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### Plan

#### The United States federal judiciary should affirm that the president of the United States lacks the authority to detain prisoners indefinitely.

### Torture

#### Judicial Review is key to preventing torture

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

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

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

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

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

#### Indefinite detention negates the legal identify of human beings

Schatz and Horst 7 (Christopher and Noah, Assistant Federal Public Defender in the Federal Public Defender’s Office for the District of Oregon + a Law Clerk in the Federal Public Defender’s Office for the District of Oregon, "WILL JUSTICE DELAYED BE JUSTICE DENIED? CRISIS JURISPRUDENCE, THE GUANTÁNAMO DETAINEES, AND THE IMPERILED ROLE OF HABEAS CORPUS IN CURBING ABUSIVE GOVERNMENT DETENTION," http://law.lclark.edu/law\_reviews/lewis\_and\_clark\_law\_review/past\_issues/volume\_11/number\_3.php)

In June of 2007, the Supreme Court abruptly reversed its earlier decision and granted certiorari in the GuantÃ¡namo Bay detainee case, Boumediene v. Bush. Legal scholars anticipate the Court will now address the issue that has been lurking in the background of the detainee litigation since the Court’s decision in Rasul v. Bush: does the Constitution mandate that the writ of habeas corpus is available to aliens held in military detention facilities outside the territorial boundaries of the United States, but nevertheless within its sovereign jurisdiction and control?¶ In this Article, the authors contend that the Constitution requires that federal court jurisdiction exist with respect to habeas claims of unlawful detention raised by the GuantÃ¡namo Bay detainees, notwithstanding their classification by the Executive Branch as unlawful enemy alien combatants. The authors support their contention with a number of propositions drawn from the text and history of the Constitution. First, the power to grant a writ of habeas corpus is an essential and inherent incident of the judicial power of the United States that cannot be impaired, except in times of rebellion or invasion, without violating the Suspension Clause contained in Article I, Section 9, clause 2 of the Constitution. Second, because sovereignty is manifested by the exercise of power within a legal and political space, and not simply by the boundaries of a physical or territorial place, the GuantÃ¡namo Bay Navel Station is subject to the limitations imposed by Due Process on Executive Branch detentions. Third, the Constitution and binding jus cogens principles of international law protect the legal identity of all individuals by, in part, prohibiting indefinite detention without an independent judicial determination of cause. Fourth, insofar as the tripartite structure of government established by the Constitution contemplates habeas corpus as a critical judicial check on unitary Executive Branch detention activity, impairment of that function violates the separation of powers doctrine.¶ Invoking these propositions, the authors argue that the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 are unconstitutional to the extent they abrogate the jurisdiction of the federal courts to entertain the habeas petitions of the GuantÃ¡namo Bay detainees. These Acts permit indefinite detention—an action unparalleled in American history, and contrary to the rule of law and values of this Nation. Because indefinite detention destroys the legal identity of human beings, the authors urge the Supreme Court to restore the writ of habeas corpus to its intended function in the Constitutional scheme established by the Founders.

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

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

Beginning in 2002, as a result of military and intelligence activities ¶ conducted in Afghanistan and elsewhere against the perpetrators of the ¶ September 11 attack and their supporters, American military personnel began ¶ to take custody of individuals, both on and off the battlefield, who were ¶ subsequently classified as enemy combatants. Many of these detainees were ¶ soon transported out of the military’s theater of operation to a hastily ¶ constructed detention facility located at the Guantánamo Bay Naval Base in ¶ Cuba.4¶ Jettisoning jus in bello principles of international humanitarian law ¶ governing the treatment of people captured during an armed conflict, the Bush ¶ Administration declared that the war on terror required a “new paradigm,” and ¶ that individuals detained at Guantánamo Bay and other so called “black sites” ¶ were “unlawful combatants” who would not be treated as prisoners of war ¶ under the Third Geneva Convention.5¶ Nor, in the Bush Administration’s view, ¶ did the detainees qualify for the minimum humanitarian requirements ¶ established by Common Article Three of the Geneva Conventions.6¶ Furthermore, in addition to concocting legal rationalizations for legitimating ¶ torture on a scale and to a degree never before countenanced by United States¶ government policy,7¶ Justice Department lawyers also theorized that habeas ¶ corpus would not be available to the Guantánamo Bay detainees because they ¶ are aliens held outside of the sovereign territory of the United States.8¶ As Commander in Chief, the Bush Administration continues to assert that ¶ the President has a constitutionally based entitlement to wield total power over ¶ the Guantánamo Bay detainees—a use of sovereign power for which the ¶ President is not accountable to any other governing body or agency, domestic ¶ or international. If the Bush Administration’s position prevails, the detainees ¶ will be barred from claiming a right to relief under any body of law. In effect, ¶ the detainees will be reduced to an ontological state of human being that has ¶ not been present in the West since the Nazi extermination camps of the ¶ holocaust—they will have been rendered completely devoid of legal identity. ¶ Like the occupants of the Nazi concentration camps, although biologically ¶ alive, the Guantánamo Bay detainees will be legally dead.9¶ 9¶ Concerning the normalization of the state of exception that the Nazi concentration ¶ camps represented, Giorgio Agamben writes: ¶ Whoever entered the camp moved in a zone of indistinction between outside and inside, ¶ exception and rule, licit and illicit, in which the very concepts of subjective right and ¶ juridical protection no longer made any sense. What is more, if the person entering the ¶ camp was a Jew, he had already been deprived of his rights as a citizen by the ¶ Nuremberg laws and was subsequently completely denationalized at the time of the ¶ Final Solution. Insofar as its inhabitants were stripped of every political status and ¶ wholly reduced to bare life, the camp was also the most absolute biopolitical space ever ¶ to have been realized, in which power confronts nothing but pure life, without any ¶ mediation. ¶ GIORGIO AGAMBEN, HOMO SACER 170–71 (Daniel Heller-Roazen trans., Stanford Univ. ¶ Press 1998). The space of the concentration camp is one in which the juridico-political ¶ identity of a certain group of people is reduced solely to that of being “the Other.” The ¶ Guantánamo Bay facility where the detainees are held cannot be characterized as either a ¶ penal or a detention facility, because in those custodial environments the inmates retain some ¶ modicum of rights. The only nomination for that facility which accurately describes the ¶ political-legal status of the Guantánamo Bay detainees is that of “concentration camp.”

### Independent Judiciary Advantage

**Judicial Independence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Latin American conflict goes global

Rochlin 94 (James Francis, Prof. Pol. Sci. @ Okanagan University College, “Discovering the Americas: the evolution of Canadian foreign policy towards Latin America”, p. 130-131)

While there were economic motivations for Canadian policy in Central America, security considerations were perhaps more important. Canada possessed an interest in promoting stability in the face of a potential decline of U.S. hegemony in the Americas. Perceptions of declining U.S. influence in the region – which had some credibility in 1979-1984 due to the wildly inequitable divisions of wealth in some U.S. client states in Latin America, in addition to political repression, under-development, mounting external debt, anti-American sentiment produced by decades of subjugation to U.S. strategic and economic interests, and so on – were linked to the prospect of explosive events occurring in the hemisphere. Hence, the Central American imbroglio was viewed as a fuse which could ignite a cataclysmic process throughout the region. Analysts at the time worried that in a worst-case scenario, instability created by a regional war, beginning in Central America and spreading elsewhere in Latin America, might preoccupy Washington to the extent that the United States would be unable to perform adequately its important hegemonic role in the international arena – a concern expressed by the director of research for Canada’s Standing Committee Report on Central America. It was feared that such a predicament could generate increased global instability and perhaps even a hegemonic war. This is one of the motivations which led Canada to become involved in efforts at regional conflict resolution, such as Contadora, as will be discussed in the next chapter.

#### 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.

#### Disease pandemics cause extinction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Goes nuclear

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

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

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

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

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

#### Economic decline causes nuclear war

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

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

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

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

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

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

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

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

#### Extinction

**Dusky 8** (Lorraine, Contributing Editor – YI and Award-Winning Environmental Writer, “Champion of a Forest Sanctuary: Sally Jewell Coxe”, Yoga International, May / June, http://www.himalayaninstitute.org/yi/Article.aspx?i d=2834)

Coxe is founder and president of the Bonobo Conservation Initiative (BCI), dedicated to saving the “hippie” primate in its native habitat in the Congo Basin of the DRC, the only place in the world bonobos are found. This is no mean feat, as the rain forest—sometimes called our second lung by ecologists—is threatened by commercial logging and poachers with guns who freely roam the area. Though bonobos may be the species most closely related to humans, they are slain for bush-meat, or killed and dismembered for local rituals. Together, the logging and poaching has taken its deadly toll. While civil strife in the area has made an accurate count impossible, it is generally accepted that the number of bonobos has declined from a robust 150,000 to 10,000 over the last three decades, according to the World Wildlife Fund. Coxe and her nonprofit organization, working hand in glove with the DRC government, are their last best hope against extinction. Most news from the DRC is not good; the current fighting there makes ugly headlines of rape and murder, but it is in the eastern part of the country bordering Rwanda and Uganda, some distance away from the Congo Basin and bonobo territory. Yoga in the Bush Home base for Coxe and the BCI is Washington D.C., but she spends a good deal of time on-site in Africa. Coxe has been to the Congo Basin more times than she can readily count. It was there she saw that the women who regularly carry heavy bundles had numerous back problems. Aware that certain asanas would be beneficial, she began teaching them yoga. “I take out my mat and just do it,” she says. “They think it is very bizarre, but I tell them it will help their backs.” It helps that she speaks the native tongue, Lingala. Yoga and meditation have been integral to Coxe’s spiritual path for decades. “Yoga is a part of who I am; I rely on yoga for my spiritual and physical health,” she explains. “I can’t imagine who I would be if I had never discovered it.” Coxe practices both hatha and kundalini yoga, as well as daily meditation—up to two hours when possible—and although she has studied with several teachers and yogis, these days she rarely finds the time for a class. She confesses that sometimes she says her mantra “even when walking down the street.” Because of her innate spirituality, the philosophy that we are all one world infuses the BCI, which has been instrumental—in fact, crucial—to the establishment of bonobo reserves in the Congo Basin. Her close friendship with Gene Nash, who at the time was running the Keshavashram International Center, a meditation center near Washington, D.C. (it’s now a peace center), was the key to saving a good-sized chunk of the forest. A few years ago, Nash remembers, Coxe was despondent that land would be lost to logging because she couldn’t raise the money to stop development there. Coxe expressed her dismay to Nash in a late-night phone call. “I asked her how much money she needed, thinking it would be a few thousand, and she said, ‘Three hundred and fifty thousand,’” says Nash, who is known as Gita. “I knew in an instant how I would raise the money.” Nash had a 16-acre piece of property nearby in Warrenton, Virginia, and was pretty sure she had a willing buyer, a man who bred thoroughbreds on property that abutted hers. It was already early December; Coxe needed the cash in hand by the end of the year, not a day later. “I called him the next morning and told him the property was for sale but everything had to be settled by December 31st,” Nash says. “Nothing was smooth, various offices were closing for the Christmas holiday, there were many complications, but everybody collaborated and hours before the deadline, we had $350,000 shipped to the Congo to give to the man who owned the development rights. Loggers were already there and ready to go in. It was the most amazing synchronicity I have ever seen.” Today bonobo reserves (which are also home to other rare species) in the rain forest cover more than 95,000 square miles, approximately 10 percent of the country and one of the largest contiguous land reserves left on earth. The eventual goal is to add another 5 percent to that, bringing the total to more than 15 percent of the DRC landmass. One reserve alone, the Sankuru, was established only late last year; encompassing more than 11,800 square miles, it is slightly larger in size than the state of Massachusetts. “We are not just saving bonobos, we are protecting the entire rain forest and ecosystem,” notes Michael Hurley, BCI executive director and Coxe’s partner. “The forest we are talking about is the second largest in the world, and as such, crucial to the survival of the planet—it sequesters huge amounts of carbon and releases oxygen.” The amount indeed is enormous: It is estimated that the Sankuru Reserve alone stores up to 660 million tons of carbon, which if released by deforestation would emit up to 2 billion tons of carbon dioxide, comparable to emissions from 38,000,000 cars per year for 10 years. The urgency to save the forest then is not just for our close relatives, the bonobos, and other species who live there, but for all of us. The very air the world breathes depends on it.

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

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

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

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

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

## 2ac

### Torture

Torture must be rejected- they concede the deontological rejection even if we can’t solve all of it we still stop some of it it’s a step in the right direction

No other branches can torture?

Not universal very specific to torture caused by indefinite detention

### JI

#### Multiple scenarios for extinction

Latin American instability goes global- results in conflict, prolif and disease, that’s Manwaring and deterrence can’t check a nuclear exchange specifically in latin American- that’s ghoshal

Disease causes extinction due to globalization and drug resistances, specifically when humans move to unoccupied areas- that’s Keting

New proliferatiors are uniquely destabilizing bbecause of inexperience, and a use it or losi mindset- that’s Horowitz

AND African instability goes global- small wars easily escalate and draw in kocal conflixts to shut down shipping lanes – that’s Glick, goes nuclear because of tensions – that’s Lancaster

Stability K2 the global economy-because they’re a growing economy that’s Business day - collapse goes nuclear – uncertainy moves a focus to preemption and escalates crisis and resource wars- that’s Harris and Borrows

Finally, instability kills the Congo River Basin reugees move into the forests, explotation is used for funding and illegal felling occurs- that’s Sites. Congo is the more than half the world’s wilflife and vegetable species collapse destroys biod and causes extinction – that’s Boukongou and Dusky

#### Diseases end civilization

David Quammen 12, award-winning science writer, long-time columnist for Outside magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. Aberrations occur. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through a much larger segment of humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the Next Big One comes, it will likely conform to the same perverse pattern as the 1918 influenza: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be the most horrific pathogen on the planet. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And here's the thing about outbreaks: they end. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

### K

WE all have to conform- so do I, it’s the format of this debate space, not a reason to reject us for playing the game

#### Case solves the K- we reduce indefinite detention and end Obama’s alignment with detention

#### Perm do both

#### Only the perm solves – theory must be combined with pratical political action. Failure to engage undermines social progress and allows conservatives to win out.

**Wing 2003** (Adrien Katherine Wing, Bessie Dutton Murray Distinguished Professor of Law at the University of Iowa College of Law, Louisiana Law Review, Spring, 2003, 63 La. L. Rev. 717)

Another tenet that Critical Race Theorists espouse involves the necessity to engage in praxis, the combining of the-ory and practice. n153 According to Eric Yamamoto, "critical race praxis focuses on developing and then translating critical theoretical insights about race, culture, and law into operational ideas and language for antisubordination prac-tice and, in turn, rethinking theory in light of new practice experience." n154 Sumi Cho and Robert Westley have [\*736] called for synergism, an "interaction of agents or conditions that produces a combined effect that is greater than the sum of the individual effects. We envision a mode of synergistic movement theorizing that contains both sub-stantive and methodological commitments . . . Such a project is necessarily collaborative, requiring information and insights gleaned from movements in order to formulate discursive strategies that **must ultimately be** tested **in the context of actual struggle**." n155 My own explanation for the need for praxis is based upon the historical realities of many minorities. "Since many of us come from disenfranchised communities of color, we feel compelled to 'look to the bottom,' n156 to involve our-selves in the development of solutions to our people's problems. We can not afford to adopt the classic, detached, ivory tower model of scholarship when so many are suffering, sometimes in our own extended families. We do not believe in praxis instead of theory, but that both are essential to our people's literal and figurative future." n157 Praxis can take many forms ranging from counseling a client, filing a brief, making a speech, doing op-ed pieces, writing popular press books, appearing on talk shows, serving on boards, testifying before Congress, support-ing/attacking federal judicial nominees, or working officially or pro bono with various public interest, governmental, or international organizations. Some CRT adherents do engage in praxis. For example, RobertWilliams represents Indian tribes around the world. n158 Gerald Lopez calls for community centered rebellious lawyering, n159 and Luke Cole places legal tactics within a broader political strategy. n160 Acknowledging the difficulties academics naturally face into linking theory with prac-tice, John Calmore states that CRT's primary impact on practice is seed planting among students. n161 Yamamoto has developed four guideposts for critical race praxis inquiry: conceptual, performative, material, and reflexive. n162 After [\*737] framing and exploring the conceptual issues involved, he asserts that one can design or perform appropriate actions. You can then assess if there was any material change, and then reintegrate that experience back into the theory of practice. n163 In my own career, I have unknowingly used Yamamoto's framework. Because I am the mother of five African American sons, I am critically interested in the treatment of Black men in the criminal justice system. In the early 90s, my interest manifested itself in exploring issues related to gangs. I studied conceptual issues related to gang theory, particularly as affecting ethnic minority males. I determined that I needed to get beyond theories developed predominantly by white male social science academics in ivory towers to understand the reality of Black gang life, and then design culturally appropriate strategies. My research led me to Los Angeles former gang members, who were dealing directly with preventive and rehabili-tative solutions to the gang problem. Through them, I discovered Amer-I-Can, a self-esteem curriculum started by Hall of Fame former football player, actor, and activist Jim Brown. After studying the program's effectiveness, I became involved as a national consultant. I went through facilitator training to teach the curriculum; brought former gang members to interact with law students in Iowa; took law students from Iowa to Los Angeles to meet with gang members there; arranged for Jim Brown to visit Iowa and other states; sold the curriculum for use and supervised programs in Des Moines, Iowa and New Orleans; wrote Congressional testimony on preventive and rehabilitative approaches to the gang problem; drafted a former gang member's autobiography; made numerous speeches; and served on the Iowa gubernato-rial commission on African Americans in the prison population. I ended up engaging with various other actors on the gang issue, including scholars, gang members, ex-convicts, Congresspersons, state representatives and staffers, execu-tive branch policy makers, cultural and religious community activists, federal and state law enforcement, including then Attorney General Janet Reno and then FBI director Louis Freeh, not-for-profit service providers like the YMCA, poten-tial corporate contributors, professional athletes, entertainers, etc. Assessing my several years of experiences, I realized that I had not sufficiently explored the roles of women with respect to gangs, whereas my other scholarly interests were examined culturally relevant feminisms. n164 So I did additional research into gang theories related to women, pre-sented some speeches and panel [\*738] presentations, and wrote a scholarly article. n165 Needless to say, these ac-tivities were highly educational for my students, personally and professionally transformative for me and even my entire family, but also very time consuming, and with relatively little scholarly output to show for it. My plans to publish an entire book on gangs have been sidetracked by other matters, including the passe nature of the gang subject in the na-tional spotlight. I remain interested, but not as actively involved personally or on a scholarly level in the area. In my view, unfortunately, praxis remains an aspirational element for many CRT theorists, who may limit their discussions about solutions to racism to ivory tower academic conferences and highly footnoted law review articles that are not even physically or pedagogically accessible to other social science academics, much less the adult college edu-cated public. Many if not most tenure track professors are hired for their potential scholarly abilities and must devote several intense years to demonstrating those abilities sufficiently to get tenure through the writing of law review articles. It would not be surprising that most of them would not be suited to engage in praxis, especially pre-tenure. Many schol-ars may have never had any interest in praxis, pre- or post tenure, and openly welcomed the retreat from practice that professing represented. Some teachers who initially had an interest in praxis, may have lost that interest in the grueling process to get tenure. Some realize that post tenure raises are based on scholarly productivity, i.e. more articles and books, and not on other activities. Many lawyers primarily interested in practice would not want to deflect their focus by "wasting" many years writing theoretical articles, so they would not even be attracted to teaching. My comments here do not relate to clinical faculty who may be more likely to engage in praxis as they remain practitioners, training students to handle real world lawyering, and even social justice issues. Ironically, it is evident that too many progressive theoreticians of all colors have remained unconnected to praxis, while the political right has been able to marry its neoconservative race theory with its political lawyering. n166 Groups like the Federalist Society in law [\*739] schools are integrally linked with conservative professors, lawyers, judges, think tanks, and ascendant Republican party policy. Most critical race theorists have not been able to effectively connect to similarly embattled progressive groups. As one commentator stated, "it's nice to know racism is socially constructed, but it doesn't help hail a cab at night."

#### No text to the alt is a reason to reject the team – it makes the neg a moving target and skews aff strategy, makes it impossible for us to be aff because we can’t pin them down to the alt and they can shift its meaning to get out of our best offense –reject the team for fairness and ground – and floating piks are an independent reason to reject the team because they steal all of the aff.

#### State institutions inevitable – our education is valuable teaches us to direct that opposition to those levers of power

Lawrence **Grossburg**, University of Illinois, We Gotta Get Outta This Place, **1992**, p. 391-393

**The Left needs institutions which can operate within the systems of governance, understanding that such institutions are the mediating structures by which power is actively realized.** It is often **by directing opposition against specific institutions** that **power can be challenged.** The Left has assumed from some time now that, since it has so little access to the apparatuses of agency, its only alternative is to seek a public voice in the media through tactical protests. **The Left** does in fact need more visibility, but it also **needs greater access to the entire range of apparatuses of decision making and power**. Otherwise, the Left has nothing but its own self-righteousness. **It is not individuals who have produced** starvation and the other **social disgraces** of our world, **although it is individuals who must take responsibility for eliminating them. But to do so, they must act within organizations, and within the system of organizations which in fact have the capacity** (as well as the moral responsibility) **to fight them.** Without such organizations, the only models of political commit­ment are self-interest and charity. Charity suggests that we act on behalf of others who cannot act on their own behalf. But we are all precariously caught in the circuits of global capitalism, and every­one’s position is increasingly precarious and uncertain. It will not take much to change the position of any individual in the United States, as the experience of many of the homeless, the elderly and the “fallen” middle class demonstrates. Nor are there any guarantees about the future of any single nation. We can imagine ourselves involved in a politics where acting for another is always acting for oneself as well, a politics in which everyone struggles with the resources they have to make their lives (and the world) better, since the two are so intimately tied together! For example, we need to think of affirmation action as in everyone’s best interests, because of the possibilities it opens. We need to think with what Axelos has described as a “planetary thought” which “would be a coherent thought—but not a rationalizing and ‘rationalist’ inflection; it would be a fragmentary thought of the open totality—for what we can grasp are fragments unveiled on the horizon of the totality. Such a politics will not begin by distinguishing between the local and the global (and certainly not by valorizing one over the other) for the ways in which the former are incorporated into the latter preclude the luxury of such choices. **Resistance is always a local struggle, even when** (as in parts of the ecology movement) **it is imagined to connect into its global structures of articulation**: Think globally, act locally. Opposition is predicated precisely on locating the points of articulation between them, the points at which the global becomes local, and the local opens up onto the global. Since the meaning of these terms has to be understood in the context of any particular struggle, one is always acting both globally and locally: Think globally, act appropriately! Fight locally because that is the scene of action, but aim for the global because that is the scene of agency. “Local struggles directly target national and international axioms, at the precise point of their insertion into the field of imma­nence. This requires the imagination and construction of forms of unity, commonality and social agency which do not deny differences. Without such commonality, politics is too easily reduced to a ques­tion of individual rights (i.e., in the terms of classical utility theory); difference ends up “trumping” politics, bringing it to an end. The struggle against the disciplined mobilization of everyday life can only be built on affective commonalities, a shared “responsible yearning: a yearning out towards something more and something better than this and this place now.” The Left, after all, is defined by its common commitment to principles of justice, equality and democ­racy (although these might conflict) in economic, political and cultural life. It is based on the hope, perhaps even the illusion, that such things are possible. **The construction of an affective commonal­ity attempts to mobilize people in a common struggle, despite the fact that they have no common identity or character, recognizing that they are the only force capable of providing a new historical and oppositional agency. It strives to organize minorities into a new majority.**

#### It’s a link of omission- as long as the aff is better than squo still vote aff , right now, the state authority is acting as the “protector” while indefinitely detaining prisoners, plan changes that and reduces the torture that the state is inflicting.

#### No root causes AND our impacts turn the K – no risk of a turn

Goldstein 03 (Joshua, Prof of Int'l Relations @ American University, War and Gender: How Gender Shapes the War System and Vice Versa, p. 412)

First, peace activists face a dilemma in thinking about causes of war and working for peace . Many peace scholars and activists support the approach, "if you want peace, work for justice." Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace . This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war . The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars' outbreaks and outcomes. **Rather,** war has in part fueled and sustained these and other injustices**.**¶ So, "If you want peace, work for peace ." **Indeed, if you want justice (gender and others), work for peace**. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to "reverse women's oppression ." The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet in light of this book's evidence, **the emphasis on injustice as the main cause of war seems to be empirically inadequate.**

#### Root causes don’t exist – MUST focus first on proximate causes

Thompson 3 (William, Professor of Political Science and Director of the Center for the Study of International Relations at Indiana University,“A Streetcar Named Sarajevo: Catalysts, Multiple Causation Chains, and Rivalry Structures,” International Studies Quarterly, 47(3))

Richard Ned Lebow (2000–2001) has recently invoked what might be called a streetcar interpretation of systemic war and change. According to him, all our structural theories in world politics both over determine and underdetermine the explanation of the most important events such as World War I, World War II, or the end of the Cold War. Not only do structural theories tend to fixate on one cause or stream of causation, they are inherently incomplete because the influence of structural causes cannot be known without also identifying the necessary role of catalysts. As long as we ignore the precipitants that actually encourage actors to act, we cannot make accurate generalizations about the relationships between more remote causation and the outcomes that we are trying to explain. Nor can we test the accuracy of such generalizations without accompanying data on the presence or absence of catalysts. In the absence of an appropriate catalyst (or a ‘‘streetcar’’ that failed to arrive), wars might never have happened. Concrete information on their presence (‘‘streetcars’’ that did arrive) might alter our understanding of the explanatory significance of other variables. But since catalysts and contingencies are so difficult to handle theoretically and empirically, perhaps we should focus instead on probing the theoretical role of contingencies via the development of ‘‘what if ’’ scenarios.

#### We don’t need a revolution, we need a blueprint for political change

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A question that must be asked is also just what a black revolution would even be about today. Certainly black America has serious problems. However, a revolution does not consist solely of howling grievances. For a revolutionary effort to be worth anyone's time, the demands have to be ones that those being revolted against have some way of fulfilling. In one episode of the animated version of Aaron McGruder's *The Boondocks,* there is an articulate depiction of the idea that black people need to Rise Up as a group and Make Demands. Huey, whose bitter frown is as in­grained in his design as a vapid smile is on Mickey Mouse, imagines that Martin Luther King comes back to life and inspires a revolution in black America, graphically indi­cated as hordes of blacks swarming the gates at the White House. "It's fun to dream," Huey concludes, the idea being that black people know what to rise up against, but that they would run up against the heartless moral cesspool that is AmeriKKKa, where, say, "George Bush doesn't care about black people." But the question is: what would the people at the gates, if attended to, demand? Fifty years ago, the demands were obvious: dismantle Jim Crow. And since then, a lot more has been given: affirmative action, the transformation of welfare from a stingy program for widows to an open- ended dole for any unmarried woman with children (done largely as riot insurance in the late 1960s, called for by left­ist activists including black ones) ... I could go on. So—yes, black America still has problems. Yes, there is still racism. But what is it that the White House should do now, in 2008, that is staring everyone in the face but hasn't happened because white people just "don't care" and the black community has failed to "demand" it? What? Precisely? I am not implying that what needs to happen is black people getting acquainted with those "bootstraps" we hear so much about. But the problems are not the kind that could be solved by simply buckshotting whitey with the usual cries of "racism." Would the people at the gates be calling for inner city schools to get as much money as schools in leafy white suburbs? If they did, they would see the same thing that has happened when exactly that was done in places like New Jersey and Kansas City: nothing changes. Obviously something needs to be done about the schools. But what, of the sort that should be shouted through the White House fence? How many of the shouters would know about poor black kids kicking academic butt in KIPP schools? Or in other charter schools filled with kids there because of—oh dear—vouchers, in Ohio and Florida? Let's face it—most of the people at that fence would draw a blank on what KIPP schools even were, much less the good that vouchers are doing. Some revolution. Would the people at the gates be calling for police forces to stop beating up on young black men and some­times killing them? Well, that's a legitimate concern. But the revolution on that is already happening, in every American city making concerted efforts to foster dialogue between the police and the street. We're not there yet, but things are better. Anyone who says that the shooting death of Sean Bell in 2006 in New York was evidence that noth­ing had changed since the death of Amadou Diallo in 1998 knows little of what the relationship between the police and black people was like in New York and so many other places before the nineties. In 1960, the death of Amadou Diallo would have made the local papers only, for one day, and, even in those papers, on some back page. It wouldn't have been considered important news. Going through newspapers of that era, one constantly comes across stories about things that happened to "Negroes," on page A31, that today would be front-page breaking news. We are blissfully past that America. And back to the main point: what could the White House do to prevent things like the Diallo and Bell inci­dents? What simple, wave-the-wand policy point would make it so that never again would a young black man be killed by the police in dicey circumstances where every­body lost his head for a minute or so? The relationship between police forces and black people is not as simple as something that could be changed by storming through a gate, which is obvious from how persistent that prob­lem has been despite profound changes on so many other fronts.

#### Violence and genocide is the inevitable result of alt

Horowitz 89—David, author and civil rights activist, founder of the New Left in the 1960s and editor of its largest magazine, Rampart, and Peter Colier, journalist, "Destructive Generation", pp 265-270

The manufacture of innocence out of guilt: it is the eternal work of the Left. The true genius of radicalism is constant self-recreation and reappearance in new guises. Never mind that the sloughcd-off skins it leaves behind are fossilized remains of the death and destruction caused by its past commitments. For Leftists, there are only tomorrows. They never talk about the evil they have done, except superficially, to imply (as Hayden does) that it has increased their moral sensitivity. But they are always anxious to discuss the Utopia to come. The future perfect is the only tense in their political grammar. Thus they are willing to criticize every revolution but the one currently unfolding—the one in which there is still a choice. Their opponents' misdeeds must never be forgotten, but their own can never really be recalled. While Central America is alleged by Leftists to be "another Vietnam," Nicaragua is never another Cuba. How does the Left maintain its belief against the crushing weight of its failures in the past? By recycling its innocence, which allows it to be born again in its Utopian faith. The utopianism of the Left is a secular religion (as the vogue of "liberation theology" attests), its promise an earthly kingdom of heaven. However sordid Leftist practice may be, defending Leftist ideals is, for the true believer, tantamount to defending the ideals of humanity itself. To protect the faith is the highest calling of the radical creed. The more the evidence weighs against the belief, the more noble the act of believing becomes. In this sense, Ter-tullian is the true father of the radical church. "Credo quia impossi-bile": "I believe because it is impossible." In the Stalin era, an English Quaker, returning from a visit to Bolshevik Russia, reported to his flock: The Communist view of human nature seems to me far more inspired by Faith, Hope and Charity than our own— The simple unostentatious life of Russia's rulers represents a notable advance in real civilization—real because based on a more enlightened interpretation of human nature, both of its needs and capacities; an interpretation which incidentally is also a more Christian one. Almost forty years later, in the mid-Sixties, the Reverend William Sloane Coffin declared that "Communism is a page torn out of the Bible" and that "the social justice that's been achieved in ... North Vietnam [is] an achievement no Christian society on that scale has ever achieved ." Today, softheaded Witness for Peaceniks come home from Managua saying much the same thing. It is understandable that they should have found a heaven on earth there, for the Sandinistas have consecrated the marriage of the religious and the revolutionary by combining the offices of comandante and priest. "For me, the four Gospels are all equally Communist" declared the Marxist padre Ernesto Cardenal. So committed is he to the infallibility of his spiritual and temporal leader that after returning from a trip to Havana to kiss Castro's ring, Cardenal reported that Cuba's homosexuals "were actually happier in the concentration camps [that Castro had built for themj, a place like that where they were all together must have been almost like paradise for them." It is often observed that a symmetry exists between the extreme ends of the political spectrum, that the fanatics of the Right are mirror images of the zealots on the Left. But once we leave the extremes, there is this tangible difference: the Right seeks to conserve (and the Left to undermine) workaday democracy; the Left seeks to defend (and the Right to defeat) the destructive fantasy of a heaven on earth. This is why American Leftists in their "innocence" embrace political evil in a way that American conservatives in their realism do not. A Bill Buckley might defend a Pinochet in Chile on pragmatic grounds as "our sonofabitch," but he would never call him "the Abraham Lincoln of his people," as Jesse Jackson has praised Communist dictators like Fidel Castro and Daniel Ortega. Nor would the Right defend Chile as a brave new society pioneering the path to humanity's future, the way the Left has defended Soviet Russia, the People's Republic of China, Communist Cuba, Nicaragua, and all the other socialist despotisms. It is this religious confusion and moral corruption that defines the utopianism of the Left. It insists on imposing the idea of salvation on a temporal reality that is by its nature flawed; in so doing, it exploits mankind's faith, as well as its hope and charity. If self-righteousness is the moral oxygen of the radical creed, self-deception is the marrow of its immune system. Credo quia impossi-bile: because what he believes is impossible, the radical believes because it is necessary to believe. Malcolm Muggeridge observed the prototypes of the radical faithful on a tour of Russia in the 1930s: Their delight in all they saw and were told, and the expression they gave to this delight, constitute unquestionably one of the wonders of our age. There were earnest advocates of the humane killing of cattle who looked up at the massive headquarters of the OGPU with tears of gratitude in their eyes, earnest advocates of proportional representation who eagerly assented when the necessity for a Dictatorship of the Proletariat was explained to them, earnest clergymen who walked reverently through anti-God museums and reverently turned the pages of atheistic literature, earnest pacifists who watched delightedly tanks rattle across the Red Square and bombing planes darken the sky, earnest town-planning specialists who stood outside overcrowded ramshackle tenements and muttered: "If only we had something like this in England!" The almost unbelievable credulity of these mostly university-educated tourists astonished even Soviet officials used to handling foreign visitors. After Stalin's death, when the Soviet rulers were forced to admit a considerable part of the terrible truth, many of their progressive supporters also had confessions to make: In fact, they had not really been so credulous as they appeared. Their seeming innocence, as Nobel novelist Halldor Laxness explained, actually had an element of guile: "We feared that the final victory of Socialism would be hampered and hindered if the truth about Stalin's paradise were revealed to the public" It is easy for today's Leftists to dismiss such revelations, saying that "that was then and this is now"—that Stalin is long dead, his memory having been exhumed and then desecrated by Gorbachev as well as Khrushchev. But as new Marxist paradises have sprouted in China, Cuba, Vietnam, Nicaragua, and elsewhere, new generations of revolutionary tourists have made their visits and come away reporting that they had seen a future that really worked. Back home they have spread the new gospel, their voices filled with what Milan Kundera has called the "totalitarian poetry" of the socialist cause: the lyrical promises that lead directly to the gulag—waiting room of the socialist paradise. But while Utopian fantasies provide socialism with a shield against external criticism, within its own borders a brutal pragmatism rules the state. The millions who have been "liberated" by revolutionaries know the dirty little secret of their liberation: that they are more oppressed by the revolution itself than they ever had been by the regime it replaced. It is the need to bridge the chasm between the socialist dream and the socialist reality that produces the totalitarian state. The essence of that state and its difference from the democracies with which it will always be at war was foreseen with crystal clarity by Machiavelli. Because people are susceptible, he wrote, "it is easy to persuade them, |but | difficult to fix them in that persuasion. Thus it is necessary to take such measures that, when they believe no longer, it may be possible to make them believe by force." In the year zero of the revolution, Lenin showed himself to be Machiavelli's disciple: "If the workers and peasants do not wish to accept socialism, our reply will be: Why waste words when we can apply force?... If we do not apply terror and immediate executions, we will get nowhere. It is better that a hundred innocent are killed than that one guilty person escapes." It is this bleak landscape that the totalitarian poetry is meant to beautify.

#### Afro-pessimism is inaccurate and is used to justify white supremacism

Patterson 98 The Ordeal Of Integration: Progress And Resentment In America's "Racial" Crisis Orlando Patterson is a Jamaican-born American historical and cultural sociologist known for his work regarding issues of race in the United States, as well as the sociology of development

In the attempt to understand and come to terms with the problems of Afro-Americans and of their interethnic relations, the country has been ill served by its intellectuals, policy advocates, and leaders in recent years. At present, dogmatic ethnic advocates and extremists appear to dominate discourse on the subject, drowning out both moderate and other dissenting voices. A strange convergence has emerged between these extremists. On the left, the nation is misled by an endless stream of tracts and studies that deny any meaningful change in America's "Two Nations," decry "The Myth of Black Progress," mourn "The Dream Deferred," dismiss AfroAmerican middle-class status as "Volunteer Slavery," pronounce AfroAmerican men an "Endangered Species," and apocalyptically announce "The Coming Race War." On the right is complete agreement with this dismal portrait in which we are fast "Losing Ground," except that the road to "racial" hell, according to conservatives, has been paved by the very pQlicies intended to help solve the problem, abetted by "The Dream and the Nightmare" of cultural changes in the sixties and by the overbreeding and educational integration of inferior Afro-Americans and very policies intended to help solve the problem, abetted by "The Dream and the Nightmare" of cultural changes in the sixties and by the overbreeding and educational integration of inferior Afro-Americans and lower-class Euro-Americans genetically situated on the wrong tail of the IQ "Bell Curve." If it is true that a "racial crisis" persists in America, this crisis is as much one of perception and interpretation as of actual socioeconomic and interethnic realities. By any measure, the record of the past half century has been one of great achievement, thanks in good part to the suecess of the government policies now being maligned by the left for not having gone far enough and by the right for having both failed and gone too far. At the same time, there is still no room for complacency: because our starting point half a century ago was so deplorably backward, we still have some way to go before approaching anything like a resolution.

#### Preventing death is the first ethical priority – it’s the only impact you can’t recover from.

**Bauman 95** Zygmunt Bauman, University of Leeds Professor Emeritus of Sociology, 1995, Life In Fragments: Essays In Postmodern Morality, p. 66-71

The being‑for is like living towards‑the‑future: a being filled with anticipation, a being aware of the abyss between future foretold and future that will eventually be; it is this gap which, like a magnet, draws the self towards the Other,as it draws life towards the future, making life into an activity of overcoming, transcending, leaving behind. The self stretches towards the Other, as life stretches towards the future; neither can grasp what it stretches toward, but it is in this hopeful and desperate, never conclusive and never abandoned stretching‑toward that the self is ever anew created and life ever anew lived. In the words of M. M. Bakhtin, it is only in this not‑yet accomplished world of anticipation and trial, leaning toward stubbornly an‑other Other, that life can be lived ‑ not in the world of the `events that occurred'; in the latter world, `it is impossible to live, to act responsibly; in it, I am not needed, in principle I am not there at all." Art, the Other, the future: what unites them, what makes them into three words vainly trying to grasp the same mystery, is the modality of possibility. A curious modality, at home neither in ontology nor epistemology; itself, like that which it tries to catch in its net, `always outside', forever `otherwise than being'. The possibility we are talking about here is not the all‑too‑familiar unsure‑of‑itself, and through that uncertainty flawed, inferior and incomplete being, disdainfully dismissed by triumphant existence as `mere possibility', `just a possibility'; possibility is instead `plus que la reahte' ‑ both the origin and the foundation of being. The hope, says Blanchot, proclaims the possibility of that which evades the possible; `in its limit, this is the hope of the bond recaptured where it is now lost."' The hope is always the hope of *being fu filled,* but what keeps the hope alive and so keeps the being open and on the move is precisely its *unfu filment.* One may say that the paradox *of hope* (and the paradox of possibility founded in hope) is that it may pursue its destination solely through betraying its nature; the most exuberant of energies expends itself in the urge towards rest. Possibility uses up its openness in search of closure. Its image of the better being is its own impoverishment . . . The togetherness of the being‑for is cut out of the same block; it shares in the paradoxical lot of all possibility. It lasts as long as it is unfulfilled, yet it uses itself up in never ending effort of fulfilment, of recapturing the bond, making it tight and immune to all future temptations. In an important, perhaps decisive sense, it is selfdestructive and self‑defeating: its triumph is its death. The Other, like restless and unpredictable art, like the future itself, is a *mystery.* And being‑for‑the‑Other, going towards the Other through the twisted and rocky gorge of affection, brings that mystery into view ‑ makes it into a challenge. That mystery is what has triggered the sentiment in the first place ‑ but cracking that mystery is what the resulting movement is about. The mystery must be unpacked so that the being‑for may focus on the Other: one needs to know what to focus on. (The `demand' is *unspoken,* the responsibility undertaken is *unconditional;* it is up to him or her who follows the demand and takes up the responsibility to decide what the following of that demand and carrying out of that responsibility means in practical terms.) Mystery ‑ noted Max Frisch ‑ (and the Other is a mystery), is an exciting puzzle, but one tends to get tired of that excitement. `And so one creates for oneself an image. This is a loveless act, the betrayal." Creating an image of the Other leads to the substitution of the image for the Other; the Other is now fixed ‑ soothingly and comfortingly. There is nothing to be excited about anymore. I know what the Other needs, I know where my responsibility starts and ends. Whatever the Other may now do will be taken down and used against him. What used to be received as an exciting surprise now looks more like perversion; what used to be adored as exhilarating creativity now feels like wicked levity. Thanatos has taken over from Eros, and the excitement of the ungraspable turned into the dullness and tedium of the grasped. But, as Gyorgy Lukacs observed, `everything one person may know about another is only expectation, only potentiality, only wish or fear, acquiring reality only as a result of what happens later, and this reality, too, dissolves straightaway into potentialities'. Only death, with its finality and irreversibility, puts an end to the musical‑chairs game of the real and the potential ‑ it once and for all closes the embrace of togetherness which was before invitingly open and tempted the lonely self." `Creating an image' is the dress rehearsal of that death. But creating an image is the inner urge, the constant temptation, the *must* of all affection . . . It is the loneliness of being abandoned to an unresolvable ambivalence and an unanchored and formless sentiment which sets in motion the togetherness of being‑for. But what loneliness seeks in togetherness is an end to its present condition ‑ an end to itself. Without knowing ‑ without being capable of knowing ‑ that the hope to replace the vexing loneliness with togetherness is founded solely on its own unfulfilment, and that once loneliness is no more, the togetherness ( the being‑for togetherness) must also collapse, as it cannot survive its own completion. What the loneliness seeks in togetherness (suicidally for its own cravings) is the foreclosing and pre‑empting of the future, cancelling the future before it comes, robbing it of mystery but also of the possibility with which it is pregnant. Unknowingly yet necessarily, it seeks it all to its own detriment, since the success (if there is a success) may only bring it back to where it started and to the condition which prompted it to start on the journey in the first place. The togetherness of being‑for is always in the future, and nowhere else. It is no more once the self proclaims: `I have arrived', `I have done it', `I fulfilled my duty.' The being‑for starts from the realization of the bottomlessness of the task, and ends with the declaration that the infinity has been exhausted. This is the tragedy of being‑for ‑ the reason why it cannot but be death‑bound while simultaneously remaining an undying attraction. In this tragedy, there are many happy moments, but no happy end. Death is always the foreclosure of possibilities, and it comes eventually in its own time, even if not brought forward by the impatience of love. The catch is to direct the affection to staving off the end, and to do this against the affection's nature. What follows is that, if moral relationship is grounded in the being-for togetherness (as it is), then it can exist as a project, and guide the self's conduct only as long as its nature of a project (a not yet-completed project) is not denied. Morality, like the future itself, is forever not‑yet. (And this is why the ethical code, any ethical code, the more so the more perfect it is by its own standards, supports morality the way the rope supports the hanged man.) It is because of our loneliness that we crave togetherness. It is because of our loneliness that we open up to the Other and allow the Other to open up to us. It is because of our loneliness (which is only belied, not overcome, by the hubbub of the being‑with) that we turn into moral selves. And it is only through allowing the togetherness its possibilities which only the future can disclose that we stand a chance of acting morally, and sometimes even of being good, in the present.

#### Alt fails – reverses the error and can’t build transformational theory

Caprioli 4 (Mary, Professor of Political Science – University of Tennessee, “Feminist IR Theory and Quantitative Methodology: A Critical Analysis”, International Studies Review, 42(1), March, http://www.blackwell-synergy.com/links/doi/10.1111/0020-8833.00076)

If researchers cannot add gender to an analysis, then they must necessarily use a purely female-centered analysis, even though the utility of using a purely female centered analysis seems equally biased. Such research would merely be gendercentric based on women rather than men, and it would thereby provide an equally biased account of international relations as those that are male-centric. Although one might speculate that having research done from the two opposing worldviews might more fully explain international relations, surely an integrated approach would offer a more comprehensive analysis of world affairs. Beyond a female-centric analysis, some scholars (for example, Carver 2002) argue that feminist research must offer a critique of gender as a set of power relations. Gender categories, however, do exist and have very real implications for individuals, social relations, and international affairs. Critiquing the social construction of gender is important, but it fails to provide new theories of international relations or to address the implications of gender for what happens in the world.

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#### Academic debate regarding war powers makes checks on excessive presidential authority effective---college students key

Kelly Michael Young 13, Associate Professor of Communication and Director of Forensics at Wayne State University, "Why Should We Debate About Restriction of Presidential War Powers", 9/4, public.cedadebate.org/node/13

Beyond its obviously timeliness, we believed debating about presidential war powers was important because of the stakes involved in the controversy. Since the Korean War, scholars and pundits have grown increasingly alarmed by the growing scope and techniques of presidential war making. In 1973, in the wake of Vietnam, Congress passed the joint War Powers Resolution (WPR) to increase Congress’s role in foreign policy and war making by requiring executive consultation with Congress prior to the use of military force, reporting within 48 hours after the start of hostiles, and requiring the close of military operations after 60 days unless Congress has authorized the use of force. Although the WPR was a significant legislative feat, 30 years since its passage, presidents have frequently ignores the WPR requirements and the changing nature of conflict does not fit neatly into these regulations. After the terrorist attacks on 9-11, many experts worry that executive war powers have expanded far beyond healthy limits. Consequently, there is a fear that continued expansion of these powers will undermine the constitutional system of checks and balances that maintain the democratic foundation of this country and risk constant and unlimited military actions, particularly in what Stephen Griffin refers to as a “long war” period like the War on Terror (http://www.hup.harvard.edu/catalog.php?isbn=9780674058286). In comparison, pro-presidential powers advocates contend that new restrictions undermine flexibility and timely decision-making necessary to effectively counter contemporary national security risks. Thus, a debate about presidential wars powers is important to investigate a number of issues that have serious consequences on the status of democratic checks and national security of the United States.¶ Lastly, debating presidential war powers is important because we the people have an important role in affecting the use of presidential war powers. As many legal scholars contend, regardless of the status of legal structures to check the presidency, an important political restrain on presidential war powers is the presence of a well-informed and educated public. As Justice Potter Stewart explains, “the only effective restraint upon executive policy and power…may lie in an enlightened citizenry – in an informed and critical public opinion which alone can protect the values of a democratic government” (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0403\_0713\_ZC3.html). As a result, this is not simply an academic debate about institutions and powers that that do not affect us. As the numerous recent foreign policy scandals make clear, anyone who uses a cell-phone or the internet is potential affected by unchecked presidential war powers. Even if we agree that these powers are justified, it is important that today’s college students understand and appreciate the scope and consequences of presidential war powers, as these students’ opinions will stand as an important potential check on the presidency.