertake such an examination, The New American Militarism does so from a distinctive perspective. The bellicose character of U.S. policy after 9/11, culminating with the American-led invasion of Iraq in March 2003, has, in fact, evoked charges of militarism from across the political spectrum. Prominent among the accounts advancing that charge are books such as The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic, by Chalmers Johnson; Hegemony or Survival: Americas Quest for Global Dominance, by Noam Chomsky; Masters of War; Militarism and Blowback in the Era of American Empire, edited by Carl Boggs; Rogue Nation: American Unilateralism and the Failure of Good Intentions, by Clyde Prestowitz; and Incoherent Empire, by Michael Mann, with its concluding chapter called "The New Militarism." Each of these books appeared in 2003 or 2004. Each was not only writ- ten in the aftermath of 9/11 but responded specifically to the policies of the Bush administration, above all to its determined efforts to promote and justify a war to overthrow Saddam Hussein. As the titles alone suggest and the contents amply demonstrate, they are for the most part angry books. They indict more than explain, and what- ever explanations they offer tend to be ad hominem. The authors of these books unite in heaping abuse on the head of George W Bush, said to combine in a single individual intractable provincialism, religious zealotry, and the reckless temperament of a gunslinger. Or if not Bush himself, they fin- ger his lieutenants, the cabal of warmongers, led by Vice President Dick Cheney and senior Defense Department officials, who whispered persua- sively in the president's ear and used him to do their bidding. Thus, accord- ing to Chalmers Johnson, ever since the Persian Gulf War of 1990-1991, Cheney and other key figures from that war had "Wanted to go back and finish what they started." Having lobbied unsuccessfully throughout the Clinton era "for aggression against Iraq and the remaking of the Middle East," they had returned to power on Bush's coattails. After they had "bided their time for nine months," they had seized upon the crisis of 9/1 1 "to put their theories and plans into action," pressing Bush to make Saddam Hussein number one on his hit list." By implication, militarism becomes something of a conspiracy foisted on a malleable president and an unsuspecting people by a handful of wild-eyed ideologues. By further implication, the remedy for American militarism is self-evi- dent: "Throw the new militarists out of office," as Michael Mann urges, and a more balanced attitude toward military power will presumably reassert itself? As a contribution to the ongoing debate about U.S. policy, The New American Militarism rejects such notions as simplistic. It refuses to lay the responsibility for American militarism at the feet of a particular president or a particular set of advisers and argues that no particular presidential election holds the promise of radically changing it. Charging George W. Bush with responsibility for the militaristic tendencies of present-day U.S. for- eign policy makes as much sense as holding Herbert Hoover culpable for the Great Depression: Whatever its psychic satisfactions, it is an exercise in scapegoating that lets too many others off the hook and allows society at large to abdicate responsibility for what has come to pass. The point is not to deprive George W. Bush or his advisers of whatever credit or blame they may deserve for conjuring up the several large-scale campaigns and myriad lesser military actions comprising their war on ter- ror. They have certainly taken up the mantle of this militarism with a verve not seen in years. Rather it is to suggest that well before September 11, 2001 , and before the younger Bush's ascent to the presidency a militaristic predisposition was already in place both in official circles and among Americans more generally. In this regard, 9/11 deserves to be seen as an event that gave added impetus to already existing tendencies rather than as a turning point. For his part, President Bush himself ought to be seen as a player reciting his lines rather than as a playwright drafting an entirely new script. In short, the argument offered here asserts that present-day American militarism has deep roots in the American past. It represents a bipartisan project. As a result, it is unlikely to disappear anytime soon, a point obscured by the myopia and personal animus tainting most accounts of how we have arrived at this point. The New American Militarism was conceived not only as a corrective to what has become the conventional critique of U.S. policies since 9/11 but as a challenge to the orthodox historical context employed to justify those policies. In this regard, although by no means comparable in scope and in richness of detail, it continues the story begun in Michael Sherry's masterful 1995 hook, In the Shadow of War an interpretive history of the United States in our times. In a narrative that begins with the Great Depression and spans six decades, Sherry reveals a pervasive American sense of anxiety and vulnerability. In an age during which War, actual as well as metaphorical, was a constant, either as ongoing reality or frightening prospect, national security became the axis around which the American enterprise turned. As a consequence, a relentless process of militarization "reshaped every realm of American life-politics and foreign policy, economics and technology, culture and social relations-making America a profoundly different nation." Yet Sherry concludes his account on a hopeful note. Surveying conditions midway through the post-Cold War era's first decade, he suggests in a chapter entitled "A Farewell to Militarization?" that America's preoccupation with War and military matters might at long last be waning. In the mid- 1995, a return to something resembling pre-1930s military normalcy, involving at least a partial liquidation of the national security state, appeared to be at hand. Events since In the Shadow of War appear to have swept away these expectations. The New American Militarism tries to explain why and by extension offers a different interpretation of America's immediate past. The upshot of that interpretation is that far from bidding farewell to militariza- tion, the United States has nestled more deeply into its embrace. f ~ Briefly told, the story that follows goes like this. The new American militarism made its appearance in reaction to the I96os and especially to Vietnam. It evolved over a period of decades, rather than being sponta- neously induced by a particular event such as the terrorist attack of Septem- ber 11, 2001. Nor, as mentioned above, is present-day American militarism the product of a conspiracy hatched by a small group of fanatics when the American people were distracted or otherwise engaged. Rather, it devel- oped in full view and with considerable popular approval. The new American militarism is the handiwork of several disparate groups that shared little in common apart from being intent on undoing the purportedly nefarious effects of the I96OS. Military officers intent on reha- bilitating their profession; intellectuals fearing that the loss of confidence at home was paving the way for the triumph of totalitarianism abroad; reli- gious leaders dismayed by the collapse of traditional moral standards; strategists wrestling with the implications of a humiliating defeat that had undermined their credibility; politicians on the make; purveyors of pop cul- turc looking to make a buck: as early as 1980, each saw military power as the apparent answer to any number of problems. The process giving rise to the new American militarism was not a neat one. Where collaboration made sense, the forces of reaction found the means to cooperate. But on many occasions-for example, on questions relating to women or to grand strategy-nominally "pro-military" groups worked at cross purposes. Confronting the thicket of unexpected developments that marked the decades after Vietnam, each tended to chart its own course. In many respects, the forces of reaction failed to achieve the specific objectives that first roused them to act. To the extent that the 19603 upended long-standing conventions relating to race, gender, and sexuality, efforts to mount a cultural counterrevolution failed miserably. Where the forces of reaction did achieve a modicum of success, moreover, their achievements often proved empty or gave rise to unintended and unwelcome conse- quences. Thus, as we shall see, military professionals did regain something approximating the standing that they had enjoyed in American society prior to Vietnam. But their efforts to reassert the autonomy of that profession backfired and left the military in the present century bereft of meaningful influence on basic questions relating to the uses of U.S. military power. Yet the reaction against the 1960s did give rise to one important by-prod: uct, namely, the militaristic tendencies that have of late come into full flower. In short, the story that follows consists of several narrative threads. No single thread can account for our current outsized ambitions and infatua- tion with military power. Together, however, they created conditions per- mitting a peculiarly American variant of militarism to emerge. As an antidote, the story concludes by offering specific remedies aimed at restor- ing a sense of realism and a sense of proportion to U.S. policy. It proposes thereby to bring American purposes and American methods-especially with regard to the role of military power-into closer harmony with the nation's founding ideals. The marriage of military metaphysics with eschatological ambition is a misbegotten one, contrary to the long-term interests of either the American people or the world beyond our borders. It invites endless war and the ever-deepening militarization of U.S. policy. As it subordinates concern for the common good to the paramount value of military effectiveness, it promises not to perfect but to distort American ideals. As it concentrates ever more authority in the hands of a few more concerned with order abroad rather than with justice at home, it will accelerate the hollowing out of American democracy. As it alienates peoples and nations around the world, it will leave the United States increasingly isolated. If history is any guide, it will end in bankruptcy, moral as well as economic, and in abject failure. "Of all the enemies of public liberty," wrote James Madison in 1795, "war is perhaps the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies. From these proceed debts and taxes. And armies, debts and taxes are the known instruments for bringing the many under the domination of the few .... No nation could preserve its freedom in the midst of continual Warfare." The purpose of this book is to invite Americans to consider the continued relevance of Madison's warning to our own time and circumstances.

#### The Alternative is to reject the 1AC and imagine Whatever Being--Any point of rejection of the sovereign state creates a non-state world made up of whatever life – that involves imagining a political body that is outside the sphere of sovereignty in that it defies traditional attempts to maintain a social identity

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(Anne, “Bio-Sovereignty and the Emergence of Humanity,” Theory & Event, Volume 7, Issue 2, Project Muse)

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 refuse the distinctions sovereignty and the state would demand of us, the possibility of a non-state world, made up of whatever life, appears.

#### Civilian trials are rigged- the State gets the results it wants – due process won’t solve

Silverglate 10-6-13 [Harvey Silverglate, a Boston criminal defense and civil liberties lawyer, is the author, most recently, of "Three Felonies a Day: How the Feds Target the Innocent" (Encounter Books, updated second edition 2011), “How Prosecutors Rig Trials by Freezing Assets,” <http://online.wsj.com/article/SB10001424127887324110404578630561814823892.html>]

On Oct. 16, the Supreme Court will hear oral arguments on a claim brought by husband and wife Brian and Kerri Kaley. The Kaleys are asking the high court to answer a serious and hotly contested question in the federal criminal justice system: Does the Constitution allow federal prosecutors to seize or freeze a defendant's assets before the prosecution has shown at a pretrial hearing that those assets were illegally obtained?¶ Such asset freezes often prevent a defendant from hiring the trial counsel of his choice to mount a vigorous defense, thus increasing the likelihood of the government extracting a guilty plea or verdict. Because asset forfeiture almost automatically follows conviction, a pretrial freeze ultimately enables the Justice Department to grab the frozen assets for use by executive-branch law enforcement agencies. It is a neat, vicious circle. What crimes are the Kaleys charged with? Kerri Kaley was a sales representative for a subsidiary of Johnson & Johnson JNJ +1.90% . Beginning in 2005, the fedsin Florida investigated her, her husband Brian, and other sales reps for reselling medical devices given to them by hospitals. The hospitals had previously bought and stocked the devices but no longer needed or wanted the overstock since the company was offering new products. Knowing that the J&J subsidiary had already been paid for the now-obsolete products and was focused instead on selling new models, the sales reps resold the old devices and kept the proceeds.¶ The feds had various theories for why this "gray market" activity was a crime, even though prosecutors could not agree on who owned the overstocked devices and, by extension, who were the supposed victims of the Kaleys' alleged thefts. The J&J subsidiary never claimed to be a victim.¶ The Kaleys were confident that they would prevail at trial if they could retain their preferred lawyers. A third defendant did go to trial with her counsel of choice and was acquitted. But the Justice Department made it impossible for the Kaleys to pay their chosen lawyers for trial.¶ The government insisted that as long as the Kaleys' assets—including bank accounts and their home—could be traced to the sale of the medical devices, all of those assets could be frozen. The Kaleys were not allowed to go a step further and show that their activities were in no way criminal, since this would be determined by a trial. But the Kaleys insisted that if the government wanted to freeze their funds, the court had to hold a pretrial hearing on the question of the legality of how the funds were earned.¶ The Kaleys complained that the asset freeze effectively deprived them of their Sixth Amendment right to the counsel of their choice—the couple couldn't afford to hire the defense that they wanted. Prosecutors and the trial judge responded that the Kaleys could proceed with a public defender. This wouldn't have been an encouraging prospect for them, for while public counsel is often quite skilled, such legal aid wouldn't meet the requirements the Kaleys believed they needed for this complex defense. Choice of counsel in a free society, one would think, lies with the defendant, not with the prosecutor or the judge. (The Kaleys' chosen trial lawyers have agreed to stick with the case during the pretrial tussling over the asset-freeze question, but trying the case before a jury would be much more expensive and would require the frozen funds.)¶ Federal asset-forfeiture statutes like the one the Kaleys are fighting are actually a relatively recent invention. Before 1970, when Congress adopted the first provisions seeking to strip organized-crime figures of ill-gotten racketeering gains, there were no such laws (with the exception of the Civil War-era Confiscation Acts providing for the forfeiture of property of Confederate soldiers).¶ Since 1970, however, such federal statutes have expanded to cover a breathtaking number of crimes, from the sale of fraudulent passports and contraband cigarettes right up to murder and drug trafficking. An authoritative treatise, the 4th edition of the encyclopedia "Federal Practice & Procedure," asserts that federal forfeiture is now available "for almost every crime." In January, the New York Times quoted Manhattan U.S. Attorney Preet Bharara as saying that asset forfeiture is "an important part of the culture" and "an example of the government being efficient and bringing home the bacon." In 2012 alone, federal prosecutors seized more than $4 billion in assets. The Justice Department is allowed by law to put that bacon to use however prosecutors wish—to pay informants, provide snazzy cars to cooperating witnesses, whatever.¶ The Kaleys are hardly alone. The recently completed prosecution of Conrad Black indicates starkly how such seizures can torpedo a defendant's chance of getting a fair trial. In his 2007 high-profile case, Mr. Black, a former newspaper publisher indicted for alleged fraud and related crimes in the sale of Hollinger International, endured a federal freeze of his major unencumbered asset, the cash proceeds from the sale of his New York City apartment. That freeze prevented him from being able to retain the legal counsel upon whom he had relied before the asset freeze.¶ Mr. Black ultimately was convicted on two counts, winning on all the others in a shifting array of counts that numbered more than a dozen. Last year, having served his 42-month prison sentence, he filed a petition in federal court seeking to vacate his convictions on the ground that the government's asset-forfeiture tactics had deprived him of his counsel of choice. That effort foundered when the judge concluded that Mr. Black's trial counsel—not his counsel of choice, it must be noted, but rather the counsel he could afford after the asset freeze—had failed to properly raise and hence preserve the issue for later appellate review.¶ The Supreme Court has now threatened to upset the game that is so lucrative for the government and disabling for defendants. On March 18, the court agreed to consider the Kaleys' claim that the asset freeze without a hearing on the merits of the underlying criminal charge violated their constitutional rights. At oral argument in mid-October, the broader question will be whether, after four decades of federal asset seizures, the high court will put a freeze on the Justice Department.

#### Obama empirically exploits detention loopholes

Calabresi ’11 [Massimo Calabresi joined the Washington bureau of TIME in 1999 and has covered the CIA, State, Justice, Treasury, Congress and the White House. He covered the wars in Bosnia, Croatia and Kosovo as TIME's Central Europe bureau chief from 1995 to 1999 and the collapse of the Soviet Union as a freelancer in Moscow in 1991, “Why Obama Is Threatening to Veto a Defense Bill Over Detention Policy,” Nov. 18, <http://swampland.time.com/2011/11/18/why-obama-is-threatening-to-veto-a-defense-bill-over-detention-policy/>]

The White House is threatening to veto a long-awaited defense funding bill over a perennial policy dispute: whether the President can prosecute terrorists in civilian courts, or must transfer them to military custody. The battle has raged since the very first day of Barack Obama’s presidency, but this time Obama’s opponent is not the GOP. It’s the powerful Democratic chairman of the Senate Armed Services Committee, Carl Levin of Michigan.¶ Originally, Levin worked with the SASC’s conservative Democrats (like Joe Lieberman) and GOP members (like John McCain and Lindsey Graham) to produce a bill that would have mandated transfer of captured terrorists to military custody. The White House briefed wary liberals two weeks ago not to worry, though, that they were engaged in negotiations with Levin and the GOP to change the language. “They were very optimistic that they were going to get an agreement,” says one Senate aide.¶ But last Tuesday, Levin marked up the bill in private and moved it straight to the Senate floor, where Senate majority leader Harry Reid promptly scheduled it for debate. And while Levin had responded to some of the White House’s concerns, he didn’t give it much of what it wanted, and even hawkish national security lawyers are objecting.¶ Levin says he accepted White House changes to a section that for the first time gives legislative authority for the indefinite detention of Americans in the U.S. And he inserted several loopholes that he says soften the requirement that al-Qaeda terrorists arrested in the U.S. must be transferred to military custody.¶ The administration in response issued a four-page “Statement of Administration Policy” (pdf) Thursday, stating that the bill “would tie the hands of our intelligence and law enforcement professionals” and would be “inconsistent with the fundamental American principle that our military does not patrol our streets.” Further, the administration said, Levin’s loopholes—particularly a provision allowing the Administration to issue a waiver–“fails to address these concerns.”¶ Said the White House: “Any bill that challenges or constraines the President’s critical authorities to collect intelligence, incapacitate dangerous terrorists, and protect the Nation would prompt the President’s senior advisers to recommend a veto.”¶ On the floor of the Senate Friday, Levin said he’d accepted all of the Administration’s changes regarding indefinite detention, and that the requirement to transfer suspects to military detention “does not mandate military custody” because of the waiver. “Nothing is automatic,” Levin said.¶ “The White House got rolled,” says the Senate aide, who admits the bill is nevertheless likely to pass. “The votes don’t exist to change it,” the aide says. Moreover, the White House veto threat is significantly more vague than previous ones on the subject of detention, declining to refer specifically to the authorization bill itself, and leaving the Administration a way out if it decides it doesn’t want to continue this fight with a veto in an election year.

#### Your author concedes that we cannot abandon security in totality – your approach is too broad and fails to acknowledge real threats that sometimes need to be constructed outside of discussions about immigration policy AND the impact is too ambiguous

Martin, your author, 12, Lauren Martin, Academy of Finland Postdoctoral Researcher in Geography, Department of Geography, “Review essay: Detaining noncitizens: law, security, crime, and politics - A review of Immigration detention: law, history, politics by D Wilsher,” 2012, Environment and Planning D: Society and Space, volume 30, pages 748 – 755, doi:10.1068/d3004rev,
[http://www.envplan.com/openaccess/d3004rev.pdf](http://www.envplan.com/openaccess/d3004rev.pdf%29)

Beyond his account of judicial debates over the state‘s ability to regulate transboundary mobility, Wilsher provides an internal critique of liberal legal thought. He argues that liberal critiques of punitive immigration detention policies have failed because, in arguing against the securitization of immigration policy, they do not take security itself seriously. This oversight leaves too much ground to realist and geopolitical framings of immigration that understand immigration detention as a function of states’ power to declare war and suspend civil rights in times of crisis. Taking security seriously, for Wilsher, means allowing for the existence of occasional ‘real threats’, but treating immigration generally as a regular, everyday social policy issue, appropriately addressed through the constitutional frameworks in place in receiving countries. This approach would allow state officials to continue to detain high-risk migrants, but release the low-risk migrants who constitute the vast majority of the detention population in the countries he analyzes. It is unclear, however, what constitutes in/security or ‘real threat’ and how they are measured in the context of immigration enforcement cases. At various points in the text, Wilsher implies a close symmetry between ‘politics’, ‘security’, and nonjudicial policy making. Thus his vague conceptualization of security cannot account for the performative value of these punitive spectacles for states (Andreas, 2000) nor detention’s disciplinary and social control functions (Coleman, 2008; Martin, 2012). He is therefore unable to take seriously what immigration’s securitization makes possible for executive decision makers and politicians.

#### Legal alt causes – scaling, global citizenship, and trial frameworks

Martin, your author, 12, Lauren Martin, Academy of Finland Postdoctoral Researcher in Geography, Department of Geography, “Review essay: Detaining noncitizens: law, security, crime, and politics - A review of Immigration detention: law, history, politics by D Wilsher,” 2012, Environment and Planning D: Society and Space, volume 30, pages 748 – 755, doi:10.1068/d3004rev,
[http://www.envplan.com/openaccess/d3004rev.pdf](http://www.envplan.com/openaccess/d3004rev.pdf%29)

The fundamental problems—and their solutions—are twofold in Wilsher’s view. First, liberalism has a jurisdictional scale problem. Scaling immigration enforcement as an international legal phenomenon places it in the realm of geopolitical calculations and outside the reach of national constitutional regimes. To resolve liberalism’s scalar problem and establish ‘the rule of law’ in relation to noncitizens, Wilsher suggests that we should couch our nonnative arguments in the principles of global citizenship. Speaking primarily to legal scholars, he argues for a rereading of constitutionalism that deals with the reality of global migration and its legal conundrums. Transboundary migrants should, in his reading, be afforded basic human rights and yet cannot be guaranteed them because of their mobile, transnational character. Second, the majority of migrants and refugees are inaccurately categorized as threats to national security. Wilsher argues that we must resituate immigration within a domestic/criminal justice framework, thereby endowing migrants with the right and protections offered in the criminal justice system. Here he thinks as a practitioner and his recommendations include a list of technical changes to immigration statutes (such as time limits on detention stays. mental health examinations, and individualized risk analyses). ln addition, these changes would shift the burden of proving legitimate or illegitimate presence from the migrant to the state, endowing migrants with the presumptive right to be present in another country. In recommending that we move immigration from the exceptional realm of geopolitics to the normal realm of domestic policy. Wilsher is primarily asking for a shoring up of legal categories and procedures. Carving ‘the rule of law’ from ‘politics’ and arguing for the clarification of boundaries between these two realms, Wilsher’s liberal approach falls back on an unproblematized correspondence between national territory and legal space. While he acknowledges the flexibility allowed by current legal configurations in the US, UK, and Australia, his theoretical apparatus does not interrogate the process through which migration is securitized. He too simply chalks it up to ‘politics’.

#### Changing discursive practices doesn’t alter the material reality of state practices or help create better policy for the oppressed

Jarvis, 00 (Darryl, lecturer in IR at the University of Sydney, International relations and the challenge of postmodernism, 2000, p. 128-130)

Perhaps more alarming though is the outright violence Ashley recom-mends in response to what at best seem trite, if not imagined, injustices. Inculpating modernity, positivism, technical rationality, or realism with violence, racism, war, and countless other crimes not only smacks of anthropomorphism but, as demonstrated by Ashley's torturous prose and reasoning, requires a dubious logic to malce such connections in the first place. Are we really to believe that ethereal entities like positivism, mod-ernism, or realism emanate a "violence" that marginalizes dissidents? Indeed, where is this violence, repression, and marginalization? As self- professed dissidents supposedly exiled from the discipline, Ashley and Walker appear remarkably well integrated into the academy-vocal, pub-lished, and at the center of the Third Debate and the forefront of theo-retical research. Likewise, is Ashley seriously suggesting that, on the basis of this largely imagined violence, global transformation (perhaps even rev-olutionary violence) is a necessary, let alone desirable, response? Has the rationale for emancipation or the fight for justice been reduced to such vacuous revolutionary slogans as "Down with positivism and rationality"? The point is surely trite. Apart from members of the academy, who has heard of positivism and who for a moment imagines that they need to be emancipated from it, or from modernity, rationality, or realism for that matter? In an era of unprecedented change and turmoil, of new political and military configurations, of war in the Balkans and ethnic cleansing, is Ashley really suggesting that some of the greatest threats facing humankind or some of the great moments of history rest on such innocu-ous and largely unknown nonrealities like positivism and realism? These are imagined and fictitious enemies, theoretical fabrications that represent arcane, self-serving debates superfluous to the lives of most people and, arguably, to most issues of importance in international relations. More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil. That it does and continues to do so reflects our lack of judicious criteria for evaluating the-ory and, more importantly, the lack of attachment theorists have to the real world. Certainly it is right and proper that we ponder the depths of our theoretical imaginations, engage in epistemological and ontological debate, and analyze the sociology of our lmowledge.37 But to suppose that this is the only task of international theory, let alone the most important one, smacks of intellectual elitism and displays a certain contempt for those who search for guidance in their daily struggles as actors in international politics. What does Ashley's project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and des-titute? How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the emigres of death squads? Does it in any way speak to those whose actions and thoughts comprise the policy and practice of international relations? On all these questions one must answer no. This is not to say, of course, that all theory should be judged by its technical rationality and problem-solving capacity as Ashley forcefully argues. But to suppose that problem-solving technical theory is not necessary-or is in some way bad-is a contemptuous position that abrogates any hope of solving some of the nightmarish realities that millions confront daily. As Holsti argues, we need ask of these theorists and their theories the ultimate question, "So what?" To what purpose do they deconstruct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches? Does this get us any further, make the world any better, or enhance the human condition? In what sense can this "debate toward [a] bottomless pit of epistemology and metaphysics" be judged pertinent, relevant, help-ful, or cogent to anyone other than those foolish enough to be scholasti-cally excited by abstract and recondite debate.38 Contrary to Ashley's assertions, then, a poststructural approach fails to empower the marginalized and, in fact, abandons them. Rather than ana-lyze the political economy of power, wealth, oppression, production, or international relations and render an intelligible understanding of these processes, Ashley succeeds in ostracizing those he portends to represent by delivering an obscure and highly convoluted discourse. If Ashley wishes to chastise structural realism for its abstractness and detachment, he must be prepared also to face similar criticism, especially when he so adamantly intends his work to address the real life plight of those who struggle at marginal places. If the relevance of Ashley's project is questionable, so too is its logic and cogency. First, we might ask to what extent the postmodern "empha-sis on the textual, constructed nature of the world" represents "an unwar-ranted extension of approaches appropriate for literature to other areas of human practice that are more constrained by an objective reality. "39 All theory is socially constructed and realities like the nation-state, domestic and international politics, regimes, or transnational agencies are obviously social fabrications. But to what extent is this observation of any real use? Just because we acknowledge that the state is a socially fabricated entity, or that the division between domestic and international society is arbitrar-ily inscribed does not make the reality of the state disappear or render invisible international politics. Whether socially constructed or objectively given, the argument over the ontological status of the state is of no particular moment. Does this change our experience of the state or somehow diminish the political-economic-juridical-military functions of the state? To recognize that states are not naturally inscribed but dynamic entities continually in the process of being made and reimposed and are therefore culturally dissimilar, economically different, and politically atypical, while perspicacious to our historical and theoretical understanding of the state, in no way detracts from its reality, practices, and consequences. Similarly, few would object to Ashley's hermeneutic interpretivist understanding of the international sphere as an artificially inscribed demarcation. But, to paraphrase Holsti again, so what? This does not malce its effects any less real, diminish its importance in our lives, or excuse us from paying serious attention to it. That international politics and states would not exist with-out subjectivities is a banal tautology. The point, surely, is to move beyond this and study these processes. Thus, while intellectually interesting, constructivist theory is not an end point as Ashley seems to think, where we all throw up our hands and announce there are no foundations and all real-ity is an arbitrary social construction. Rather, it should be a means of rec-ognizing the structurated nature of our being and the reciprocity between subjects and structures through history. Ashley, however, seems not to want to do this, but only to deconstruct the state, international politics, and international theory on the basis that none of these is objectively given but fictitious entities that arise out of modernist practices of representa-tion. While an interesting theoretical enterprise, it is of no great conse- quence to the study of international politics. Indeed, structuration theory has long talcen care of these ontological dilemmas that otherwise seem to preoccupy Ashley.40

#### Ignoring consequences when pursing ethics is dismissive of the choices that other nation states make to uphold survival & is complicit with the highest forms of immorality.

Joseph Nye, Harvard University Distinguished Service Professor. 1986. From “Nuclear Ethics.” Pg. 32-34.

Free Press; London: Collier Macmillan

The third approach stresses the common nature of humanity. States and boundaries exist, but their existence does not endow them with moral significance. Ought does not follow from is. David Luban has written, "The rights of security and subsistence... are necessary for the enjoyment of any other rights at all. No one can do without them. Basic rights, therefore, are universal. They are not respecters of political boundaries, and require a universalist politics to implement them; even when this means breaching the wall of state sovereignty." 53 Many citizens hold multiple loyalties to several communities at the same time. They may wish their governments to follow policies that give expression to the rights and duties engendered by other communities in addition to those structured at the national level. While the cosmopolitan approach has the virtue of accepting transnational realities and avoids the sanctification of the nation-state, an unsophisticated cosmopolitanism also has serious drawbacks. First, if morality is about choice, then to underestimate the significance of states and boundaries is to fail to take into account the main features of the real setting in which choices must be made**. To pursue individual justice at the cost of survival or to launch human rights crusades that cannot hope to be fulfilled, yet interfere with prudential concerns about order, may lead to immoral consequences. And if such actions**, for example the promotion of human rights in Eastern Europe, **were to lead to crises and an unintended nuclear war,** the consequences might be the ultimate immorality. Applying ethics to foreign policy is more than merely constructing philosophical arguments; it must be relevant to the international domain in which moral choice is to be exercised. The other problem with an unsophisticated cosmopolitan approach is ethical; it discards the moral dimension of national politics. As Stanley Hoffmann has written, "States may be no more than collections of individuals and borders may be mere facts. But a moral significance is attached to them." 54 People wish to live in historic communities and autonomously to express their own political choices. A pure cosmopolitan view that ignores those rights of self-determination fails to do justice to the difficult job of balancing rights in the international realm. One of the reasons that states have nuclear weapons is that peoples wish to defend their sovereign autonomy as independent moral communities at this stage in human history.

#### You evaluate high magnitude impacts first

Sissela Bok, Professor of Philosophy @ Brandies. 1988. From “Applied Ethics and Ethical Theory.”

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such a responsibility seriously—perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish.

#### All lives are infinitely valuable. The only ethical option is to maximize the number saved.

David Cummisky, Professor of Philosophy @ Bates College. 1996. “Kantian Consequentialism.” Pg. 131.

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one-because dignity cannot be added and summed in this way-this point still does not justify deontological constraints. On the extreme interpretation, **why would not killing one person be a stronger obligation than saving two persons**? If I am **concerned with the priceless dignity of each**, it would seem that I may still save two; it is just that my reason cannot be that the two compensate for the loss of one. Consider Hill's example of a priceless object: If I can save two of three priceless statues only by destroying one, then I cannot claim that saving two makes up for the loss of the one. But similarly, the loss of the two is not outweighed by the one **that was not destroy yed**. Indeed, even if dignity cannot be simply summed up, how is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the loss of the one, each is priceless; thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the killing/letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.