# 1AC

**1AC – Advantage One**

**Contention One – Terrorism**

**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, 08** (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 securit**y. 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.

**Decentralization of terrorist groups makes them even more dangerous – the risk is spreading**

**Gertz, 6/19/13** – Bill, Senior Editor at the WFB and Washington Times, Fellow at the Hoover Institute at Stanford University, Lecturer on Defense and National Security at Johns Hopkins, “Al Qaeda Terrorist Threat Is Growing”, http://freebeacon.com/al-qaeda-terrorist-threat-is-growing/

**The threat posed by al Qaeda terrorism around the world** **continues to increase** **despite President Barack Obama’s recent claim that the central group behind the Sept. 11, 2001, attacks is on the path to defeat, according to U.S. and foreign counterterrorism officials and private experts.** Obama said in a speech to the National Defense University May 23 that because of the death of al Qaeda leader Osama bin Laden and most of his top aides, “we are safer.” While terrorist threats still exist, “the core of al Qaeda in Pakistan and Afghanistan is on the path to defeat,” the president said. However, **a U.S. counterterrorism official said the threat posed by al Qaeda is growing**. **“From Africa to Pakistan, it is spreading systematically**,” the official said. The official blamed the Obama administration policy of focusing its counterterrorism efforts almost exclusively on central al Qaeda. The focus on Pakistan and Afghanistan resulted in a lack of targeted counterterrorism efforts in other locations, the official said. The official added that counterterrorism efforts have been weakened by the administration’s policy of dissociating Islam from al Qaeda and other Islamist terrorism. The policy was a key effort of John Brennan, White House counterterrorism chief during the first Obama administration. As CIA director, Brennan has expanded the policy of limiting links between Islam and terrorism at the agency. The result is that **Islamist terror groups are flourishing, posing direct threats to the United States and to U.S. interests outside the country, the official said**. **That assessment is bolstered by a new report by the private Lignet intelligence group**. The report made public Tuesday says **the U.S. government’s overreliance on sanctions and surveillance has limited the war on terror. The result is “a decentralized al Qaeda structure—and a much greater threat**,” the report said. **“Al Qaeda has transitioned from a hierarchical cell structure to a franchise organization that is now responsible for four times as many terrorist attacks a year as it was before 9/11**,” the report said. **“Al Qaeda training camps are now being established on the Arabian Peninsula, in Africa, countries of the former Soviet Union, and Southeast Asia**.” U.S. counterterrorism efforts in Southwest Asia, including a steady series of armed drone attacks against al Qaeda leaders, have resulted in central al Qaeda moving out of the region. York Zirke, head of Germany’s federal criminal police agency, told a conference in Russia recently that **al Qaeda and other terrorist groups are shifting operations from Pakistan and Afghanistan to Syria, northern Africa, Yemen, and other countries.** “Speaking about the situation in the world, **it has to be reiterated that al Qaeda and organizations associated with it are not halting their activities, but the centers of its activities have moved from the area close to the Pakistani and Afghani borders to other regions such as Syria, Northern Africa, Mali, and Yemen**,” Zirke said during a conference in Kazan, Russia, on June 6, according to Interfax. **The U.S. official outlined gains by al Qaeda both ideologically and operationally in expanding its reach as well as developing affiliates in key regions targeted by Islamists over the past several months. Al Qaeda has moved rapidly to expand in parts of east, west, and north Africa, helped by the so-called Arab Spring.** A key affiliate, **al Qaeda in the Islamic Maghreb**, known as AQIM, **and the Somalia-based al Shabaab group are the two main groups operating and expanding in Africa. The Nigerian al Qaeda group Boko Haram also emerged as a new affiliate and is posing a significant threat to the region**. About 4,000 French troops were dispatched to Mali in January to battle al Qaeda terrorists. AQIM is expanding despite the French military intervention. A BBC report from May 29 stated that the expansion is not new. “**Militants and armed radical groups have expanded and entrenched their positions throughout the Sahel and Sahara over the last decade under the umbrella of [AQIM].”** French troops announced a day later they had uncovered an AQIM bomb factory engaged in making suicide bomber vests in northern Mali. U.S. intelligence agencies recently identified a new AQIM training base near Timbuktu in Mali. An al Qaeda training manual discovered in Mali revealed that **terrorists are training with SA-7 surface-to-air missiles**, the Associated Press reported. **Al Qaeda affiliates in Libya are moving into the power vacuum left by the ouster of the regime of Muammar Gadhafi**. The main al Qaeda affiliate there is Ansar al Sharia, blamed for the Sept. 11, 2012, attack against the U.S. diplomatic compound in Benghazi that killed four Americans, including Ambassador to Libya Chris Stevens. France’s government recently said Paris has become increasingly alarmed about al Qaeda activities in Libya and is considering a deployment of troops near Libya for counterterrorism operations. French President Francois Hollande said in a speech last month that **Libya-based jihadists represent the main security threat to North Africa and also to Europe**. He told a reporter May 23 that the terrorist threat in Mali “began in Libya and is returning to Libya.” **The concerns are based on recent intelligence reports that al Qaeda and other jihadists groups have new training camps in the southern Libyan desert.** Further east in Africa, **Egypt’s Muslim Brotherhood government is creating an environment that is allowing al Qaeda to develop in that country. A U.S. intelligence official has said reports from Egypt identified al Qaeda groups operating Al-Azhar University in Cairo. The university is said to be a covert base for al Qaeda organizational and training activities that is developing a jihadist network made up of many different nationalities**. Al Shabaab in Somalia continues to conduct attacks, although there are signs the group is fragmented, with some armed fighting among various groups within al Shabaab. The group remains a key al Qaeda affiliate. Attacks related to al Shabaab continue to increase, according to U.S. officials. **One particular concern for security officials are reports that al Qaeda is moving into Egypt’s Sinai Peninsula**. A U.S. official said in May that **al Qaeda elements were conducting small arms training in the mountainous areas of the Sinai Peninsula in preparation for fighting alongside jihadist rebels in Syria.** The al Qaeda affiliate in the Sinai was identified by U.S. officials as Ansar Bayt al-Maqdis (ABM). The group’s logo is similar to that of al Qaeda—a black flag, an AK-47, and a globe. Saudi Arabia has been battling the affiliate al Qaeda in the Arabian Peninsula, which tried several high-profile airline bombings against the United States. The group is led by several former inmates of the U.S. prison at Guantanamo Bay, Cuba, and is very active against the government of Yemen. Earlier this year, a leaked memorandum from Saudi Arabia’s Interior Ministry revealed that **Riyadh is exporting al Qaeda terrorists to Syria. The memo from April 2012 disclosed that 1,239 prisoners who were to be executed were trained and sent to “jihad in Syria” in exchange for a full pardon**. The prisoners included 212 Saudis and the rest were foreigners from Syria, Pakistan, Yemen, Sudan, Egypt, Jordan, Somalia, Kuwait, Afghanistan, and Iraq and included Palestinians. **Syria’s al Qaeda group is the al Nusra Front, which has emerged as the most powerful rebel group opposing the forces of the Bashar al-Assad regime**. Obama said in his National Defense University speech that the “lethal yet less capable al Qaeda affiliates” and domestic jihadists remain a threat. “But as we shape our response, **we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.” The Lignet report said the use of sanctions and financial penalties against al Qaeda produced the unintended consequence of transforming al Qaeda into a coalition of loose, localized, autonomous terror cells.** “In terms of financing, al Qaeda’s shuria or high command council, no longer plays a central role in allocating expenditures or soliciting funds,” the report said. “Instead, terrorist financing has moved further into the ‘gray’ economy. Cells raise funds from a combination of charities, independent criminal ventures, and licit businesses.” Crime is now the main source of al Qaeda funds and criminal activities by the group include extortion, hijacking, theft, blackmail, the drug trade, and kidnapping for ransom. “Counterterrorism efforts that target the financing of terrorism are a work in process,” the report concludes. “**The measures employed by the United States and others in the last 12 years have reshaped rather than resolved the terrorist threat**. It remains to be seen if the United States will be able to in turn adapt to al Qaeda’s new and alarming franchise cell structure and finance methods.” Joseph Myers, a retired Army officer and specialist on the ideology of Islamist terror, said U.S. efforts to target and kill al Qaeda leaders have been successful. But **al Qaeda affiliates are spreading “from the Horn of Africa, across North Africa and post-Gaddafi Libya into central Africa to Dagestan and like-minded bombers in Boston**,” he noted. **“Al Qaeda is an idea, not simply an organization and ideas are not easily ‘killed,’**” Myers said in an email. **The U.S. government’s counterterrorism paradigm is misguided because the forefront of global Islamic jihad is not al Qaeda, but the Muslim Brotherhood** “we are now partnering with as a matter of policy,” he said. **The doctrine of Islamic jihad remains the key ideological threat that must be recognized,** he said. Until that is realized, “**we will continue to have national security failures of analysis and prediction and not only al Qaeda, but other Islamic jihadist groups will continue to emerge and spread,**” Myers said.

**Nuclear terrorism is specifically likely**

**Brill & Luongo, 12** (Kenneth C., former U.S. Ambassador to the IAEA, Kenneth N., President of the Partnership for Global Security, “Nuclear Terrorism: A Clear Danger”, New York Times, March 15, http://www.nytimes.com/2012/03/16/opinion/nuclear-terrorism-a-clear-danger.html)

Terrorists exploit gaps in security. **The current global regime for protecting the nuclear materials that terrorists desire** for their ultimate weaponis far from seamless. It **is based largely on unaccountable, voluntary arrangements that are inconsistent across borders. Its weak links make it dangerous and inadequate to prevent nuclear terrorism**. Later this month in Seoul, the more than 50 world leaders who will gather for the second Nuclear Security Summit need to seize the opportunity to start developing an accountable regime to prevent nuclear terrorism. There is a consensus among international leaders that **the threat of nuclear terrorism is real, not a Hollywood confection**. President **Obama**, the leaders of 46 other nations, the heads of the International Atomic Energy Agency and the United Nations, **and** numerous **experts have called nuclear terrorism one of the most serious threats to global security and stability**. It is also preventable with more aggressive action. **At least four terrorist groups, including Al Qaeda, have demonstrated interest in using a nuclear device. These groups operate in or near states with histories of questionable nuclear security practices. Terrorists do not need to steal a nuclear weapon. It is quite possible to make an improvised nuclear device from highly enriched uranium or plutonium being used for civilian purposes.** And there is a black market in such material. **There have been 18 confirmed thefts or loss of weapons-usable nuclear material**. In 2011, the Moldovan police broke up part of a smuggling ring attempting to sell highly enriched uranium; one member is thought to remain at large with a kilogram of this material.

**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" \l "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, increasing US legitimacy and winning hearts and minds, can we win the war on terror**

**Spaulding, 09** (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.

**1AC – Advantage Two**

**Contention Two – Judicial Independence**

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

**RFE, 7/25/13** (Radio Free Europe, 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 03** ("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**.

**Scenario One – Latin America**

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

**Mirow, 07** (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 U**nited **S**tates **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 U**nited **S**tates **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 and democracy**

**Cooper, 08** (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 causes disease outbreaks and regional conflict escalation**

**Manwaring, 05** (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 terror**ism. 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

**Disease pandemics cause extinction**

**Keating, 09** (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. **Bio**logical **weapons experimentation** has **add**ed **a new and** just as **troubling complication**.

**Failure of Latin American democracy causes Brazil-Argentina prolif**

**Schulz, 00** (Donald E., Chairman of Political Science - Cleveland State University, former Research Professor - SSI of the U.S. Army War College, March, The United States and Latin America: Shaping An Elusive Future, http://www.strategicstudiesinstitute.army.mil/Pubs/display.cfm?pubID=31)

**A** second **major interest is the promotion of democracy**. At first glance, this might appear to be a peripheral concern. For much of its history, the United States was perfectly comfortable with authoritarian regimes in Latin America, so long as they did not threaten higher priority interests like regional security or U.S. economic holdings. But that is no longer the case. U.S. values have changed; democracy has been elevated to the status of an “important” interest. In part, this has been because American leaders have gained a greater appreciation of the role of legitimacy as a source of political stability. **Governments that are popularly elected and respect** human rights and the **rule of law are less dangerous to** both their citizens and **their neighbors. Nations** which **are substantively democratic tend not to go to war** with one another. They are also less vulnerable to the threat of internal war provoked, in part, by state violence and illegality and a lack of governmental legitimacy. 6 In short, **democracy and economic integration are not simply value preferences, but are increasingly bound up with hemispheric security**. To take just one example: **The restoration of democracy in Brazil and Argentina** and their increasingly strong and profitable relationship in Mercosur **have contributed in no small degree to their decisions to forsake the development of nuclear weapons. Perceptions of threat have declined, and perceptions of the benefits of cooperation have grown, and this has permitted progress on a range of security issues** from border disputes, to peacekeeping, environmental protection, counternarcotics, and the combat of organized crime. Argentina has also developed a strong bilateral defense relationship with the United States, and is now considered a non-NATO ally.

**That causes conflict escalation and war**

**Pravda, 03** Argentina concerned on Brazil's nuclear program, http://english.pravda.ru/world/2003/01/09/41762.html

The new **Brazilian Minister of Science** and Technology, Roberto **Amaral, shook** the **South America**n and international media **after announcing** **his Government was interested on developing a nuclear program** to "handle such technology". In confusing declarations, Amaral said: "We are against the atomic bomb, wherever it comes from: Brazil, Argentina, USA or Israel". However, he added: "there cannot be limits to the knowledge" and puzzled local and foreign authorities. As **the** polemic **declarations may provoke a reaction from Brazil's neighbors** and the international community, the Foreign Minister Celso Amorim consulted his colleague and said Amaral did not mean Brazil was interested on developing an atomic bomb. "We will keep on fighting for the world nuclear disarming", said Amorim to the press. The problem with Amaral declarations is that he actually said what he says he didn't said. On Monday, the BBC correspondent to Brasilia asked him if he was of the idea that his country should eventually has the know-how to produce atomic bombs. His answer was very clear: "I agree, I agree", he said. **If Brazil plans to have the bomb, they would alter the military equilibrium in the region and may face a diplomatic reaction from its Mercosur partners.** Argentina, as well as Brazil, already handles atomic energy, but with pacific purposes. If its neighbor plans to develop massive destruction weapons, then **the Argentine militaries would push their civil authorities to follow Brazil's path.** Sources in the Argentine Army confirmed to PRAVDA.Ru that even in peacetime, **Brazil and Chile** are always targets for military actions and the Armed Forces **have defensive plans to neutralize hypothetical neighbor attacks.** This is mere speculation as an armed conflict in the region is unthinkable with democratic governments.

**Goes nuclear and deterrence doesn't check**

**Ghoshal, 13** (Debalina, Associate Fellow at the Centre for Air Power Studies, India, "South America Goes Nuclear: Now Brazil," 8/20, http://www.gatestoneinstitute.org/3941/nuclear-brazil)

By stating that submarines would be used for defensive roles only, Brazil apparently tries to make clear, as the analyst William Goncalvez stated, that it has "strategic needs," but no desire to fuel an "arms race….nor does it want to be a military power."[24]¶ **At a time when countries such as China, Russia, and Iran are intensifying their efforts to deny to their adversaries access** to certain areas,[25] **Brazil's nuclear-powered submarines could** also **enable the country to enhance its sea-denial capabilities**. Brazil's nuclear-powered submarine is expected to have a "world wide reach, deep water stealth, and strike capability."[26] The submarine could further be used for finding and tracking enemy submarines and to carry out covert missions for intelligence gathering.¶ The cost of building the fleet of submarines would be high, estimated up to USD $4 billion. As such, Brazil's domestic problems might cause a reduction to its defense budget. Moreover, the Brazilian navy has had an uneven experience with its French Sao Paulo aircraft carrier which, when deployed,[27] has undergone a number of mechanical problems.¶ **Brazil's** submarine **capabilities could**, of course, **enable it to take part in warfare away from Brazil's borders**. When **under the threat of nuclear war**, **having the capability to wage a war distant from the homefront is advantageous**. Although, under the Treaty of Tlalelolco of 1967, Latin America is at present is a nuclear-weapons-free zone, **Brazil's move** towards nuclearization **could prompt Venezuela and Argentina to follow suit**.¶ Brazil could also eventually develop SSBNs(ship-submersible ballistic missile nuclear-powered submarines), which can fire submarine-launched ballistic missiles, and which are one of the components of a nuclear triad -- to move towards a credible deterrent. Brazil could choose to develop submarine-launched missiles or torpedoes. In the long run, the nuclear attack submarines could be converted to submarines capable of carrying nuclear-powered cruise missiles. Only then can Brazil strengthen its Continuous-at-Sea Deterrent, or the ability of a submarine armed with nuclear missiles to be on constant patrol.¶ **These nuclear developments** in Brazil **are worth watching closely**: the precariousness of deterrence, or of collapsed or **ineffective deterrence, easily leads to all-out war**.

**Scenario Two – Africa**

**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 Africa**

**CJA, et al 03** ("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 U**nited **S**tates **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, 07** (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, 09** – \*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, 04** (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, 05** (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 rainforests**4. **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 life**16. According to Walter Kansteiner, **they are a “world treasure,” a “world lung” necessary for preserving biologic diversity**.

**Supreme Court action to restrict detention powers, particularly during war time, is ESSENTIAL to protecting and strengthening US judicial independence – judicial passivity only encourages attacks on the courts**

**Reinhardt, 06** (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. **A**nother 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 charg**e. 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**.

**US judicial independence is modeled globally – correlational studies prove**

**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

# 2AC

**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?

Syria thumps – their ev

**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 -- 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 presidentialpower 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.

### NSC CP – 2AC

#### Their terror DA card isn’t specific to civilian versus another court – it’s talking about stopping ID in general – if we link, they sure do too

#### Perm --- do both --- solves the link: it authorizes the ruling, shoring up support

#### Agent counterplans are a voter --- steal the Aff, focus on stale process questions, and no decision-maker can choose

**Doesn’t solve the terror adv – procedural protections are key to prevent erroneous imprisonment and gain cooperation from local populations – allies see a difference in the level of legitimacy between the plan and the counterplan – that’s Hathaway**

#### Doesn’t solve --- even if Courts model ---

#### Bad signal --- Supreme Court must be the first actor --- CP’s seen as weak quasi-commitment

Morrison 97 (Fred L., Professor of Law – University of Minnesota Law School, “Book Review: The United States and the World Court as a "Supreme Court of the Nations": Dreams, Illusions and Disillusion”, American Journal of International Law, April, 91 A.J.I.L. 396, Lexis)

The author presents a comprehensive review of American attitudes toward the concept of a World Court, from the earliest days of consideration of the idea at the beginning of this century to the present time. She traces these developments in successive chapters, from the pre-World War I arbitration treaties, through U.S. consideration and rejection of the Statute of the Permanent Court of International Justice after World War I, to its adoption, in 1946, of the "optional clause" providing for compulsory jurisdiction of the re-formed International Court of Justice (ICJ). As Pomerance shows, early proponents of international adjudication saw the U.S. Supreme Court as a model for orderly governance of nations under a rule of law. And, indeed, the original jurisdiction of the Supreme Court was a touchstone for the development of peaceful resolution of disputes between political powers. Substantial parts of modern international law, from the rules regarding the peaceful uses of modern watercourses to the rules of state responsibility established in Trail Smelter, [1](http://www.lexis.com/research/retrieve?_m=75bf46a0945d15b7bbdd15ba2a209300&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAW&_md5=19efaf481e80f1c07c866aa538665f71#n1) have been heavily influenced by its jurisprudence. Nevertheless, passage of the Connally Amendment limiting the application of compulsory jurisdiction meant that U.S. adoption of the optional clause could only be called "quasi-acceptance."

#### And that destroys judicial independence – it would be a clear signal of deference that goes global – that’s CJA

#### Conditionality is a voter-

#### A – it results in argument irresponsibility because it encourages contradictory positions

#### B – creates time and strat skews by making the neg a moving target

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

#### Uniquely worse with multiple worlds – forces us into strategic double binds and tradeoffs

#### No modeling

Merritt 97 (Hon. Gilbert S., Circuit Judge for the Sixth Circuit Court, U.S. Court of Appeals, Former Assistant Dean and Professor of Law – Vanderbilt University, Spring, Saint Louis University Law Journal, 41 St. Louis L.J. 505, p. Lexis)

And so our institution is a unique institution in our society. It was unique in the world up until the Second World War. But now other countries have imitated our judicial system. They are not imitating our congressional system or our presidential system, but it is the federal judiciary as an institution that other countries have after the Second World War sought to imitate in large measure. We are a unique institution in a democratic society and this can never be over-emphasized; the uniqueness of the federal judiciary, and that we run against the grain. We have no term limits, and we are not elected. In a democratic society, some would say, that is an anachronism. In a democratic society we have life tenure and we are counter-majoritarian. And most of us in this room, I am sure, unlike Pat Buchanan, think that there is a reason for that. And that if we lose that we will have lost a great deal of the substance and procedures which maintain our system of civil liberty, and our open system of commerce. Because that is what the founding fathers intended and which I view as almost sacred. n15

#### Perm --- do the CP, then the plan --- justified by the sequential nature of the net-benefit and the plan doesn’t commit to immediacy

**Executive CP – 2AC**

**Perm – do both**

**Court action is key –**

1. **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**.

1. **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**
2. **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.

1. **The executive has openly defended a right to indefinite detention *without judicial review* – review is critical to check dictatorialexecutive power – that’s Martin**

**6. Perm do the CP – it’s an example of the president complying with judicial oversight**

**7. Counterplan** **is a voter**

**A) Topic education – shifts the focus of the debate from whether the president should have the authority and to whether the president 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**

**C) Object fiat – fiats the object of the resolution which makes clash impossible- no way to have a stable source of aff offense**

**8. Court action is critical to ensure rights and prevent executive tyranny**

**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.

**9. Perm do the counterplan then the plan – shields the link to the net benefit because it looks like the court enforcing the XO**

**They’ve spotted us global modeling – that’s CJA**

**Critical to Sri Lankan stability**

**Weerasekera 12** (Dharshan, JD @ Sri Lanka Law College and former analyst @ Sri Lankan Defense Ministry, "The Fatal Flaw in the Sri Lanka Constitution," http://d3e11nsse60sj1.cloudfront.net/wp-content/uploads/2012/07/120709-Weerasekera-SriLanka-Constitution.pdf)

In other words, in Sri Lanka, as far as the making of laws, there really is no “check” on Parliament. ¶ Such a situation, when combined with a Strong Executive deriving from the French tradition, **is a** ¶ **recipe for disaster** because if the Executive manages to bring the legislature under his sway, he can ¶ get any law passed, and thereby rule without any Constitutional or legal impediment. This is where ¶ the American notion of “Separation of Powers” is supposed to come in. The claim and perhaps ¶ also something of the intent, was to ameliorate the deficit with regard to the failure to import the ¶ British safeguards by substituting a separation of powers scheme akin to the American system. But ¶ this, in fact, has not happened, and the American notion has been imported only in form and not in ¶ substance. Thus, the “fatal flaw” in the Sri Lanka Constitution is its lack of a meaningful separation ¶ of powers i.e. a meaningful systems of checks and balances between the three branches of ¶ government, which leads to the legislature, and through that the Executive, having untrammeled ¶ powers. ¶ Any Constitution worth its name has to impose controls on Government. Therefore, it cannot be ¶ that Sri Lanka’s Constitution-makers failed to devise such controls. So what has gone wrong, and ¶ why? To find out, one would have to first understand the controls the Constitution-makers did ¶ create, or conceptualize, and then compare it with the controls in the two models on which they ¶ drew for inspiration—in this case, the British system, for “Supremacy of Parliament,” and the ¶ American system, for “Separation of Powers.” One would then be able to isolate inadequacies and ¶ shortcomings in the “hybrid.” So this is what this paper proposes to do. The paper is comprised of ¶ four sections. Section One briefly explains the provisions in the Constitution that create the¶ problem. Section Two is devoted to discussing the issue of “Separation of Powers,” and consists of ¶ four parts. Parts 1-3 discuss the “rationales” underlying the systems of governance, respectively, of ¶ Sri Lanka, Great Britain, and the United States, with respect to “checks” on Government. Part 4¶ consists of a brief comparative analysis of all three. ¶ Section Three is devoted to discussing the recent 18th Amendment to the Constitution, enacted ¶ through the expedient of an “Urgent Bill.” In my view, this Amendment is as perfect an example as ¶ any of the practical consequences—indeed, the predictable end—of the flaw inherent in the Sri ¶ Lanka Constitution, and is therefore the best means possible to appreciate the sad state of affairs to ¶ which Sri Lanka has been reduced as a result of the aforementioned flaw. In the course of this ¶ Section, I also propose to present an interesting argument against the 18th Amendment, one, to the ¶ best of my knowledge, that has never before been used. It is now too late to be of any effect against ¶ the 18th Amendment itself due to restrictions placed by Article 80(3) of the Constitution.¶ Nevertheless, it is something valuable for Sri Lankans to have in hand, in case the government tries ¶ to resort to the same tactic again. Finally, in Section Four, I discuss “solutions.”¶ Although the focus of this paper is Constitutional Law, and that also Constitutional Law of Sri ¶ Lanka, I believe it can nevertheless be relevant to a general audience, particularly one with interests ¶ in US foreign policy. This is because the ideas raised here suggest certain new, or under-utilized,¶ ways in which America and Americans can engage with the rest of the world, and vise versa, for the ¶ mutual benefit of both. In my view, the types of core principles to be discussed here, if properly ¶ imported, can really **help bring stability and peace** to a lot of countries, particularly in the “Third ¶ World” and the “Second World”—countries precisely like **Sri Lanka**—whose perennial problems ¶ include, among other things, tendencies towards chaos and internal violence, especially based on ¶ ethnic, religious or linguistic differences. Readers from different countries can apply ideas discussed ¶ here to contexts important and relevant to their own respective countries, if they detect similarities ¶ between the latter contexts and any of the matters raised with regard to Sri Lanka’s predicament.

**Sri lanka instability spills over to indo-pak nuclear war**

**Bouton 10** (Marshall M., President – Chicago Council on Global Affairs, “America’s Interests in India”, CNAS Working Paper, October, <http://www.cnas.org/files/documents/publications/CNAS_USInterestsinIndia_> Bouton.pdf)

In South Asia, the most immediately compelling U.S. interest is preventing terrorist attacks on the U.S. homeland originating in or facilitated by actors in South Asia, particularly in Afghanistan and Pakistan. To avert that possibility, the United States also has an interest in the stability and development of both countries. At the same time, the United States has a vital interest in preventing conflict between Pakistan and India, immediately because such a conflict would do great damage to U.S. efforts in Afghanistan and Pakistan (such as the diversion of Pakistani military attention away from the insurgency) and because it **would pose** the **severe risk of nuclear escalation**. Finally, the United States has an interest in peace and stability in South Asia as a whole. Instability and violence in nearly every one of India’s neighbors, not to mention in India itself, could, if unchecked, undermine economic and political progress, potentially **destabilizing the entire region**. At present, a South Asia dominated by a politically stable and economically dynamic India is a hugely important counterweight to the prevalent instability and conflict all around India’s periphery. Imagining the counterfactual scenario, a South Asian region, including India, that is failing economically and stumbling politically, is to imagine instability on a scale that would have **global consequences**, including damage to the global economy, huge dislocations of people and humanitarian crisis, increasing extremism and terrorism, and much greater potential for **unchecked interstate** and civil **conflict.**

# 1AR

### Drone shift

#### No china war

Allison & Blackwill 3/5 -- \*director of the Belfer Center for Science and International Affairs and Douglas Dillon Professor at Harvard's John F. Kennedy School of Government AND \*\*Henry A. Kissinger Senior Fellow for U.S. foreign policy at the Council on Foreign Relations (Graham and Robert D., 2013, "Interview: Lee Kuan Yew on the Future of U.S.- China Relations," http://www.theatlantic.com/china/archive/2013/03/interview-lee-kuan-yew-on-the-future-of-us-china-relations/273657/)

Interview with Lee Kuan Yew, the founding prime minister of Singapore, one of Asia's most prominent public intellectuals, a member of the Fondation Chirac's honour committee

Competition between the United States and China is inevitable, but conflict is not. This is not the Cold War. The Soviet Union was contesting with the United States for global supremacy. China is acting purely in its own national interests. It is not interested in changing the world. There will be a struggle for influence. I think it will be subdued because the Chinese need the United States, need U.S. markets, U.S. technology, need to have students going to the United States to study the ways and means of doing business so they can improve their lot. It will take them 10, 20, 30 years. If you quarrel with the United States and become bitter enemies, all that information and those technological capabilities will be cut off. The struggle between the two countries will be maintained at the level that allows them to still tap the United States. Unlike U.S.-Soviet relations during the Cold War, there is no irreconcilable ideological conflict between the United States and a China that has enthusiastically embraced the market. Sino-American relations are both cooperative and competitive. Competition between them is inevitable, but conflict is not. After the collapse of the Soviet Union, the United States and China are more likely to view each other as competitors if not adversaries. But the die has not been cast. The best possible outcome is a new understanding that when they cannot cooperate, they will coexist and allow all countries in the Pacific to grow and thrive. A stabilizing factor in their relationship is that each nation requires cooperation from and healthy competition with the other. The danger of a military conflict between China and the United States is low. Chinese leaders know that U.S. military superiority is overwhelming and will remain so for the next few decades. They will modernize their forces not to challenge America but to be able, if necessary, to pressure Taiwan by a blockade or otherwise to destabilize the economy. China's military buildup delivers a strong message to the United States that China is serious about Taiwan. However, the Chinese do not want to clash with anyone -- at least not for the next 15 to 20 years. The Chinese are confident that in 30 years their military will essentially match in sophistication the U.S. military. In the long term, they do not see themselves as disadvantaged in this fight.

#### No US-China war – Economic interdependence checks.

**Goldstein and Murray 04** [Lyle Goldstein & William Murray, Professors at the US Naval War College, 2004, International Security, Vol 28, no. 4, Spring, p. 195-6]

Far from inevitable, the possibility of war between the United States and China is reduced by numerous factors: the enormous volume of trade and investment between the two powers chief among them. The same economic mechanisms are also drawing Taiwan and the PRC ever closer. Close examination of Beijing’s current terms for unification, in particular Jiang Zemin’s “eight points,” yields the conclusion that a political settlement of the Taiwan issue is not beyond the realm of possibility.179 Such an outcome would do much to forestall the tendencies toward rivalry that characterized United States–China relations during most of the 1990s. On the other hand, the United States must hedge against the worst case and face China’s rise with eyes wide open.

#### No US-China war

**Rosecrance et al ‘10** (Richard, Political Science Professor @ Cal and Senior Fellow @ Harvard’s Belfer Center and Former Director @ Burkle Center of IR @ UCLA, and Jia Qingguo, PhD Cornell, Professor and Associate Dean of School of International Studies @ Peking University, “Delicately Poised: Are China and the US Heading for Conflict?” Global Asia 4.4, <http://www.globalasia.org/l.php?c=e251>)

**Will China and the US Go to War?** If one accepts the previous analysis, the answer is “no,” or at least not likely. Why? First, despite its revolutionary past, **China has** gradually **accepted the US-**led **world** order **and become a status quo power.** It has joined most of the important inter-governmental international organizations. It has subscribed to most of the important international laws and regimes. It has not only accepted the current world order, it has become a strong supporter and defender of it. China has repeatedly argued that the authority of the United Nations and international law should be respected in the handling of international security crises. China has become an ardent advocate of multilateralism in managing international problems. And China has repeatedly defended the principle of free trade in the global effort to fight the current economic crisis, despite efforts by some countries, including the US, to resort to protectionism. To be sure, there are some aspects of the US world order that China does not like and wants to reform. However, it wishes to improve that world order rather than to destroy it. Second, **China** has **clearly rejected** the option of **territorial expansion.** It argues that territorial expansion is both immoral and counterproductive: immoral because it is imperialistic and counterproductive because it does not advance one’s interests. China’s behavior shows that instead of trying to expand its territories, **it has been trying to settle** its border **disputes through negotiation**. Through persistent efforts, China has concluded quite a number of border agreements in recent years. As a result, most of its land borders are now clearly drawn and marked under agreements with its neighbors. In addition, China is engaging in negotiations to resolve its remaining border disputes and making arrangements for peaceful settlement of disputed islands and territorial waters. Finally, **even on** the question of **Taiwan**, which China believes is an indisputable part of its territory, **it has adopted** a policy of **peaceful reunification**. A country that handles territorial issues in such a manner is by no means expansionist. Third, **China has relied on trade** and investment **for** national welfare and **prestige, instead of** military **conquest.** And like the US, Japan and Germany, China has been very successful in this regard. In fact, so successful that **it** really **sees no other option than** to continue on **this path to prosperity**. Finally, after years of reforms, China increasingly finds itself sharing certain basic values with the US, such as a commitment to the free market, rule of law, human rights and democracy. Of course, there are still significant differences in terms of how China understands and practices these values. However, at a conceptual level, Beijing agrees that these are good values that it should strive to realize in practice. A Different World It is also important to note that certain changes in international relations since the end of World War II have made the peaceful rise of a great power more likely. To begin with, the emergence of nuclear weapons has drastically reduced the usefulness of war as a way to settle great power rivalry. By now, all great powers either have nuclear weapons or are under a nuclear umbrella. If the objective of great power rivalry is to enhance one’s interests or prestige, the sheer destructiveness of nuclear weapons means that these goals can no longer be achieved through military confrontation. Under these circumstances, countries have to find other ways to accommodate each other — something that China and the US have been doing and are likely to continue to do. Also, globalization has made it easier for great powers to increase their national welfare and prestige through international trade and investment rather than territorial expansion. In conducting its foreign relations, the US relied more on trade and investment than territorial expansion during its rise, while Japan and Germany relied almost exclusively on international trade and investment. China, too, has found that its interests are best served by adopting the same approach. Finally, the development of relative pacifism in the industrialized world, and indeed throughout the world since World War II, has discouraged any country from engaging in territorial expansion. **There is less and less popular support for using force to address even legitimate concerns** on the part of nation states. Against this background, efforts to engage in territorial expansion are likely to rally international resistance and condemnation. Given all this, is the rise of China likely to lead to territorial expansion and war with the US? The answer is no.

#### No Pakistani collapse

**AP 10** (“Pakistan's stability, leadership under spotlight after floods and double dealing accusations,” August 6th, <http://www.foxnews.com/world/2010/08/06/pakistans-stability-leadership-spotlight-floods-double-dealing-accusations/>,

**Not for the first time, Pakistan appears to be teetering on the edge** with a government unable to cope. Floods are ravaging a country at war with al-Qaida and the Taliban. Riots, slayings and arson are gripping the largest city. Suggestions are flying that the intelligence agency is aiding Afghan insurgents. The crises raise questions about a nation crucial to U.S. hopes of success in Afghanistan and to the global campaign against Islamist militancy. **Despite the recent headlines, few** here **see Pakistan in danger of collapse or being overrun by militants** — a fear that had been expressed before the army fought back against insurgents advancing from their base in the Swat Valley early last year. **From its birth in 1947, Pakistan has been dogged by military coups**, corrupt and inefficient leaders, natural **disasters**, assassinations **and civil unrest. Through it all, Pakistan** has not prospered — but it **survives**. “There is plenty to be worried about, but also indications that **when push comes to shove the state is able to respond**," said Mosharraf Zaidi, an analyst and writer who has advised foreign governments on aid missions to Pakistan. "**The military** has many weaknesses, but it **has done a reasonable job** in relief efforts. There have been gaps in the response. But this is a developing a country, right?" The recent flooding came at a sensitive time for Pakistan, with Western doubts over its loyalty heightened by the leaking of U.S. military documents that strengthened suspicions the security establishment was supporting Afghan insurgents while receiving billions in Western aid. With few easy choices, the United States has made it clear it intends to stick with Pakistan. Indeed, it has used the floods to demonstrate its commitment to the country, rushing emergency assistance and dispatching helicopters to ferry the goods. The Pakistani government's response to the floods has been sharply criticized at home, especially since President Asif Ali Zardari departed for a European tour. With so many Pakistanis suffering, the trip has left the already weak and unpopular leader even more vulnerable politically. The flooding was triggered by what meteorologists said were "once-in-a-century" rains. The worst affected area is the northwest, a stronghold for Islamist militants. Parts of the northwest have seen army offensives over the last two years. Unless the people are helped quickly and the region is rebuilt, anger at the government could translate into support for the militants. At least one charity with suspected links to a militant outfit has established relief camps there. The extremism threat was highlighted by a suicide bombing in the main northwestern town of Peshawar on Wednesday. The bomber killed the head of the Frontier Constabulary, a paramilitary force in the northwest at the forefront of the terror fight. With authorities concentrating on flood relief, some officials have expressed concern that militants could regroup. The city of Karachi has seen militant violence and is rumored to be a hiding place for top Taliban and al-Qaida fighters. It has also been plagued by regular bouts of political and ethnic bloodletting since the 1980s, though it has been calmer in recent years. The latest violence erupted after the assassination of a leading member of the city's ruling party. More than 70 people have been killed in revenge attacks since then, paralyzing parts of the city of 16 million people. While serious, the **unrest does not** yet **pose an immediate threat to the stability of the country.** Although the U.S. is unpopular, **there is little public support for the hardline Islamist rule espoused by the Taliban and their allies**. Their small movement has been unable to control any Pakistani territory beyond the northwest, home to only about 20 million of the country's 175 million people.

### Cp

#### Federal judicial review of detention policy is critical to US judicial independence

Brighten 10 (Andrew, Ph.D. student in the Jurisprudence & Social Policy Program, Boalt Hall School of Law, University of California at Berkeley, "‘TheWay Ahead’ orThe Status Quo? Why National Security Court Proposals Threaten Judicial Independence," <http://laworgs.depaul.edu/journals/RuleofLaw/Documents/Brighten%20-%20final.pdf>)

The past decade witnessed two important and latently connected developments ¶ relevant to the extant debate about the nature and role of courts in contemporary society. ¶ First, legal and political scholars have reinvigorated the analysis of judicial ¶ independence, inspiring multiple academic conferences and revealing previously underrecognized complications to the presumed independence paradigm.3¶ As Burbank, Friedman & Goldberg commented following one such conference, “we know far less ¶ about the subject than we should,” and recent scholarship has challenged “every bit of ¶ common wisdom.”4¶ An important facet of this discussion concerns the means by which ¶ the political branches of governments have curtailed judicial independence in the ¶ twentieth century. One of the most subtle but effective tactics identified by scholars ¶ involves stripping regular courts of jurisdiction by transferring adjudication to specialized ¶ tribunals.5¶ In light of this realization, as S. Ronald Ellis recently argued, “we are faced . . ¶ . with a clear question as to whether we, as a society, are prepared to mandate legislatures ¶ to remove judicial functions from the courts . . . and assign those functions to institutions ¶ [] who, it is now clear, are not [] judicially independent.”6¶ A critically overlooked ¶ context in which to pose Ellis’ question is the past decade’s debate over counter-terrorism ¶ policy. In this second development, proposals to legislatively constitute special national ¶ security tribunals have steadily trickled through post-9/11 academic and popular ¶ discourse in the United States and elsewhere,7¶ and have burgeoned to a torrent during the ¶ past two years in anticipation of the Guantanamo Bay detention facility’s impending¶ closure.8¶ Proponents envisage that specialist civilian tribunals would oversee detention ¶ and prosecution of suspected terrorists, instead of the generalist court system normally ¶ tasked with that role – the federal district courts in the United States – and in lieu of ¶ military tribunals such as those favored by the previous U.S. administration. Glenn ¶ Sulmasy, a principal advocate for this idea, is a Commander and Judge Advocate of the ¶ U.S. Coast Guard, as well as a Professor of Law at the U.S. Coast Guard Academy.¶ Sulmasy has represented his proposals in a variety of media over the past decade.9¶ Last ¶ year, Sulmasy published the first book-length treatment of this issue, The National ¶ Security Court System: A Natural Evolution of Justice in an Age of Terror (Oxford ¶ University Press 2009). ¶ From a socio-legal perspective, this latest book in the counter-terrorism debate ¶ marks a significant contribution. As this review will elaborate, Sulmasy unintentionally ¶ casts the latent relation between the aforementioned two developments in its starkest ¶ relief to date, thereby both exposing the political nature of recent security-court proposals ¶ and furnishing an unintended case study of the jurisdiction-stripping dynamic posited in ¶ the judicial independence literature. The book therefore merits attention not only from ¶ national security scholars, but also from researchers interested in the intersection of law ¶ and politics. The latter group should recognize that this is not really a book about a ¶ national security court system. Revealingly, the book allots short shrift to its titular ¶ subject: only 20 pages near the end are devoted to an almost point-form sketch of ¶ Sulmasy’s proposed system, mostly derivative of earlier proposals and existing ¶ institutions,10 and leaving important aspects underdeveloped.¶ 11 Instead, what ¶ distinguishes Sulmasy’s new book – and implants its socio-legal relevance – is its ¶ virtually exclusive focus on the impetus for that system. The bulk of Sulmasy’s analysis ¶ frames his proposal as a political instrument to constrain the federal judiciary’s influence ¶ over counter-terrorism policy, in reaction to the latter’s supposed reversal of its pre-9/11 ¶ pattern of deference to military decision-making. What Sulmasy fails to account for¶ however – and what this review also aims to illuminate – is the problematic nature of his ¶ proposal in light of its antecedents. Sulmasy follows directly in the footsteps of various ¶ international and domestic analogues that commentators have decried from the ¶ perspective of judicial independence. Sulmasy’s proposal contains little to mitigate the ¶ latter problem, as this review will demonstrate. Curiously, recent liberal critics of ¶ proposed counter-terrorism tribunals mirror proponents in overlooking this potential ¶ critique. Such detractors therefore represent a third group that would do well to study the ¶ relation between the judicial independence literature and proposals such as Sulmasy’s, an ¶ endeavor that offers significant promise to buttress their current arguments.

#### Current detention trials are a blight on judicial independence

Allo 10 (Awol K., Lord Kelvin Adam Smith scholar at the University of Glasgow Law School, UK “ARTICLE: THE 'SHOW' IN THE 'SHOW TRIAL': CONTEXTUALIZING THE POLITICIZATION OF THE COURTROOM” Barry Law Review 15 Barry L. Rev. 41)

In important ways, although these trials did not resolve the fundamental contradictions that pervade society's political order, the mere excavation, deconstruction, and re-construction of the underlying conflicts and loyalties they bring about, in-and-of itself, enriches our understanding of the relationship between law, politics, and power. As Lawrence Douglas argues in The Memory of Judgment, there is no doubt that trials can function as instruments of historical instruction. The problem with this thesis is not on the possibility, but rather on the methodology with the ways in which the trial is made to have a pedagogic effect. Although Douglas calls for a more capacious understanding of the trial to accommodate far-reaching historical edification, such a didactic stunt overwhelms the juridical function of the trial, and, therefore, detracts attention from the primary goal of normative reconstruction. A deliberate and prejudicial interference in the juridical process for the sake of pedagogy does not deliver on the mission of pedagogy itself, let alone serve the dual task of historical edification and normative re-construction. As Milner Ball observes, "trials may indeed have an educative effect, but they have this effect when, instead of deliberately undertaking to teach, [\*69] they treat the parties as individuals." n122 He further adds that, "insofar as a trial is made a platform for moralizing or a forum for educating, a trial is not a trial." n123 As questionable as the pedagogic n124 ends of a trial are, a 'show trial' staged with the sole purpose of educating or showing, even when staged within democratic nations, violates, at least formally, the defendant's right to be presumed innocent. The defendant is not guaranteed a perfect trial, but only a fair one. The right to a fair trial, now a well settled Due Process right of the defendant, guarantees the true essence of a trial's legitimacy and justice. n125 However, the 'show trial' staged within constitutional democracies in which the courts claim strong political authority and independence signifies a different kind of 'show' reflective of the case and the judicial system. An example will illustrate how a 'show trial' within a consolidated democracy performs a 'show' that violates the defendant's right in a limited sense. Much has been written about the detention conditions in Guantanamo, and several legal battles have been fought over the proper status of the detainees and the scope of the rights to which they are entitled. n126 While many on the left argued that they are entitled to American justice, those to the right of center argued that they are neither civilians nor combatants, and hence, entitled to no legal protection. After months of bickering and political calculations, on 13 November 2009, the Obama administration decided to transfer five of those accused of masterminding the 9/11 attack for a trial before a civilian court in New York City. n127 The President, a former constitutional law professor, preempted the judgment of the court declaring that, "Americans won't find it offensive when Khalid Sheik Mohammed (known as KSM) is convicted and when the death penalty is applied to him." n128 Attorney [\*70] General Eric Holder, one of America's best criminal law minds, said that he would ask federal "prosecutors to seek death sentences for Mr. KSM" and the other four and that "the world would see him for the coward that he is" regardless of the spectacle he might hope to stage. n129 Although the American justice system is arguably one of the world's most effective, the preemption by both the Attorney General and the President of the Defendant's conviction and the penalty to be imposed, goes a long way in denying the Defendant's right to be presumed innocent and is likely to affect the impartiality required of the jury. There is something suspect here and questions must be raised. The first question is this: if the administration already knows that they are guilty and that a death penalty is in store for them, then why try them in the first place? How is their trial a fair one if they are already presumed guilty and their sentence predetermined by the government? At any rate, if the trial is meant to show the world that America provides the most hardened of criminals the luxuries of American justice, there is an element of 'show' in this trial. Steve Benen said, "by giving this suspected monster a fair trial, we can prove to the world the strength of American values and the integrity of the American system." n130 Emphasizing the looming spectacle and highlighting the peculiarity of this 'show', James Taranto argued that, "these trials will differ from an ordinary 'show trial' in that the process will be fair even though the verdict is predetermined." n131 The second question that supports the above conclusion over the administration's decision to try only five of the leading suspects before a civilian court while other detainees will be tried before an improved (in terms of due process guarantee) military commission: what accounts for such a differential, if not discriminatory, treatment?

#### Detainee policy is a key litmus test for US judicial independence – US judicial restrictions on the executive are modeled 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)

For more than two hundred years, this Court has stood as a ¶ bulwark against unilateral action by the executive. In so ¶ doing, this Court has fulfilled its constitutional obligations. ¶ Still more, this Court has helped to make the United States a ¶ model for emerging democracies seeking to secure ¶ fundamental rights from encroachment by unchecked ¶ executive power. ¶ This case threatens to break that fundamental line of ¶ defense against the tyranny of executive power. The ¶ executive claims that it can put its actions beyond the reach of ¶ the judiciary by holding people in the United States Naval ¶ Base at Guantánamo Bay, Cuba. This effort to place itself ¶ outside judicial control is fundamentally inconsistent with the ¶ structure of the U.S. government. The Constitution divides ¶ federal power among three co-equal branches, and no branch ¶ has the power to eliminate, unilaterally, the power of the ¶ others to review and, if necessary, correct its actions. ¶ Although this Court has at times deferred to the decisions of ¶ the executive and legislature when they act together, it has ¶ never abdicated its constitutional obligation to review the ¶ unilateral actions of either the executive or the legislature. ¶ Domestically, this case therefore represents an important test ¶ of this country’s commitment to the independence of the ¶ judiciary. ¶ This is chiefly, but not solely, a domestic concern. People ¶ around the world have long noted that the United States’ ¶ experiment with a tripartite government and an independent ¶ judiciary has, with some notable and regretted missteps, succeeded in living up to the ideals expressed in its ¶ Constitution. They have noted that the federal judiciary, ¶ specifically this Court, has managed to guarantee civil ¶ liberties even in times of strife. This success has made the ¶ U.S. system a model for countries around the world, ¶ particularly countries seeking to construct a civil society after ¶ decades of tyranny and oppression. ¶ However, these attempts to construct civil societies are ¶ consistently under assault. And as in this case, often the lead ¶ argument for dismantling such systems is national security. ¶ Indeed, some would-be democracies already have begun to ¶ justify prolonged detentions without judicial review on the ¶ basis of the detentions at Guantánamo Bay. ¶ Amici urge this Court to exercise jurisdiction over the ¶ claims asserted by the detainees at Guantánamo Bay not only ¶ because it is the only result consistent with more than two ¶ hundred years of legal precedent in this country, but also ¶ because the people of countries around the world look to the ¶ United States to uphold the ideals so elegantly reflected in its ¶ Constitution. When the United States fails to live up to these ¶ ideals, the cause of individual rights is diminished not just ¶ here but everywhere.

#### Deciding on indefinite detention would reestablish the independence of the judiciary (pretty terrible ev; read the other cards first)

Cleveland 12 (June, Sarah H., Columbia, Louis Henkin Professor in Human and Constitutional Rights; Faculty Co-Dir., Human Rights Institute, questioner is Marty Lederman, Deputy Assistant Attorney General in the Department of Justice’s Office of Legal Counsel “WAR, TERROR, AND THE FEDERAL COURTS, TEN YEARS AFTER 9/11: CONFERENCE\*: ASSOCIATION OF AMERICAN LAW SCHOOLS' SECTION ON FEDERAL COURTS PROGRAM AT THE 2012 AALS ANNUAL MEETING IN WASHINGTON, D.C” 61 Am. U.L. Rev. 1253)

So I'm going to start by posing a question for Sarah in the first instance: Sarah, to what extent are these federal courts doctrines, in particular Bivens and official immunity doctrines, preventing the federal courts from resolving some of the most important substantive questions, such as permissible means of interrogation, the extent to which persons apprehended in the United States can be militarily detained, and the like? President Obama has rejected some of these as a matter of policy, but the result of those decisions is that we won't resolve whether they were legal or not in the last administration and in the next administration. Many thought we would finally get some resolution through damages actions, such as Bivens actions and state court tort actions against contractors. How have the federal courts been doing? Should they be doing more or less to resolve these substantive questions, and how do federal courts doctrines affect whether such questions might be resolved? Sarah Cleveland: Okay great. So first, thank you to Marty for including me on this. I think one of the most important developments post-9/11 was the Supreme Court's reaffirmation of the independent role of the Federal Judiciary in reviewing legal questions in the context of an ongoing conflict, you know Hamdi n7 says the Supreme Court - you know, war is not a blank check for the Executive and the Supreme Court has a role. The Supreme Court itself has the two most important and in fact only decisions that recognize the application of binding law on Guantanamo, and that is Boumediene recognizing the application of the Suspension Clause and Hamdan n8 recognizing the application of Common Article 3. Those two decisions, I think have been extraordinarily important in helping the U.S. Government to bring its detention policies within a rule of law framework that is internationally recognized and accepted. And so I think the courts, at least some have not adequately appreciated the really positive role that judicial review can play in this context. It can play a very important role in disciplining internal government conversations about policies and legal principles. It helps legitimate governmental action externally and it allows, in some [\*1257] cases, the political practice to accomplish what may be politically difficult for them to accomplish on their own. So if you think back to the civil rights movement - I grew up in Alabama - this is not a digression. Southern judges who actually wanted to comply with desegregation orders were much better positioned politically when they had a court order requiring them to do it, than if they had it to do on their own. So courts can play all of these positive things and they have, to some extent, post-9/11, that I do think that we are seeing in some cases, not all, a combination of the view that courts are sort of across the board, institutionally ill-equipped to deal with these questions and therefore, necessarily need to defer to political branches' decisions in nearly all circumstances. And on the other hand, reaching out to the kind of threshold doctrines that Marty was just talking about; political question, standing, mootness, Bivens, qualified immunity, Westfall Act n9 substitution, battlefield preemption, all kinds of doctrines.

### Politics

#### No investor runaway – they’re too invested in the economy

#### No impact to shutdown - essential services still funded and empirically proven

von Spakovsky 13 (Hans, Senior Legal Fellow @ Heritage, "What Happens During a Government Shutdown?" http://www.heritage.org/research/reports/2013/09/what-happens-during-a-government-shutdown)

If President Barack Obama “shuts down” the government by vetoing a continuing resolution (CR) that funds all government operations with the exception of Obamacare, or the Senate fails to pass such a CR, crucial services will continue without interruption. That includes all services essential for national security and public safety—such as the military and law enforcement—as well as mandatory government payments such as Social Security and veterans’ benefits.¶ The key fact, as the U.S. Department of Justice (DOJ) itself has said, is that when there is a short-term lapse in appropriations, “the federal Government will not be truly ‘shut down’…because Congress has itself provided that some activities of Government should continue.” In fact, any claims that not passing a CR will result in a “shutting down” of the government “is an entirely inaccurate description” according to the DOJ.[1]¶ Such a lapse in funding would be neither catastrophic nor unprecedented, but it would pare down government services to those most essential for “the safety of human life or the protection of property.” That would not include the hundreds of billions of dollars in the federal budget that are constantly squandered and wasted on frivolous, unnecessary, and unneeded programs.

#### No impact to shutdown - Obama can cushion the impact

Liberto 9/18/13 (Jennifer, CNN Money, "CBO chief: Government shutdown bad for economy," http://money.cnn.com/2013/09/18/news/economy/congress-shutdown-economy/)

Elmendorf said only President Obama would be able to cushion the effect, because he has leeway to decide how broad any shutdown is. He can decide which agencies, departments and employees are "essential" to public service or serve a mandatory function, meaning they would continue to work during a federal shutdown.

In past shutdowns during the mid-1990s, for example, leaders realized that social security benefits are a key public service. In the longest shutdown, which lasted 21 days, many employees of the Social Security Administration stayed on the job and benefit checks were issued mostly on time.

**Obama has no political capital now – Summers withdrawal proves**

**Rogers 9/17/13** (Ed, Wash Post, "The Insiders: Stubborn facts and bothersome polls," http://www.washingtonpost.com/blogs/post-partisan/wp/2013/09/17/the-insiders-stubborn-facts-and-bothersome-polls/)

It seems like it has been 10 years, but in reality it has been less than 10 months since the president’s second inauguration. And **as** President **Obama tries to put Syria behind him, nothing on the domestic agenda looks promising**. **I don’t know what the opposite of the Midas Touch is, but that’s what Obama has.¶** To try and regain some momentum and credibility domestically**, the president is attempting to pivot back to the economy** (yet again.) **But his remarks** yesterday, on the five-year anniversary of the Lehman Brothers bankruptcy, **seemed tone-deaf,** as he lashed out at Republicans on economic issues while the tragic events of the Navy Yard shooting were still unfolding.¶ ‎And while the president loves to surround himself onstage with middle class families while he waxes poetic about how much he’s helping them, the truth is that Obama’s economic policies are only helping the rich get richer. In fact, the Associated Press reported last week that, “in 2012, the incomes of the top 1 percent rose nearly 20 percent compared with a 1 percent increase for the remaining 99 percent.” ‎¶ This income equality gap — now the largest since the 1920s — shows that Obama’s policies are failing miserably, with the middle class bearing the brunt of his no-growth economy. No president has been better for the 1 percent than Obama.¶ **Obama was** also **dealt an embarrassing blow this week as** Larry **Summers withdrew his name from consideration** for Federal Reserve Chairman. I wasn’t even for Summers getting the job, but **this was another telling sign that the president lacks any political capital on the Hill** — **among members of either party**. If he wasn’t so weak, he might have gotten his pick for the Fed, but as it is, he must defer to the loud voices making demands. **The president does not have any influence with members of Congress now, and he isn’t going to have any going forward**. I think it’s safe to say he cannot take a leadership role in the looming debt ceiling and budget battles. ‎

**Capital spend on other issues now – national security controversies**

**Indiviglio 9/19/13** (Daniel, Reuters Breakingviews columnist, "Activist would contest Obama’s capital allocation," http://blogs.reuters.com/breakingviews/2013/09/19/activist-would-contest-obamas-capital-allocation/)

**If** Barack **Obama were the c**hief **e**xecutive **o**fficer of the United States, **an activist investor would have a field day contesting his allocation of** capital – **political capital**, that is. In the CEO analogy, an uppity shareholder would want more focus on the economy, jobs and fiscal challenges.¶ **In both politics and business, leaders have limited resources to produce results**. In business, the key investment resource is cash; in government, it has more to do with time. In the White House, hours spent persuading the public or politicians, brokering deals and crafting strategy earn the president more capital, as expenditures should in boosting corporate returns.¶ In this spirit, **Breakingviews tried to pinpoint Obama’s capital allocation by analyzing news, speeches, and Oval Office blog posts**. Though unscientific, **the results** are worth considering. **Defense and security issues snagged the most attention**, **including the Syrian conflict, Afghanistan** and Iraq, **and leaks** by a rogue National Security Agency contractor.

**Spending capital now - EPA regs**

**EnergyWashington Week 9/18/13** ("Obama Faces Limits Using Executive Power For Second Term EPA Agenda," lexis)

**Obama's recent use of executive power to advance climate rules for power plants follows** what observers widely agree is **an almost-impossible chance for Congress to approve any legislation** creating new greenhouse gas (GHG) regulatory authority for EPA. House Republicans have repeatedly attempted to move amendments to legislation that would prohibit the agency from issuing the utility climate rules and other GHG policies.¶ The legal source says the likely purpose of the climate rule directive was to reflect the White House expectations on the timeline and scope of the rules, while **an environmentalist sees the move as a "public push for climate policy" that allowed the administration to flex political muscle on the issue**. The directive requires a re-proposed GHG new source performance standard for future power plants by Sept. 20 and a rule for existing plants in June.