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### Terrorism Advantage

#### Indefinite detention hurts the war on terror – impedes intelligence gathering, destroys credibility, and alienates key allies

Hathaway, et al, ’13 [Oona (Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013]

The least contested bases for detention authority in any context are postconviction criminal detention and pre-verdict detention for those who pose a risk of flight. It is often assumed that such criminal detention is ill-suited to terrorists. However, with very little fanfare, federal district court dockets have been flush with terrorism cases over the past decade. Strikingly, during the first two years of Barack Obama’s presidency, the annual number of terrorism prosecutions doubled, while the conviction rate for the nearly 500 cases has stayed constant at around 90 percent. 233 One reason for this increase in prosecutions is the recognition by both the Bush and Obama Administrations that trying suspected terrorists in criminal courts has certain strategic and moral advantages in the fight against terrorism. Predictability Post-conviction detention of terrorists after prosecution in federal court provides a level of predictability that is absent in the military commission system. Federal courts have years of experience trying and convicting dangerous criminals, including international terrorists, and the rules are well established and understood. The current military commission system, on the other hand, is an untested adjudicatory regime with no established jurisprudence to guide the parties and judges.234 As discussed above, conviction rates in terrorism trials have been close to 90% since 2001, despite a huge increase in the absolute number of such prosecutions. The military commissions, by contrast, have convicted three people since 2001, and three more have pled guilty.235 Several defendants had their charges dropped,236 and others have been charged but not tried.237 Their procedures have been challenged at every stage, and it is unclear what their final form will ultimately look like. The commissions’ track record is short, and in light of their mixed results thus far, their future performance is uncertain. Furthermore, those who have been convicted by the commissions have received extremely short sentences.238 By contrast, favorable sentencing guidelines in federal terrorism trials allow the government to incapacitate dangerous individuals for long periods of time, if not for the life of the defendant.239 While it is difficult to estimate the counterfactual results were the defendants in each case to have been tried in the other system, it is clear that the military commission system is highly unproven and unpredictable compared to the federal courts.240 2. Fairness and Legitimacy Federal courts are also fairer and more legitimate fora than military commissions. The procedural protections they offer are the source of their legitimacy, and they reduce the risk of error.241 At every turn, the military commissions’ deviations from established criminal procedure has been challenged—sometimes successfully.242 Even where commission procedures are constitutional, they are not widely accepted, and are a novel judicial framework.243 Federal criminal procedure, on the other hand, is as legitimate a criminal process as we have. Both acceptance and accuracy are important to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods.244 Meanwhile, local populations are more likely to cooperate in policing when they believe they have been treated fairly.245 The understanding that a more legitimate detention regime will be a more effective one is echoed in statements from within the Department of Defense and the White House.246 3. Strategic Advantages Furthermore, our allies in the fight against terrorism also recognize and respond to the difference in legitimacy and fairness between civilian and military courts. Increased international cooperation is another advantage of criminal prosecution. Many of our key allies have been unwilling to cooperate in cases involving law of war detention or prosecution but have cooperated in criminal law prosecution. In fact, many of our extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court.247 This issue has played out in practice several times. An al-Shabaab operative was recently extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court.248 Two similar cases arose in 2007,249 and several more are pending.250 The use of military commissions may similarly hinder other kinds of international prosecutorial cooperation, such as testimony- and evidence-sharing. Finally, the criminal justice system is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the United States, and subsequently to detain those who are convicted.251 This greater variety of offenses—military commissions can only punish a narrow set of traditional offenses against the laws of war252 —offers prosecutors important flexibility. For instance, it might be very difficult to prove al Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior.253 The federal criminal system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are powerful incentives for defendants to cooperate, and often lead to valuable intelligence-gathering. The legitimacy and consistency of the federal courts, discussed above, also push defendants to cooperate, which in turn produces more intelligence over the course of prosecution.254

#### Indefinite detention creates recruitment propaganda and causes a resource trade off which shatters the ability to fight terrorism

Powell 8 (Catherine, Georgetown Law Visiting Professor for the 2012-13 academic year and teaches international law, constitutional law, and constitutional rights in comparative perspective. She has recently served in government on Secretary of State Hillary Clinton’s Policy Planning Staff and on the White House National Security Staff, where she was Director for Human Rights. “Scholars’ Statement of Principles for the New President on U.S. Detention Policy: An Agenda for Change\*” <http://www.law.yale.edu/documents/pdf/Alumni_Affairs/Scholars_Statement.pdf>)

Across the political spectrum, there is a growing consensus that the existing system of long term detention of terrorism suspects without trial through the network of facilities in Guantanamo and elsewhere is an unsustainable liability for the United States that must be changed. The current policies undermine the rule of law and our national security. The last seven years have seen a dangerous erosion of the rule of law in the United States through a disingenuous interpretation of the laws of war, the denial of ordinary legal process, the violation of the most basic rights, and the use of unreliable evidence (including secret and coerced evidence). The current detention policies also point to the inherent fallibility of “preventive” determinations that are based on assessment of future dangerousness (as opposed to past criminal conduct). Empirical studies demonstrate that “preventive” detention determinations that rely on assessment of future dangerousness generate unacceptably high levels of false positives (i.e., detention of innocent people).1 Indeed, while the Bush Administration once claimed the Guantanamo detainees were “the worst of the worst,” following minimal judicial intervention, it subsequently released more than 300 of them, as of the end of 2006.2 Because it is viewed as unprincipled, unreliable, and illegitimate, the existing detention system undermines our national security. Because the current system threatens our national security, we strongly oppose any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects.3 Despite dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent. To the extent such systems were established within the territorial United States as opposed to on Guantanamo or elsewhere, they would essentially bring the failed Guantanamo system home. Perhaps most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable. Moreover, many of the proponents of a renewed “preventive” detention regime explicitly underscore the primacy of interrogation with respect to detainees’ otherwise-recognized rights. A detention system that permits ongoing interrogation inevitably treats individuals as means to an end, regardless of the danger they individually pose, thereby creating perverse incentives to prolonged, incommunicado, arbitrary (and indefinite) detention, minimized procedural protections, and coercive interrogation. Such arrangements instill resentment and provide propaganda for recruitment of future terrorists, undermine our relationships with our allies, and embolden terrorists as “combatants” in a “war on terror” (rather than delegitimizing them as criminals in the ordinary criminal justice system).4 Moreover, the current system of long term (and, essentially, indefinite) detention diverts resources and attention away from other, more effective means of combating terrorism. Reflecting what has now become a broad consensus around the need to use the full range of instruments of state power to combat terrorism, the bi-partisan 9/11 Commission pointed out that “long-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.”5 Thus, in addition to revamping the existing detention program to bring it within the rule of law, the incoming President should work with Congress to utilize this broad array of tools to vigorously prosecute terrorism.

#### Terrorist organizations are gaining strength now

Evans 13(Andrew, quoting: Derek Chollet, assistant secretary of Defense for International Security Affairs and Michael Sheehan, assistant secretary of Defense for Special Operations/Low Intensity Conflict and Interdependent Capabilities, “Al Qaeda growing threat in Middle East, Obama officials say”, http://freebeacon.com/the-tide-of-war-is-rising/, 4/10/13)

Defense and military officials testified that al Qaeda is gaining a foothold in several areas throughout the Middle East and Northern Africa in a hearing before a subcommittee of the Senate Armed Services Committee Tuesday afternoon. The terrorist organization is seeking to exploit the upheaval in the Middle East following uprisings over the past two years that overthrew many longstanding governments across the region, testified Derek Chollet, assistant secretary of Defense for International Security Affairs. Chollet also said the administration is worried about the possibility that al Qaeda could establish strongholds in multiple countries, including Syria and Mali. When pressed by Sen. John McCain (R., Ariz.), Michael Sheehan, assistant secretary of Defense for Special Operations/Low Intensity Conflict and Interdependent Capabilities, said al Qaeda affiliates are gaining strength in Syria. Sheehan and McCain differed in their respective assessments of al Qaeda’s capacity in Libya during an acrimonious exchange. Sheehan asserted al Qaeda has “failed to demonstrate strategic capability in those new areas” such as Libya that are outside of their traditional strongholds. “I just came from Libya, Mr. Sheehan,” McCain said. “I just came from there. That is patently false. That is a false statement.” Al Qaeda remains strong in the mountains between Afghanistan and Pakistan as well as in Yemen, Sheehan said. He argued that the military has had great success in targeting and eliminating the terrorist organization’s leadership. When asked by McCain, Sheehan refused to answer whether he would support arming the Syrian opposition, saying he would rather discuss that issue in the closed session that immediately followed the open hearing. “The American people should not know how the members of our Department of Defense feel about an issue of the slaughter of 70,000 or more people, millions of refugees?” McCain asked in response. Chollet testified that the U.S. government is supplying the Syrian opposition with “non-lethal” support. He also said al Qaeda is losing the “hearts and minds” of the Syrian people. Sen. Deb Fischer (R., Neb.) expressed concern that the American military is spread too thinly across the globe, a concern that Adm. William McRaven, commander of the U.S. Special Operations Command, rejected. “I’m not sure that I think we’re spread to thin,” McRaven said, noting that on any given day the United States has special operations forces in 70 to 90 countries. Sheehan said United Nations forces, which will likely replace the French forces currently in Mali, will not be able to take on the al Qaeda affiliate there and root it out. That will be a job for other, better equipped forces, like French forces with U.S. support, Sheehan said. McCain returned to the issue of America’s policy toward Syria at the end of the hearing. “The reality on the ground is that arms and people are flowing freely all across North Africa, and many of them are coming in to Syria,” he said. “The situation continues to become more radicalized in Syria as 80,000 more people have been massacred while we sit by and watch and figure out reasons why we can’t intervene,” McCain said.

#### Nuclear terrorism is likely - al Qaeda is opportunistic and has WMD ambitions

Hoffman 13 (February 19, Bruce, Director of the Center for Security Studies and Director of the Security Studies Program at Georgetown, “Interview with Bruce Hoffman on today’s Global Terrorism Threat” interview by Bilal Y. Saab, Arms Control and Regional Security for the Middle East, <http://www.middleeast-armscontrol.com/2013/02/19/interview-with-bruce-hoffman-on-todays-global-terrorism-threat/>)

1- Many scholars, analysts, and government officials have viewed the Al Qaeda threat to U.S. interests as waning after the killing and capture of several terrorist leaders including Al Qaeda chief Osama bin Laden. How do you assess the threat today in light of the historic changes in the Middle East? Is it the same? Worse? It is dynamic. What we have seen is the decline of Core al Qaeda, but the rise of al Qaeda-ism. In other words, even while Core al Qaeda has suffered since bin Laden’s killing, its ideology and brand have clearly prospered. Today, al Qaeda’s affiliates and associates are present in more places than al Qaeda was ten years ago. And, as the French intervention in Northern Mali has again shown: once al Qaeda entrenches itself, Western intervention is invariably required to remove it. In sum, the historic changes in the Middle East and North Africa of the past two years have created new opportunities for the spread of al Qaeda-ism and, potentially, the resurrection of the threat that al Qaeda poses. In this respect, no al Qaeda affiliate or associate has ever remained completely local: all have eventually become regional players and have internationalized in one respect or another—whether by recruiting Westerners (including Americans) into its ranks or aspiring to attack beyond its local and even regional confines. 2- State capacity, specifically in the domain of counterterrorism, has always been a problem in the Middle East and other under-developed regions around the world. As nonproliferation analysts, we are interested in studying the capacity of Middle Eastern states to implement various measures related to WMD counterproliferation, and particularly United Nations Security Council Resolution 1540, which calls for the prevention of the spread of WMD to non-state actors. Do you see progress in that area or have Middle Eastern states lagged even farther behind given the unrest in the region? What can the United States realistically do to bolster the capabilities of states in the region? Iran’s continued development of a nuclear capability clearly shows the limits of international counterproliferation efforts in the region. As if that were not bad enough, the threat of Syria’s chemical and biological weapons stockpiles falling into the hands of both radical Sunni as well as Shi’a terrorists (mainly, respectively al Qaeda and Hezbollah) is fundamentally alarming. 3- With Syria burning and Al Qaeda elements actively involved in the fight, is the threat of the terrorist organization capturing chemical weapons and other WMD material overblown or very real? Is this the closest example we have in Al Qaeda’s history of the organization possibly acquiring WMD? What about any episodes of the jihadists’ history in Pakistan? Yes, this is a real and extremely serious threat. Al Qaeda sees Syria generally and its unconventional weapons stockpiles in particular as offering the best chance for it to revive its waning fortunes and once again become as threatening and consequential as it appeared in the aftermath of the September 11th 2001 attacks. Indeed, I would argue that al Qaeda has pinned its faith and hopes to the demise of the Assad regime and, in turn, its acquisition of deadly weapons from that country’s vast unconventional weapons arsenal. 4- There seems to be some confusion in the media about the dangers of failed states versus weak states. Which ones are worse in your judgment as far as terrorism formation and which ones are more likely to produce long-term terrorist threats? Can you please give us a brief comparison of the two with some real examples? A failed state is Somalia (or, more accurately, was Somalia). A weak state is Libya, for example, and a failing state is Syria. They all pose dangers of varying kinds and degrees. Failed states have neither the will nor the capacity to police their borders, maintain law and order internally, and fulfill even the most basic requirements of governance. They are generally incapable of receiving international assistance in support. Weak states may perhaps have the will, but not the capacity to discharge these same functions but are often amenable to international assistance and support. Failing states are the most dangerous categories because their only concern is holding onto power at whatever the cost. To survive they must by definition go rogue. Hopefully, as in Libya, the tide of history sweeps along the forces of revolution and reform, who can relatively quickly subdue the existing authorities and begin to establish a new order. Syria, with the external involvement of Iran and Hezbollah, and its stockpiles of chemical and biological weapons and vast conventional arsenal –on a scale that certainly eclipses Libya and likely surpasses Saddam’s Iraq–presents perhaps the ultimate nightmare scenario. 5- Overall and in your opinion, are we witnessing a resurgence of Al Qaeda in the Middle East and North Africa? It seems that every time we pronounce the organization dead it comes back with a vengeance. Is it more about its own capabilities or simply the result of the crisis conditions that have swept the Middle East since the Arab uprisings began? Or is it both? Yes, we are witnessing a resurgence of the al Qaeda ideology and brand across the Middle East and North Africa. It is of course limited to a small number of fanatics but that in essence is the appeal of terrorism: you don’t need divisions or brigades to have an impact or arguably even to change the course of history. Rather, a handful of persons can fundamentally do so if they are sufficiently disciplined and able to perpetrate even only one or two dramatic, significant, jarring acts of violence. That is the age-old conceit of terrorists and their driving motivation. What concerns me is that the threat of terrorism seems to have increased rather than diminished in the Maghreb and Levant in particular over the past two years and appears to be growing elsewhere as well. It is nascent today–but far more serious and salient than it was even a year ago. I shudder to think to what extent it may have grown by next year. Both in answer to the second question. Al Qaeda has always been as opportunistic as it is instrumental. That is, capable of taking advantage of whatever available opportunities for intervening in local conflicts and engaging in terrorism. Across the Middle East and North Africa the movement has demonstrated its ability repeatedly to seize and exploit opportunities either to re-entrench or establish itself in a variety of long-favored or new venues, to capitalize on the instability and uncertainty in the region’s countries, and create local toe-holds that it hopes to transform into regional foot-holds. Whether it will fail or be successful is the most pressing question today. How the US, the West, and regional governments react will determine the outcome.

#### Nuclear terrorism causes extinction

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Only by ending indefinite detention, thus increasing US legitimacy and winning hearts and minds, can we win the war on terror

Spaulding 9 (Suzanne E., counsel of record, AMICI CURIAE OF FORMER NATIONAL SECURITY OFFICIALS AND COUNTERTERRORISM EXPERTS IN SUPPORT OF PETITIONER, http://www.cnss.org/data/files/DetentionDue\_Process/Enemy\_Combatants/AlMarri\_v\_Spagone\_Amicus\_Brief\_1.28.09.pdf)

Imprisonment without trial of individuals seized inside the United States promotes the false narrative of a United States engaged in a war on Islam and Muslims, which the terrorists exploit for recruitment. Seizing individuals off the streets of America, declaring them enemy combatants, and asserting the right to keep them locked up indefinitely, with no formal charges or trial, is so far outside the traditions of fundamental fairness on which this Nation was founded that it perpetuates the perception generated by al Qaeda that we have abandoned our commitment to the rule of law. We recognize that the security threat springs from the terrorists: U.S. policies and actions in no way justify the conduct of the terrorists. But the perception that the United States is failing to act in accordance with its fundamental values feeds the terrorist narrative, and thus undermines our efforts to confront the terrorist threat.12 The significance of this dynamic is now broadly understood. As Retired General Wesley Clark said in an article about this very case: [Treating al-Marri as an enemy combatant] endangers our political traditions and our commitment to liberty, and further damages America’s legitimacy in the eyes of others. . . . We train our soldiers to respect the line between combatant and civilian. Our political leaders must also respect this distinction, lest we unwittingly endanger the values for which we are fighting, and further compromise our efforts to strengthen our security. Wesley K. Clark & Kal Raustiala, Why Terrorists Aren’t Soldiers, N.Y.Times, Aug. 8, 2007, at A19. Jeffrey H. Smith, former CIA General Counsel, testified before the Senate Armed Services Committee in 2007: “In our efforts to get tough with the terrorists we have strayed from some of our fundamental principles and undermined 60 years of American leadership in the law of war. In six short years, our disregard for the rule of law has undermined our standing in the world and, with it, our ability to achieve our objectives in the broader war.” Meeting to Receive Testimony on Legal Issues Regarding Individuals Detained by the Department of Defense as Unlawful Enemy Combatants: Hearing Before the S. Comm. on Armed Services, 110th Cong. 3 (Apr. 26, 2007) (statement of Jeffrey H. Smith, Senior Partner, Arnold & Porter LLP), available at http://armedservices.senate.gov/statemnt/2007/April/Smith%2004- 26-07.pdf. One reason the United States does not face the level of homegrown terrorism threat that Europe has experienced is that immigrants are better integrated into American society. See James Fallows, Declaring Victory, The Atlantic, Sept. 2006, at 60 (“Something about the Arab and Muslim immigrants who have come to America, or about their absorption here, has made them basically similar to other well-assimilated American ethnic groups – and basically different from the estranged Muslim underclass of much of Europe.”). Working with these Muslim communities in the United States, and building trust, is one of the most promising avenues for deterring young people from extremism. See Muslim Public Affairs Council, The Impact of 9/11 on Muslim American Young People 1 (June 2007) (“The more narrow the orbit of acceptance is toward young Muslims who are traversing the various stages of adolescence toward becoming young professionals, the more likely we will begin to see serious cases of radicalization that can evolve into trends.”), available at <http://www.mpac.org/publications/youth-> paper/MPAC-Special-Report--Muslim-Youth.pdf.13 See also Stephen Magagnini, Local FBI chief rebuilds trust with Muslim leaders, Sacramento Bee, Dec. 1, 2008, available at http://www.sacbee.com/101/story/1438316.html. Policies that drive a wedge between these communities and the government or the rest of society frustrate efforts aimed at increasing trust and understanding and, instead, increase a sense of alienation. In 2008, the Department of Homeland Security issued a memorandum that reflects how seriously those with responsibility for protecting the territory and people of the United States take the battle for hearts and minds. It concludes that “Bin Laden and his followers will succeed if they convince large numbers of people that America and the West are at war with Islam and that a ‘clash of civilizations’ is inherent.” Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 7 (Jan. 2008). The DHS memorandum mphasized the importance of conveying the message that “Muslims have been, and will continue to be part of the fabric of our country. . . . We must emphasize that Muslims are not ‘outsiders’ looking in, but are an integral part of America and the West.” Id. at 8. This essential message is dramatically undermined by seizing and indefinitely detaining Muslims inside the United States on the basis of an executive branch allegation that they are enemy combatants. While this policy may not expressly target Muslims, it has been applied only against Muslims, as have nearly all of the harsh policies adopted after 9/11.14 This fuels the terrorist narrative of a war on Islam. The DHS memorandum clearly explains the danger inherent in inadvertently reinforcing al Qaeda’s propaganda. “Bin Laden’s narrative presumes a war against Islam and rampant mistreatment of Muslims by the American and other Western governments. Extremist recruiters argue that Muslims should segregate from the larger society; moreover, their recruitment pitch depends on isolation.” Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 8 (Jan. 2008). The terrorist seeks to undercut an individual’s sense of identity as a Muslim citizen of a state that values fair treatment and protects fundamental human rights. Policies that appear to accord Muslim suspects less than full equality under the law reinforce this dangerous and misleading message. See Islamic Extremism in Europe: Hearing Before the Subcomm. on European Affairs of the S. Foreign Relations Comm., 109th Cong. 7 (Apr. 5, 2006) (statement of Daniel Fried, Assistant Secretary of State for European Affairs), available at http://foreign.senate.gov/testimony/2006/FriedTestimony060405.pdf (“[W]e must also intensify our efforts to counter the extremist ideas that drive Islamic terrorism. . . . It . . . requires us to demonstrate through our own nation’s experience that Muslims can be patriotic, democratic, and religious at the same time.”). Senior Counterterrorism Analyst Gina Bennett, until recently the Deputy National Intelligence Officer for Transnational Threats, first highlighted the national security risk of a double standard in an intelligence assessment written back in 1993, which also provided the first serious warning about Usama Bin Laden. That assessment, titled “The Wandering Mujahidin: Armed and Dangerous,” concludes: “The growing perception by Muslims that the U.S. follows a double standard with regard to Islamic issues – particularly in Iraq, Bosnia, Algeria, and the Israelioccupied territories – heightens the possibility that Americans will become the targets of radical Muslims’ wrath. Afghan war veterans, scattered through the world, could surprise the U.S. with violence in unexpected locales.” Gina Bennett, The Wandering Mujahidin: Armed and Dangerous, Weekend Edition (U.S. Dep’t of State, Bureau of Intelligence and Research), Aug. 21-22, 1993, at 5, available at http://www.nationalsecuritymom.com/3/WanderingM ujahidin.pdf. The foresight of this analysis was tragically proven on September 11, 2001. The danger to Americans of sending a message that the United States has a double standard for Muslims can no longer be viewed as hypothetical. Nor is the impact of such messages considered hypothetical by those serving in Iraq and Afghanistan. As former Navy General Counsel Alberto Mora has testified, “there are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are, respectively the symbols of Abu Ghraib and Guantánamo.” Hearing on the Treatment of Detainees in U.S. Custody Before the S. Comm. on Armed Services, 110th Cong. 5 (June 17, 2008) (statement of Alberta Mora, General Counsel, Dep’t of the Navy), available at http://armedservices.senate.gov/statemnt/2008/June/Mora%2006- 17-08.pdf. Again, harsh policies and actions that were directed only against Muslims fueled recruitment efforts, with direct and deadly consequences. b. Military detention of Mr. al-Marri feeds the false narrative that the terrorists are holy warriors. By treating a terrorism suspect apprehended within the United States as an “enemy combatant,” rather than as a criminal suspect, we grant the suspect the very status a terrorist seeks, a status widely honored by those to whom terrorists propound their narrative. See Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 9 (Jan. 2008) (“Words matter. The terminology the [United States] uses should convey the magnitude of the threat we face, but also avoid inflating the religious bases and glamorous appeal of the extremists’ ideology. Instead, [United States’] terminology should depict the terrorists as the dangerous cult leaders they are. They have no honor, they have no dignity, and they offer no answers. While acknowledging that they have the capacity to destroy, we should constantly emphasize that they cannot build societies, and do not provide solutions to the problems people across the globe face.”). The dilemma we create for ourselves takes on particular force where, as here, military imprisonment is indefinite.15 As a military captive, the terrorism suspect is the continuing object of our own military force, and by imposing that force for an indefinite period of time, we continue to validate the terrorist narrative of the warrior and martyr. The prisoner may be regularly, if not constantly, in the public’s mind, always available as a source of inspiration. For example, a relatively insignificant Sudanese cameraman named Sami al Hajj became famous around the world by the mere fact of his long impris-onment at Guantanamo Bay as an enemy combatant. His captivity was regularly reported by al Jazeera and other Arabic news outlets, and closely followed by the more than a billion people reached by those outlets. See, e.g., Profile: Sami al-Hajj, Al Jazeera, May 2, 2008, available at http://english.aljazeera.net/news/americas/2008/05/200 861505753353325.html; Sami al-Hajj Hits Out at U.S. Captors, Al Jazeera, May 31, 2008, available at http://english.aljazeera.net/news/africa/2008/05/20086 150155542220.html. In contrast, treating the terrorism suspect seized in the United States as a criminal suspect pursuant to statutes that proscribe engagement in terrorist activity focuses the narrative on the alleged terrorist activity, rather than his status as “warrior,” thereby deconstructing the terrorist narrative. The heroism of armed conflict against the enemy becomes the cowardice of anonymous violence against innocent victims. The aspiring member of a great army, when isolated to his crime, becomes a small-minded individual. About a warrior held in a military prison an extravagant mythology may be erected; but the fellow in the dock of a public trial, forced to witness the deliberate presentation of evidence of his cowardice becomes pathetic. His narrative loses the power to inspire. Like Ramzi Yousef, Fawaz Yunis, and many others convicted of terrorist acts in U.S. courts, he may soon be forgotten. Thus, the Director of National Intelligence’s National Counterterrorism Center has urged intelligence professionals to Never use the terms “jihadist” or “mujahideen” in conversation to describe the terrorists. A mu-ahed, a holy warrior, is a positive characterization in the context of a just war. . . . Calling our enemies jihadists and their movement a global jihad unintentionally legitimizes their actions. Counterterrorism Communications Center, National Counterterrorism Center, Office of the Director of National Intelligence, Words that Work and Words that Don’t: A Guide for Counterterrorism Communication, March 14, 2008, at 2; see also Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 3 (Jan. 2008) (“The consensus is that we must carefully avoid giving bin Laden and other al-Qaeda leaders the legitimacy they crave, but do not possess, by characterizing them as religious figures, or in terms that may make them seem to be noble in the eyes of some.”). General Clark has also made this point: By treating such terrorists as combatants . . . we accord them a mark of respect and dignify their acts. And we undercut our own efforts against them in the process. . . . If we are to defeat terrorists across the globe, we must do everything possible to deny legitimacy to their aims and means, and gain legitimacy for ourselves. . . . . [T]he more appropriate designation for terrorists is not “unlawful combatant” but the one long used by the United States: “criminal.” Wesley K. Clark & Kal Raustiala, Why Terrorists Aren’t Soldiers, N.Y.Times, Aug. 8, 2007, at A19. In sum, the government’s argument that national security concerns justify and require the indefinite emilitary imprisonment of Mr. al-Marri as an enemy combatant is precisely backwards. Using the paradigm of the “war on terror” and the label “enemy combatant” to justify the indefinite military detention of individuals seized inside the United States does not preserve our national security; it threatens it. Unwavering Commitment To America’s Fundamental Values Makes Our Nation Strong And Is Essential To Protect The Nation Against The Terrorist Threat. Discrediting the terrorist narrative and offering a positive alternative – i.e., a narrative of equality, justice, and commitment to the rule of law – is critical to effective counterterrorism strategy. The national security benefits of adhering to our fundamental principles are broadly understood. See Office of the Executive, National Strategy for Combating Terrorism, 2 (Feb. 2003) (The Bush Administration declared, in the 2003 National Strategy for Combating Terrorism, “We will use the power of our values to shape a free and more prosperous world. We will employ the legitimacy of our government and our cause to craft strong and agile partnerships.”); Michael German, Squaring the Error, in Law vs. War: Competing Approaches to Fighting Terrorism 11, 15-16 (Strategic Studies Institute, U.S. Army War College, 2005) (“This is a battle for legitimacy, and as such, it is one that we should easily win. As an open and free democracy regulated by the rule of law, we offer a future of peace and prosperity that the jihadist movement does not. . . . Respect for the rule of law, international conventions, and treaty obligations will not make us weaker, it will engender international cooperation and good will that make it impossible for extremist movements to prosper.”), available at http://www.strategicstudiesinstitute.army.mil/pubs/di splay.cfm?pubID=613; Dr. Kenneth Payne, Waging Communication War, Parameters: U.S. Army War College Quarterly, Summer 2008, at 37, 45 (“[E]ffective communication rests on credibility; communications that are not believed are simply hot air.”). Ultimately, the most credible voices revealing the emptiness of the terrorist narrative will be Muslim voices. However, these voices are more likely to be heard if American policies do not hand a megaphone to al Qaeda and their ilk. The reality of a United States that is willing to fairly prosecute the terrorism suspect in a public trial will diminish and discredit the terrorists’ lies and strengthen the credibility of the counter-narrative. This is how violent extremism will ultimately be defeated. In the words of President Obama, “We know that to be truly secure, we must adhere to our values as vigilantly as we protect our safety – with no exceptions.” President-Elect Barack Obama, Remarks at Announcement of Intelligence Team (Jan. 9, 2009). CONCLUSION The decision in this case will reinforce one of two narratives – our own or the terrorist’s – and thereby either aid or encumber the Nation’s ongoing counterterrorism efforts. The Court should reverse.

### Independent Judiciary Advantage

**Judicial Independence**

#### Now is the key time for judicial independence movements globally

Radio Free Europe 7/25/13 (Interview with US Supreme Court Justice Elena Kagan, "U.S. Supreme Court Justice Elena Kagan: 'There Are Always Bumps In The Road'," http://www.rferl.org/content/us-supreme-court-justice-elena-kagan-interview/25056808.html)

The nine judges of the United States Supreme Court have no armies, no police, and no budgetary authority at their disposal. But nevertheless, for more than two centuries, the court has been the undisputed watchdog of the U.S. Constitution. That role has often forced judges to stand toe-to-toe with powerful American presidents -- from Thomas Jefferson to Barack Obama -- striking down laws and executive actions that exceed their constitutional authority. ¶ How did the U.S. Supreme Court establish and preserve its independent role? And are there any lessons that can be derived from this experience for countries struggling to establish the rule of law and independent judiciaries?¶ In an exclusive interview at RFE/RL's Prague headquarters, correspondent Brian Whitmore spoke with U.S. Supreme Court Justice Elena Kagan about these issues. Prior to taking her lifetime seat on the Supreme Court in 2010, Kagan served as solicitor-general in the Obama administration and as dean of the Harvard Law School.¶ RFE/RL: Let's start with the very basics. Many of the countries RFE/RL broadcasts to are trying -- with varying degrees of success -- to develop independent judiciaries. Some say they are, but really aren't. Some are sincerely trying to, but have thus far been unsuccessful. And a rare few have been fairly successful. How did an independent judiciary really develop in the United States? What were the main bumps in the road? Are there lessons from the early years of the republic that would be useful for countries currently struggling to form independent judiciaries? Was it the brilliance of the founders, like we're taught in civics class, or did we just get lucky?¶ Elena Kagan: Well, we did get lucky. But we also had people who demonstrated enormous skill and wisdom in order to get to the point we're at now. And we're not perfect either, and there are always bumps in the road, and there's always more that can be done to establish a rule-of-law system and an independent judiciary.¶ But we had a number of factors working in our favor in the United States, and not every country has this. And so the lessons that you can draw from country to country are real, but they are limited. You can draw some lessons, but every country's experience is going to be different because every country's traditions and history is different.¶ But in the United States, even before the revolution, there was a very strong commitment to judicial systems and to the rule of law. This was part of the heritage the United States inherited from England and its common-law system. And in the revolutionary period there was a great deal of influence on some structural matters that have been integral to an independent judiciary. There was the separation of powers, so the judiciary stood separate from both the legislature and the executive. There was also a real commitment in the founding period -- the revolution and the development of our constitution -- to federalism, so it wasn't all about the national government. It was about the states; individual states had extensive powers as well. So that meant that there were real checks and balances built into our government that facilitated the development of an independent judiciary.¶ And finally, we had some very wise leaders at the start of our history. This includes someone most nonlawyers don't know about. Everybody knows about [Presidents] Thomas Jefferson and James Madison. But the person who really founded, if you will, our judicial system, founded the concept of judicial review of executive and legislative action, was a very early chief justice named John Marshall, who served as the chief justice of the United States Supreme Court for several decades (1801-1835) and who, more than any single person in the United States, managed to ensure that the courts were an important and independent player in the American governmental process.¶ RFE/RL: Can you point to some important formative experiences in the early years of U.S. history that established an independent judiciary?¶ Kagan: Well, I think that people think the most formative experience was a judicial case that started out as a very unimportant judicial case. It's called Marbury v. Madison and it was a case that John Marshall really used to establish the principle that a court could invalidate legislative or executive action if that action infringed on the constitution. That was a new and revolutionary concept.¶ Our constitution itself does not set forth a system of judicial review. There is no provision of our constitution that says the courts will have the power to invalidate executive or legislative action that violates the constitution. So John Marshall really had to create that power for himself. And he used this case of Marbury v. Madison, a case that involved whether the proper judicial commission was given to a man named Mr. Marbury by Thomas Jefferson. And John Marshall said it was not, but he did it in a very clever way that established the principle but at the same time was not too threatening to President Jefferson and, indeed, gave President Jefferson part of what he wanted. From that moment, the system of judicial review was never really questioned in American history.¶ (Editor's Note: Marbury v. Madison was a landmark ruling in 1803 that established the Supreme Court's power to overturn actions by the executive and legislative branch.)¶ RFE/RL: Did this have more to do with the American political culture or institutions?¶ Kagan: Well, culture and institutions are related. And certainly there was something in the political culture that allowed John Marshall to do what he did, which was to say that somebody has to be the supreme guardian of the constitution and that role falls to the courts. It falls to the courts to say when Congress or the executive branch -- in our case, the president -- violates the constitution.¶ You can imagine that there were many people who were not so happy about that principle, who thought that the courts had no special role in this area and that the Congress and the president were as good as the courts were in determining what did and didn't violate the constitution. Marshall said there had to be somebody who ultimately sets the rules of the road and determines when the constitution is violated, and that falls to the courts.¶ And, as I said, there have been plenty of times when actors questioned that, including heroes of American history. Abraham Lincoln was never a great fan of judicial review. But for the most part, it has stuck as an important part of our political system. In the end the courts get to say whether Congress or the president have exceeded their powers.¶ RFE/RL: So this was a pivotal moment. The history of the United States could have gone down a different path if not for Marbury v. Madison?¶ Kagan: I'm sure that is true. But at the same time, it's important to say that courts only gain respect, and their judgments are only acceded to, if they use their powers wisely. So judicial restraint is a very significant part of judicial review. Just as the courts can say when the executive or legislative branches have overstepped their powers, the courts have to ensure that they don't overstep their own powers. The system only works if the courts don't unwisely or unduly step on the prerogatives of the other players in the government.¶ RFE/RL: The problems of the judiciary in most of the countries we broadcast to are remarkably similar. I wanted to go through some of them and get you to address them. Were there ever similar issues in U.S. history? If so, how were they addressed? If not, as a legal scholar, how do you think they might be addressed? First, there is the issue of what the Russians call "telephone justice." In theory, this means that in all important cases, the judge hearing the case gets a phone call from the executive branch or its proxy spelling out how he or she is supposed to rule. How do you build an independent judiciary in societies where this is common practice?¶ Kagan: If we did [have such issues], those would have been understood as abuses of the system and violative of the rules of the system. That is the very opposite of a system founded on the rule of law, which says the way a judge decides a case, the way a court decides a case, is by virtue of legal principle, not by virtue of legal power, by who called him and said this is how we want the case to turn out.¶ The independence of a judiciary can in some sense be measured by its ability and willingness to challenge the powers that be and say they've overstepped their role and to hold them to account, not to accede to everything that the powers that be want.

#### Current deference to the executive over detention policy has downed judicial independence

McCormack 8/20/13 (Wayne, E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, "U.S. Judicial Independence: Victim in the “War on Terror”," https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/)

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.¶ The U.S. Government has taken the position that inquiry by the judiciary into a variety of actions would threaten the safety of the nation. This is pressure that amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But a long pattern of threats and intimidation to depart from established law undermines judicial independence. That has been the course of the U.S. “war on terror” for over a decade now.¶ Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference.¶ 1. Guantanamo.¶ In Boumediene v. Bush,1 the Supreme Court allowed the U.S. to detain alleged “terrorists” under unstated standards to be developed by the lower courts with “deference” to Executive determinations. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.”¶ 2. Detention and Torture¶ Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP)¶ Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities.¶ Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity.¶ Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP.¶ 1 553 U.S. 723 (2008).¶ 2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007).¶ 3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009).¶ 4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012).¶ 5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP.¶ 3. Unlawful Detentions¶ Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant.¶ Ali Al-Marri was originally charged with perjury, then detained as an enemy combatant, for a total detention of four years before the Fourth Circuit finally held that he must be released or tried.7¶ Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security.¶ Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute¶ 4. Unlawful Surveillance¶ Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others.¶ 5. Targeted Killing¶ Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes.¶ 6. Asset Forfeiture¶ 6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009).¶ 7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007).¶ 8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)¶ 9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002).¶ 10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013).¶ 11 Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (D.D.C. 2010)¶ Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge.¶ Avoiding Accountability¶ The “head in the sand” attitude of the U.S. judiciary in the past decade is a rather dismal record that does not fit the high standard for judicial independence on which the American public has come to rely. Many authors have discussed these cases from the perspective of civil rights and liberties of the individual. What I want to highlight is how undue deference to the Executive in “time of crisis” has undermined the independent role of the judiciary. Torture, executive detentions, illegal surveillance, and now killing of U.S. citizens, have all escaped judicial review under a variety of excuses.¶ To be clear, many of the people against whom these abuses have been levied are, or were, very dangerous if not evil individuals. Khalid Sheikh Muhamed and Anwar al-Aulaqi should not be allowed to roam free to kill innocent civilians. But hundreds of years of history show that there are ways of dealing with such people within the limits of restrained government without resort to the hubris and indignity of unreviewed executive discretion. The turning of blind eyes by many, albeit not all, federal judges is a chapter of this history that will weigh heavily against us in the future.¶ No judge wants to feel responsible for the deaths of innocents. But moral responsibility for death is with those who contribute to the act. Meanwhile the judge has a moral responsibility for abuses by government of which the judiciary is a part. ¶

#### US judicial independence is a key model – detention policy is used to justify abuses globally

CJA et al 3 ("Brief of the Center for Justice and Accountability, International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," October, Odah vs. USA and Rasul vs. Bush, <http://jenner.com/system/assets/assets/5567/original/AmiciCuriae_Center_for_Justice_Int_League_Human_Rights_Adv_For_Indep_Judiciary2.pdf?1323207521>)

Other Nations Have Curtailed Judicial Review During Times Of Crisis, Often Citing the United States' Example, And Individual Freedoms Have Diminished As A Result. While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of the rulers that go down that road justify their actions on the basis of national security and the fight against terrorism, and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at http://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695&lang=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09:34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security, and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world. This case starkly presents the question of which model this Court will set for the world. CONCLUSION Much of the world models itself after this country’s two hundred year old traditions — and still more on its day to day implementation and expression of those traditions. To say that a refusal to exercise jurisdiction in this case will have global implications is not mere rhetoric. Resting on this Court’s decision is not only the necessary role this Court has ¶ historically played in this country. Also at stake are the freedoms that many in emerging democracies around the globe seek to ensure for their peoples.

#### US constitutional jurisprudence and decisions are modeled by Latin America

Mirow 7 (M.C., Asst Prof of Law @ Florida International, "Marbury in Mexico: Judicial Review's Precocious Southern Migration," http://www.hastingsconlawquarterly.org/archives/V35/I1/Mirow.pdf)

In an era in which the use of foreign sources by the United States¶ Supreme Court is one of law professors' topics du jour,10 this Mexican¶ example from over 125 years ago has much to contribute."1 In this context,¶ this study asks not what other countries can do for us, but rather what we¶ have done to or for other countries. 12 The United States Constitution has played an extremely important role in the establishment and development of constitutional orders in Latin America.' 3 It served as a model in drafting Latin American constitutions, and, at times, even United States¶ constitutional commentators and the opinions of United States Supreme Court Justices found their way into the decisions of Latin American supreme court judges. 14 Keith Rosenn writes that in Latin America "the influence of the United States experience with judicial review has been direct and substantial.' 15 This is true, despite the fact such a region "of chronic political instability and short-lived constitutions with a civil law¶ tradition would appear most infertile soil for the seeds of Marbury v.¶ Madison to take root."'16¶ Marbury now embodies a particular approach to constitutional law¶ and decision making; it is emblematic of the doctrine of judicial review. 17¶ The decision provides the constitutional cornerstone of the doctrine in the¶ United States and, as a result, supports the core democratic structures of¶ government in this country. 1 With the flurry of scholarship accompanying¶ the recent bicentennial of the decision, it would seem there is hardly¶ anything new left to say about the opinion.' 9¶ But there is: The decision was also instrumental in the development of¶ Mexican constitutional law, leaving a legacy of constitutional jurisprudence¶ and a broadly construed supreme court power in Mexico. The Mexican Supreme Court would not be the same institution today were it not for Marbury. Indeed, the decision is selected here for study because it is¶ representative of Vallarta's consistent recourse to United States materials in¶ the 1880s.¶ The recognition of this influence in the domestic literature of Latin American countries varies. 20 National pride and long-standing political tensions between the United States and many Latin American countries¶ have led some Latin American writers to ignore, gloss over, or underplay United States influence on their country's constitutional development.¶ Similarly, national pride and the revolutionary spirit of 1917 in Mexico¶ may make the United States origins of its constitutional method a difficult¶ fact to accept.21 A common Mexican saying is "Pobre Mexico, tan lejos de¶ Dios, tan cerca de los Estados Unidos.'¶ ,¶ 22 Reflecting popular disdain for¶ the United States, Mexican historiography has greatly downplayed and for¶ the most part silenced the United States' voice in the development of some¶ of the most fundamental substantive provisions and procedures for the¶ protection of constitutional rights in Mexico.23

#### Independent judiciaries are key to Latin American stability

Cooper 8 (James, Institute Professor of Law and an Assistant Dean at California Western School of Law, "COMPETING LEGAL CULTURES AND LEGAL REFORM: THE BATTLE OF CHILE," 29 Mich. J. Int'l L. 501, lexis)

The legal transplantation process involves, by its very nature, the adoption of, adaptation n57 to, incorporation of, or reference to legal cultures from abroad. n58 Judges, along with other actors in the legal [\*512] sector - including prosecutors, justice ministry officials, judicial councils, supreme courts, law school professors, ombudspeople, and public defenders - often look to rules, institutions, and jurisprudence from other countries, particularly to those from similar legal traditions and Anglo-Saxon or other legal cultures. n59 Professor Alan Watson contends that "legal transplants [are] the moving of a rule or a system of law from one country to another, or from one people or another since the earliest recorded history." n60 For many centuries, the legal codes and legal cultures that were established in Latin America were products of the colonial experience with Spain and Portugal. n61 Prior to independence, laws were merely imposed on the territories of the colonial powers. Spain, through the legal culture it transplanted during colonial times, enjoyed a consistent influence on the New World in the Americas. n62 In the colonies, "the Spanish judiciary was given almost no autonomy and continued to depend on the Crown's scholarly-inspired statutes with limited reflection of the principles, customs and values arising from Spain's diverse regions." n63¶ After independence in the early part of the nineteenth century, however, legal models from other countries like the United Kingdom and the United States soon found receptive homes in the southern parts of the Western Hemisphere. n64 Statutes, customs, and legal processes were [\*513] transplanted in a wholesale fashion, themselves the product of French influence over the codification process. n65¶ For much of the twentieth century - at least until the early 1980s - most governments in Latin America pursued policies of economic nationalism, including import substitution and controls on capital flows. Latin American governments closed markets to foreign competition and pursued state intervention. n66 When these policies failed, they resulted in economic stagnation, hyperinflation, and the erosion of living standards. n67 International bond defaults in the early 1980s produced military dictatorships and oppressive regimes simultaneously throughout Latin [\*514] America. The region was ready for a change. n68 In exchange for the adoption of certain rules and regulations concerning the functioning of markets, and some strengthening of democratic institutions, the international financial community lent money to these nascent democracies in an attempt to encourage a set of "neoliberal" policies - the so-called Washington Consensus. n69 Privatization of state assets was a central part of the prescription. n70 Deregulation, the opening of markets to foreign competition, and the lowering of barriers to trade were also recommended policies. n71¶ These policies - involving the flow of capital, intellectual property, technology, professional services, and ideas - require that disputes be settled fairly and by a set of recognized and enforced laws. n72 The rule of law, after all, provides the infrastructure upon which democracies may thrive, because it functions to enforce property rights and contracts. n73 [\*515] Likewise, the rule of law is the foundation for economic growth and prosperity: n74¶ ¶ Law is a key element of both a true and a stable democracy and of efficient economic interaction and development both domestically and internationally ... . The quality and availability of court services affect private investment decision and economic behavior at large, from domestic partnerships to foreign investment. n75¶ ¶ Foreign businesses that invest or do business abroad want to ensure that their intellectual property, shareholder, capital repatriation, contract, and real property rights will be protected. n76 It is not surprising, then, that in [\*516] the aftermath of the economic reforms, or at times concurrently, there also have been efforts to implement new criminal procedures, protect human and civil rights, and increase access to justice. n77 Economic growth and sustainable development require a functioning, transparent, and efficient judicial sector. n78 "It is not enough to build highways and factories to modernize a State ... a reliable justice system - the very basis of civilization - is needed as well." n79 Without the rule of law, corruption in the tendering regimes was rampant, encouraging the looting of national treasuries, n80 the exploitation of labor, and the polluting of the environment. n81 As Professor Joseph Stiglitz sadly points out, "The market [\*517] system requires clearly established property rights and the courts to enforce them; but often these are absent in developing countries." n82¶ A healthy and independent judicial power is also one third of a healthy democratic government. n83 Along with the executive and legislative branches, the judicial branch helps form the checks and balances to allow for an effective system of governance. Instead, what has resulted over the last few decades in many Latin American governments is a breakdown in the rule of law: a judiciary unable to change itself, virtual impunity from prosecution, judicial officers gunned down, and the wholesale interference with the independence of the judicial power. The judiciary is not as independent as the other two branches of government. n84 Instead, the judiciary functions as part of the civil service: devoid of law-making abilities, merely a slot machine for justice that applies the various codes. n85

#### Latin America instability results in regional conflict escalation and disease spread

Manwaring ‘5 (Max G., Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, October 2005, <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub628.pdf>)
President Chávez also understands that the process leading to state failure is the most dangerous long-term security challenge facing the global community today. The argument in general is that failing and failed state status is the breeding ground for instability, criminality, insurgency, regional conflict, and terrorism. These conditions breed massive humanitarian disasters and major refugee flows. They can host “evil” networks of all kinds, whether they involve criminal business enterprise, narco-trafficking, or some form of ideological crusade such as Bolivarianismo. More specifically, these conditions spawn all kinds of things people in general do not like such as murder, kidnapping, corruption, intimidation, and destruction of infrastructure. These means of coercion and persuasion can spawn further human rights violations, torture, poverty, starvation, disease, the recruitment and use of child soldiers, trafficking in women and body parts, trafficking and proliferation of conventional weapons systems and WMD, genocide, ethnic cleansing, warlordism, and criminal anarchy. At the same time, these actions are usually unconfined and spill over into regional syndromes of poverty, destabilization, and conflict .62 Peru’s Sendero Luminoso calls violent and destructive activities that facilitate the processes of state failure “armed propaganda.” Drug cartels operating throughout the Andean Ridge of South America and elsewhere call these activities “business incentives.” Chávez considers these actions to be steps that must be taken to bring about the political conditions necessary to establish Latin American socialism for the 21st century.63 Thus, in addition to helping to provide wider latitude to further their tactical and operational objectives, state and nonstate actors’ strategic efforts are aimed at progressively lessening a targeted regime’s credibility and capability in terms of its ability and willingness to govern and develop its national territory and society. Chávez’s intent is to focus his primary attack politically and psychologically on selected Latin American governments’ ability and right to govern. In that context, he understands that popular perceptions of corruption, disenfranchisement, poverty, and lack of upward mobility limit the right and the ability of a given regime to conduct the business of the state. Until a given populace generally perceives that its government is dealing with these and other basic issues of political, economic, and social injustice fairly and effectively, instability and the threat of subverting or destroying such a government are real.64 But failing and failed states simply do not go away. Virtually anyone can take advantage of such an unstable situation. The tendency is that the best motivated and best armed organization on the scene will control that instability. As a consequence, failing and failed states become dysfunctional states, rogue states, criminal states, narco-states, or new people’s democracies. In connection with the creation of new people’s democracies, one can rest assured that Chávez and his Bolivarian populist allies will be available to provide money, arms, and leadership at any given opportunity. And, of course, the longer dysfunctional, rogue, criminal, and narco-states and people’s democracies persist, the more they and their associated problems endanger global security, peace, and prosperity.65

#### Latin American instability undermines US global leadership

Sabatini and Berger 12 (Christopher Sabatini is the editor-in-chief of Americas Quarterly and senior director of policy at Americas Society/Council of the Americas. Ryan Berger is a policy associate at the Americas Society/Council of the Americas. The views in this article are solely those of Christopher Sabatini and Ryan Berger, Why the U.S. can't afford to ignore Latin America, June 2012,http://globalpublicsquare.blogs.cnn.com/2012/06/13/why-the-u-s-cant-afford-to-ignore-latin-america/)

Yes, we get it. The relative calm south of the United States seems to pale in comparison to other developments in the world: China on a seemingly inevitable path to becoming a global economic powerhouse, the potential of political change in the Middle East, the feared dismemberment of the eurozone, and rogue states like Iran and North Korea flaunting international norms and regional stability.¶ But the need to shore up our allies and recognize legitimate threats south of the Rio Grande goes to the heart of the U.S.’ changing role in the world and its strategic interests within it.¶ Here are three reasons why the U.S. must include Latin America in its strategic calculations:¶ 1. Today, pursuing a global foreign policy requires regional allies.¶ Recently, countries with emerging economies have appeared to be taking positions diametrically opposed to the U.S. when it comes to matters of global governance and human rights. Take, for example, Russia and China’s stance on Syria, rejecting calls for intervention.¶ Another one of the BRICS, Brazil, tried to stave off the tightening of U.N. sanctions on Iran two years ago. And last year, Brazil also voiced its official opposition to intervention in Libya, leading political scientist Randall Schweller to refer to Brazil as “a rising spoiler.”¶ At a time of (perceived) declining U.S. influence, it’s important that America deepens its ties with regional allies that might have been once taken for granted. As emerging nations such as Brazil clamor for permanent seats on the U.N. Security Council and more representatives in the higher reaches of the World Bank and the International Monetary Fund, the U.S. will need to integrate them into global decision-making rather than isolate them.¶ If not, they could be a thorn in the side of the U.S. as it tries to implement its foreign policy agenda. Worse, they could threaten to undermine efforts to defend international norms and human rights.¶ 2. Latin America is becoming more international.¶ It’s time to understand that the U.S. isn’t the only country that has clout in Latin America.¶ For far too long, U.S. officials and Latin America experts have tended to treat the region as separate, politically and strategically, from the rest of the world. But as they’ve fought battles over small countries such as Cuba and Honduras and narrow bore issues such as the U.S.-Colombia free-trade agreement, other countries like China and India have increased their economic presence and political influence in the region.¶ It’s also clear that countries such as Brazil and Venezuela present their own challenges to U.S. influence in the region and even on the world forum.¶ The U.S. must embed its Latin America relations in the conceptual framework and strategy that it has for the rest of the world, rather than just focus on human rights and development as it often does toward southern neighbors such as Cuba.¶ 3. There are security and strategic risks in the region.¶ Hugo Chavez’s systematic deconstruction of the Venezuelan state and alleged ties between FARC rebels and some of Chavez’s senior officials have created a volatile cocktail that could explode south of the U.S. border.¶ FARC, a left-wing guerrilla group based in Colombia, has been designated as a “significant foreign narcotics trafficker” by the U.S. government.¶ At the same time, gangs, narcotics traffickers and transnational criminal syndicates are overrunning Central America.¶ In 2006, Mexican President Felipe Calderón launched a controversial “war on drugs” that has since resulted in the loss of over 50,000 lives and increased the levels of violence and corruption south of the Mexican border in Guatemala, El Salvador, Honduras and even once-peaceful Costa Rica. Increasingly, these already-weak states are finding themselves overwhelmed by the corruption and violence that has come with the use of their territory as a transit point for drugs heading north.¶ Given their proximity and close historical and political connections with Washington, the U.S. will find it increasingly difficult not to be drawn in. Only this case, it won’t be with or against governments — as it was in the 1980s — but in the far more complex, sticky situation of failed states.¶ There are many other reasons why Latin America is important to U.S. interests.¶ It is a market for more than 20% of U.S. exports. With the notable exception of Cuba, it is nearly entirely governed by democratically elected governments — a point that gets repeated ad nauseum at every possible regional meeting. The Western Hemisphere is a major source of energy that has the highest potential to seriously reduce dependence on Middle East supply. And through immigration, Latin America has close personal and cultural ties to the United States. These have been boilerplate talking points since the early 1990s.¶ But the demands of the globe today are different, and they warrant a renewed engagement with Latin America — a strategic pivot point for initiatives the U.S. wants to accomplish elsewhere. We need to stop thinking of Latin America as the U.S. “backyard” that is outside broader, global strategic concerns.

#### US primacy prevents global nuclear conflict - withdrawal sparks power vacuums and global transition wars

Brooks et al 13 (Stephen G. Brooks is Associate Professor of Government at Dartmouth College.G. John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs. He is also a Global Eminence Scholar at Kyung Hee University.William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College. “Don't Come Home, America: The Case against Retrenchment”, Winter 2013, Vol. 37, No. 3, Pages 7-51,<http://www.mitpressjournals.org/doi/abs/10.1162/ISEC_a_00107>)

A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive wartemptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without theAmerican pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins toswing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimismregarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by astill-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on itsparticular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however,undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and theyengage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts thatthe withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war).

#### Disease pandemics cause extinction

Keating 9 (Joshua – Foreign Policy web editor , "The End of the World," Foreign Policy, 11-13-9, [www.foreignpolicy.com/articles/2009/11/13/the\_end\_of\_the\_world?page=full](http://www.foreignpolicy.com/articles/2009/11/13/the_end_of_the_world?page=full))

How it could happen: Throughout history, plagues have brought civilizations to their knees. The Black Death killed more off more than half of Europe's population in the Middle Ages. In 1918, a flu pandemic killed an estimated 50 million people, nearly 3 percent of the world's population, a far greater impact than the just-concluded World War I. Because of globalization, diseases today spread even faster - witness the rapid worldwide spread of H1N1 currently unfolding. A global outbreak of a disease such as ebola virus -- which has had a 90 percent fatality rate during its flare-ups in rural Africa -- or a mutated drug-resistant form of the flu virus on a global scale could have a devastating, even civilization-ending impact. How likely is it? Treatment of deadly diseases has improved since 1918, but so have the diseases. Modern industrial farming techniques have been blamed for the outbreak of diseases, such as swine flu, and as the world’s population grows and humans move into previously unoccupied areas, the risk of exposure to previously unknown pathogens increases. More than 40 new viruses have emerged since the 1970s, including ebola and HIV. Biological weapons experimentation has added a new and just as troubling complication.

#### Now is key for African independent judiciaries – they’re integral to stability

Mogoeng 13 (June 25, The Hon. Mogoeng Mogoeng Chief Justice of South Africa, “Transcript: The Rule of Law in South Africa: Measuring Judicial Performance and Meeting Standards” http://www.tradingplaces2night.co.za/wp-content/uploads/2013/07/250613Mogoeng.pdf)

Even if all others were to be unable to give practical expression to the rule of law, human rights and the constitutional aspirations of the people in any democracy, that constitutional democracy would survive; provided a truly independent body of judges and magistrates, loyal to the oath of office or solemn affirmation, is in place and ready to administer justice to the aggrieved in terms of their oath of office or affirmation. And that is the oath or affirmation to be faithful to the Republic of South Africa, to uphold and protect the constitution and the human rights entrenched in it and to administer justice to all persons alike without fear, favour or prejudice, in accordance with the constitution and the law. Central to the affirmation or oath of office is the obligation to uphold the foundational values of our constitutional democracy, which include the rule of law, human dignity, equality, freedom, transparency and accountability. This is the legal philosophy and the vision necessary for the promotion of the rule of law and the economic developmental agenda not only for South Africa and the SADC (Southern African Development Community) region but of the African continent as well. Because African countries face similar challenges albeit to varying degrees, I have decided not to confine my address to South Africa but to deal with the broader African situation. Africa is a beautiful continent. And Africa is populous, comprises vast tracts of land and is extremely rich in minerals and natural resources. It has what it takes not only to have its people bask in the glory of sustainable economic development and prosperity; but also to enjoy peace and all-round stability in an environment of good governance, facilitated by an independent, efficient and effective court system. And yet reports about Africa are generally negative. Africa is generally associated with massive corruption, social and political instability, rigged elections, dictatorships, abuse of human rights with near impunity, rampant non-observance of the rule of law, coups d’état, sickness and disease, high mortality rate, abject poverty, economic underdevelopment, dependency and in general, the paucity of accountability, responsiveness and good governance. Yet economists say that the United Kingdom and Switzerland, which do not have the mineral and natural resources we have, with a very small population and a small piece of land, are each richer than all African countries put together. We must therefore play our part to reverse this unacceptable state of affairs. To avoid dwelling on the predictable lamentations of Africa, generally based on what colonization has done to us, and how some superpowers possibly continue to employ more nuanced and sophisticated ways of prospering with our resources at our expense, we need to identify the challenges that strangle the possibility of African people enjoying the peace and the prosperity that this great continent is pregnant with, which African people can change. The judiciary is the third branch of government; the third arm of the state. There simply can be no state or government without the judiciary in a genuine constitutional democracy. To breathe life into the African dream that is inspired by the desire to break free from centuries of economic oppression, and to recapture the lost glory of Africa, the judiciary in Africa must be more alive to the enormous responsibilities it bears on its shoulders to contribute to the renaissance of Africa. When the judiciary enjoys both individual and institutional independence and is faithful to its constitutional mandate, then peace, good governance and sustainable economic development is achievable. It must be for this reason that it is recalled in the preamble to the statute of the Conference of Constitutional Jurisdictions of Africa (CCJA); that the Constitutive Act of the African Union enshrines the commitment of heads of state and government of the Union ‘to promote and protect human and people’s rights, to consolidate institutions and democratic culture, to promote good governance and the rule of law’. The judiciaries of Africa have, through the CCJA, also committed themselves to supplementing the AU mechanisms to consolidate the rule of law, democracy and human rights. Finally, we recognise again in the CCJA statute that the achievement of the above objectives is ‘closely linked to the independence and impartiality of judges’. And it is to this end that the CCJA and the court system in a true democracy were primarily established. How then can we, as the judiciary, make this African dream and the renaissance of Africa come true? I am one of those who believe that lasting solutions to our problems are simple but certainly not simplistic. We often fail to address problems that beset our systems and countries because we tend to look for complex and highly sophisticated solutions, when simple and practical ones, borne out of the experiences of others, and our own experiences are at hand and best suited to yield the much needed results. Why do we not witness in France, Singapore and the UK problems that have become familiar in Africa? We have oil, gas, gold, diamonds, platinum, chrome, coal etc. in abundance, and breath-taking tourist attractions. The UK is the size of a game reserve in South Africa known as the Kruger National Park. South Korea is about the size of a province in South Africa known as KwaZulu-Natal – where Durban is – and Singapore was very poor and insignificant in 1965, but is now rightly counted among the big world economies although it has nothing but its people and a tiny piece of land. A closer examination of the operations of their judiciaries would, without ignoring the damage done by our painful history, be quite revealing. Africa desperately needs a truly independent and efficient judiciary in each of its countries to create peace and stability. When citizens know that there is an effective and efficient court system in their country and that arrest, prosecution, conviction and sentence for the guilty is predictable, then corruption and crime in general will go down. Those who may wish to take power through unconstitutional means would be deterred from forging ahead with their unconstitutional plans by what an independent judiciary in their country could do to them. I asked colleagues in countries like Germany where people cycle freely with no apparent fear of crime even at night what the secret was. And they said the efficiency of the judicial system and the predictability and probability, as opposed to a remote possibility, of paying for one’s crime is the reason behind the peace and overall stability the people enjoy. When the other branches of government know that courts as the guardians of the constitution will always do their job without fear, favour or prejudice, they will observe and promote the rule of law. When it is known that a challenge to the executive’s failure to deliver on a constitutional obligation could result in an executable court order against anybody from the president to a mayor, of their own accord government functionaries and role players in business will obey the law of the land, observe business ethics and good governance will materialize. Good governance stems from compliance with conventional, legislative and constitutional governance prescripts. The entrenchment of the human rights culture, the observance of the rule of law and giving priority to, among others, the realization of the legitimate aspirations of the citizenry in terms of the law, transparency, accountability, responsiveness, the creation of a truly independent and effective corruption-busting machineries, protection of press freedom and the creation of an investor-friendly climate are some of the key ingredients of good governance. For example, the Constitutional Court of South Africa ruled that the corruption-busting body created in terms of legislation was not sufficiently independent to deal with corruption effectively and the relevant legislation had to be appropriately amended to meet the independence requirement. All of the above conspire to create an investor-friendly atmosphere. When potential investors know that in Africa you will get justice against any lawbreaker when defrauded, and when government, business partners or any entity tries to get an unjust or unlawful advantage of them, they will come in droves to invest, given the huge and diligent labour force, the fertile and productive land, the very rich minerals and abundant natural resources we have to offer. In this regard, the United Nations observed a few years ago that there was a direct link between the capacity of the judiciary to promote the rule of law and facilitate good governance on the one hand, and the willingness of multinational companies to embark upon massive and sustainable economic development on the other. And a concern was raised about the apparent lack of capacity by African judiciaries and governments to facilitate an investor friendly environment.

#### US judicial independence is crucial to democratic consolidation and stability in Latin America and Africa

CJA et al 3 ("Brief of the Center for Justice and Accountability, International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," October, Odah vs. USA and Rasul vs. Bush, http://jenner.com/system/assets/assets/5567/original/AmiciCuriae\_Center\_for\_Justice\_Int\_League\_Human\_Rights\_Adv\_For\_Indep\_Judiciary2.pdf?1323207521)

Many of the newly independent governments that have ¶ proliferated over the past five decades have adopted these ¶ ideals. They have emerged from a variety of less-than-free ¶ contexts, including the end of European colonial rule in the ¶ 1950's and 1960's, the end of the Cold War and the breakup of ¶ the former Soviet Union in the late 1980's and 1990's, the ¶ disintegration of Yugoslavia, and the continuing turmoil in ¶ parts of Africa, Latin America and southern Asia. Some ¶ countries have successfully transitioned to stable and ¶ democratic forms of government that protect individual ¶ freedoms and human rights by means of judicial review by a ¶ strong and independent judiciary. Others have suffered the ¶ rise of tyrannical and oppressive rulers who consolidated their ¶ hold on power in part by diminishing or abolishing the role of ¶ the judiciary. And still others hang in the balance, struggling ¶ against the onslaught of tyrants to establish stable, democratic ¶ governments. ¶ In their attempts to shed their tyrannical pasts and to ensure ¶ the protection of individual rights, emerging democracies have ¶ consistently looked to the United States and its Constitution in ¶ fashioning frameworks that safeguard the independence of ¶ their judiciaries. See Ran Hirschl, The Political Origins of ¶ Judicial Empowerment through Constitutionalization: ¶ Lessons from Four Constitutional Revolutions, 25 Law & Soc. ¶ Inquiry 91, 92 (2000) (stating that of the “[m]any countries . . ¶ . [that] have engaged in fundamental constitutional reform ¶ over the past three decades,” nearly all adopted “a bill of ¶ rights and establishe[d] some form of active judicial review”). ¶ Establishing judicial review by a strong and independent ¶ judiciary is a critical step in stabilizing and protecting these ¶ new democracies. See Christopher M. Larkins, Judicial ¶ Independence and Democratization: A Theoretical and ¶ Conceptual Analysis, 44 Am. J. Comp. L. 605, 605-06 (1996) ¶ (describing the judicial branch as having "a uniquely ¶ important role" in transitional countries, not only to "mediate ¶ conflicts between political actors but also [to] prevent the ¶ arbitrary exercise of government power; see also Daniel C. ¶ Prefontaine and Joanne Lee, The Rule of Law and the ¶ Independence of the Judiciary, International Centre for ¶ Criminal Law Reform and Criminal Justice Policy (1998) ¶ ("There is increasing acknowledgment that an independent ¶ judiciary is the key to upholding the rule of law in a free ¶ society . . . . Most countries in transition from dictatorships ¶ and/or statist economies recognize the need to create a more ¶ stable system of governance, based on the rule of law."), ¶ available at¶ http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw.¶ pdf (last visited Jan. 8, 2004). Although the precise form of ¶ government differs among countries, “they ultimately ¶ constitute variations within, not from, the American model of ¶ constitutionalism . . . [a] specific set of fundamental rights and ¶ liberties has the status of supreme law, is entrenched against ¶ amendment or repeal . . . and is enforced by an independent ¶ court . . . .” Stephen Gardbaum, The New Commonwealth ¶ Model of Constitutionalism, 49 Am. J. Comp. L. 707, 718 ¶ (2001). ¶ This phenomenon became most notable worldwide after ¶ World War II when certain countries, such as Germany, Italy, ¶ and Japan, embraced independent judiciaries following their ¶ bitter experiences under totalitarian regimes. See id. at 714-¶ 15; see also United States v. Then, 56 F.3d 464, 469 (2d Cir. ¶ 1995) (Calabresi, J., concurring) (“Since World War II, many ¶ countries have adopted forms of judicial review, which — ¶ though different from ours in many particulars — ¶ unmistakably draw their origin and inspiration from American ¶ constitutional theory and practice. See generally Mauro ¶ Cappelletti, The Judicial Process in Comparative Perspective¶ (Oxford: Clarendon Press, 1989).”). It is a trend that ¶ continues to this day.¶ It bears mention that the United States has consistently ¶ affirmed and encouraged the establishment of independent ¶ judiciaries in emerging democracies. In September 2000, ¶ President Clinton observed that "[w]ithout the rule of law, ¶ elections simply offer a choice of dictators. . . . America's ¶ experience should be put to use to advance the rule of law, ¶ where democracy's roots are looking for room and strength to ¶ grow." Remarks at Georgetown University Law School, 36 ¶ Weekly Comp. Pres. Doc. 2218 (September 26, 2000), ¶ available at http://clinton6.nara.gov/2000/09/2000-09-26-¶ remarks-by-president-at-georgetown-international-lawcenter.html. The United States acts on these principles in part ¶ through the assistance it provides to developing nations. For ¶ example, the United States requires that any country seeking ¶ assistance through the Millenium Challenge Account, a ¶ development assistance program instituted in 2002, must ¶ demonstrate, among other criteria, an "adherence to the rule of ¶ law." The White House noted that the rule of law is one of the ¶ "essential conditions for successful development" of these ¶ countries. See ¶ http://www.whitehouse.gov/infocus/developingnations (last ¶ visited Jan. 8, 2004).12

#### Independent, judicial checks on executive power are key to African rule of law – that’s vital for political and economic stability

Mbaku 13 (John Mukum, Presidential Distinguished Professor of Economics, Willard L. Eccles Professor of Economics, and John S. Hinckley Research Fellow at Weber State University, "PROVIDING A FOUNDATION FOR WEALTH CREATION AND DEVELOPMENT IN AFRICA: THE ROLE OF THE RULE OF LAW," 38 Brooklyn J. Int'l L. 959, lexis)

These priorities are all interrelated. For example, the failure of African governments to manage ethnic and religious diversity has often resulted in destructive and violent mobilization by groups that perceive themselves as being marginalized by a central government dominated and controlled by other groups. n308 The result has been significantly high levels of political instability, which have created economic environments that are not suitable for, or conducive to, investment and/or engagement by entrepreneurs in productive activities. Peaceful coexistence creates opportunities for mutually-beneficial exchanges between groups, which may include cultural exchanges and trade. Such exchanges can lead to innovation and the creation of new knowledge that can aid production and the peaceful resolution of problems and conflicts. State actors, such as civil servants and politicians, are responsible for a significant amount of the corruption and rent seeking that takes place in the African countries today. n309 [\*1051] Thus, to minimize the engagement of state actors in growth-inhibiting behaviors, it is necessary that the state be adequately constrained by the constitution. To adequately restrain the state, the law must be supreme--no citizen, regardless of their political, economic, or traditional standing in society, can be above the law. Judicial independence must also be assured, so that the executive does not turn judiciary structures into instruments of control and plunder. In addition, the laws chosen must reflect the values and aspirations of citizens, that is, the laws need to be locally-focused, and must also be laws that citizens can obey in order to enhance compliance and minimize the costs of policing. Furthermore, government operations must be conducted in an open and transparent manner to minimize corruption, enhance participation, and increase the people's trust in the government. Finally, the rights of minorities must be protected--it is critical that the rights of minority ethnic and religious groups be protected, not just from state tyranny, but also from violence perpetuated against them by non-state actors. The rule of law is a critical catalyst to Africa's effort to deal effectively with poverty. Each country must engage its citizens in democratic constitution-making to provide laws and institutions that guarantee the rule of law. One must caution that what is being advocated here is not simple regime change as has occurred in many countries throughout the continent. In order to secure institutional arrangements that guarantee the rule of law, countries must engage in the type of robust state reconstruction that provides all of the country's relevant stakeholders with the wherewithal to participate fully and effectively in institutional reforms. It is only through such a democratic process that a country can avail itself of legal and judicial frameworks that guarantee the rule of law, and hence, provide the environment for peaceful coexistence, wealth creation, and democratic governance.

#### Instability and conflict escalate to great power war

Glick 7 (Caroline, Senior Middle East Fellow – Center for Security Policy, “Condi’s African Holiday”, 12-12, [http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568](http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568%29))

US Secretary of State Condoleezza Rice introduced a new venue for her superficial and destructive stewardship of US foreign policy during her lightning visit to the Horn of Africa last Wednesday. The Horn of Africa is a dangerous and strategically vital place. Small wars, which rage continuously, can easily escalate into big wars. Local conflicts have regional and global aspects. All of the conflicts in this tinderbox, which controls shipping lanes from the Indian Ocean into the Red Sea, can potentially give rise to regional, and indeed global conflagrations between competing regional actors and global powers. Located in and around the Horn of Africa are the states of Eritrea, Djibouti, Ethiopia, Somalia, Sudan and Kenya. Eritrea, which gained independence from Ethiopia in 1993 after a 30-year civil war, is a major source of regional conflict. Eritrea has a nagging border dispute with Ethiopia which could easily ignite. The two countries fought a bloody border war from 1998-2000 over control of the town of Badme. Although a UN mandated body determined in 2002 that the disputed town belonged to Eritrea, Ethiopia has rejected the finding and so the conflict festers. Eritrea also fights a proxy war against Ethiopia in Somalia and in Ethiopia's rebellious Ogaden region. In Somalia, Eritrea is the primary sponsor of the al-Qaida-linked Islamic Courts Union which took control of Somalia in June, 2006. In November 2006, the ICU government declared jihad against Ethiopia and Kenya. Backed by the US, Ethiopia invaded Somalia last December to restore the recognized Transitional Federal Government to power which the ICU had deposed. Although the Ethiopian army successfully ousted the ICU from power in less than a week, backed by massive military and financial assistance from Eritrea, as well as Egypt and Libya, the ICU has waged a brutal insurgency against the TFG and the Ethiopian military for the past year. The senior ICU leadership, including Sheikh Hassan Dahir Aweys and Sheikh Sharif Ahmed have received safe haven in Eritrea. In September, the exiled ICU leadership held a nine-day conference in the Eritrean capital of Asmara where they formed the Alliance for the Re-Liberation of Somalia headed by Ahmed. Eritrean President-for-life Isaias Afwerki declared his country's support for the insurgents stating, "The Eritrean people's support to the Somali people is consistent and historical, as well as a legal and moral obligation." Although touted in the West as a moderate, Ahmed has openly supported jihad and terrorism against Ethiopia, Kenya and the West. Aweys, for his part, is wanted by the FBI in connection with his role in the bombing of the US embassies in Kenya and Tanzania in 1998. Then there is Eritrea's support for the Ogaden separatists in Ethiopia. The Ogaden rebels are Somali ethnics who live in the region bordering Somalia and Kenya. The rebellion is run by the Ogaden National Liberation Front (ONLF) which uses terror and sabotage as its preferred methods of warfare. It targets not only Ethiopian forces and military installations, but locals who wish to maintain their allegiance to Ethiopia or reach a negotiated resolution of the conflict. In their most sensationalist attack to date, in April ONLF terror forces attacked a Chinese-run oil installation in April killing nine Chinese and 65 Ethiopians. Ethiopia, for its part has fought a brutal counter-insurgency to restore its control over the region. Human rights organizations have accused Ethiopia of massive human rights abuses of civilians in Ogaden. Then there is Sudan. As Eric Reeves wrote in the Boston Globe on Saturday, "The brutal regime in Khartoum, the capital of Sudan, has orchestrated genocidal counter-insurgency war in Darfur for five years, and is now poised for victory in its ghastly assault on the region's African populations." The Islamist government of Omar Hasan Ahmad al-Bashir is refusing to accept non-African states as members of the hybrid UN-African Union peacekeeping mission to Darfur that is due to replace the undermanned and demoralized African Union peacekeeping force whose mandate ends on December 31. Without its UN component of non-African states, the UN Security Council mandated force will be unable to operate effectively. Khartoum's veto led Jean-Marie Guehenno, the UN undersecretary for peacekeeping to warn last month that the entire peacekeeping mission may have to be aborted. And the Darfur region is not the only one at risk. Due to Khartoum's refusal to carry out the terms of its 2005 peace treaty with the Southern Sudanese that ended Khartoum's 20-year war and genocide against the region's Christian and animist population, the unsteady peace may be undone. Given Khartoum's apparent sprint to victory over the international community regarding Darfur, there is little reason to doubt that once victory is secured, it will renew its attacks in the south. The conflicts in the Horn of Africa have regional and global dimensions. Regionally, Egypt has played a central role in sponsoring and fomenting conflicts. Egypt's meddling advances its interest of preventing the African nations from mounting a unified challenge to Egypt's colonial legacy of extraordinary rights to the waters of the Nile River which flows through all countries of the region.

#### Goes nuclear

Lancaster 00 (Carol, Associate Professor and Director of the Master's of Science in Foreign Service Program – Georgetown University, “Redesigning Foreign Aid”, Foreign Affairs, September / October, Lexis)

THE MOST BASIC CHALLENGE facing the United States today is helping to preserve peace. The end of the Cold War eliminated a potential threat to American security, but it did not eliminate conflict. In 1998 alone there were 27 significant conflicts in the world, 25 of which involved violence within states. Nine of those intrastate conflicts were in sub-Saharan Africa, where poor governance has aggravated ethnic and social tensions. The ongoing war in the Democratic Republic of the Congo has been particularly nightmarish, combining intrastate and interstate conflict with another troubling element: military intervention driven by the commercial motives of several neighboring states. Such motives could fuel future conflicts in other weak states with valuable resources. Meanwhile, a number of other wars -- in Colombia, the former Yugoslavia, Cambodia, Angola, Sudan, Rwanda, and Burundi -- have reflected historic enmities or poorly resolved hostilities of the past. Intrastate conflicts are likely to continue in weakly integrated, poorly governed states, destroying lives and property, creating large numbers of refugees and displaced persons, and threatening regional security. The two interstate clashes in 1998 -- between India and Pakistan and Eritrea and Ethiopia -- involved disputes over land and other natural resources. Such contests show no sign of disappearing. Indeed, with the spread of weapons of mass destruction, these wars could prove more dangerous than ever.

#### African stability is vital to the global economy

Business Day 13 (January 18, Ivor Ichikowitz, “Stability in Africa now key to world economy” http://www.bdlive.co.za/world/africa/2013/01/18/stability-in-africa-now-key-to-world-economy)

A significant change in the way the world’s leaders are starting to see Africa was revealed this week but has gone almost entirely unreported. Christine Lagarde, the head of the International Monetary Fund (IMF), was in Cote d’Ivoire’s capital, Abidjan, and identified conflict as the "enemy number one" of Africa’s economic growth. She said: "Security is too fragile … if there is no peace, the people simply won’t have the confidence or courage to invest in their own future and neither will (foreign investors)." However, Lagarde did not stop at security being significant merely because it crippled economic development in Africa. She said it was vital for the financial stability of the entire world. "It’s clear that emerging countries are the motor of world economic growth," she said, backing the IMF’s projections that sub-Saharan Africa will grow 5.25% this year, second only to Asia’s boom economies and well above the world average of 3.6%. To hear the recognition from such a leading figure in the international community that security is one of Africa’s core problems was incredibly uplifting. It echoes statements I made last year, when I said: "Capitalism is the most powerful driving force behind Africa’s economic development…. Stability is crucial because the growing middle classes (up to a third of all Africans) will spend more money if they feel confident, and they will feel more confident if they feel safe. The next stage will be to convince private investors that no sudden, unexpected or violent shift in government will happen and make their funds disappear overnight." Lagarde said: "I cannot help but be impressed by the continent’s resilience … in the face of the most serious disturbances seen by the world’s economy since the Great Depression." While the leading economies are struggling to tiptoe back into growth, it is to Africa that the world is turning for impetus. Lagarde’s recognition of this is a minor historical moment in Africa’s relations with the rest of the world — instead of Africa being seen as a drain, it has been accepted as a vital driver of the global economy by one of its leading figures. Global leaders have previously come close but have never been so explicit. When US President Barack Obama visited Ghana in 2009, he said: "Your prosperity can expand America’s. Your health and security can contribute to the world’s…. All of us must strive for the peace and security necessary for progress." He also said that "development depends upon good governance" but I would say that, beyond this, good governance depends on stable societies. I would venture that Lagarde agrees. I have had the privilege to work with many African countries to strengthen the capabilities and capacity of their defence, police and peacekeeping forces. I have seen first-hand the benefits for economic activity, inward investment, regional stability and long-term growth that stability can bring. Africa cannot rely solely on its booming sectors, such as oil, for its growth. It needs to build strong and wide economic foundations. Its projected growth might be second only to Asia’s, but unlike Asia it is happening in the absence of the institutional framework necessary to absorb that growth and direct it towards more investment in things such as infrastructure, health, education and public transport.

#### Economic decline causes nuclear war

Harris and Burrows, 9 – \*counselor in the National Intelligence Council, the principal drafter of Global Trends 2025, \*\*member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis”, Washington Quarterly, http://www.twq.com/09april/docs/09apr\_burrows.pdf)

Increased Potential for Global Conflict Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

#### African instability creates massive incentives to exploit and destroy forests of the Congo River Basin

Sites 4 (Kevin, Conflict Studies Expert @ World Wildlife Fund, "Conflict in the Green Heart of Africa," http://wwf.panda.org/what\_we\_do/where\_we\_work/congo\_basin\_forests/problems/conflict/)

In the Congo River Basin, conflict has been a recurring nuisance for the development of several countries. Natural resources play a significant role in feeding conflicts, many of which involve securing control and access to natural resources. Communities and forests pay the price.¶ Wars in the Congo River Basin involve groups of combatants that are always on the move, gaining temporary control over towns and settlements, but who are almost never able to subdue the surrounding areas. ¶ The constant movement of militias and the unpredictability of their actions have a devastating impact on human lives. ¶ Estimates of war-related deaths in eastern regions of the Democratic Republic of Congo (DRC) range from 3.3 million to 4.5 million. To avoid conflict, refugees and displaced rural populations avoid major roads and move into the forests and protected areas, where they are less likely to encounter soldiers and rebels.1 ¶ How natural resources fuel war¶ Natural resources such as timber, as well as other commodities such as diamonds, all play roles in motivating these wars because of their characteristics (accessibility, weight-to-value ratios and the ability to loot, conceal and sell them later)2. ¶ In the DRC, rebel groups, government troops and their foreign allies have used the country’s diamonds, gold, timber, ivory, coltan and cobalt to pay for their war-related expenses.3 ¶ Perpetuating conflict…¶ A United Nations panel of experts on the illegal exploitation of natural resources of the DRC recently stated that "illegal exploitation remains one of the main sources of funding for groups involved in perpetuating conflict". ¶ According to the panel, neighbouring countries such as Rwanda, Uganda, Burundi and Zimbabwe have all helped themselves to the DRC's gold, diamonds, timber and coltan; systematically stripping factories, farms and banks in the process.4 ¶ What are the impacts of conflict?¶ A breakdown in the rule of law and other controls during and immediately after conflicts. ¶ Mass movements of people and human rights abuses. ¶ Decline in agricultural production, trade and food availability as conditions become unsafe to carry out such activities and transport is disrupted. ¶ Increased dependence on wild natural resources (such as bushmeat) for survival when other livelihoods are made impossible: As refugees seek means to sustain themselves away from their home areas and hold their families together, they often invade poorly protected areas in search of housing materials, bush foods and products that they can sell. ¶ Protected areas also often contain more wildlife than other areas and can thus provide a ready supply of meat for rebels or small armies. ¶ Moreover, when it becomes too dangerous for the staff in protected zones to continue patrols, the frequency of illegal mining of gold and diamonds, hunting for ivory and bushmeat, felling of timber and agricultural encroachment often increases.5

#### Destruction of the Congo River Basin forests ensures planetary extinction

Boukongou 5 (Jean Didier, Professor – Central African Catholic University (Cameroon), “The Protection of the Congo basin: A Multilateral Challenge", www.african-geopolitics.org/show.aspx?ArticleId=3836#\_ftn1)

This is not a revival of “good savage” ideology which is useful for the “civilized world,” but it is simply a matter of understanding that the forests of the Congo basin is the entire humanity’s precious “lung.” Beyond the traditional quarrels1 of the sycophants of environmental protection and the relevance of advocated public programs2, one notices the intensification of multilateral initiatives, which try to respond both to the stakes of protecting the Congo basin as well as to the challenge of preserving life on Earth. Nevertheless, even the advocates of sustainable development cannot forget that “bio-humanity” is a naturally complex vision of society. As far as one can go back in time, and on the principle of the divine message, man will always return to nature. This implies an organization and structuralization of spaces, which cannot be strictly limited to the protection of the fauna and flora. Consequently, international concern about the ecosystem of the Congo basin is neither the result of sudden philanthropy, nor the outcome of triumphant environmentalism. The region is a dynamic geopolitical area, where forests are a source of oil and conflicts. I think that it is fundamental not to separate the issue of forests from the less media-covered question of the rich oil and mineral resources in the hinterland and maritime zones of Central Africa. The predators are in the forests and on the political scene, and they are searching for democratic legitimacy3. Thus, I’m calling for combining the “green” debate with the “political” debate in order to promote better governance of the geopolitical basin of the Congo, give rise to concrete and multilateral awareness of the problems of Central Africa which aren’t only environmental but also political. It is a matter of emphasizing political and civil implications, on one hand, and legal instruments and institutional frameworks, on the other, in order to assure a better progressive transition in Central Africa from “Black governance” (in other words, oil-based governance) to “green governance”. A Geopolitical Basin The geographic entity called the “Congo basin” includes territories extending from the end of the Sahelian areas of Chad and Sudan and the edge of the plains along the Zambezi. The voluntarily extensive vision of this basin challenges the thesis that this forest area is confined to narrow post-colonial zones in Central African States, which doesn’t challenge the principles of international law relating to boundaries. This basin is a vast forest area that covers approximately 2,300,000 sq. km., or 26 percent of the world’s rainforests4. The forests are well known for their exceptional biodiversity and contribute, in an important way, to countering the greenhouse effect by absorbing the carbon dioxide which is emitted into the atmosphere5. This is the natural environment of more than half of the world’s wildlife and vegetable species. Some consider it the compost of numerous diseases, such as the terrible Ebola fever.The Congo basin regroups several countries (Cameroon, the Congo, the Democratic Republic of the Congo, the Central African Republic, Equatorial Guinea, Gabon, Burundi, Rwanda, Angola and Chad), which form (with Sao Tome e Principe) the Economic Community of Central African States (ECCAS). On the one side, one may identify the Congo basin area itself to the ECCAS, and on the other, consider it as the logical construction of a regional area where sustainable governance of ecosystems should contribute, via the mobility of people, to economic links and ecological flows, to restoring and strengthening peace. One must remember that during the Millenium Summit held in New York in 2000 the Heads of State and Government declared their intention not to spare “any effort in order to assure that the entire humanity, and especially our children and grandchildren, will not live on a planet irreversibly degraded by human activities whose resources can no longer meet their requirements6.” This appeal is in line with the dynamics of building the concept of sustainable development, advocated by the UICN7 in 1980 and resumed in the Bundtland report in 19878. States have to cooperate in a spirit of world partnership in order to preserve, protect and restore the integrity of the ecosystem. Of course, according to Resolutions 1803 (XVII) and 1514 (XV)9 of the United Nations General Assembly and Principle 2 of the Rio Declaration, “States have the sovereign right to exploit their own resources according to their environment and development policies.” In other words, they can implement their proper environmental policies. But these actions do not produce concrete effects. The degradation of the environment and certain natural or industrial disasters directly affect the Earth as a continuous portion of space. It is only on this scale that adequate initiatives can be taken in order to obtain durable and adequate results. International CooperationActually, environmental protection has become one of the most important issues in contemporary world relations. International cooperation is necessary to protect humanity’s common heritage. No country can do it on its own, because this is a common responsibility. Therefore, the quality of air and the atmosphere depends on world coordination in many domains. The protection of the quality of the waters of a boundary river, or of a lake common to several countries, requires international coordination and cooperation. As the International Court of Justice reminded in the case Gabcikovo-Nagymaros: “During ages, man did not stop influencing nature for economic and other purposes. In the past it often accomplished this without taking into account the effects on the environment. Due to the new horizons opened by science and the increasing awareness of the risks of these interventions for humanity – whether it is for the present or for future generations – new standards and requirements have been put in place, enounced in a substantial number of instruments over the past two decades. These new standards must be taken in consideration and these new requirements appropriately appreciated, not only when States envisage launching new activities, but also when they pursue projects that have already been launched. The concept of sustainable development expresses the need for reconciling economic development and environmental protection10.” Since the Earth Summit in Rio in 1992 the pressure exercised by NGOs and the international financial backers prompted governments to adjust their institutional frameworks and to work out coherent policies, in particular environmental action plans relating to the national, regional and international dimension. At the sub-regional level, such initiatives led to setting up mechanisms and processes such as the Conference of Ministers for Forests of Central Africa (COMIFAC)11, Conference on Central Africa’s Moist Forest Ecosystem (CEFDHAC) and the Africa Forest Law Enforcement and Governance Process (AFLEG)12. Organized in March, 1999 in Yaoundé, the summit of leaders of Central African States on the conservation and sustainable management of rain forests confirmed the Rio commitment to lead common policies for sustainable management of forested ecosystems. This regional dynamics led to the elaboration and adoption of a “convergence plan” for the Congo basin, whose main objective is the “conservation, restoration, development and durable use of biologic resources in the framework of management adapted to the social and cultural economic development of populations and the protection of the global environment13.” This convergence plan covers a ten-year period (2004-2013 and will globally cost an estimated US$ 1.5 billion, or 840 billion CFA Francs14. Regional dynamics led to international participation in efforts to respond to this universal concern, and the Johannesburg summit on sustainable development in September 200215 paved the way to a multilateral initiative: the United States of America and South Africa inspired, along with many other actors, the idea of a multilateral partnership for the protection of forests in the Congo basin. Considered as the left lung of the earth, these forests are a vegetable and wildlife reserve inextricably bound to human life16. According to Walter Kansteiner, they are a “world treasure,” a “world lung” necessary for preserving biologic diversity.

**Supreme court action to restrict detention powers is key**

**Reinhardt 6** (Stephen, Judge, U.S. Court of Appeals for the Ninth Circuit, "The Judicial Role in National Security," http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume86n5/documents/REINHARDTv.2.pdf)

The role of judges during times of war – whether it be a traditional war or a ¶ “war on terrorism” – is essentially no different than during times of peace: it is ¶ to interpret the law to the best of our ability, consistent with our ¶ constitutionally mandated role **and without regard to external pressure**. Among ¶ the differences in wartime for the judiciary, however, is one that involves a ¶ principle that is essential to the proper operation of the federal courts – **judicial** ¶ **independence**. In wartime, the need for judicial independence is **at its highest**, ¶ yet the very concept is **at its most vulnerable**, imperiled by threats both within ¶ and without the judiciary. Externally, there is pressure from the elected ¶ branches, and often the public, to afford far more deference than may be ¶ desirable to the President and Congress, as they wage wars to keep the nation ¶ safe. Often this pressure includes threats of retribution, including threats to ¶ strip the courts of jurisdiction. Internally, judges may question their own right ¶ or ability to make the necessary, potentially perilous judgments at the very ¶ time when it is most important that they exercise their full authority. This ¶ concern is exacerbated by the fact that the judiciary is essentially a ¶ conservative institution and judges are generally conservative individuals who ¶ dislike controversy, risk taking, and change. ¶ As Professor Stone can tell you, the history of judicial responses to threats ¶ to our liberties in wartime is mixed at best.1¶ Now, in the first years of the ¶ twenty-first century, the threat to judicial independence is **proving particularly troublesome**, and I am not referring just to those demagogues who rush to the ¶ steps of the Capitol to call for legislation stripping the federal courts of ¶ jurisdiction every time they do not like a decision bolstering the Bill of Rights. ¶ Rather, I refer to the chilling reality that, as we enter the fifth year of the socalled “Global War on Terror,” we are faced with a conflict with no projected ¶ or foreseeable end, and, thus, with the prospect that the war-related challenges ¶ to constitutional rights and to judicial independence, which typically subside ¶ with the end of a conflict, will continue unabated into the indefinite future. In ¶ an era of “war without end,” any inclination of judges to lessen the necessary ¶ constitutional vigilance will not only seriously jeopardize basic rights to ¶ privacy and liberty, but also **will make it more difficult to fend off** other, nonwar-related challenges to judicial **independence**, and as a result cause harm to ¶ all of our fundamental rights and liberties. ¶ Archibald Cox – who knew a thing or two about the necessity of ¶ government actors being independent – emphasized that an essential element ¶ of judicial independence is that “there shall be no tampering with the ¶ organization or jurisdiction of the courts for the purposes of controlling their ¶ decisions upon constitutional questions.”2¶ Applying Professor Cox’s precept ¶ to current events, we might question whether some recent actions and ¶ arguments advanced by the elected branches constitute threats to judicial ¶ independence. Congress, for instance, recently passed the Detainee Treatment ¶ Act.3¶ The Graham-Levin Amendment, which is part of that legislation, ¶ prohibits any court from hearing or considering habeas petitions filed by aliens ¶ detained at Guantanamo Bay.4¶ The Supreme Court has been asked to rule on ¶ whether the Act applies only prospectively, or whether it applies to pending ¶ habeas petitions as well. It is unclear at this time which interpretation will ¶ prevail.5¶ But if the Act is ultimately construed as applying to pending appeals, ¶ one must ask whether it constitutes “tampering with the . . . jurisdiction of the ¶ courts for the purposes of controlling their decisions,” which Professor Cox ¶ identified as a key marker of a violation of judicial independence. All of this, ¶ of course, is wholly aside from the question of whether Congress and the ¶ President may strip the courts of such jurisdiction prospectively. And it is, of ¶ course, also wholly apart from the Padilla case,6¶ in which many critics believe ¶ that the administration has played fast and loose with the courts’ jurisdiction in ¶ order to avoid a substantive decision on a fundamental issue of great ¶ importance to all Americans. ¶ Another possible **threat to judicial independence** involves the position taken ¶ by the administration regarding the scope of its war powers. In challenging ¶ cases brought by individuals charged as enemy combatants or detained at ¶ Guantanamo, the administration has argued that the President has “inherent ¶ powers” as Commander in Chief under Article II and that actions he takes ¶ pursuant to those powers are essentially not reviewable by courts or subject to ¶ limitation by Congress.7¶ The administration’s position in the initial round of ¶ Guantanamo cases was that no court anywhere had any jurisdiction to consider ¶ any claim, be it torture or pending execution, by any individual held on that ¶ American base, which is located on territory under American jurisdiction, for ¶ an indefinite period.8¶ The executive branch has also relied on sweeping and ¶ often startling assertions of executive authority in defending the ¶ administration’s domestic surveillance program, asserting at times as well a ¶ congressional resolution for the authorization of the use of military force. To ¶ some extent, such assertions carry with them a challenge to judicial ¶ independence, as they seem to rely on the proposition that a broad range of ¶ cases – those that in the administration’s view relate to the President’s exercise ¶ of power as Commander in Chief (and that is a broad range of cases indeed) – ¶ are, in effect, beyond the reach of judicial review. The full implications of the ¶ President’s arguments are open to debate, especially since the scope of the ¶ inherent power appears, in the view of some current and former administration ¶ lawyers, to be limitless. What is clear, however, is that the administration’s ¶ stance raises important questions about how the constitutionally imposed ¶ system of checks and balances should operate during periods of military ¶ conflict, **questions judges should not shirk from resolving**. ¶ The fundamental question, I suppose, is whether the role of the judge should ¶ change in wartime. The answer is that while our function does not change, the ¶ manner in which we perform the balancing of interests that we so often ¶ undertake in constitutional cases does. In times of national emergency, we ¶ must necessarily give greater weight in many instances to the governmental, ¶ more specifically the national security, interest than we might at other times. ¶ As courts have often recognized, the government’s interests in protecting the ¶ nation’s security are heightened during periods of military conflict. ¶ Accordingly, particular searches or detentions that might be unconstitutional ¶ during peacetime may well be deemed constitutional during times of war – not ¶ because the role of the judge is any different, and not because courts curtail ¶ their constitutionally mandated role, but because a governmental interest that ¶ may be insufficient to justify such deprivations in peacetime may be ¶ sufficiently substantial to justify that action during times of national ¶ emergency. **Courts must not**, however, at any time allow the balancing to turn ¶ into a routine licensing of unbridled and unsupervised governmental power.

#### Supreme court action is key to end indefinite detention and affirm the court’s duty and independence

Martin 13 (Ronald, Contributor @ Tenth Amendment Center, "Indefinite Detention is Patently Unconstitutional," http://tenthamendmentcenter.com/2013/06/27/indefinite-detention-is-patently-unconstitutional/#.Uhj8TJLqnoI)

In January 2012, New York Times Pulitzer Prize winning reporter Christopher Hedges filed a federal lawsuit against President Obama, challenging detention provisions in the National Defense Authorization Act (NDAA) of Fiscal Year 2012.¶ The Act authorized $662 billion in funding, “for defense of the United States and it’s interests abroad.” Central to Hedges’ suit, a controversial provision set forth in subsection 1021 of Title X, Sub-title (d) entitled “Counter-Terrorism,” authorizing indefinite military detention of individuals the government suspects are involved in terrorism, including U.S. citizens arrested on American soil.¶ Over the last two years, a broad coalition including the Tenth Amendment Center, the American Civil Liberties Union, the Bill of Rights Defense Committee, and many others formed in opposition to indefinite detention provisions, concerned with over-broad language open to wide interpretation and the growing scope of presidential authority. In support of Hedges, many of these individuals and organizations joined together as an Amicus Curiae, otherwise known as a Friend of the Court. The coalition filed an Amicus Brief supporting Hedges’ interpretation of the controversial issues abounding in Hedges v. Obama. The Amicus Curiae states, “Each entity is dedicated, inter alia (among other things), to the correct construction, interpretation, and application of the law.”¶ For those not familiar with an Amicus Brief, it is a document filed with a court by a person or group not directly involved in the case. The brief often contains information useful to a judge when evaluating the merits of a case and it becomes part of the official record. In addition to filing a brief, Amicus Curiae can involve itself in a case in many ways. It can contribute academic evaluations of subject matters, it can testify in a case, and on rare cases it can help contribute to oral arguments. Many times, state and local governments also join a case as a “Friend” if they believe it will impact them. This happened in Hedges v. Obama. A large number of concerned individuals and advocacy organizations enjoined the case as Amicus Curiae.¶ The Amicus Brief of this case commences by focusing on the ambiguity of the language in section 1021 of the 2012 NDAA.¶ “Rarely has a short statute been subject to more radically different interpretations than Section 1021 of the NDAA of 2012.”¶ The “Friends” contend the verbiage offers diametrically opposite meanings.¶ ”The Framers would be greatly shocked to hear the United States assert that an American President has power to place civilians in the U.S. or citizens abroad into military custody absent status as armed combatants. No President has ever held such power.”¶ As the Amicus Curiae implies, the language of this law is dangerously vague. Many believe the provisions of Section 1021 grant dictatorial powers to the federal government to arrest any American citizen without a warrant and indefinitely detain them without charge. Detainees can be shipped to the military’s offshore prisons and kept there until “the end of hostilities.”¶ Section 1021 defines a “covered person” as “one subject to detention” and “a person who was part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities against the United States or it’s coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” However, the law does not define “substantially supported” or “associated forces,” leaving those nebulous terms open to interpretation.¶ The White House and Senate sponsors maintain the Authorization for Use of Military Force (AUMF) previously granted presidential authority for indefinite detention. In their Appellant Brief, the Department of Justice contends that the NDAA does no more than “explicitly reaffirm…the President’s detention authority under AUMF,” a Congressional Joint Resolution passed Sept. 14, 2001.¶ In response to this claim, the plaintiffs’ Coalition rebuts, “If the Government’s theory was true, then the U.S. Senate spent weeks debating and enacting, and the U.S. Department of Justice has worked mightily to uphold a meaningless and unnecessary statute.”¶ The Amicus Curiae addresses a second issue.¶ “The Legislative History of the NDAA Reveals a Gap between the Clear Purpose and the Ambiguous Statutory Language. The NDAA detention provisions, and one amendment which was adopted creating subsection (e), were not drafted in haste. Rather, the legislative history suggests another reason for the stark difference of statutory interpretation.”¶ This section continues, contrasting the original Senate bill (S. 1253) that included limiting language excluding the ability of the government to detain citizens of the United States under the act and the final version of the NDAA. This limiting language was deleted in a substitute bill (S. 1867), by Senator Carl Levin (D-MI). The record shows that this limiting language was removed at the request of the president in order to keep the law consistent with the AUMF of 2001.¶ This fact stands in stark contrast to public statements made by Pres. Obama on the detention issue, including his signing statement.¶ “I want to clarify, that my Administration will not authorize the indefinite detention without trial of American citizens…My Administration will interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law.”¶ However in May 2012, Judge Katherine Forrest, (an Obama-appointed judge) ruled part of section 1021 unconstitutional.¶ “The plaintiffs do have standing, and that section 1021 is facially unconstitutional.”¶ In her ruling, Forrest asserted that the provision denies First and Fifth Amendment rights, and she granted a temporary restraining order against Section 1021 of the NDAA. The government responded by requesting that the judge reverse her ruling, claiming the plaintiffs did not have standing to bring the case against the government because they had yet to be indefinitely detained. And the administration argued that even if Mr. Hedges and the other plaintiffs did have standing, they were the only seven American citizens covered by the temporary restraining order.¶ In spite of the administration’s arguments, Judge Forrest returned a clarifying order, making it abundantly clear, without any equivocation, that the temporary restraining order applied to ALL American citizens. According to the judge, the government cannot indefinitely detain any American citizen without access to due process.¶ In September 2012, Judge Forrest issued a permanent injunction against indefinite detention of American citizens, but the Obama administration appealed and was granted a stay pending that appeal.¶ The next consequential argument forwarded in the Amicus Brief is that the 2001 AUMF is not a Constitutional Declaration of War.¶ “The Government misunderstands the Constitution which was written for a time of war, as well as a time of peace. There is only one provision in the Constitution which can be suspended in wartime conditions: the writ of habeus corpus, and that suspension requires an act of Congress. U.S. Constitution, Article I, Section 9. And there is only one wartime exception, that being the right to a Grand Jury indictment as set forth in the Fifth Amendment. The war power does not trump the rights and protections of the people in any other instances.”¶ “The Government’s sole support in attempt to sweep aside the Constitution’s Bill of Rights, is the Congressional declaration of war against the Imperial Department of Japan in World War II (Govt. Br., p.47), which the Government claims to have been: -stated in broadest terms, with no precise descriptions of who may be the subject of force (including detention) or under what circumstances, and without any express carve-outs for arguably protected speech. This pattern holds for every authorization for the use of military force in our nation’s history-including the AUMF.’”¶ Rather than offering support for the Government’s claim, the differences between the 2001 and 1941 declarations undermine it.¶ In contrast the AUMF provides: “that the President is authorized to use all necessary and appropriate force against those nations, organizations or persons he determines planned,authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” [Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001)§ 2(a)¶ The first and most obvious difference between the two resolutions is that the U.S. actually declared war against Japan. Even though the Government argues the Constitution “imposes no constraints on how the declaration should be worded, Congress has never been at a loss for words when declaring war from 1812 to 1941.'”¶ Secondly, the 1941 declaration “authorizes and directs” the President to take action, while the 2001 AUMF merely leaves it to the President’s discretion to “determine” the force necessary.¶ “In 1941, Congress instructed the President to use all of the nation’s military force and government resources to carry on war against a clearly identified enemy, while the 2001 AUMF empowered the President to identify the enemy."¶ Lastly, the 1941 declaration specified a time when the president’s authority ended, when the war was successfully terminated, while the AUMF set no definite time for the president’s power to cease. In the wake of 9/11, Congressman Ron Paul implored Congress to address the war declaration issue, but found little interest in the constitutional process.¶ “As the Apellees have demonstrated, the Constitution does not confer upon the President or upon Congress any power to subject civilians to detention by the military as AUMF and Section 1021 (b)(2) do, even if the nation is at war.”¶ Access to habeus corpus is “not a satisfactory remedy to the burden of military detention” for a citizen who is suspected of “substantially supporting a force associated with any enemy, al-Qaeda, the Taliban, or otherwise.” Not only is habeas relief unsatisfactory, imposing upon an American citizen the burden of seeking habeas relief to escape from military detention is constitutionally impermissible under the Treason Clause of Article III, Section 3. In Federalist No. 43, James Madison asserted that the Treason Clause must be understood as one of the enumerated powers of the federal government, placing severe limits on the legislative power not only to define the elements of treason, but to preclude Congress from evading the constitutional definition of treason by "new-fangled and artificial” definitions.¶ Lastly, the Amicus Brief discusses the judicial branch's duty to address constitutional issues in the case asserted by many states.¶ After the enactment of the NDAA of 2012, many state and local officials expressed opposition to the constitutional violations perceived in Section 1021. State legislators and local officials have taken different approaches in battling this unconstitutional overreach. Some states have passed non-binding resolutions, while others like Virginia and Alaska have enacted laws nullifying Section 1021 by “barring any state agency or political subdivision or employee or National Guard from knowingly aiding an agency of the armed forces of the United States in the unlawful NDAA detention of any citizen…”¶ “These efforts do not break new ground, they build on lessons learned since the beginning of the Republic. When the federal government breeches the bounds of its authority, the nation’s sovereign states can be expected to respond to protect the liberties of the people.” As Chief Justice John Marshall observed, "vesting such power in the courts requires a judge to look into the Constitution, examining it’s text to determine whether actions of the two other branches conform to the written instrument." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 178-79 (1803).¶ “In this case, the executive branch is arguing on behalf of the legislative branch that the judicial branch may not even look into the Constitution to determine if Section 1021 (b) (2) violates First and Fifth Amendments. As Chief Justice John Marshall responded in Marbury, the Government’s claim is too extravagant to be maintained.”¶ The appeals process continues and the case is expected to ultimately be heard by the Supreme Court. If the Plaintiff and it’s coalition are correct, then the district court’s conclusion that, “Section 1021(b)(2), and its companion subsections (d) and (e), differ materially from AUMF, creating a reasonable and objective fear of detention , and should be affirmed” as Unconstitutional.

#### Correlational studies prove - US judicial independence is modeled globally

Goldbach, Brake and Katzenstein 13 (Toby, Benjamin, and Peter, Doctor of the Science of Law (J.S.D.) at Cornell University Law School and was the Rudolf B. Schlesinger Research Fellow for 2011-2012 + foreign affairs officer at the U.S. Department of State, Walter S. Carpenter, Jr. Professor of International Studies at Cornell University, "The Movement of U.S. Criminal and Administrative Law: Processes of Transplanting and Translating," 20 Ind. J. Global Leg. Stud. 141, lexis)

The transplanting of foreign laws by some countries, however, reveals a transplant bias, whereby importing state actors operate with an unthinking receptivity to foreign law because of social conditions such as the general prestige, linguistic accessibility, and the training and experience of local lawyers. n39 Many of these factors have helped the transnational movement of U.S. law. Academic writers typically are most susceptible to the sway of grand foreign theories, whereas those following legal precedents are sometimes more resistant. Judges borrowing foreign rules will carefully weigh the pros and cons, while academics are more likely to be swept away by the logic of an elegant or innovative argument. n40 Economic factors can also play an important role. Economic efficiency has proven to be a powerful engine driving the process of transplanting law in legal domains such as competition and estate law. n41¶ The process of transplanting law emphasizes domestic differences, especially between adversarial common law systems and their inquisitorial civil law counterparts. As David Sklansky observed, "if scholars of comparative law agree on anything, it is the hazards of legal [\*151] transplants," most especially between civil and common-law systems. n42 Thus, the origin of a transplanted rule is one condition that can affect the process of legal transplanting. In general, transplants occur more readily within, rather than across, legal families. n43 The institutionalization of different legal cultures accounts for the persistence of legal families over time. n44 The closer states' legal systems are in terms of cost structure and constitutive rules, the more likely those states are to look to each other for legal innovations. n45 For example, though they lack an analysis of causal mechanisms specifying how transplants occur, correlational studies have shown a persistent relationship between legal family and observable phenomena such as financial development, n46 government ownership of banks, n47 burden of entry regulations, n48 incidence of military conscription, n49 government [\*152] ownership of the media, n50 formalism of judicial procedures, n51 and judicial independence. n52

### Plan

#### The United States federal judiciary should rule that the President of the United States lacks the authority to detain individuals indefinitely.

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### RSPEC 2AC

#### Counter-interpretation –

#### Judicial restriction means to reduce the scope of

Newman 8 (Pauline, Judge @ UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 545 F.3d 943; 2008 U.S. App. LEXIS 22479; 88 U.S.P.Q.2D (BNA) 1385; 2008-2 U.S. Tax Cas. (CCH) P50,621, IN RE BERNARD L. BILSKI and RAND A. WARSAW, lexis)

Id. at 315 (quoting U.S. Const., art. I, §8). The Court referred to the use of "any" in Section 101 ("Whoever invents or discovers any new and useful process . . . or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title"), and reiterated that the statutory language shows that Congress "plainly contemplated that the patent laws would be given wide scope." Id. at 308. The Court referred to the legislative intent to include within the scope of Section 101 "anything under the sun that is made by man," id. at 309 (citing S. Rep. 82-1979, at 5; H.R. Rep. 82-1923, at 6 (1952)), and stated that the unforeseeable future should not be inhibited by judicial restriction of the "broad general language" of Section 101: A rule that unanticipated inventions are without protection would conflict with the core concept of the patent law that anticipation undermines patentability. Mr. Justice Douglas reminded that the [\*981] inventions most benefiting mankind are those that push back the frontiers of chemistry, physics, and the like. Congress employed broad general language in [\*\*103] drafting §101 precisely because such inventions are often unforeseeable.

#### Aff is an example of a judicial restriction – we resitrict presidential war powers over detention policy – no reason we have to cite grounds

#### Infinitely regressive – there is no resolutional basis – it only says judicial restriction – no reason we have to specify – that’s unpredictable

#### No ground loss – structural disads linked to restrictions or plan topic area provide ground

#### Not a voting issue – if they win this it just means we should be forced to specify.

#### A2: Conditional

#### Plan isn’t conditional – we’ll always defend it gets implemented

#### A2: No Solvency

#### Doesn’t implicate solvency – plan solvency is based on review occurring, this still happens

## Terror

#### Threat of terror is high now – and they are opportunistic – treat any risk as absolute because they’ve conceded that we would have catastrophic retal that causes extinction – that’s Hoffman and ayson

### A2: Threat Low/Your Cards Say Syria

#### The threat of terrorism is high now

Kean and Hamilton 13 (September 9, Former New Jersey governor Tom Kean and Indiana congressman Lee Hamilton, now co-chairs of the Bipartisan Policy Center's Homeland Security Project, served as chairman and vice chairman of the 9/11 Commission “Terror threat far different from 2001” <http://www.usatoday.com/story/opinion/2013/09/09/tom-kean-and-lee-hamilton-on-terror-anniversary/2762527/>)

Twelve years ago this week the Islamist terrorist group al-Qaeda launched four coordinated attacks on our country. We still mourn the 2,977 innocent victims killed that fateful morning when our nation was shaken to its very core. Today, the threat of terrorism is dramatically different from 2001. The leadership of al-Qaeda in Pakistan and Afghanistan has been decimated by drone strikes. Affiliates in Yemen and Somalia have also suffered significant losses as a result of counterterrorism operations. The threat, however, is evolving, as outlined in a report, "Jihadist Terrorism: A Threat Assessment," which we are releasing Monday through a project at the Bipartisan Policy Center, which we co-chair. Al-Qaeda and sympathetic groups are situated in many more countries, maintaining a presence in 16 theaters of operation, including Iraq, North Africa, Mauritania, Mali, Nigeria, Niger and Syria. Until now, the threat from these lethal offshoots against the United States has been confined to attacks against U.S. diplomatic outposts and Western economic interests abroad. The slaying of U.S. officials in Benghazi, Libya, one year ago and the attack on a gas facility in Algeria earlier this year, are two notable examples. But it is important to understand that no al-Qaeda threat has ever remained purely localized, as shown by the recent al-Qaeda in the Arabian Peninsula threat in late July that led to the closure of 22 U.S. diplomatic facilities in 17 countries in the Middle East, Africa and South Asia. Instability in the Middle East is reaching explosive levels. The civil war in Syria may provide al-Qaeda with an opportunity to regroup, train and plan operations. Foreign fighters hardened in that conflict could eventually destabilize the region or band together to plot attacks against the West. In Egypt, the military overthrow of the Mohamed Morsi government and recent mass killing of Islamist protestors will inflame and possibly radicalize Islamists, turning them toward al-Qaeda's rejection of democracy. It is not a stretch to think that some of their animosity may be directed at the U.S. for its decades-long support of the Egyptian military. Here at home, the threat has shifted to individuals who are radicalized over the Internet, often inspired by al-Qaeda's jihadist message. While these lone wolves might not be able to kill in mass numbers, the Boston Marathon bombings and the Fort Hood slayings show that alienated persons influenced partially by online messaging can cause great damage. While the core of al-Qaeda is reeling from 12 years of relentless pressure, its ideology is still winning new converts even on our soil. The future face of terrorism is decentralized and more diffuse, creating a challenge for law enforcement because it can surface anywhere, often without warning.

#### Terrorism causes extinction- improving tech and inefficient response mechanisms

Nathan Myhrvold '13, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

Several powerful trends have aligned to profoundly change the way that the world works. Technology ¶ now allows stateless groups to organize, recruit, and fund ¶ themselves in an unprecedented fashion. That, coupled ¶ with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be ¶ lead players on the world stage. They may act on their own, ¶ or they may act as proxies for nation-states that wish to ¶ duck responsibility. Either way, stateless groups are forces ¶ to be reckoned with.¶ At the same time, a different set of technology trends ¶ means that small numbers of people can obtain incredibly ¶ lethal power. Now, for the first time in human history, a ¶ small group can be as lethal as the largest superpower. Such ¶ a group could execute an attack that could kill millions of ¶ people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even ¶ to drive the human race to extinction. Our defense establishment was shaped over decades to ¶ address what was, for a long time, the only strategic threat ¶ our nation faced: Soviet or Chinese missiles. More recently, ¶ it has started retooling to address tactical terror attacks like ¶ those launched on the morning of 9/11, but the reform ¶ process is incomplete and inconsistent. A real defense will ¶ require rebuilding our military and intelligence capabilities from the ground up. Yet, so far, strategic terrorism has ¶ received relatively little attention in defense agencies, and ¶ the efforts that have been launched to combat this existential threat seem fragmented.¶ History suggests what will happen. The only thing ¶ that shakes America out of complacency is a direct threat ¶ from a determined adversary that confronts us with our ¶ shortcomings by repeatedly attacking us or hectoring us for ¶ decades.

## JI

### O.V

#### They’ve conceded several independence extinction impacts specifically that the African economy is key to the global economy that’s the IMF president turns their debt ceiling scenarios

### A2: Liptak

#### US is modeled globally – our CJA evidence says rulers are JUSTIFYING THEIR ABUSES by citing US detention policy – and we read evidence specific to latin America and Africa about modeling – threshold analysis – only evaluate regionally specific evidence

#### Correlational studies prove - US judicial independence is modeled globally

That’s 1ac goldbach – more recent studies have shown a link between US and global JI

Goldbach, Brake and Katzenstein 13 (Toby, Benjamin, and Peter, Doctor of the Science of Law (J.S.D.) at Cornell University Law School and was the Rudolf B. Schlesinger Research Fellow for 2011-2012 + foreign affairs officer at the U.S. Department of State, Walter S. Carpenter, Jr. Professor of International Studies at Cornell University, "The Movement of U.S. Criminal and Administrative Law: Processes of Transplanting and Translating," 20 Ind. J. Global Leg. Stud. 141, lexis)

The transplanting of foreign laws by some countries, however, reveals a transplant bias, whereby importing state actors operate with an unthinking receptivity to foreign law because of social conditions such as the general prestige, linguistic accessibility, and the training and experience of local lawyers. n39 Many of these factors have helped the transnational movement of U.S. law. Academic writers typically are most susceptible to the sway of grand foreign theories, whereas those following legal precedents are sometimes more resistant. Judges borrowing foreign rules will carefully weigh the pros and cons, while academics are more likely to be swept away by the logic of an elegant or innovative argument. n40 Economic factors can also play an important role. Economic efficiency has proven to be a powerful engine driving the process of transplanting law in legal domains such as competition and estate law. n41¶ The process of transplanting law emphasizes domestic differences, especially between adversarial common law systems and their inquisitorial civil law counterparts. As David Sklansky observed, "if scholars of comparative law agree on anything, it is the hazards of legal [\*151] transplants," most especially between civil and common-law systems. n42 Thus, the origin of a transplanted rule is one condition that can affect the process of legal transplanting. In general, transplants occur more readily within, rather than across, legal families. n43 The institutionalization of different legal cultures accounts for the persistence of legal families over time. n44 The closer states' legal systems are in terms of cost structure and constitutive rules, the more likely those states are to look to each other for legal innovations. n45 For example, though they lack an analysis of causal mechanisms specifying how transplants occur, correlational studies have shown a persistent relationship between legal family and observable phenomena such as financial development, n46 government ownership of banks, n47 burden of entry regulations, n48 incidence of military conscription, n49 government [\*152] ownership of the media, n50 formalism of judicial procedures, n51 and judicial independence. n52

#### Liberal, progressive rulings help restore US constitutional influence abroad – Liptak concedes

Cohen 13 (Drew, law clerk to the Chief Justice of the Constitutional Court of South Africa, "Saving the Constitution's Reputation Abroad," 7/10, http://www.usnews.com/opinion/articles/2013/07/10/how-the-supreme-courts-doma-decision-saved-the-constitutions-status-abroad)

The irony of founding a new constitutional right to equal marriage on an American system that itself did not recognize it was not lost on the Deputy Chief Justice of the South African Constitutional Court, Dikgang Moseneke, who, in a speech to Georgetown Law students last year said, "let me to display patriotic vanity about our constitutional architecture. Respectable academic and judicial opinion, other than South African, considers our final constitution a reasonable model for progressive, modern constitution-making." The American model's global influence, he said, was "in decline."¶ In fact, other foreign courts with progressive constitutions have begun to shy away from relying on American law to support their judgments. A 2012 study by David S. Law of Washington University in St. Louis and Mila Versteeg of the University of Virginia found that "the U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere." Perhaps this is due to the fact that, as the New York Times' Adam Liptik wrote, "the rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber."

#### Liberal rulings are vital in re-establishing US constitutional pre-eminence globally - squo jurisprudence has undercut the US model – your author

Liptak 8 (Adam, Supreme Court correspondent @ NYT, "U.S. Court Is Now Guiding Fewer Nations," 9/17, http://users.wfu.edu/palmitar/Courses/ComparativeLaw/CourseReadings/Assign01-Lawrence-v-Texas.htm)

The trend abroad, moreover, is toward decisions of a distinctly liberal sort in areas like the death penalty and gay rights. “What we have had in the last 20 or 30 years,” Professor Fried said, “is an enormous coup d’état on the part of judiciaries everywhere — the European Court of Human Rights, Canada, South Africa, Israel.” In terms of judicial activism, he said, “they’ve lapped us.”¶ The rightward shift of the Supreme Court may partly account for its diminished influence. Twenty years ago, said Anthony Lester, a British barrister, the landmark decisions of the court were “studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C.”¶ That is partly because the foundational legal documents of many of the world’s leading democracies are of quite recent vintage. The Indian Constitution was adopted in 1949, the Canadian Charter of Rights and Freedoms in 1982, the New Zealand Bill of Rights in 1990 and the South African Constitution in 1996. All drew on the American constitutional principles.¶ Particularly at first, courts in those nations relied on the constitutional jurisprudence of the United States Supreme Court, both because it was relevant and because it was the essentially the only game in town. But as constitutional courts around the world developed their own bodies of precedent and started an international judicial conversation, American influence has dropped.¶ Judge Guido Calabresi of the federal appeals court in New York, a former dean of Yale Law School, has advocated continued participation in that international judicial conversation.¶ “Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice,” he wrote in a 1995 concurrence that cited the German and Italian constitutional courts.¶ “These countries are our ‘constitutional offspring,’ ” Judge Calabresi wrote, “and how they have dealt with problems analogous to ours can be very useful to us when we face difficult constitutional issues. Wise parents do not hesitate to learn from their children.” (Judge Calabresi is Professor Calabresi’s uncle.)¶ The openness of some legal systems to foreign law is reflected in their constitutions. The South African Constitution, for instance, says that courts interpreting its bill of rights “must consider international law” and “may consider foreign law.” The constitutions of India and Spain have similar provisions.¶ Many legal scholars singled out the Canadian Supreme Court and the Constitutional Court of South Africa as increasingly influential.¶ “In part, their influence may spring from the simple fact they are not American,” Dean Slaughter wrote in a 2005 essay, “which renders their reasoning more politically palatable to domestic audience in an era of extraordinary U.S. military, political, economic and cultural power and accompanying resentments.”¶ Frederick Schauer, a law professor at the University of Virginia, wrote in a 2000 essay that the Canadian Supreme Court had been particularly influential because “Canada, unlike the United States, is seen as reflecting an emerging international consensus rather than existing as an outlier.”¶ In New Zealand, for instance, Canadian decisions were cited far more often than those of any other nation from 1990 to 2006 in civil rights cases, according to a recent study in The Otago Law Review in Dunedin, New Zealand.¶ “As Canada’s judges are, by most accounts, the most judicially activist in the common-law world — the most willing to second-guess the decisions of the elected legislatures — reliance on Canadian precedents will worry some and delight others,” the study’s authors wrote.¶ American precedents were cited about half as often as Canadian ones. “It is surprising,” the authors wrote, “that American cases are not cited more often, since the United States Bill of Rights precedents can be found on just about any rights issue that comes up.”

#### Liptak has no conclusive evidence and misinterprets his primary sources

Friedman 8 (Joshua, former editor of The Atlantic Monthly and Boston Review, "Jurisprudence, American Style," 9/23, http://www.cjr.org/campaign\_desk/jurisprudence\_american\_style.php?page=all)

It may well be true that the U.S. Supreme Court is losing its influence in the wider world. But you won’t find much evidence for the proposition in the latest (and probably last) installment of Adam Liptak’s generally praiseworthy “American Exception” series in The New York Times. The article, headlined “U.S. Court, a Longtime Beacon, Is Now Guiding Fewer Nations” and published on page one of the September 18 edition, argues that “a diminishing number of foreign courts seem to pay attention to the writings of American justices,” while attempting to link this trend to the domestic debate over whether the Supreme Court should ever cite foreign law. But in 2,500 words, the piece gives only two concrete pieces of evidence for the apparent trend—statistics about declining court citations in Canada and Australia. Meanwhile, the article proposes at least six possible causes, without doing much to demonstrate the validity of any of them. Perhaps American legal influence is declining because the new authority of the European Court of Human Rights has rendered U.S. Supreme Court decisions irrelevant in certain crucial areas; or because “new and sophisticated” constitutional courts elsewhere have little regard for the old ways; or because slightly older constitutional courts are maturing and developing their own bodies of precedent; or because the unpopularity of the Bush administration has led foreign courts to snub American judgment; or because the Rehnquist and Roberts courts’ conservatism is out of sync with the prevailing international liberalism; or because some U.S. Supreme Court justices vocally oppose citing foreign law, making foreign judges want to return the favor. This last suggestion is the most innovative. And while the article devotes nearly 1,000 words to a largely familiar discussion of the pros and cons of citing foreign law, it is strangely nonchalant about establishing a connection between the U.S. Supreme Court’s resistance to foreign citations and a reciprocal neglect by foreign judges. As Michael Stokes Paulsen, a professor of law at the University of St. Thomas, writes on the Balkinization law blog, “What unites the two phenomena, loosely, is the idea of some sort of U.S. balance-of-trade in the export-import market for constitutional interpretation.” Even the two pieces of evidence the article manages to muster for its central claim seem shaky: From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six. Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72. Are these numbers significant or not? At least the Canadian statistic consists of nineteen data points. But do the two data points borrowed from the Australian study demonstrate a meaningful trend? Russell Smyth, the economist who performed the study, wanted to analyze citation patterns over a century, so he counted citations from one year in each decade as a representative sample: 1905, 1915, 1925, and so on, through 2005. He found that between 1905 and 1975, the number of American citations never rose above sixteen; in both 1965 and 1975 the number was twelve. But ten years later, in 1985, it jumped all the way up to 105. In 1995 it jumped again, to 208. Why the large increases in 1985 and 1995? And is the decline in 2005 significant? “I think Adam Liptak has used my study in a slightly misleading way,” Smyth told me over e-mail. The 2005 decline should be considered in light of the 1985 and 1995 increases, he said, which followed directly from the passage of the Australia Act of 1985-1986, severing the remaining legal ties between Australia and the United Kingdom. It was, Smyth said, “the beginning of attempts to forge a national legal identity” and led to greater citation of foreign, but non-British, jurisprudence. As for the 2005 decline, Smyth doubts its significance as an indicator of American legal influence. Australian state courts cite relatively few foreign decisions, period: those 208 citations from 1995 were only 1.37 percent of the total citations, foreign and domestic. (The seventy-two from 2005 were 0.47 percent of the total.) The Australian High Court may well still be citing as many American cases as ever, Smyth said. (A study of High Court decisions shows a continuing upward trend in various sorts of American citations through 2000.) Are the Canadian numbers more persuasive? Peter McCormick, a Canadian political scientist and the author of a statistical analysis of Canadian Supreme Court citations, told me that in Canada, too, there was a large increase in American citations in the 1980s and 1990s that makes the decrease of the 2000s seem less significant. Looking at a graph of the past century, he said, “the general feeling is a long-term level at 3% or below, with a temporary ‘blip’ of a dozen or so years centered on 1990.” His best explanation for the blip is the passage of the Canadian Charter of Rights and Freedoms in 1982, combined with the presence in the 1980s and 1990s of several Canadian Supreme Court justices who earned graduate law degrees in the United States. (The last of this group left the bench in 1997.) Based on his research, McCormick found it particularly unlikely that Canadian judges were hesitating to cite the U.S. Supreme Court because of its current conservatism. “The citations are splendidly scattered across a very extended period, and across a very broad range of judges,” he said. “So if I am a [Canadian Supreme Court] judge who knows the US jurisprudence and I feel like citing that Court even though I don’t like its current or recent direction, I can just keep looking until I find a judge (or at least a finding or a rationale) that I do like.” The most frequently cited U.S. Supreme Court justice, through the 2000s, was Byron White, who served between 1962 and 1993. Justice Horace Gray, who served from 1882 to 1902, was in the top ten. Despite its flaws, Liptak’s article collects a number of strong quotations and makes some worthwhile points. In one of the article’s most persuasive moments, we are reminded why the worst fears about foreign citation are overblown: The controversy over the citation of foreign law in American courts is freighted with misconceptions. One is that the practice is somehow new or unusual. The other is that to cite such a decision is to be bound by it. … Indeed, American judges cite all sorts of things in their decisions—law review articles, song lyrics, television programs. State supreme courts cite decisions from other states, though a decision from Wisconsin is no more binding in Oregon than is one from Italy. But the extended discussion of the controversy over foreign citation mostly serves to muddy the article’s core argument. Indeed, no one quoted in the article asserts the connection that Liptak wants to make between American justices being reluctant to cite foreign precedent and foreign judges declining to cite them in return. (Former U.S. Supreme Court Justice Sandra Day O’Connor comes the closest when she says, “When U.S. courts are seen to be cognizant of other judicial systems, our ability to act as a rule-of-law model for other nations will be enhanced.”) At a crucial point early in the article, a misleading arrangement of quotes gives the incorrect impression that Australian High Court Justice Michael Kirby is making this connection. The article quotes former Israeli Supreme Court Chief Justice Aharon Barak as saying that the U.S. Supreme Court “is losing the central role it once had among courts in modern democracies,” and then immediately quotes Kirby as follows: Justice Michael Kirby of the High Court of Australia said that his court no longer confined itself to considering English, Canadian and American law. “Now we will take information from the Supreme Court of India, or the Court of Appeal of New Zealand, or the Constitutional Court of South Africa,” he said in an interview published in 2001 in The Green Bag, a legal journal. “America” he added, “is in danger of becoming something of a legal backwater.” Kirby’s final pronouncement sounds like it means that the Australian High Court no longer has much use for the U.S. Supreme Court. But in the full interview, it is clear that what Kirby means is that by ignoring the rest of the world, America is impoverishing its own legal imagination: The best thoughts, the most creative thoughts, will come from outside of your magic circle. It’s therefore important to stimulate your mind with analogous reasoning. … One problem in the United States, in my experience, is that lawyers are not as stimulated as in other countries by external forces that really challenge their thinking. England, which is the source of the legal system in both our countries, is being fundamentally challenged now because of its association with Europe and the civil law system. Other countries, similarly, are being challenged by the forces of globalism. America is in danger, I think, of becoming something of a legal backwater in a world of such radical global changes, and it’s not good enough simply to go to a lawyers’ conference in London and feel like you’ve been globalised. You’ve got to realize that the legal systems of Asia, Latin America and Africa are speaking to us as well. This notion that attention to foreign jurisprudence can stimulate good legal thinking, which Barak also asserts, is an interesting one, and Liptak might have written a more focused article about whether, as some believe, U.S. Supreme Court decisions are becoming increasingly narrow and esoteric, and the causes and implications of that trend for both American and foreign jurisprudence.

### A2: no impact to disease

#### Disease pandemics will cause mass deaths – the black plague, ebola, new mutations could END CIVILIZATION – their evidence doesn’t account for new pathogens and biological agents

### A2: Burnout

#### No burnout

**Torrey and Yolken 5** E. Fuller and Robert H, Directors Stanley Medical Research Institute, 2005, Beasts of the Earth: Animals, Humans and Disease, pp. 5-6

The outcome of this marriage, however, is not as clearly defined as it was once thought to be. For many years, it was believed that microbes and human slowly learn to live with each other as microbes evolve toward a benign coexistence wit their hosts. Thus, the bacterium that causes syphilis was thought to be extremely virulent when it initially spread among humans in the sixteenth century, then to have slowly become less virulent over the following three centuries. This reassuring view of microbial history has recently been challenged by Paul Ewald and others, who have questioned whether microbes do necessarily evolve toward long-term accommodation with their hosts. Under certain circumstances, Ewald argues, “Natural selection may…favor the evolution of extreme harmfulness if the exploitation that damages the host [i.e. disease] enhances the ability of the harmful variant to compete with a more benign pathogen.” The outcome of such a “marriage” may thus be the murder of one spouse by the other. In eschatological terms, this view argues that a microbe such as HIV or SARS virus may be truly capable of eradicating the human race.

### A2: African wars don’t escalate

#### Wars will escalate – all of the superpowers have major stakes in Africa which will incentivize them to get involved

### A2: Latin America doesn’t escalate

#### Instability escalates – 1ac evidence indicates that latin American instability prevents us from managing superpower involvement and impairs our ability to successfully deal with problems elsewhere – latin America is a STRATEGIC PIVOT POINT and the Us will inevitably be drawn in – that’s Sabatini

## Solvency

### P/V

#### Posner and Vermeule are wrong---external checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

### A2: Obama SideSteps

#### Be skeptical of this argument – this evidence is talking about why expiration of the AUMF won’t limit detention powers – a judicial restriction making indefinite detention unconstitutional is fundamentally different

#### And judicial review checks – the courts would strike down sidestepping – that’s the aff

### Legit

#### Legitimacy resilient – single decisions don’t matter

Grosskopf 98 (Anke and Jeffrey Mondak, Professor of Political Science – University of Pittsburgh and Florida State University, “Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court”, Political Research Quarterly, 51(3), September)

Opinion about the Supreme Court may influence opinion about the Court’s decisions, but is the opposite true? Viewed from the perspective of the Court’s justices, it would be preferable if public reaction to rulings did not shape subsequent levels of support for the Court. If opinion about the Court were fully determined by early political socialization and deeply rooted attachments to democratic values, then justices would be free to intervene in controversial policy questions without risk that doing so would expend political capital. Consistent with this perspective, a long tradition of scholarship argues that the Supreme Court is esteemed partly because it commands a bedrock of public support or a reservoir of goodwill, which helps it to remain legitimate despite occasional critical reaction to unpopular rulings (Murphy and Tanenhaus 1958; Easton 1965, 1975; Caldeira 1986; Caldiera and Gibson 1992). The sources of this diffuse support are usually seen as rather stable and immune from short-term influences, implying that evaluations of specific decisions are of little or no broad importance. For instance, Caldeira and Gibson (1992) find that basic democratic values, not reactions to decisions, act as the strongest determinants of institutional support.

### Weka court turn env

Prefer our evidence- only our evidence is specific to the environment in the cong- their turn is nonunique because the judiciary is weak now – it’s try or die for the aff they’ve conceded the extinction impact

### A2: Congress Sidesteps

#### Congressional sidestepping doesn’t allow for continued indefinite detention our Reinhardt evidence indicates that judicial checks will be enough to ensure that detention is not INDEFINITE – our evidence specific cites the indefinite nature of detention as a reason for the case harms

#### Congressional backlash is irrelevant – there’s no impact to this and judicial indepdnence turns their arguments

## Off

### K – 2AC

#### Perm do both – solves the residual links

#### doesn’t cause war – it allows for emancipation that creates surival

Ken Booth, visiting researcher - US Naval War College, 2005, Critical Security Studies and World Politics, p. 22

The best starting point for conceptualizing security lies in the real conditions of insecurity suffered by people and collectivities. Look around. What is immediately striking is thatsome degree of insecurity, as a life-determining condition, is universal. To the extent an individualor groupis insecure, to the extent their life choices and changes are taken away; thisis because of the resources and energy they need to invest in seeking safety from domineering threats–whether these are the lack of food for one’s children, or organizing to resist a foreign aggressor.The corollary of the relationship between insecurity and a determined life is that a degree of security creates life possibilities. Security might therefore be conceived as synonymous with opening up space in people’s lives. This allows for individual and collective human becoming–the capacity to have some choice about living differently–consistent with the same but different search by others.Two interrelated conclusion follow from this. First, security can be understood as an instrumental value; it frees its possessors to a greater or lesser extent from life-determining constraints and so allows different life possibilities to be explored. Second,security is not synonymous simply with survival. One can survive without being secure (the experience of refugees in long-term camps in war-torn parts of the world, for example). Security is therefore more than mere animal survival(basic animal existence). It is survival-plus, the plus being the possibility to explore human becoming. As an instrumental value, security is sought because it free people(s)to some degree to do other than deal with threats to their human being. The achievementof a levelof security–and security is always relative –gives to individuals and groups some time, energy, and scope to choose to beor become,other than merely survivingas human biological organisms. Security is an important dimension of the process by which the human species can reinvent itselfbeyond the merely biological.

#### No link – we’re detaining terrorists in the status quo because we think that they’re a threat to our security – that devalues their lives and causes human rights abuses \*globally\* - the aff is a net decrease in security

#### Framework – evaluate the aff vs. status quo or a competitive policy option. That’s best for fairness and predictability – there are too many frameworks to predict and they moot all of the 1ac – makes it impossible to be aff. Only our framework solves activism.

#### Perm do the plan and the alternative

#### . The state will co-opt the alternative and make things worse.

**McCormack 10** (Tara, Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster, *Critique, Security and Power: The political limits to emancipatory approaches*, page 137-138)

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals has served to **enforce international power inequalities** rather than lessen them. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have no way of controlling or influencing these international institutions or powerful states. This shift away from the pluralist security framework has not challenged the status quo, which may help to explain why major international institutions and states can easily adopt a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). Without concrete engagement and analysis, however, the critical project is undermined and critical theory becomes nothing more than a **request that people behave in a nicer way** to each other. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered renders them actually **unable to engage** with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

#### Judge Choice – you can vote for any representation that we present, but none of them are necessarily tied to the plan – just reject the bad representations and vote for the good ones – this is justified by the fact that they get to kick their representations because of conditionality.

**Judicial Review is key to preventing torture**

**Amnesty International** USA, Guantanamo, and Beyond: The Continuing Pursuit of Unchecked Executive Power, May 13, 20**05**, http://web.amnesty.org/library/Index/ENGAMR510632005

Judicial review of the lawfulness of detentions is a fundamental safeguard against arbitrary detention, torture and ill-treatment, and "disappearance". Unsurprisingly, then, with the US courts having been kept out of reviewing the cases for more than three years, there is evidence that all these categories of abuse have occurred at the hands of US authorities in the "war on terror". Indeed, Amnesty International believes that abuses have been the result of official policies and policy failures and linked to the executive decision to leave detainees unprotected by not only the courts, but also by the prohibition on torture and other cruel, inhuman or degrading treatment as defined under international humanitarian and human rights treaties binding on the USA. The US administration still does not believe itself legally bound by the Geneva Conventions in relation to the detainees in Guantánamo, Afghanistan and in secret locations, by customary international law, or by the human rights treaty prohibition on the use of cruel, inhuman or degrading treatment in the case of foreign detainees in US custody held outside of US sovereign territory. Nor has it expressly abandoned the notion that the President may in times of war ignore all the USA’s international legal obligations and order torture, or that torturers may be exempted from criminal liability by entering a plea of "necessity" or "self-defence" (see below).

#### Torture is a deontological evil that must be rejected

Oren **Gross,** Professor, Law, University of Minnesota, MINNESOTA LAW REVIEW, June 20**04**, p. 1492-1493.

Absolutists - those who believe that an unconditional ban on torture ought to apply without exception regardless of circumstances - often base their position on deontological grounds. For adherents of the absolutist view of morality, torture is intrinsically wrong. It violates the physical and mental integrity of the person subjected to it, negates her autonomy, and deprives her of human dignity. It reduces her to a mere object, a body from which information is to be extracted; it coerces her to act in a manner that may be contrary to her most fundamental beliefs, values, and interests, depriving her of any choice and controlling her voice. Torture is also wrong because of its depraving and corrupting effects on individual torturers and society at large. Moreover, torture is an evil that can never be justified or excused. Under no circumstances should the resort to torture be morally acceptable or legally permissible. It is a reprehensible action whose wrongfulness may never be assuaged or rectified morally even if the consequences of taking such action in any particular case are deemed to be, on the whole, good. Indeed, one may argue that the inherent wrongfulness of torture and possible good consequences are incommensurable, i.e., they cannot be measured by any common currency and therefore cannot be compared, or balanced, one against the other. The conclusion drawn from such a claim is that "the wrong of torture can be taken as a trump or side constraint on welfare maximization in all possible cases."

#### --Turn: the alt causes the security sector to be dominated by the most conservative policymakers.

Olav. F. Knudsen, Prof @ Södertörn Univ College, ‘1 [*Security Dialogue* 32.3, “Post-Copenhagen Security Studies: Desecuritizing  Securitization,” p. 366]

A final danger in focusing on the state is that of building the illusion that  states have impenetrable walls, that they have an inside and an outside, and  that nothing ever passes through. Wolfers’s billiard balls have contributed to  this misconception.   But the state concepts we should use are in no need of  such an illusion. Whoever criticizes the field for such sins in the past needs to  go back to the literature. Of course, we must continue to be open to a frank  and unbiasedassessment of the transnational politics which significantly in-  fluence almost every issue on the domestic political agenda. The first decade  of my own research was spent studying these phenomena – and I disavow  none of my conclusions about the state’s limitations. Yet I am not ashamed to  talk of a domestic political agenda. Anyone with a little knowledge of Euro-  pean politics knows that Danish politics is not Swedish politics is not German  politics is not British politics. Nor would I hesitate for a moment to talk of the  role of the state in transnational politics, where it is an important actor, though  only one among many other competing ones. In the world of transnational  relations, the exploitation of states by interest groups – by their assumption of  roles as representatives of states or by convincing state representatives to  argue their case and defend their narrow interests – is a significant class of  phenomena, today as much as yesterday. Towards a Renewal of the Empirical Foundation  for Security Studies  Fundamentally, the sum of the foregoing list of sins blamed on the Copen-  hagen schoolamounts to a lack of attention paid to just that ‘reality’ of security which Ole Wæver consciously chose to leave aside a decade ago in order  to pursue the politics of securitization instead. I cannot claim that he is void of  interest in the empirical aspects of security because much of the 1997 book is  devoted to empirical concerns. However, the attention to agenda-setting –  confirmed in his most recent work – draws attention away from the important issues we need to work on more closely if we want to contribute to a better understanding of European security as it is currently developing.  That inevitably requires a more consistentinterest in security policy in the  making – not just in the development of alternative security policies. The dan-  ger here is that, as alternative policies are likely to fail grandly on the political  arena, crucial decisions may be made in the ‘traditional’ sector of security  policymaking, unheeded by any but the most uncritical minds.

#### Case is a DA to the alt – overwhelming global problems like heg and economic decline inevitably co-op their revolution because resources and survival become the number 1 issue

#### Utopian fiat bad – impossible to predict, no literature supports it, and is impossible to implement.

#### Reps don't shape reality.

**Balzacq 5** (Thierry, Professor of Political Science and International Relations at Namur University, “The Three Faces of Securitization: Political Agency, Audience and Context” European Journal of International Relations, London: Jun 2005, Volume 11, Issue 2)

However, despite important insights, this position remains highly disputable. The reason behind this qualification is not hard to understand. With great trepidation my contention is that one of the main distinctions we need to take into account while examining securitization is that between 'institutional' and 'brute' threats. In its attempts to follow a more radical approach to security problems wherein threats are institutional, that is, mere products of communicative relations between agents, the CS has neglected the importance of 'external or brute threats', that is, threats that **do not depend** on language mediation to be what they are - hazards for human life. In methodological terms, however, any framework over-emphasizing either institutional or brute threat risks losing sight of important aspects of a **multifaceted phenomenon**. Indeed, securitization, as suggested earlier, is successful when the securitizing agent and the audience reach a common structured perception of an ominous development. In this scheme, there is no security problem except through the language game. Therefore, how problems are 'out there' is exclusively contingent upon how we linguistically depict them. This is not always true. For one, language **does not construct** reality; at best, it shapes our perception of it. Moreover, it is **not theoretically useful** nor is it **empirically credible** to hold that what we say about a problem would determine its essence. For instance, what I say about a typhoon would not change its essence. The consequence of this position, which would require a deeper articulation, is that some security problems are the attribute of the development itself. In short, threats are not only institutional; some of them can actually wreck entire political communities **regardless of** the use of language. Analyzing security problems then becomes a matter of understanding how external contexts, including external objective developments, affect securitization. Thus, far from being a departure from constructivist approaches to security, external developments are central to it.

#### The alternative is a goal - not a mechanism to create that goal – their repoliticization never moves beyond the seminar room

Jones 99 (Richard Wyn, Lecturer in the Department of International Politics – University of Wales, Security, Strategy, and Critical Theory, CIAO, http://www.ciaonet.org/book/wynjones/wynjones06.html)

Because emancipatory political practice is central to the claims of critical theory, one might expect that proponents of a critical approach to the study of international relations would be reflexive about the relationship between theory and practice. Yet their thinking on this issue thus far does not seem to have progressed much beyond **grandiose statements of intent**. There have been no systematic considerations of how critical international theory can help generate, support, or sustain emancipatory politics beyond the seminar room or conference hotel. Robert Cox, for example, has described the task of critical theorists as providing “a guide to strategic action for bringing about an alternative order” (R. Cox 1981: 130). Although he has also gone on to identify possible agents for change and has outlined the nature and structure of some feasible alternative orders, he has not explicitly indicated whom he regards as the addressee of critical theory (i.e., who is being guided) and thus how the theory can hope to become a part of the political process (see R. Cox 1981, 1983, 1996). Similarly, Andrew Linklater has argued that “a critical theory of international relations must regard the practical project of extending community beyond the nation–state as its most important problem” (Linklater 1990b: 171). However, he has little to say about the role of theory in the realization of this “practical project.” Indeed, his main point is to suggest that the role of critical theory “is not to offer instructions on how to act but to reveal the existence of unrealised possibilities” (Linklater 1990b: 172). But the question still remains, reveal to whom? Is the audience enlightened politicians? Particular social classes? Particular social movements? Or particular (and presumably particularized) communities? In light of Linklater’s primary concern with emancipation, one might expect more guidance as to whom he believes might do the emancipating and how critical theory can impinge upon the emancipatory process. There is, likewise, little enlightenment to be gleaned from Mark Hoffman’s otherwise important contribution. He argues that critical international theory seeks not simply to reproduce society via description, but to understand society and change it. It is both descriptive and constructive in its theoretical intent: it is both an intellectual and a social act. It is not merely an expression of the concrete realities of the historical situation, but also a force for change within those conditions. (M. Hoffman 1987: 233) Despite this very ambitious declaration, once again, Hoffman gives no suggestion as to how this “force for change” should be operationalized and what concrete role critical theorizing might play in changing society. Thus, although the critical international theorists’ critique of the role that more conventional approaches to the study of world politics play in reproducing the contemporary world order may be persuasive, their account of the relationship between their own work and emancipatory political practice is unconvincing. Given the centrality of practice to the claims of critical theory, this is a very significant weakness. Without some plausible account of the **mechanisms** by which they hope to aid in the achievement of their emancipatory goals, proponents of critical international theory are hardly in a position to justify the assertion that “it represents the next stage in the development of International Relations theory” (M. Hoffman 1987: 244). Indeed, without a more convincing conceptualization of the theory–practice nexus, one can argue that critical international theory, by its own terms, has no way of redeeming some of its central epistemological and methodological claims and thus that it is a **fatally flawed** enterprise.

#### Case turns the K – nuclear war causes securitization and the worst forms of their impacts.

#### No prior questions

**Owen 02** David Owen, 2 Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not **undermine** the point that, for a certain class of problems, rational choice theory may **provide the best account available to us.** In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the **most important** kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, **it cultivates a theory-driven rather than problem-driven approach to IR.** Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous **grip on** the **action,** event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a **reductionist program’** in that it ‘dictates always opting for the description that calls for the explanation that flows from the **preferred model** or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, **this is to misunderstand the enterprise of science** since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, **not to be prejudged** before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of **generality over** that of **empirical validity.** The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and **prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially **vicious circle arises.**

#### Indefinite detention negates the legal identity of human beings – reduces them to bare life, replicates the logic of Nazi extermination camps

Schatz and Horst 7 (Christopher and Noah, Assistant Federal Public Defender in the Federal Public Defender’s Office for the District of Oregon + a Law Clerk in the Federal Public Defender’s Office for the District of Oregon, "WILL JUSTICE DELAYED BE JUSTICE DENIED? CRISIS JURISPRUDENCE, THE GUANTÁNAMO DETAINEES, AND THE IMPERILED ROLE OF HABEAS CORPUS IN CURBING ABUSIVE GOVERNMENT DETENTION," http://law.lclark.edu/live/files/9557-lcb113art1schatzpdf)

Beginning in 2002, as a result of military and intelligence activities ¶ conducted in Afghanistan and elsewhere against the perpetrators of the ¶ September 11 attack and their supporters, American military personnel began ¶ to take custody of individuals, both on and off the battlefield, who were ¶ subsequently classified as enemy combatants. Many of these detainees were ¶ soon transported out of the military’s theater of operation to a hastily ¶ constructed detention facility located at the Guantánamo Bay Naval Base in ¶ Cuba.4¶ Jettisoning jus in bello principles of international humanitarian law ¶ governing the treatment of people captured during an armed conflict, the Bush ¶ Administration declared that the war on terror required a “new paradigm,” and ¶ that individuals detained at Guantánamo Bay and other so called “black sites” ¶ were “unlawful combatants” who would not be treated as prisoners of war ¶ under the Third Geneva Convention.5¶ Nor, in the Bush Administration’s view, ¶ did the detainees qualify for the minimum humanitarian requirements ¶ established by Common Article Three of the Geneva Conventions.6¶ Furthermore, in addition to concocting legal rationalizations for legitimating ¶ torture on a scale and to a degree never before countenanced by United States¶ government policy,7¶ Justice Department lawyers also theorized that habeas ¶ corpus would not be available to the Guantánamo Bay detainees because they ¶ are aliens held outside of the sovereign territory of the United States.8¶ As Commander in Chief, the Bush Administration continues to assert that ¶ the President has a constitutionally based entitlement to wield total power over ¶ the Guantánamo Bay detainees—a use of sovereign power for which the ¶ President is not accountable to any other governing body or agency, domestic ¶ or international. If the Bush Administration’s position prevails, the detainees ¶ will be barred from claiming a right to relief under any body of law. In effect, ¶ the detainees will be reduced to an ontological state of human being that has ¶ not been present in the West since the Nazi extermination camps of the ¶ holocaust—they will have been rendered completely devoid of legal identity. ¶ Like the occupants of the Nazi concentration camps, although biologically ¶ alive, the Guantánamo Bay detainees will be legally dead.9¶ 9¶ Concerning the normalization of the state of exception that the Nazi concentration ¶ camps represented, Giorgio Agamben writes: ¶ Whoever entered the camp moved in a zone of indistinction between outside and inside, ¶ exception and rule, licit and illicit, in which the very concepts of subjective right and ¶ juridical protection no longer made any sense. What is more, if the person entering the ¶ camp was a Jew, he had already been deprived of his rights as a citizen by the ¶ Nuremberg laws and was subsequently completely denationalized at the time of the ¶ Final Solution. 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. ¶ GIORGIO AGAMBEN, HOMO SACER 170–71 (Daniel Heller-Roazen trans., Stanford Univ. ¶ Press 1998). The space of the concentration camp is one in which the juridico-political ¶ identity of a certain group of people is reduced solely to that of being “the Other.” The ¶ Guantánamo Bay facility where the detainees are held cannot be characterized as either a ¶ penal or a detention facility, because in those custodial environments the inmates retain some ¶ modicum of rights. The only nomination for that facility which accurately describes the ¶ political-legal status of the Guantánamo Bay detainees is that of “concentration camp.”

#### -- Their alternative fails- security as a specific concept can’t be deconstructed. The ethical response is to engage in scenario planning and try to minimize violence

**Weaver 2k** (Ole Weaver,2k International relations theory and the politics of European integration, p. 284-285)

The other main possibility is to stress' responsibility. Particularly in a field like security one has to make choices and deal with the challenges and risks that one confronts – and not shy away into long-range or principled trans-formations. The meta political line risks (despite the theoretical commit­ment to the concrete other) implying that politics can be contained within large 'systemic questions. In line with he classical revolutionary tradition, after the change (now no longer the revolution but the meta-physical trans­formation), there will be no more problems whereas in our situation (until the change) we should not deal with the 'small questions' of politics, only with the large one (cf. Rorty 1996). However, the ethical demand in post-structuralism (e.g. Derrida's 'justice') is of a kind that can never be instan­tiated in any concrete political order – It is an experience of the undecidable that exceeds any concrete solution and reinserts politics. Therefore, politics can never be reduced to meta-questions there is no way to erase the small, particular, banal conflicts and controversies. In contrast to the quasi-institutionalist formula of radical democracy which one finds in the 'opening' oriented version of deconstruction, we could with Derrida stress the singularity of the event. To take a position, take part, and 'produce events' (Derrida 1994: 89) means to get involved in specific struggles. Politics takes place 'in the singular event of engage­ment' (Derrida 1996: 83). Derrida's politics is focused on the calls that demand response/responsi­bility contained in words like justice, Europe and emancipation. Should we treat security in this manner? No, security is not that kind of call. 'Security' is not a way to open (or keep open) an ethical horizon. Security is a much more situational concept oriented to the handling of specifics. It belongs to the sphere of how to handle challenges – and avoid 'the worst' (Derrida 1991). Here enters again the possible pessimism which for the security analyst might be occupational or structural. The infinitude of responsibility (Derrida 1996: 86) or the tragic nature of politics (Morgenthau 1946, Chapter 7) means that one can never feel reassured that by some 'good deed', 'I have assumed my responsibilities ' (Derrida 1996: 86). If I conduct myself particularly well with regard to someone, I know that it is to the detriment of an other; of one nation to the detriment of my friends to the detriment of other friends or non-friends, etc. This is the infinitude that inscribes itself within responsibility; otherwise there would he no ethical problems or decisions. (ibid.; and parallel argumentation in Morgenthau 1946; Chapters 6 and 7) Because of this there will remain conflicts and risks - and the question of how to handle them. Should developments be securitized (and if so, in *what* terms)? Often, our reply will be to aim for de-securitization and then politics meet meta-politics; but occasionally the underlying pessimism regarding the prospects for orderliness and compatibility among human aspirations will point to scenarios sufficiently worrisome that responsibility will entail securitization in order to block the worst. As a security/securitization analyst, this means accepting the task of trying to manage and avoid spirals and accelerating security concerns, to try to assist in shaping the continent in a way that creates the least insecurity and violence - even if this occasionally means invoking/producing `structures' or even using the dubious instrument of securitization. In the case of the current European configuration, the above analysis suggests the use of securitization at the level of European scenarios with the aim of pre­empting and avoiding numerous instances of local securitization that could lead to security dilemmas and escalations, violence and mutual vilification.

#### Rejection of securitization causes the state to become more interventionist—turns the K

Tara **McCormack, ’10**, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 127-129)

The following section will briefly raise some questions about the rejection of the old security framework as it has been taken up by the most powerful institutions and states. Here we can begin to see the political limits to critical and emancipatory frameworks. In an international system which is marked by great power inequalities between states, the rejection of the old narrow national interest-based security framework by major international institutions, and the adoption of ostensibly emancipatory policies and policy rhetoric, has the consequence of **problematising weak or unstable states** and allowing international institutions or major states **a more interventionary role**, yet without establishing mechanisms by which the citizens of states being intervened in might have any control over the agents or agencies of their emancipation. Whatever the problems associated with the pluralist security framework **there were at least formal and clear demarcations**. This has the consequence of **entrenching international power inequalities** and allowing for a shift towards a hierarchical international order in which the citizens in weak or unstable states may arguably have even less freedom or power than before. Radical critics of contemporary security policies, such as human security and humanitarian intervention, argue that we see an assertion of Western power and the creation of liberal subjectivities in the developing world. For example, see Mark Duffield’s important and insightful contribution to the ongoing debates about contemporary international security and development. Duffield attempts to provide a coherent empirical engagement with, and theoretical explanation of, these shifts. Whilst these shifts, away from a focus on state security, and the so-called merging of security and development are often portrayed as positive and progressive shifts that have come about because of the end of the Cold War, Duffield argues convincingly that these shifts are highly problematic and unprogressive. For example, the rejection of sovereignty as formal international equality and a presumption of nonintervention has eroded the division between the international and domestic spheres and led to an international environment in which Western NGOs and powerful states have a major role in the governance of third world states. Whilst for supporters of humanitarian intervention this is a good development, Duffield points out the depoliticising implications, drawing on examples in Mozambique and Afghanistan. Duffield also draws out the problems of the retreat from modernisation that is represented by sustainable development. The Western world has moved away from the development policies of the Cold War, which aimed to develop third world states industrially. Duffield describes this in terms of a new division of human life into uninsured and insured life. Whilst we in the West are ‘insured’ – that is we no longer have to be entirely self-reliant, we have welfare systems, a modern division of labour and so on – sustainable development aims to teach populations in poor states how to survive in the absence of any of this. Third world populations must be taught to be self-reliant, they will remain uninsured. Self-reliance of course means **the condemnation of millions to** **a barbarous life of inhuman bare survival**. Ironically, although sustainable development is celebrated by many on the left today, by leaving people to fend for themselves rather than developing a society wide system which can support people, sustainable development actually leads to a less human and humane system than that developed in modern capitalist states. Duffield also describes how many of these problematic shifts are embodied in the contemporary concept of human security. For Duffield, we can understand these shifts in terms of Foucauldian biopolitical framework, which can be understood as a regulatory power that seeks to support life through intervening in the biological, social and economic processes that constitute a human population (2007: 16). Sustainable development and human security are for Duffield technologies of security which aim to *create* self-managing and self-reliant subjectivities in the third world, which can then survive in a situation of serious underdevelopment (or being uninsured as Duffield terms it) without causing security problems for the developed world. For Duffield this is all driven by a neoliberal project which seeks to control and manage uninsured populations globally. Radical critic Costas Douzinas (2007) also criticises new forms of cosmopolitanism such as human rights and interventions for human rights as a triumph of American hegemony. Whilst we are in agreement with critics such as Douzinas and Duffield that these new security frameworks cannot be empowering, and ultimately lead to more power for powerful sta**tes**, we need to understand why these frameworks have the effect that they do. We can understand that these frameworks have political limitations without having to look for a specific plan on the part of current powerful states. In new security frameworks such as human security we can see the political limits of the framework proposed by critical and emancipatory theoretical approaches.

#### --Realism is true and inevitable – a shift away collapses into chaos.

Mearsheimer 2001 [professor of political science at University of Chicago, *The Tragedy of Great Power Politics*, pg. 361]

The optimists' claim that security competition and war among the great powers has been burned out of the system is wrong. In fact, all of the major states around the globe still care deeply about the balance of power and are destined to compete for power among themselves for the foreseeable future. Consequently, realism will offer the most powerful explanations of international politics over the next century, and this will be true even if the debates among academic and policy elites are dominated by non-realist theories. In short, the real world remains a realist world. States still fear each other and seek to gain power at each other's expense, because international anarchy-the driving force behind greatpower behavior-did not change with the end of the Cold War, and there are few signs that such change is likely any time soon. States remain the principal actors in world politics and there is still no night watchman standing above them. For sure, the collapse of the Soviet Union caused a major shift in the global distribution of power. But it did not give rise to a change in the anarchic structure of the system, and without that kind of profound change, there is no reason to expect the great powers to behave much differently in the new century than they did in previous centuries.Indeed, considerable evidence from the 1990s indicates that power politics has not disappeared from Europe and Northeast Asia, the regions in which there are two or more great powers, as well as possible great powers such as Germany and Japan. There is no question, however, that the competition for power over the past decade has been low-key. Still, there is potential for intense security competion among the great powers that might lead to a major war. Probably the best evidence of that possibility is the fact that the United States maintains about one hundred thousand troops each in Europe and in Northeast Asia for the explicit purpose of keeping the major states in each region at peace.

#### We have the best epistemology – critical academia is always wrong and gets shut out by policy elites

Kramer 1 (Dr. Martin, Editor – Middle East Quarterly, Former Director – Moshe Dayan Center for Middle Eastern and African Studies at Tel Aviv University, Doctorate in Middle Easter Studies – Princeton University, Visiting Professor – University of Chicago, and Fellow – Woodrow Wilson International Center, “Ivory Towers on Sand: The Failure of Middle Eastern Studies in America,” Washington Institute for Near East Policy, No 58, http://www.washingtoninstitute.org/pubPDFs/IvoryTowers.pdf)

Only now have hesitant voices been raised from within the ramparts, pointing to serious problems. They run even deeper than insiders are prepared to admit. It is no exaggeration to say that America’s academics have failed to predict or explain the major evolutions of Middle Eastern politics and society over the past two decades. Time and again, academics have been taken by surprise by their subjects; time and again, their paradigms have been swept away by events. Repeated failures have depleted the credibility of scholarship among influential publics. In Washington, the mere mention of academic Middle Eastern studies often causes eyes to roll. The purpose of this paper is to probe how and why a branch of academe once regarded with esteem has descended to such a low point in the public estimate, and what might be done about it.

While the professors “faked it,” the think tanks progressively colonized the public domain. When Said wrote Orientalism, think tanks played a negligible role in interpreting the Middle East. But over the next twenty years, a few dozen individuals working out of think tanks managed to establish more public credibility on Middle Eastern affairs than the entire membership of MESA. The new reality only dawned on MESA’s members during the Gulf War. The university centers were flooded by calls from the media; Georgetown’s Center for Contemporary Arab Studies responded to more than 2,000 requests from the media and public. 6 But the academics were distressed to discover the emergence of another class of experts, who contested academe’s exclusive claims. Yvonne Haddad pointed to the shift in her MESA presidential address, in the midst of the Gulf crisis: It is clear that the press has its list of accredited authorities from research institutions independent of the academic structure, not only to provide expertise on the area but also to contextualize and define reality, generating the “spin” as to what are the legitimate questions to ask when interpreting events in the Middle East. Researchers from within the Washington beltway think tanks and former security officers have acquired a certain legitimacy in the eyes of the media as the experts on the Middle East, and are in obvious demand to expound on the present situation despite the fact that a few have readily admitted that they have never been to the area or studied in any of our academic centers. 7 James Bill was even more pointed, regretting that “many of the leading scholars have found their perspectives ignored and devalued by the public and by policymakers who are inundated by the uninformed, slanted and repetitious opinions of the instant experts.” These “intellectual counterfeiters” and “pseudo-authorities” had achieved “considerable success in penetrating the policy-making apparatus in Washington, where their superficial and twisted analyses” harmed American interests and “reinforced the long-standing gap between knowledgeable well-trained scholars and policymakers.” 8 Nowhere did the academics pause to reflect on how the think tanks had acquired their clout. Back on campus, the academics comforted themselves in the thought that the think tanks flourished only because of their big money and organizational technique. “The influence of the contemporary Middle East studies network,” complained one of MERIP’s editors in 1997, “is dwarfed by the financial resources and institutional muscle of right-wing organizations intent on advancing an ethos of pro-Americanism of the most retrograde variety in the nation’s public fora.” 9 But the money advantage was a myth. In fact, only one or two Middle East–specific think tanks approximated the annual cost of one of the top dozen university-based Middle East centers and their salaried faculty. Even the biggest general think tanks spent less on their Middle East programs than middle-range universities spent on theirs. The budgets devoted by universities, foundations, and government to maintaining more than a dozen National Resource Centers, 125 programs, and more than 2,000 professors dwarfed the combined expenditures of the think tanks. Was it any more true, as Haddad claimed, that the think tank denizens were but instant experts, who had not studied in “our academic centers”? Disparaging the credentials of the think tankers became a favorite academic pastime. In 1993, Stanford’s Joel Beinin wrote that one particularly successful think tank, The Washington Institute for Near East Policy, had gained its influence despite the “minimal involvement of scholars with substantive knowledge of the region.” 10 It was comforting for the new mandarins to think that no such “substantive knowledge” existed outside their carefully patrolled perimeters. But these claims could not withstand closer scrutiny. True, in the think tanks—as in the universities—not everyone was the expert he or she pretended to be. But in the 1980s and 1990s, the intolerant climate in academe had driven many talented people with “substantive knowledge” into the more diverse and open world of the think tanks. There they dramatically raised the level of Middle East–related research, which often surpassed university- based research in clarity, style, thoroughness, and cogency. Nor was there anything “instant” about their academic credentials. For example, in 1993, the very institute derided by Beinin named as director an academic (Robert Satloff) who had completed his doctorate at Oxford (under Roger Owen). Its senior fellow in military affairs (Michael Eisenstadt) had his master’s degree in Arab studies from Georgetown. The success of the think tanks ultimately depended on neither money nor “muscle.” It sprang from an ability to formulate and present ideas in the accepted public discourse of the national interest. Only a handful of people in academe, such as John Esposito and, to a lesser extent, Augustus Richard Norton, knew how to do this, and their paradigms had turned out to be substantively wrong. The growing reputation of the think tanks rested on their delivery of timely, reliable, and persuasive analyses of developments and trends that bore on the interests and policies of the United States. There was an almost schizophrenic contradiction between the academics’ refusal to do such work themselves, and their jealous resentment of those outside academe who did do it. “Should we learn to operate within their circles,” asked Haddad, “to hone our skills, to make pithy soundbites in order to have more input into America’s understanding of the Middle East? Or should we devote ourselves to serious research and leave the task of popular interpretation to others?” 11 The answer, for the vast majority of academics, was to leave it to others—and then complain about them in their faculty lounges. Even more humiliating to the guild was the growing prominence of independent journalists and writers. Said had derided the journalists in Covering Islam, and a general contempt for them pervaded the academy. Rashid Khalidi, while president of MESA, vented a widespread resentment against the influence of journalists and writers. “[On the] level of policy and public discourse,” he wrote to MESA members, “we who actually know something about the Middle East, and have been there, and know the languages, are largely ignored, while ill-informed sensationalists like Steven Emerson and Robert D. Kaplan hog the headlines and grace the podiums of think-tanks and lecture halls.” 12 In fact, many journalists were extremely well informed (and well travelled), and even controversial ones often unearthed important information. But whatever one thought of the journalists on Middle Eastern beats, their rise had been made easier by the deliberate refusal of academics to engage the press. Roger Owen personified this retreat. In the midst of another Middle East crisis, Owen found time to write a short piece—for an Egyptian weekly. There he rationalized his disengagement from the American debate. “Given the very narrow political parameters which govern any policy towards the Middle East,” he wrote, there was “little mileage to be gained by running campaigns to convince those in Washington.” As for the media, “journalistswho try to find out my opinions are so ignorant themselves that I cannot reasonably trust any of them to report what I try to say correctly.” Owen’s conclusion? “It is better, for the moment, to spend my time with those of my students who are troubled and upset by both the crisis itself and by having to experience it here in these unfriendly surroundings. University teach-ins and workshops will follow.” 13 (For the A. J. Meyer Professor of Middle Eastern History at Harvard, those “unfriendly surroundings” were these United States.) Countless academics made the same choice Owen did. It was much easier to huddle with student disciples, who constituted a subordinate class, indebted to and dependent on their professors in every conceivable way. Unlike journalists, they would hang on every word uttered by their mentors. After all, their careers might depend on it. The crisis in Middle Eastern studies arose partly from this self-imposed isolation, and the loss of an ability to communicate beyond the field—something at which the pioneers of the field had excelled. The new guard, dancing to every new academic tune, found it ever more difficult to communicate with other Americans who had an interest in the region. Perhaps this was inevitable: the academics were intent upon winning legitimacy within the disciplines, even if this dictated obeisance to the gods of theory and shunning the vulgar media. But the disciplines, it turned out, were not so easily appeased.

#### Security inevitable

**Guzzini, Senior Research Fellow at the Copenhagen Peace Research Institute, 98** Associate Professor of Political Science, International Relations, and European Studies at the Central European University in Budapest, 1998 (Stefano, Realism in International Relations, p. 212)

Therefore, in a third step, this chapter also claims that it is impossible just to heap realism onto the dustbin of history and start anew.

This is a non-option. Although realism as a strictly causal theory has been a disappointment, various realist assumptions are well alive in the minds of many practitioners and observers of international affairs. Although it does not correspond to a theory which helps us to understand a real world with objective laws, it is a world-view which suggests thoughts about it, and which permeates our daily language for making sense of it. Realism has been a rich, albeit very contestable, reservoir of lessons of the past, of metaphors and historical analogies, which, in the hands of its most gifted representatives, have been proposed, at times imposed, and reproduced as guides to a common understanding of international affairs. Realism is alive in the collective memory and self-understanding of our (i.e. Western) foreign policy elite and public whether educated or not. Hence, we cannot but deal with it. For this reason, forgetting realism is also questionable. Of course, academic observers should not bow to the whims of daily politics. But staying at distance, or being critical, does not mean that they should lose the capacity to understand the languages of those who make significant decisions not only in government, but also in firms, NGOs, and other institutions. To the contrary, this understanding, as increasingly varied as it may be, is a prerequisite for their very profession. More particularly, it is a prerequisite for opposing the more irresponsible claims made in the name although not always necessarily in the spirit, of realism.

#### --Representations don’t influence reality

**Kocher 00 (**Robert L., Author of “The American Mind in Denial” and Philosopher, “Discourse on Reality and Sanity”, http://freedom.orlingrabbe.com/lfetimes/reality\_sanity1.htm)

While it is not possible to establish many proofs in the verbal world, and it is simultaneously possible to make many uninhibited assertions or word equations in the verbal world, it should be considered that reality is more rigid and does not abide by the artificial flexibility and latitude of the verbal world. The world of words and the world of human experience are very imperfectly correlated. That is, saying something doesn't make it true. A verbal statement in the world of words doesn't mean it will occur as such in the world of consistent human experience I call reality. In the event verbal statements or assertions disagree with consistent human experience, what proof is there that the concoctions created in the world of words should take precedence or be assumed a greater truth than the world of human physical experience that I define as reality? In the event following a verbal assertion in the verbal world produces pain or catastrophe in the world of human physical reality or experience, which of the two can and should be changed? Is it wiser to live with the pain and catastrophe, or to change the arbitrary collection of words whose direction produced that pain and catastrophe? Which do you want to live with? What proven reason is there to assume that when doubtfulness that can be constructed in verbal equations conflicts with human physical experience, human physical experience should be considered doubtful? It becomes a matter of choice and pride in intellectual argument. My personal advice is that when verbal contortions lead to chronic confusion and difficulty, better you should stop the verbal contortions rather than continuing to expect the difficulty to change. Again, it's a matter of choice. Does the outcome of the philosophical question of whether reality or proof exists decide whether we should plant crops or wear clothes in cold weather to protect us from freezing? Har! Are you crazy? How many committed deconstructionist philosophers walk about naked in subzero temperatures or don't eat? Try creating and living in an alternative subjective reality where food is not needed and where you can sit naked on icebergs, and find out what happens. I emphatically encourage people to try it with the stipulation that they don't do it around me, that they don't force me to do it with them, or that they don't come to me complaining about the consequences and demanding to conscript me into paying for the cost of treating frostbite or other consequences. (sounds like there is a parallel to irresponsibility and socialism somewhere in here, doesn't it?). I encourage people to live subjective reality. I also ask them to go off far away from me to try it, where I won't be bothered by them or the consequences. For those who haven't guessed, this encouragement is a clever attempt to bait them into going off to some distant place where they will kill themselves off through the process of social Darwinism — because, let's face it, a society of deconstructionists and counterculturalists filled with people debating what, if any, reality exists would have the productive functionality of a field of diseased rutabagas and would never survive the first frost. The attempt to convince people to create and move to such a society never works, however, because they are not as committed or sincere as they claim to be. Consequently, they stay here to work for left wing causes and promote left wing political candidates where there are people who live productive reality who can be fed upon while they continue their arguments. They ain't going to practice what they profess, and they are smart enough not to leave the availability of people to victimize and steal from while they profess what they pretend to believe in.

### CP 2ac

#### 1. Perm do both

#### 2. Solves none of the case -

#### Interrogation techniques benefit from judicial oversight – it’s a strategic benefit to the war on terror – that’s Hathaway

#### AND *Judicial* restrictions are key to effective counterterrorism

Guiora 11 (Amos, Prof of Law @ Univ. of Utah, "Indeﬁnite Detention of Megaterrorists: A Road We Must Not Travel," April, http://johnjayresearch.org/cje/files/2012/10/GUIORA-out.pdf)

Offering modifications or alternatives, such as indefinite detention, to¶ replace existing legal structures\*in¶ whole or in part\*raises a fundamental question: have sufficient controls been created? Although creating¶ alternatives, even if justifiable, is¶ risky, any expansion of executive¶

power\*the net result of Scheid’s¶ proposal\*must be tempered by¶ both independent judicial review¶ and robust congressional oversight.¶ Restraining the executive branch is¶ essential, especially when alternatives are created.¶ When Scheid asked if I would¶ consider commenting on his paper¶ (before I had a chance to read it) I instinctively agreed. My reasons were¶ simple. I first met Scheid when he¶ graciously attended a public lecture I¶ gave at the William Mitchell Law¶ School (hosted by my good friend¶ and colleague, John Radson). His questions were particularly engaging and¶ our subsequent communications\*including Scheid’s insightful and critical¶ blog postings in response to my¶ writings\*have invariably been interesting and thought-provoking.¶ When Scheid explained the article’s thesis I was intrigued, largely¶ because of my own efforts to grapple¶ with how to create alternative legal¶ infrastructures relevant to the post 9/¶ 11 world. As a consistent advocate¶ for the creation of a National Security¶ Court,1¶ I have probed the limits of¶ many of the issues Scheid addresses.¶ Friends and colleagues have criticized various aspects of my proposal;¶ similarly, members of the U.S. Senate¶ Judiciary Committee were skeptical¶ of my proposal when I testified¶ before the committee.¶ Precisely for the above reasons, I¶ feel well suited to respond to Scheid’s¶ proposal. Perhaps I have an insider’s¶ perspective of proposing an alternative and then responding to the inevitable criticism. Experience has¶ taught me that any alternative that¶ involves an expansion of executive¶ powers is only as good as the limits¶ it also imposes.¶ Scheid’s proposal does not conjure up images of President Bush’s¶ ‘‘by all means necessary’’ approach¶ to counterterrorism because it wisely¶ includes independent judicial review¶ in accordance with constitutional¶ principles of checks and balances¶ and separation of powers. The key¶ question, however, is: ‘‘how much¶ judicial review’’? Not enough to ensure effective external restraints on¶ the executive. Although Scheid¶ clearly incorporates some control¶ measures, the overall sense is of¶ insufficient restraint.¶ To push the issue: we must ask¶ whether there are controls, whether¶ they are sufficiently defined, and¶ whether they can be implemented.¶ Simply put, suggesting an alternative¶ alone is not sufficient, particularly¶ when its intended purpose is to¶ create an infrastructure specifically¶ designed to limit rights rather than¶ protect them.

#### only court action solves the independent judiciary advantage – turns the counterplan – deference sets a model which causes global instability – that’s Mirow and CJA – and indefinite detention policy is uniquely important – that’s McCormack

#### Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### Members of congress have openly defended a right to indefinite detention *without judicial review* – review is critical to check dictatorialexecutive power – that’s Martin

**3. Perm do the CP – it’s an example of the congress legislating the plans’ restriction**

#### Conditionality is a voter-

#### A – it results in argument irresponsibility because it encourages contradictory positions – this kills advocacy because it incentivizes 1NC run and gun to see what the 2A undercovers

#### B – creates time and strat skews - cross applications make it impossible to be aff and predict neg strategy - also makes the neg a moving target

#### no cost options in the 1nc make the 2ac impossible- one condo advocacy solves your offense

**4. Congress will roll back the counterplan during a conflict – kills solvency**

Tisler **11**

[Tiffany, J.D. Candidate, University of Toledo, 2011., FEDERAL ENVIRONMENTAL LAW WAIVERS AND HOMELAND SECURITY: ASSESSING WAIVER APPLICATION IN HOMELAND SECURITY SETTINGS AT THE SOUTHERN BORDER IN COMPARISON TO NATIONAL SECURITY SETTINGS INVOLVING THE MILITARY, Spring, 2011 The University of Toledo Law Review, L/N]

In times of war, the conflict between national-security goals and environmental laws tends to come out in favor of national security, n54 and shortly after 9/11 the United States was at war. As it was, the U.S. military never particularly liked the pre-9/11 waiver system, finding the scope of waivers too narrow and the time limits incompatible with long-term activities. n55 Thus, sensing the time to strike, the military began lobbying for changes to environmental-waiver provisions in the aftermath of 9/11. n56 The military has since actively and successfully sought changes to the waiver system, giving them much broader authority to disregard environmental laws, especially for reasons of "military readiness." n57 First, the military convinced Congress to attach riders to the 2004 and 2005 Defense Appropriations Acts exempting them from provisions of the Marine Mammal Protection Act ("MMPA"), some provisions of the ESA, and the entire Migratory [\*784] Bird Treaty Act. n58 Not only did the military successfully change the application of various sections of statute, it also changed the waiver structure for the MMPA, giving the Secretary of Defense the authority to grant waivers in addition to the President. n59 Though not always successful, military lobbying efforts have removed many external checks on military activities that impact the environment, creating a dim future for the environment. n60

#### 5. Counterplan is a voting issue

#### A) Topic education – shifts the focus of the debate from whether the president should have the authority and to who should be the person to stop it – causes stale debate about process

#### B) Fairness- steals the entirety off the aff and makes it impossible to generate offense

#### 6. Congress doesn’t have the authority to uphold the forrest decision and

#### Judicial restrictions are comparatively more effective at restraining the executive than statutory ones

Pearlstein 6 (Deborah, Visiting Scholar, Woodrow Wilson School for Public and International Affairs, Princeton University; Director, U.S. Law and Security Program, Human Rights First, "Finding Effective Constraints on Executive Power: Interrogation, Detention, and Torture," http://www.acslaw.org/files/Microsoft%20Word%20-%205\_Pearlstein.pdf)

While the courts continue to debate the limits of inherent executive power under the Federal Constitution, the ¶ past several years have taught us important lessons about how and to what extent constitutional and subconstitutional constraints may effectively check the broadest assertions of executive power. Following the ¶ publication in 2004 of photographs of U.S. troops torturing captives at the U.S.-run Abu Ghraib prison in Iraq, ¶ executive branch use of torture and other forms of coercive interrogation has raised profound questions of ¶ policy and morality. Are such tactics useful in combating the terrorist threat? Is a government ever morally ¶ justified in using such techniques? What are the negative consequences for U.S. strategic security goals from the ¶ public exposure of such practices? The practice has also raised serious questions of law regarding the¶ extraterritorial application of U.S. constitutional and treaty obligations, the scope of the ban on “cruel, inhuman ¶ and degrading treatment” under U.S. law,1¶ and the adequacy of enforcement mechanisms to hold accountable ¶ those who violate such prohibitions.¶ Perhaps above all, the practice has raised hard questions about what remains of meaningful constraints on ¶ executive power. The conduct revealed in the Abu Ghraib photos was immediately and widely condemned by¶ political leaders on both sides of the aisle.2¶ In the intense scrutiny of executive branch practice that followed, it ¶ became clear that the executive had not only contemplated the use of coercion up to and including torture, but ¶ that, arguably at least, the torture and abuse documented in an ever-widening series of incidents from¶ Afghanistan to Iraq to the U.S. Naval Base at Guantánamo Bay was the result of a combination of direct¶ executive authorization, and executive knowledge of wrongdoing coupled with a failure to correct and punish.3¶ Further, executive conduct in this realm was justified, at least for a time, by a sweepingly broad assertion of ¶ presidential power according to which the federal law criminalizing torture could be found unconstitutional if ¶ interpreted to constrain the ability of the President as commander in chief to authorize coercive interrogation.4¶ Whatever the theoretical merits of coercive interrogation as applied in a targeted way against the most ¶ heinous of suspects, the widespread torture and abuse of scores of apparently innocent detainees was an ¶ outcome no one purported to seek. Yet there are now hundreds of officially documented incidents of torture and ¶ abuse in U.S. custody since 2002, only a fraction of which occurred at Abu Ghraib. Among the most troubling ¶ statistics is the Pentagon’s documentation of more than two dozen homicides in U.S. detention facilities ¶ worldwide since 2002 (only one of which was at Abu Ghraib), including at least eight individuals who were ¶ tortured to death.5¶ Whether or not one believes that the executive bears direct political or legal responsibility for ¶ this conduct,6¶ few dispute that the most egregious of these acts are unlawful, and that the consequences of their ¶ revelation for U.S. policy have been overwhelmingly adverse.7¶ How is it, then, that the structures of our constitutional democracy, theoretically designed to avoid outcomes ¶ in which the power of the executive branch is exercised over a period of time without check in a manifestly ¶ unlawful way, failed to do so in this case? Our Constitution and laws are replete with basic affirmative human rights; the structural separation of powers among the branches is also designed to protect individual rights; and, ¶ particularly since World War II, executive power to act in the realm of national security has been constrained by ¶ a rich canon of statutes and regulations. Were none of these tools sufficient? What lessons can we take from the ¶ example of torture for the prospects of effectively constraining executive national security power going ¶ forward? ¶ This Article suggests some answers to each of these questions. Following a discussion of why torture and ¶ abuse in the “war on terror” became such a pervasive problem in the years after September 11, this Article ¶ argues that the most effective power-checking tools (at least at the margins) have emerged from less classically ¶ “democratic” sources: a highly professionalized military and intelligence community; the media and the¶ organizations of non-governmental civil society; and the active engagement of the courts. While it is true that ¶ many of our core democratic structures failed to constrain executive operations in prisoner detention and ¶ treatment (particularly Congress, charged as a co-equal partner in U.S. national security and foreign affairs ¶ powers),8¶ these other levers have seen at least modest success in changing the course of executive policy. ¶ Indeed, this Article suggests that effective constraints on executive power going forward are more likely to be ¶ found in the reinforcement and enhancement of the courts and these other arguably undemocratic institutions, ¶ than through congressional or other “hardcore” democratic checks on power.

#### Court action is critical

Simpson 13 (Mike Simpson, May 16, writer and teacher on topics related to government and politics, Tutor2u, online learning resource of the year via BETT, the world’s leading educational show, “Revision Update: US / UK Politics: Exemplar Answer: A Bill of Rights?” <http://www.tutor2u.net/blog/index.php/politics/print/revision-update-us-uk-politics-exemplar-answer-a-bill-of-rights>)

The concept of “paper rights” would suggest that rights exist on paper (in a bill of rights) but that they are not enforced in practice. This would suggest that the judiciary need to play an active role in the defence of rights and liberties. The role of an independent judiciary in enforcing the “rule of law” allows them to stand up to the arbitrary exercise of power by executives and legislatures which might see the tyranny of the majority override minority and individual rights. The record of the Supreme Court in this regard might be regarded as inadequate in this regard. The Roberts Court has failed to protect rights as outlined in the Bill of Rights. The composition of the court has a conservative bias. The Bush appointment of Alito was critical in this regard as the departure of Justice O’Connor allowed GW Bush to replace a centrist with a conservative. The above ruling and others such as Florence v Board of Chosen Freeholders 2012 allowing strip searches for any offence contrary to privacy rights established under the fourth amendment; Wal-mart v Dukes 2011 which prevented a case to prove sex discrimination contrary to equal protection 14th amendment rights; and Baze v Rees which allowed lethal injection contrary to 8th amendment rights which prevent “cruel and unusual” punishments. The Supreme Court has not ruled on the constitutionality of the Patriot Act. In Russia, the courts upheld the decision to punish the members of “Pussy Riot” which illustrates the need for a judiciary to be independent in order to enforce a bill of rights.

#### 7. Only courts overcome the solvency deficits

David Cole, Professor of Law, Georgetown University Law Center, “Judging the Next Emergency: Judicial Review and Individual Rights in Times of Crisis,” Michigan Law Review, v. 101, August 2003, p. 2575-2577.

Thus, when one takes a longer view of the role of courts in constraining emergency powers, the picture is less bleak than the conventional account admits. While most of the developments discussed above came too late to forestall civil rights and civil liberties violations when they were initially undertaken, they have the prophylactic effect of forestalling the same or similar measures in future emergencies. The judicial process is especially conducive to playing this role for several reasons. First, since emergency powers, and the disputes to which they give rise, tend to outlast the actual emergency, those powers can be reviewed by courts when the worst of the crisis is over. Thus, the Court's liberty-protective decisions in Milligan and Kahanamoku came when the wars were effectively over, and the Court's protective decisions from the Cold War period began after McCarthy had been censured and the height of anticommunist fervor had passed. The ability (and obligation) of courts to assess the legality of measures long after they have been adopted means that courts may bring more perspective to the question than those acting in the midst of the emergency. Second, the fact that legal decisions must offer a statement of reasons that then binds future cases contributes to the judiciary's ability to exert control over the next emergency. The obligation to create and to follow precedent means that judicial decisions are likely to have a longer "shelf life" than those of other branches of government. The lawyers' ability to distinguish the current emergency from prior ones, and the current emergency measure from those previously invalidated, means that the obligation to state reasons is no guarantee of future effectiveness in protecting rights, but precedents do tend to take certain options off the table. The government could not punish antiwar speech today, for example. Third, the common-law method facilitates a measured development of rules in the context of specific cases and permits the incorporation of lessons learned from the early and often most overreactive stages of emergencies. Once those lessons are learned and instantiated in Supreme Court decisions, they play an important role in precluding certain measures that were part of the government's arsenal in the prior emergency. In this sense, just as in Marbury, the Court's emergency-powers decisions may not help the parties immediately before it at the height of the controversy, but in the long run these decisions establish principles that are critical to checking future government abuse. Fourth, the formalities of the judicial process mandate the creation of an official record that may facilitate reaching a just result. The conviction in Korematsu was ultimately overturned on a writ of coram nobis because Korematsu was able to show, through access to government records, that the Justice Department had misled the courts about the strength of the evidence underlying its national-security concerns. As the warrant requirement demonstrates, record-keeping requirements permit evaluation of government actions after the fact. While judicial proceedings are not necessary to impose record-keeping requirements, the highly formalized judicial process itself creates a record that may make subsequent assessments, beyond the heat of the moment, more reliable. Fifth, and perhaps most important, federal courts are independent of the political process, and their institutional self-definition turns in significant part on that independence, especially when it comes to the interpretation and enforcement of constitutional rights. As a result, they are better suited to entertain claims challenging executive action than are Congress or the executive branch itself, and more likely to take politically unpopular positions than the political branches. While, as noted above, judges, like other government officials, are likely to defer to the executive branch on matters of national security, complete deference is likely to clash with their understanding of their role as judges

### Uniqueness – Debt Ceiling 2AC

#### Debt ceiling compromise won't pass - Obama won't negotiate, GOP supports poison pill proposals, even Dems concede odds are low

Sherman and Bresnahan 9/18/13 (Jake and John, Politico, "Shutdown sparring a warm-up for debt fight," http://dyn.politico.com/printstory.cfm?uuid=73BF536B-7628-4040-BF19-E247BD75BDC9)

Asked to explain how the debt ceiling will get resolved, House Republican aides say that Obama’s refusal to negotiate on the debt ceiling is “untenable.”¶ They might be right. Senate Democratic leadership isn’t even sure Obama’s position that there must be a clean debt ceiling bill can pass Reid’s chamber.¶ “I am hopeful that our Republican colleagues who have stepped up to the plate in the past, mainstream Republican colleagues, will realize this is playing with fire,” Sen. Chuck Schumer (D-N.Y.) said Wednesday when asked about the prospect of passing a clean debt ceiling. “But you can never underestimate the power of the hard right in the Republican Party these days.”¶ The Republican plan on the debt ceiling is skewed so far to the right that it’s likely to get little — if any — Democratic support. Boehner and his top lieutenants will have to come up with 217 GOP votes for their opening offer.¶ The plan appears designed for that. Just look at the conservative favorites in the mix for a debt ceiling package: construction of the Keystone XL pipeline, where Obama has demonstrated over the past few years he won’t get pushed around; tax reform, where Republicans refuse to increase revenue and Democrats refuse revenue neutrality; and a one-year delay of Obamacare, which the White House has flatly rejected.¶ If Boehner fails to get to 217 on what GOP aides call his “kitchen sink approach” to the debt ceiling hike, he will have to start over and seek Democratic backing. If successful, the battle shifts across the Capitol.¶ At that point, Reid and Senate Democratic leaders would face a difficult choice: Do they ignore the House GOP bill and raise the specter of catastrophic default on the $16.7 trillion U.S. debt? Or do they try to amend the bill, which means dealing with another round of votes on Obamacare and fiscal reform. Top Senate Democrats say they haven’t yet made up their minds about how to handle that.¶ And like the CR, Reid will need some Republicans to get any debt ceiling bill out of the Senate in the face of a likely Republican filibuster.¶ “I think it’s 50-50 on a government shutdown, but I can see a path how we avoid it,” said a senior Democratic aide. “It’s worse, maybe way worse, on the debt ceiling. And I don’t see any path there right now.”

### 2AC Debt Ceiling

#### No link – court shields the link to politics – Obama has *no influence* over court decisions and doesn’t get to give input prior to decisions

#### Debt ceiling doesn’t collapse the economy---empirics

Michael Tanner 11, National Review, “No Surrender on Debt Ceiling”, Jan 19, <http://www.nationalreview.com/articles/257433/no-surrender-debt-ceiling-michael-tanner>

Of course the Obama administration is already warning of Armageddon if Congress doesn’t raise the debt ceiling. Certainly it would be a shock to the economic system. The bond market could crash. The impact would be felt at home and abroad. But would it necessarily be worse than the alternative? While Congress has never before refused to raise the debt ceiling, it has in fact frequently taken its time about doing so. In 1985, for example, Congress waited nearly three months after the debt limit was reached before it authorized a permanent increase. In 1995, four and a half months passed between the time that the government hit its statutory limit and the time Congress acted. And in 2002, Congress delayed raising the debt ceiling for three months. It took three months to raise the debt limit back in 1985 as well. In none of those cases did the world end. More important, what will be the consequences if the U.S. government fails to reduce government spending? What happens if we raise the debt ceiling then continue merrily on our way spending more and running up ever more debt? Already Moody’s and Standard & Poor’s have warned that our credit rating might be reduced unless we get a handle on our national debt. We’ve heard a lot recently about the European debt crisis, but, as one senior Chinese banking official recently noted, in some ways the U.S. financial position is more perilous than Europe’s. “We should be clear in our minds that the fiscal situation in the United States is much worse than in Europe,” he recently told reporters. “In one or two years, when the European debt situation stabilizes, [the] attention of financial markets will definitely shift to the United States. At that time, U.S. Treasury bonds and the dollar will experience considerable declines.” Moreover, unless we do something, federal spending is on course to consume 43 percent of GDP by the middle of the century. Throw in state and local spending, and government at all levels will take 60 cents out of every dollar produced in this country. Our economy will not long survive government spending at those levels.

#### Debt ceiling vote happens BEFORE the decision is released – normal means

Mondak 92 [Jeffery J., assistant professor of political science @ the University of Pittsburgh. “Institutional legitimacy, policy legitimacy, and the Supreme Court.” American Politics Quarterly, Vol. 20, No. 4, Lexis]

The process described by the political capital hypothesis acts as expected in the laboratory, and the logic of the link between institutional and policy legitimacy has thus gained strong empirical corroboration. However, the dynamic's pervasiveness defies precise estimation due to the limitations of available public opinion data. Still, the results reported here are provocative. First, this view of legitimation may apply to institutions beyond the Supreme Court. Consequently, efforts to use this theory in the study of other institutions may yield evidence supportive of a general process. A second concern is how the Court responds to its institutional limits. Specifically, strategy within the Court can be considered from the context of legitimacy. For example, what tactics may the Court employ to reduce the erosion of political capital? By releasing controversial rulings at the end of a term, for instance, the Court may afford itself a healing period, a time to repair damaged credibility prior to the next round of efforts at conferring policy legitimacy. This suggests a third issue, the manner in which institutional approval is replenished. Does institutional support return to some equilibrium once dispute surrounding a particular ruling fades, or must the Court release popular edicts to offset the effects of its controversial actions?

#### No link – Obama isn’t going to push actions that *limit* his powers

#### Legal certainty over detainees key to the economy

Brief of International Law and Jurisdiction Professors 4 ("BRIEF OF INTERNATIONAL LAW AND JURISDICTION PROFESSORS AS AMICI CURIAE IN SUPPORT OF THE PETITIONERS," Rasul v Bush/Al Odah v United States, http://supreme.lp.findlaw.com/supreme\_court/briefs/03-334/03-334.mer.ami.iljp.pdf)

The prisoners held at the United States Naval Base at ¶ Guantanamo are not the only persons who will be affected ¶ by the Court’s jurisdictional decision in this case. In the ¶ aftermath of September 11, 2001, it appears possible that ¶ the United States executive will establish its own special criminal court process, seeking to avoid the use of Article ¶ III judges and to use instead an executive form of review ¶ rather than an independent judicial review, such as that ¶ provided by this Court, Military Order of Nov. 13, 2001:¶ Detention, Treatment, and Trial of Certain Non-Citizens in ¶ the War Against Terrorism, 66 Fed. Reg. 57833 (Nov. 16, ¶ 2001). This new process may be applied far beyond those ¶ captured in connection with the Afghanistan or Iraq ¶ actions, for the war on terrorism is likely to last indefinitely. ¶ Moreover, precedents set in this terrorism conflict ¶ may end up being applied as well to international narcotics or money-laundering offenses. International activity has ¶ already become increasingly important in the prosecution of¶ traditional crime within traditional courts. This is a result ¶ of the internationalization of crime itself and of the ¶ greater mobility of defendants. More and more, evidence ¶ collected in or a confession obtained in one jurisdiction is ¶ used in prosecutions in another jurisdiction. There is an ¶ important problem here if the evidence or confession is ¶ obtained in a way that is legitimate in one jurisdiction but ¶ not the other, especially if prosecution and evidence ¶ collection are designed to take advantage of such differences,¶ and a serious human cost if, because of inaction by ¶ supervisors or courts, the evidence collection processes ¶ sink below a lowest-common-denominator.4¶ For many of these activities, there will be no judicial supervision of the criminal law process unless review is extended to at least some international and extraterritorial activities. The United States, together with its allies, ¶ is building a global criminal law system.5 As the executive acts internationally in ways that are like those of domestic criminal law enforcement, and as international issues ¶ become more important in daily life, Constitutional freedoms may become meaningless unless appropriate judicial restraints are applied. ¶ Criminal law is not the only internationalizing area. A variety of economic issues are now being dealt with internationally, and they are becoming so significant as to ¶ implicate the heart of our national economic activity. As our economy globalizes, it is again essential to apply legal restraints to the executive. For business to function ¶ efficiently, its leaders must be able to have confidence in the existence of an orderly regime of trade regulation that ¶ maintains the predictability of judicial control. Again, ¶ judicial review of some foreign policy actions will be essential.

#### PC low and fails for fiscal fights

Greg Sargent 9-12, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away the dominant factor shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights. But those battles at bottom will be about whether the Republican Party can resolve its internal differences. Obama's "standing" with Republicans -- if it even could sink any lower -- § Marked 11:44 § is utterly irrelevant to that question.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, internal GOP differences may be unbridgeable. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

#### Winners win.

Halloran 10 (Liz, Reporter – NPR, “For Obama, What A Difference A Week Made”, National Public Radio, 4-6, http://www.npr.org/templates/story/story.php?storyId=125594396)

Amazing what a win in a major legislative battle will do for a president's spirit. (Turmoil over spending and leadership at the Republican National Committee over the past week, and the release Tuesday of a major new and largely sympathetic book about the president by New Yorker editor David Remnick, also haven't hurt White House efforts to drive its own, new narrative.) Obama's Story Though the president's national job approval ratings failed to get a boost by the passage of the health care overhaul — his numbers have remained steady this year at just under 50 percent — he has earned grudging respect even from those who don't agree with his policies. "He's achieved something that virtually everyone in Washington thought he couldn't," says Henry Olsen, vice president and director of the business-oriented American Enterprise Institute's National Research Initiative. "And that's given him confidence." The protracted health care battle looks to have taught the White House something about power, says presidential historian Gil Troy — a lesson that will inform Obama's pursuit of his initiatives going forward. "I think that Obama realizes that presidential power is a muscle, and the more you exercise it, the stronger it gets," Troy says. "He exercised that power and had a success with health care passage, and now he wants to make sure people realize it's not just a blip on the map." The White House now has an opportunity, he says, to change the narrative that had been looming — that the Democrats would lose big in the fall midterm elections, and that Obama was looking more like one-term President Jimmy Carter than two-termer Ronald Reagan, who also managed a difficult first-term legislative win and survived his party's bad showing in the midterms. Approval Ratings Obama is exuding confidence since the health care bill passed, but his approval ratings as of April 1 remain unchanged from the beginning of the year, according to [Pollster.com](http://www.pollster.com/polls/us/jobapproval-obama.php). What's more, just as many people disapprove of Obama's health care policy now as did so at the beginning of the year. According to the most recent numbers: Forty-eight percent of all Americans approve of Obama, and 47 disapprove. Fifty-two percent disapprove of Obama's health care policy, compared with 43 percent who approve. Stepping Back From A Precipice Those watching the re-emergent president in recent days say it's difficult to imagine that it was only weeks ago that Obama's domestic agenda had been given last rites, and pundits were preparing their pieces on a failed presidency. Obama himself had framed the health care debate as a referendum on his presidency. A loss would have "ruined the rest of his presidential term," says Darrell West, director of governance studies at the liberal-leaning Brookings Institution. "It would have made it difficult to address other issues and emboldened his critics to claim he was a failed president." The conventional wisdom in Washington after the Democrats lost their supermajority in the U.S. Senate when Republican Scott Brown won the Massachusetts seat long held by the late Sen. Edward Kennedy was that Obama would scale back his health care ambitions to get something passed. "I thought he was going to do what most presidents would have done — take two-thirds of a loaf and declare victory," says the AEI's Olsen. "But he doubled down and made it a vote of confidence on his presidency, parliamentary-style." "You've got to be impressed with an achievement like that," Olsen says. But Olsen is among those who argue that, long-term, Obama and his party would have been better served politically by an incremental approach to reworking the nation's health care system, something that may have been more palatable to independent voters Democrats will need in the fall. "He would have been able to show he was listening more, that he heard their concerns about the size and scope of this," Olsen says. Muscling out a win on a sweeping health care package may have invigorated the president and provided evidence of leadership, but, his critics say, it remains to be seen whether Obama and his party can reverse what the polls now suggest is a losing issue for them.

#### The GOP will attach Keystone to any debt deal – tanks passage

Washington Times 9-19 [“Keystone XL debate resurfaces, gets entangled in debt-ceiling battle”, September 19th, 2013, <http://www.washingtontimes.com/news/2013/sep/19/keystone-xl-debate-entangled-debt-ceiling-battle/>, Chetan]

The Keystone XL pipeline has been knocked out of the headlines in recent weeks, but debate over the project found new life on Capitol Hill this week.¶ A key House subcommittee held a hearing Thursday to mark the fifth anniversary of energy giant TransCanada’s first application to build the $7 billion pipeline, which would carry Canadian oil sands south through the U.S. heartland to refineries on the Gulf Coast.¶ Further bringing it into the spotlight, congressional Republicans plan to tie Keystone approval — a decision President Obama has avoided for the entirety of his time in office — to a measure raising the nation’s debt ceiling, a move that pushes the White House to accept the project as part of a larger fiscal compromise.¶ Keystone remains a hot-button issue in Washington and across the nation, with supporters arguing it’s a safe way to create thousands of jobs while also promoting North American energy independence. Its critics, including some congressional Democrats, think it would be environmentally disastrous and would greatly contribute to global warming.

#### US detention policy destroys US-Russia engagement.

Sarah E. Mendelson 9 is director, Human Rights and Security Initiative, CSIS. "U.S.-Russian Relations and the Democracy and Rule of Law Deficit" tcf.org/assets/downloads/tcf-russiarelations.pdf

Since the collapse of the Soviet Union in 1991, every U.S. administration has considered Russia’s political trajectory a national security concern.1 Based on campaign statements and President Barack Obama’s early personnel choices, this perspective likely will affect policy toward Russia in some way for the foreseeable future.2 While the Obama administration plans to cooperate with Moscow on a number of issues, it will find that Russia’s current deficit in the areas of democracy and the rule of law complicate the relationship and may, in some cases, undermine attempts at engagement. The organizers of the Century Foundation Russia Working Group have labeled this policy problem “coping with creeping authoritarianism.” Results from nearly a dozen large, random sample surveys in Russia since 2001 that examine the views and experiences of literally thousands of Russians, combined with other research and newspaper reporting, all suggest the current democracy and rule of law deficit is rather stark.3 The deficit does not diminish the importance of Russia in international affairs, nor is it meant to suggest the situation is unique to Russia. The internal conditions of many states have negative international security implications. As Europeans repeatedly pointed out during the administration of George W. Bush, U.S. departures from the rule of law made the United States increasingly problematic as a global partner, whether through the use of force in Iraq or the manner in which the United States pursued and handled terrorist suspects. In fact, coping with authoritarian trends in Russia (and elsewhere) will involve changes in U.S. policies that have, on the surface, nothing to do with Russia. Bush administration counterterrorism policies that authorized torture, indefinite detention of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo have had numerous negative unintended consequences for U.S. national security, including serving as a recruitment tool for al Qaeda and insurgents in Iraq.4 Less often recognized, these policies also have undercut whatever leverage the United States had, as well as limited the effectiveness of American decision-makers, to push back on authoritarian policies adopted by, among others, the Putin administration. At its worst, American departures from the rule of law may have enabled abuse inside Russia. These departures certainly left human rights defenders isolated.5 Repairing the damage to U.S. soft power and reversing the departure from human rights norms that characterized the Bush administration’s counterterrorism policies will provide the Obama administration strategic and moral authority and improve the ability of the United States to work with allies. It also can have positive consequences for Obama’s Russia policy. The changes that need to be made in U.S. counterterrorism policies, however politically sensitive, are somewhat more straightforward than the adjustments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian leaders and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power.

#### Key to solve warming

**Light, Wong and Charap**, 6/30/**2009** (Andrew – senior fellow at the Center for American Progress, Julian – senior policy analyst at CAP, and Samuel – fellow at CAP, U.S.-Russia Climate and Energy Efficiency Cooperation: A Neglected Challenge, Center for American Progress, p. http://www.americanprogress.org/issues/2009/06/neglected\_challenge.html)

The summit between President Barack Obama and Russian President Dmitri Medvedev in Moscow on July 6-8 comes in the middle of a packed international schedule of bilateral and multilateral meetings for the United States. on climate change. In the run up to the critical U.N. climate talks in Copenhagen at the end of this year, when the extension or successor to the existing Kyoto Protocol must be agreed upon, it is crucial that the United States and Russia—both major emitters of greenhouse gases and potentially leaders on this crucial issue—explore ways of working together to ensure a positive outcome at these talks. Enhancing cooperation on climate change and energy efficiency should be a major plank of U.S. Russia policy and should be discussed at the highest levels when President Obama meets with President Medvedev next week. Russia, like the United States, is a significant contributor to global warming. If the European Union is disaggregated Russia is the third-largest emitter of carbon dioxide behind the United States and China and still currently ahead of India. More importantly Russian per capita emissions are on the rise, and are projected at this point to approach America’s top rank as per capita emitter by 2030. Russia is also the third-largest consumer of energy and one of the world’s most energy-intensive economies. Making Russia a partner on these issues could be critical in order to **advance a sound global climate change agenda**.

#### Extinction

Mazo 10 (Jeffrey Mazo – PhD in Paleoclimatology from UCLA, Managing Editor, Survival and Research Fellow for Environmental Security and Science Policy at the International Institute for Strategic Studies in London, 3-2010, “Climate Conflict: How global warming threatens security and what to do about it,” pg. 122)

The best estimates for global warming to the end of the century range from 2.5-4.~C above pre-industrial levels, depending on the scenario. Even in the best-case scenario, the low end of the likely range is 1.goC, and in the worst 'business as usual' projections, which actual emissions have been matching, the range of likely warming runs from 3.1--7.1°C. Even keeping emissions at constant 2000 levels (which have already been exceeded), global temperature would still be expected to reach 1.2°C (O'9""1.5°C)above pre-industrial levels by the end of the century." Without early and severe reductions in emissions, the effects of climate change in the second half of the twenty-first century are likely to be **catastrophic for the stability and security of countries** in the developing world - not to mention the associated human tragedy. Climate change could even undermine the strength and stability of emerging and advanced economies, beyond the knock-on effects **on security of widespread state failure** and collapse in developing countries.' And although they have been condemned as melodramatic and alarmist, many informed observers believe that unmitigated climate change beyond the end of the century could pose an existential threat to civilisation." What is certain is that there is no precedent in human experience for such rapid change or such climatic conditions, and even in the best case adaptation to these extremes would mean profound social, cultural and political changes.