# 2AC

## 2AC T “Judicial”

### W/M- Constitutional basis is “Improper self-expansion without statutory authority”

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

1. Step One Deference to Agency Self-Expansion One important question Chevron did not address explicitly is whether courts should defer when an agency self-expands and regulates activity that appears to fall beyond the scope of the zone of authority in which it operates. This problem arose in Dole v. United Steelworkers of America, 106 a case decided six years after Chevron. Dole held that the Office of Management and Budget (OMB) exceeded the scope of its authority under the Paperwork Reduction Act when it rejected Department of Labor (DOL) standards imposing various disclosure requirements on manufacturers intended to protect employees from exposure to hazardous chemicals. 107 Under the Paperwork Reduction Act, federal agencies are prohibited from adopting regulations imposing paperwork requirements on the public where the information is not available to the agency from another source within the federal government. 108 Citing its power to regulate "information collection requests" under the Paperwork Reduction Act, OMB disapproved of the DOL provisions, claiming that they lacked required exemptions and applied to scenarios in which the disclosures did not benefit employees. 109 However, the Court found that the Paperwork Reduction Act was intended to apply to "information-gathering rules," not "disclosure rules," and therefore did not clearly grant the OMB statutory authority to countermand agency regulations requiring disclosure by regulated entities directly to third parties. 110 Finding that OMB engaged in improper self-expansion, the Court refused to defer, and it reinstated the DOL rule. 111

### Effects of the plan are the advantages—constitutional restriction demands executive and congressional compliance

Spiro, 2001 (Peter J. Spiro, Professor, Hofstra University School of Law; Visiting Professor, University of Texas School of Law, Texas Law Review, April, lexis)

The increments approach answers these objections, at the same time that it affirms the value of constitutionalism. It presents, first of all, a determinate method of constitutional location. Unlike translation exercises, the increments model substantially confines the possible discretion of individual constitutional actors, including the judiciary. Working from a premise of historical situatedness, the theory denies the possibility of independent constitutional determination. That is not to deny the inevitability of constitutional change. But all constitutional actors work from a baseline, departures from which can be challenged and rejected by other constitutional actors. Constitutional norms are resolved only by the interplay of those actors. The content of constitutional norms will usually be reflected in institutional action, but one cannot necessarily find the law by reference to the action of any single institution alone. Even if the Supreme Court attempted to exploit the discretion afforded it by a translation model, its pronouncements amount to mere artifacts in the absence of acceptance by other actors. The increments model thus answers the primary volley of the originalists against countermajoritarian judicial adaptation of the constitutional text. Such adaptation will not prevail where it is rejected by other actors.

### Indefinite detention is determination of “enemy combatant” status, the act, and the permissions and justifications

JENNIFER K. ELSEA Congressional Research Service Presidential Studies Quarterly

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President Bush claims the power, as Commander in Chief of the Armed Forces, to¶ determine that any person, including an American citizen, who is suspected of being ¶ a member, agent, or associate of Al Qaeda, the Taliban, or possibly any other terrorist¶ organization, is an “enemy combatant” who can be detained in U.S. military custody¶ until hostilities end, pursuant to the international law of war (Dworkin 2002). ¶ Attorney General John Ashcroft has taken the view that the authority to detain “enemy¶ combatants” belongs to the president alone, and that any interference in that authority¶ by Congress would thus be unconstitutional (U.S. Senate 2002). Even if congressional¶ authority were necessary, the government argues, such permission can be found in ¶ the Authorization to Use Force (AUF; Pub. L. No. 107-40, 115 Stat. 224 [2001]). ¶ So far, the courts have agreed that Congress has authorized the detention of “enemy ¶ combatants.”

## Case-intel

### Law enforcement solves

Hakimi 8 (2008 International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict-Criminal Divide Monica Hakimi Visiting Assistant Professor of Law, Benjamin N. Cardozo School of Law, University of Michigan Law School on leave from the Office of the Legal Adviser of the U.S. Department of State; <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1124&context=articles>)

A. Rejecting the Armed-Conflict Approach The United States has almost singularly 114 asserted the authority to detain non-battlefield terrorism suspects based on the law of armed conflict.115 U.S. detention practices-under the CIA program and at Guantanamo Bay have therefore been at the center of the international conversation on applying the law of armed conflict to non-battlefield suspects. The international reaction to these practices has been intensely negative. From a systemic perspective, that reaction is strong evidence that the current law of armed conflict does not properly govern non-battlefield detentions. The United States has invoked the law of armed conflict to justify various forms of non-battlefield detention. Some non-battlefield suspects have been detained in secret CIA "dark sites" without any legal process at all.1' 6 Others have been detained at Guantdnamo Bay. lWStill others have been detained at secure facilities on U.S. soil.' 18 The common feature among all such detentions is their armed-conflict premise. The reaction to those detention practices from actors outside the United States has been extraordinarily negative. The facility at Guantdnamo Bay, in particular, has become a symbol of injustice around the world," 9 such that even close European allies of the United States demand that it be closed.120 International human rights bodies have been even more outspoken. These bodies have focused on the deficiencies of legal process available to terrorism detainees in U.S. custody. 121 The Human Rights Committee and the Committee Against Torture have each criticized the insufficiency of legal process at Guantdnamo Bay,' 22 and the Council of Europe has condemned the absence of any legal process under the CIA program. 23Finally, the heads of five mechanisms under the U.N. Human Rights Commission have concluded that non-battlefield detainees at Guantdnamo should be either subjected to criminal process or released. 124 The U.N. Secretary-General publicly supported that conclusion, asserting that "the basic point that one cannot detain individuals in perpetuity and that charges have to be brought against them and their being given a chance to explain themselves and be prosecuted, charged or released . . .is something that is common under any legal system."' 125

## Case-def

### Court action is key to legitimacy

Knowles 2009 (Robert Knowles, Acting Assistant Professor, New York University School of Law, 41 Ariz. St. L.J. 87 American Hegemony and the Foreign Affairs Constitution)

The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts’ legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced.440 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of “soft power.”441 As Justice Kennedy’s majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches.442 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration’s detention scheme “hurt America’s image and standing in the world.”443 The restoration of habeas corpus in Boumediene may help begin to counter-act this loss of prestige.

## 2AC Executive CP

### Links to politics—Prez reports the CP to Congress—status of hostilities

Bradley and Goldsmith 5 (ARTICLE: CONGRESSIONAL AUTHORIZATION AND THE WAR ON TERRORISM NAME: Curtis A. and Jack L. \*\*, \* Professor, University of Virginia School of Law. \*\* Professor, Harvard Law School. We both recently worked in the Executive Branch. Bradley served as Counselor on International Law in the Legal Adviser's Office of the Department of State Goldsmith served as Special Counsel to the General Counsel of the Department of Defense and as Assistant Attorney General, Office of Legal Counsel. Copyright (c) 2005 The Harvard Law Review Association Harvard Law Review May, 2005 118 Harv. L. Rev. 2047. Lexis)

The AUMF is arguably more restrictive in one respect, and arguably broader in another respect, than authorizations in declared wars. It is arguably more restrictive to the extent that it requires the President to report to Congress on the status of hostilities. This difference from authorizations in declared wars, however, does not purport to affect the military authority that Congress has conferred on the President. The AUMF is arguably broader than authorizations in declared wars in its description of the enemy against which force can be used. The AUMF authorizes the President to use force against those "nations, organizations, or persons he determines" have the requisite nexus with the September 11 attacks. This provision contrasts with authorizations in declared wars in two related ways. First, it describes rather than names the enemies that are the objects of the use of force. 144 Second, it expressly authorizes the President to determine which "nations, organizations, or persons" satisfy the statutory criteria for enemy status. 145 One could argue that the effect of the "he determines" provision is to give the President broad, and possibly unreviewable, discretion to apply the nexus requirement to identify the covered enemy - at least to the extent that his determination does not implicate constitutional rights. 146 Even if this argument is correct, this provision [\*2083] probably adds little to the President's already-broad authority to determine the existence of facts related to the exercise of his authority under the AUMF. 147

### Court rulings on the ground of “congressional authorization” imply executive restraint and solve better—national security law precedent proves

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

Although the underlying theory of deference in Curtiss-Wright cannot be reconciled with Youngstown, its outcome is consistent with Jackson's framework - a point Jackson himself noted. Jackson placed Curtiss-Wright within Category One of his framework, in which "the President acts pursuant to an express or implied authorization of Congress" and in which "his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." 209 As Jackson explained, to the extent dicta in Curtiss-Wright "intimated that the President might act in external affairs without congressional authority," 210 the decision did not go so far as to claim the President "might act contrary to an Act of Congress." 211 If Justice Sutherland's dicta are treated as just that - dicta - Curtiss-Wright and Youngstown diverge less on their theories of executive power and more on factual differences. In one, executive policy was grounded in congressional authorization and therefore valid (Curtiss-Wright), and in the other, the [\*1947] Executive lacked a delegation from the legislature, and was therefore invalid (Youngstown). 212 And if it is possible to validate Curtiss-Wright on Youngstown's institutional process grounds, precisely as Justice Jackson was able to do, Dames & Moore's statutory approach is less about vindicating boundless executive power and more about vindicating a delegation-based theory of governance in the national security context. Indeed, there is plenty of room to argue that Dames & Moore is closer to Youngstown than it is to Curtiss-Wright. While many discussions of national security deference tend to frame the relevant doctrinal development through the lens of Curtiss-Wright, 213 there are a few notable exceptions. Samuel Issacharoff and Richard Pildes have argued, contrary to conventional accounts, that courts resolving complex national security cases have historically followed an approach akin to Jackson's Youngstown framework. As they explain, courts have developed, both in the past and the present, "a process-based, institutionally-oriented (as opposed to rights-oriented) framework" 214 for resolving cases pitting individual rights against executive power. Through these decisions, "courts have sought to shift the responsibility ... toward the joint action of the most democratic branches of the government." 215 [\*1948] More recent Supreme Court cases bear out that institutionally oriented framework. As discussed in Part II, in the decade since 9/11, the Supreme Court has tended to return to the ordinary administrative law requirement of a delegation as a necessary condition of judicial deference. Despite arguments for Curtiss-Wright-or Chevron-style deference, the Court rejected efforts by the Executive Branch to read statutory provisions beyond Congress's likely intent. Hence, while Chevron-backers have argued that courts should "play a smaller role ... in interpreting statutes that touch on foreign relations," 216 the Court has met them only part way, "applying the Youngstown framework in deciding critical post-9/11 cases concerning the war on terror." 217 When the Executive has been delegated the requisite powers to act, courts have deferred to the President. However, where neither the Constitution nor Congress provided the necessary authorization, the Court, following the logic of Youngstown and ordinary principles of administrative law, has remanded the matter to Congress for a second pass at the question.

### Closing Gitmo causes release into the United States

McCarthy 2009 [Andrew C. McCarthy is a senior fellow at the National Review Institute and the author of Willful Blindness: A Memoir of the Jihad October 23, 2009 National Review “Imprison Here, Release Here” http://www.nationalreview.com/articles/228465/imprison-here-release-here/andrew-c-mccarthy]

Here’s the thing: Because we still have Gitmo, at least Mutairi was outside the United States. When the judge voided his combatant status and the Justice Department declined to challenge the ruling, Kollar-Kotelly was in no position to force Mutairi’s release inside our country. He either had to go home to Kuwait or bide his time, like the Uighur detainees, until a country willing to take him was found.¶ Rest assured that this will not happen if the detainees are transferred to U.S. prisons, so that Gitmo can be shuttered. Once they are here, we will have the perfect storm: Federal judges, inherently hostile to detention without trial, running amok with no guidance from Congress, no political accountability, and no jury to check their excesses; combatant-designations judicially voided for scores of trained jihadists no trustworthy country is willing to take in; and a combatant-friendly Justice Department unwilling to challenge the judicial usurpation of the military’s war-fighting powers. Inexorably, the judges will order that the detainees be released in the United States. One judge already tried to do that with the Uighurs, even though they were outside the United States and had no legal right to enter.

### Can’t restrain on constitutional grounds—that’s key

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

The Hamdi Court was deeply divided, producing four separate opinions reflecting a range of different positions regarding the deference owed to the [\*1953] Executive. Justice Souter, in a partial concurrence and dissent joined by Justice Ginsburg, accepted the premise that Congress could authorize such detentions but rejected the plurality's decision to defer to the President's interpretation of the AUMF. 238 Justice Souter argued that the AUMF lacked any specific authorizing language legitimizing indefinite detention, and, in the absence of more detailed statutory language, Hamdi's detention violated the Non-Detention Act, which requires direct and specific congressional authorization to detain U.S. citizens. 239 Justice Scalia also dissented, and his opinion, joined by Justice Stevens, argued that, absent congressional suspension of the writ of habeas corpus, the government would either have to charge Hamdi with a crime or release him. 240 Only Justice Thomas's dissent accepted the more expansive notion of deference, pressed by the Bush Administration, that the President possessed inherent authority to detain a wide range of individuals with a more attenuated (if any) connection to the 9/11 attacks. Justice Thomas invoked Curtiss-Wright's apparent support for the notion that the President should be "free from interference" by the Court on questions involving national security. 241 For Thomas, Hamdi's "detention [fell] squarely within the Federal Government's war powers, and we lack the expertise and capacity to second-guess that decision." 242 The Hamdi plurality, having upheld detention, next decided what, if any, due process rights it would accord U.S. citizen "enemy combatant" detainees. Here, again, the Court rejected the government's request for deference by refusing to credit a two-page affidavit the government supplied that purported to demonstrate Hamdi's affiliations with a Taliban unit captured by Northern Alliance forces in Afghanistan. 243 The government argued that the Court should accept the contents of the affidavit under a minimal level of judicial review - the deferential "some evidence" standard - which the government asserted was the appropriate test for evaluating the government's proof of Hamdi's alleged terrorist connections. 244 While the plurality accepted a range of other government-friendly procedural regimes - including a rebuttable presumption in favor of the government's evidence, the use of hearsay, and the [\*1954] use of non-Article III tribunals - it rejected the government's proffered "some evidence" standard as "extreme," 245 stating that "any process in which the Executive's factual assertions go wholly unchallenged or are simply presumed correct without any opportunity for the alleged combatant to demonstrate otherwise falls constitutionally short." 246 Citing Youngstown, the Court noted that the government's position would "serve[] only to condense power into a single branch of government," and that the ongoing "state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." 247

### Exec alone fails—restraint doesn’t warrant deference to his decisions—district court momentum overwhelms

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

2. Chevron Step Zero A closely related issue concerns whether courts should apply Chevron in cases where it remains unclear if an agency is acting with statutory authorization in the first place, or when it is unclear if the agency's decision, even though the product of a delegation, actually carries the force of law. 124 One example involves the use of informal agency procedures. In Christensen v. Harris County, 125 the Court rejected the idea that an informal agency opinion letter issued by the Department of Labor should be analyzed under the Chevron framework. 126 The Court held that "interpretations such as those in opinion letters - like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law - do not warrant Chevron-style deference." 127 Instead, such interpretations are entitled to the lesser Skidmore 128 deference and will be upheld based upon their "power to persuade." 129 In United States v. Mead, 130 the Court applied a similar analysis to hold that informal Customs ruling letters do not warrant Chevron deference. At issue in Mead were letters that are routinely issued by the Customs Service at ports of entry, assigning tariff rates to individual goods. Mead held that those letters, which are not subject to notice and comment (though "made "available for public inspection'" 131), did not trigger Chevron deference, as the agency interpretation was not promulgated in the exercise of congressionally delegated authority.

## Amend/Con Con CP

### Supreme Court key to intl model

Feldman 2008 (Noah Feldman, law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, September 28, 2008, “When Judges Make Foreign Policy,” New York Times, http://www.nytimes.com/2008/09/28/magazine/28law-t.html?pagewanted=all&\_r=0)

Every generation gets the Constitution that it deserves. As the central preoccupations of an era make their way into the legal system, the Supreme Court eventually weighs in, and nine lawyers in robes become oracles of our national identity. The 1930s had the Great Depression and the Supreme Court’s “switch in time” from mandating a laissez-faire economy to allowing New Deal regulation. The 1950s had the rise of the civil rights movement and Brown v. Board of Education. The 1970s had the struggle for personal autonomy and Roe v. Wade. Over the last two centuries, the court’s decisions, ranging from the dreadful to the inspiring, have always reflected and shaped who “we the people” think we are.¶ During the boom years of the 1990s, globalization emerged as the most significant development in our national life. With Nafta and the Internet and big-box stores selling cheap goods from China, the line between national and international began to blur. In the seven years since 9/11, the question of how we relate to the world beyond our borders — and how we should — has become inescapable. The Supreme Court, as ever, is beginning to offer its own answers. As the United States tries to balance the benefits of multilateral alliances with the demands of unilateral self-protection, the court has started to address the legal counterparts of such existential matters. It is becoming increasingly clear that the defining constitutional problem for the present generation will be the nature of the relationship of the United States to what is somewhat optimistically called the international order.

### Links to politics

Kachimba 2011 (Larry Kachimba, writer for Op Ed News, August 25, 2011, “Five reasons why a constitutional amendment is the wrong way to get money out of politics,” http://www.opednews.com/articles/Five-reasons-why-a-constit-by-Larry-Kachimba-110825-578.html)

3. Attempting a constitutional amendment is wasteful of scarce political capital because it would be many times more difficult and time-consuming than would enactment of a comprehensive law.¶ The constitutional amendment proposal diverts political capital to an impossible task.¶ A constitutional amendment process is far more difficult and time consuming than getting a single comprehensive law through Congress. In order to battle corporations and oligarchs to get an amendment passed it would be necessary to first get 2/3d's of the members of each house of Congress to vote against Congress' usual paymasters, and then also elect a majority of legislators in 38 states who would resist the growing temptations of political money. Money can be expected to battle any such amendment designed to take away its power at every stage of this process.

### Court’s key to successful Congress push

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

While Chevron's advocates have frequently promoted the application of broad deference rules even in the absence of congressional legislation, 8 [\*1920] scholars at the opposite end of the spectrum question Chevron's application to the national security context. 9 According to these Chevron-detractors, even when national security policies are the product of joint political branch decisionmaking, the Supreme Court should "say what the law is" 10 and override the collective wisdom of the political branches when necessary. 11 While Chevron-backers and Chevron-detractors provide important insights into the role of administrative law as a source of decisionmaking in national security cases, both camps ignore Youngstown at their peril. 12 Under Jackson's framework in Youngstown, presidential powers are at their apogee when backed by congressional authorization and their "lowest ebb" when contrary to congressional will. 13 In between these two extremes are "zone of twilight" cases in which the President lacks a clear constitutional foundation or a basis in congressional authorization. 14 The post-9/11 decisions, following Youngstown, have focused less on the issue of deference as such and more on the shared responsibility of the political branches to create legislative schemes regarding national security policy. 15 Where Congress has [\*1921] responded by providing the Executive with a delegation concerning a particular security need, courts have typically construed those statutes deferentially. 16 However, where Congress has remained silent, courts have generally invoked Youngstown to catalyze greater inter-branch dialogue, 17 remanding issues to the political branches for additional legislative input. This process-oriented approach captures the Court's recent decisions more accurately than its apparent commitment to deference or non-deference where Executive power is concerned. By applying Youngstown, the Court has tamed Chevron's imperialistic aspirations, using judicial intervention as a way of resetting the proper institutional balance between Congress and the Executive. The post-9/11 decisions, understood through the lens of Youngstown, demonstrate congruities between national security cases and non-emergency administrative law rulings. In both domains, the Supreme Court has underscored the significance of congressional delegations for the scaling of judicial deference to the Executive Branch. By exploring cases in both the domestic and national security contexts, this Article indicates the importance of legislative authorization as a predicate for deference across different substantive arenas. By highlighting the intersection of "ordinary" administrative law decisions on the one hand, and recent national security cases on the other, it calls attention to an emerging middle-ground solution courts have used in national security cases that is consistent with, if not anchored squarely within, foundational principles of administrative law.

### Legitimacy is key to failed states

Loomis 2008 (Andrew Joseph Loomis, PhD in Government from Georgetown, August 4, 2008, “LEVERAGING LEGITIMACY IN SECURING U.S. LEADERSHIP: NORMATIVE DIMENSIONS OF HEGEMONIC AUTHORITY,” http://repository.library.georgetown.edu/bitstream/handle/10822/553090/loomisAndrewJoseph.pdf?sequence=1)

The results of this study suggest that U.S. authority levels vary with public ¶ perceptions of legitimacy, casting doubt on claims that ideational variables in the form of ¶ international perceptions of the legitimacy of U.S. policy are inconsequential with respect to ¶ the efficacy of U.S. foreign policy and alliance maintenance. These findings suggest that the ¶ United States would strengthen its authority by constructing policy that is sensitive to the ¶ international public voice. The need for allies is self-evident in the turbulent contemporary ¶ environment and most intractable international problems cannot be solved by the United ¶ States alone. Intelligence deficiencies, drug and human trafficking, proliferation of weapons ¶ of mass destruction, failing states, ethnic violence, and environmental catastrophe all ¶ demand joint responses by the world’s most capable countries. The question of what holds ¶ alliances together has immediate importance. The implications of this research suggest the ¶ need for policymakers to reassess the relevance of legitimate behavior and the impact that ¶ administration policy has on U.S. leadership among its allies.

### Extinction

**Manwaring 2005** (Max G. Manwaring, Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, venezuela’s hugo chávez, bolivarian socialism, and asymmetric warfare, October 2005, pg. 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

### Narrow limits force Congressional re-authorization and check authority roll-out

Geltzer 11 (Boalt Hall School of Law, University of California, Berkeley 2011 Berkeley Journal of International Law 29 Berkeley J. Int'l L. 94 Decisions Detained: The Courts' Embrace of Complexity in Guantanamo-Related Litigation NAME: Joshua Alexander Geltzer a third-year student at Yale Law School, where he is editor-in-chief of the Yale Law Journal. He received his Ph.D. in War Studies from King's College London. His dissertation was published by Routledge as US Counter-Terrorism Strategy and al-Qaeda: Signalling and the Terrorist World-View. Lexis)

In the end, the courts' embrace of complexity has been an experiment in war-time democracy in action. Consider Jack Balkin's assessment of the Supreme Court's decision in Hamdan: What the Court has done is not so much countermajoritarian as democracy forcing. It has limited the President by forcing him to go back to Congress to ask for more authority than he already has, and if Congress gives it to him, then the Court will not stand in his way... . By forcing the President to ask for authorization, the Court does two things. First, it insists that both branches be on board with what the President wants to do. Second, it requires the President to ask for authority when passions have cooled somewhat, as opposed to right after 9/11, when Congress would likely have given him almost anything ... . What the Court has done ... is use the democratic process as a lever to discipline and constrain the President's possible overreaching. 182 Balkin seems right, both in analyzing Hamdan and more broadly. The courts' restraint in embracing complexity and engaging solely with the complicated means of the war against terrorism has produced narrow rulings and reinterpretable opinions that, in the end, empower the political branches - which is to say that they empower popular democracy. It follows that what Congress and the President have done in response to such judicial behavior is a more direct reflection of the will of today's American people than sweeping, bright-line intervention by the courts would have been. Balkin seems to suggest that this outcome is praiseworthy; others find it worrisome. 183 Ultimately, the real conclusion may be that, for better or for worse, the American people have ended up with the Guantanamo that they really wanted.

## 2AC Debt Ceiling Reg

### They’ve got nothing—polarization & deficit reductions are the nail in the coffin for now

Weisman 9-12 (Boehner Seeking Democrats’ Help on Fiscal Talks By JONATHAN WEISMAN

Published: September 12, 2013 http://www.nytimes.com/2013/09/13/us/politics/at-meeting-with-treasury-secretary-boehner-pressed-for-debt-ceiling-deal.html?\_r=0)

Senator Richard J. Durbin of Illinois, the second ranking Democrat, said, “Sometimes I sympathize with Speaker Boehner, but the fact of the matter is, if he wants to lead for the good of the nation, he has to step beyond the Tea Party faction of his caucus.” Republican divisions were manifest not only in the tactics they have proposed but also in the strategic aims of those tactics. Mr. Boehner continued to emphasize taming the budget deficit as the price for a debt-ceiling increase. But the urgency of that mission was undercut by government financing figures released Thursday by the Treasury, which showed the smallest annual shortfall since 2008. In the first 11 months of the current fiscal year, the deficit reached $755.8 billion, with tax revenues rising and spending falling. The deficit in fiscal 2012 was $1.1 trillion. With no resolution in sight, Republican leaders said decisions would have to be made next week on a way forward — with Democratic votes, or Republican unity. But Mr. Boehner gave no indication he knew which way to turn. “There are a million options that are being discussed by a lot of people,” he said. “When we have something to report, we’ll let you know.”

### No vote coming—no GOP base and Dems polarized

Weisman 9-12 (Boehner Seeking Democrats’ Help on Fiscal Talks By JONATHAN WEISMAN

Published: September 12, 2013 http://www.nytimes.com/2013/09/13/us/politics/at-meeting-with-treasury-secretary-boehner-pressed-for-debt-ceiling-deal.html?\_r=0)

It was delayed indefinitely as House Republicans resumed their search for a measure that could unite them. One group of conservatives on Thursday pressed what they called a compromise: a one-year stopgap spending bill that would raise the debt ceiling for a year, delay all aspects of the health care law for a year, and give back some of the Pentagon cuts as a sweetener. Backers insisted on Thursday that it was a package Mr. Obama should be able to accept. Representative Phil Gingrey, Republican of Georgia, said seven Democratic senators facing re-election fights next year in Republican-leaning states would provide a beachhead of Democratic support, and noted the president had already agreed to some delays for his health law. Democrats scoffed at the Republican plans, and even some Republican leadership aides questioned how any could get to the president’s desk. Mr. Reid called the succession of proposals “juvenile political games” and suggested that many Republicans had lost touch with reality.

### PC doesn’t solve and the perception of talks causes the DA

Everett 13 (Lew reiterates Obama won't negotiate over debt limit By BURGESS EVERETT | 7/28/13 9:02 AM EDT http://www.politico.com/blogs/politico-live/2013/07/lew-reiterates-obama-wont-negotiate-over-debt-limit-169332.html)

Treasury Secretary Jack Lew says President Barack Obama will not sign government funding bills that cut domestic spending and will not negotiate over the debt limit with Republicans seeking spending cuts. "Congress can't let us default. Congress has to do its work," Lew said Sunday on ABC's "This Week," adding the president has has been "crystal clear" that raising the country's debt limit this fall is not an issue of negotiation between Congress and the White House. Senate Majority Leader Harry Reid also said last week he'll not negotiate over raising the country's borrowing limit, a position that echoes that of the Obama administration. House Republicans hope to use the debt ceiling as leverage to extract more spending cuts, and a group in both chambers has stated they are opposing any spending bill that funds Obamacare. "I certainly hope that Congress isn't looking to create confrontations and false crises because we did see, in 2011, how bad that is for the American economy," Lew said. "The mere fact of negotiating over the debt limit, after 2011, would introduce this notion that somehow there's a question about whether or not we're going to pay our bills, whether or not we're going to protect the full faith and credit of the United States."

### No downgrade impact – credit rating agencies are unconcerned due to deficit cuts

Dan Weil 9-13 Credit Ratings Agencies More Sanguine About Debt Limit This Year Friday, 13 Sep 2013 08:28 AM http://www.moneynews.com/Economy/Credit-ratings-S-P-Congress/2013/09/13/id/525502#ixzz2emJAwe3T

As Congress and the White House fought over raising the debt ceiling in the summer of 2011, credit ratings agencies warned that a broad deficit reduction deal was necessary for the government to retain its triple-A credit rating. And Standard & Poor's ended up cutting its rating. But as Congress prepares to deal with the budget and another increase in the debt limit in the coming weeks, the credit rating agencies are a lot more congenial, The Hill reports. Their changed attitude stems from a shrinking budget deficit and perhaps a desire to avoid another fight with Congress, according to the news service. The Congressional Budget Office forecasts a deficit of $670 billion for the year ending Sept. 30, a sharp contraction from the $1.1 trillion deficit for fiscal 2012. "We expect the continuing [budget] resolution to pass, and we expect the debt ceiling to be raised, albeit not necessarily smoothly," says Marie Cavanaugh, managing director of S&P's sovereign ratings group, according to The Hill. "The kind of extreme brinkmanship one saw in 2011 didn't serve the economy. It probably didn't serve anyone. There's major incentive in our opinion to reach an agreement." Steven Hess, senior vice president at Moody's, agrees. "From a credit rating perspective, we are not too concerned about either [government funding or the debt ceiling]," he tells The Hill. "We don't foresee that these short-term issues are likely to change that [stable] outlook." The first downgrade from S&P didn't seem to have much of an impact on the U.S. economy or Treasurys. In fact, investors still rushed to Treasury bonds as a safe haven. "We did get downgraded, and the sky didn't fall. The sun came up the next morning, and rates did not go through the roof," says Brian Gardner, senior vice president for Washington research at Keefe, Bruyette and Woods. "We're kind of left with the question of, 'OK, does it really matter?'"

### Means limitation avoids politics

Geltzer 11 (Boalt Hall School of Law, University of California, Berkeley 2011 Berkeley Journal of International Law 29 Berkeley J. Int'l L. 94 Decisions Detained: The Courts' Embrace of Complexity in Guantanamo-Related Litigation NAME: Joshua Alexander Geltzer a third-year student at Yale Law School, where he is editor-in-chief of the Yale Law Journal. He received his Ph.D. in War Studies from King's College London. His dissertation was published by Routledge as US Counter-Terrorism Strategy and al-Qaeda: Signalling and the Terrorist World-View. Lexis)

B. Avoiding Conflict with the Political Branches Focusing on the means of today's war against terrorism rather than on the war's time or space not only spared the judiciary from intruding into political questions; doing so also avoided the courts' clear and potentially unwinnable conflict with the political branches. To be sure, the courts' decisions in cases like Hamdi, Hamdan, Basardh, and Parhat dealt direct defeats to the government and forced the political branches, usually the executive, to take steps that previously it had claimed a right not to take. 108 Put in perspective, however, the effects of the judiciary's rulings were rather minimal. 109 While Hamdi may have demanded notice and an opportunity to be heard by a neutral adjudicator and Hamdan may have required alterations to Guantanamo's military commissions, as this article approached publication - almost nine years into the post-9/11 detentions - only a handful of detainees had been released from Guantanamo by court order, the ultimate outcome for which most detainees have been pressing. 110 Hence, by nibbling at the margins of the political branches' conduct of the war against terrorism, the courts have [\*117] managed to alter some of the means employed in that war without provoking open conflict with the political branches on major issues - conflict that the judiciary might well lose.

### If Congress gets involved it solves the link

Breyer 6 (Concurring Opinion, Justice Stephen Breyer & Anthony Kennedy, in part; SALIM AHMED HAMDAN, Petitioner v. DONALD H. RUMSFELD, SECRETARY OF DEFENSE, et al. No. 05-184 SUPREME COURT OF THE UNITED STATES 548 U.S. 557; 126 S. Ct. 2749; 165 L. Ed. 2d 723; 2006 U.S. LEXIS 5185; 19 Fla. L. Weekly Fed. S 452 March 28, 2006, Argued June 29, 2006, Decided; Lexis)

[\*636] Justice Breyer, with whom Justice Kennedy, Justice Souter, and Justice Ginsburg join, concurring. The dissenters say that today's decision would "sorely hamper the President's ability to confront and defeat a new and deadly enemy." Post, at 705, 165 L. Ed. 2d, at 823 (opinion of Thomas, J.). They suggest that it undermines our Nation's ability to "preven[t] future attacks" of the grievous sort that we have already suffered. Post, at 724, 165 L. Ed. 2d, at 834-835. That claim leads me to state briefly what I believe the majority sets forth both explicitly and implicitly at greater length. The Court's conclusion ultimately rests upon a single ground: Congress has not issued the Executive a "blank check." Cf. Hamdi v. Rumsfeld, 542 U.S. 507, 536, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004) (plurality opinion). Indeed, Congress has denied the President the legislative authority to create military commissions of the kind at issue here. Nothing prevents the President from returning to Congress to seek the authority he believes necessary. Where, as here, no emergency prevents consultation with Congress, judicial insistence upon that consultation does not weaken our Nation's ability to deal with danger. To the contrary, that insistence strengthens the Nation's ability to determine--through democratic means-- how best to do so. The Constitution places its faith in those democratic means. Our Court today simply does the same. Justice Kennedy, with whom Justice Souter, Justice Ginsburg, and Justice Breyer join as to Parts I and II, concurring in part.

### They just decided a whole slew of controversial cases

Wolf 2013 (Richard Wolf, August 12, 2013, “Supreme Court urged to open up,” USA Today, http://www.usatoday.com/story/news/nation/2013/08/12/supreme-court-urged-to-allow-cameras/2644779/)

A year-long string of controversial cases the general public couldn't see at all, or hear until later, has increased pressure on the Supreme Court to consider lifting the veil on its proceedings.¶ Since the end of the court's blockbuster term in late June, members of Congress and watchdog groups have urged the justices to allow cameras into the courtroom for the first time, broadcast live audio of their proceedings and adopt a binding code of ethics.¶ Many of the demands come from Democrats and liberal interest groups concerned about the court's conservative tilt. Though they are not likely to prompt Chief Justice John Roberts and his colleagues to make immediate changes, they could eventually help loosen up an institution that guards its privacy and autonomy.¶ "There have been baby steps taken to make the court more transparent, but it is still in many respects the least transparent branch of the three branches of government," says Doug Kendall, president of the Constitutional Accountability Center.

### Plan is a huge win for Obama

Catalini 2013 (Michael Catalini, May 30, 2013, “Political Barriers Stand Between Obama and Closing Guantanamo Facility,” http://www.nationaljournal.com/politics/political-barriers-stand-between-obama-and-closing-guantanamo-facility-20130503)

The Cuban camp is grabbing headlines again because of a hunger strike among the detainees. Nearly 100 have stopped eating, and the military is forcing them to eat by placing tubes through their noses, the Associated Press reported. The president reconfirmed his opposition to the camp, responding to a question about the recent hunger strikes at Guantanamo Bay with regret in his voice.¶ “Well, it is not a surprise to me that we've got problems in Guantanamo, which is why, when I was campaigning in 2007 and 2008 and when I was elected in 2008, I said we need to close Guantanamo. I continue to believe that we've got to close Guantanamo,” he said.¶ Obama blamed his failure to follow through on a campaign promise on lawmakers. “Now, Congress determined that they would not let us close it,” he said. Despite Obama’s desire to close the base and his pledge this week to “go back to this,” he touched on a political reality: Lawmakers are not inclined to touch the issue.¶ "The president stated that the reason Guantanamo has not closed was because of Congress. That's true," Majority Leader Harry Reid told reporters last month, declining to elaborate.¶ The stakes for Obama on this issue are high when it comes to his liberal base, who would like to see him display the courage of his convictions and close the camp. But the political will is lacking, outside a small contingent of lawmakers, including Sen. Dick Durbin of Illinois and five other liberal Democrats who sided with Obama in 2009, and left-leaning opinion writers.¶ Congressional Democrats, unlike Obama, will have to face voters again. And closing the camp is deeply unpopular. A Washington Post/ABC News poll in February 2012 showed that 70 percent of Americans wantedto keep the camp open to detain “terrorist suspects,” and in a 2009 Gallup Poll, a majority said they would be upset if it shut down. In 2009, the Senate voted 90-6 to block the president’s efforts at closing the camp. Obama had signed an order seeking to close the detention center, but the Senate’s vote denied the administration the $80 million needed to fund the closure. ¶ Closing the camp in Cuba and bringing the detainees into the United States grates against the political sensibilities of many lawmakers. Jim Manley, a Democratic strategist who served as Reid’s spokesman at the time, remembers the debate very well.

### Plan’s announced in June

Reuters 2013 (Jewish Daily, June 21, 2013, “Supreme Tension as Big Cases Loom for Top Court,” http://forward.com/articles/179046/supreme-tension-as-big-cases-loom-for-top-court/?p=all#ixzz2cuIQ3iXH)

Despite the mystery over how the nine justices will decide the big cases, there is no real mystery about the delay. Late June at the Supreme Court is crunch time, as the justices - not unlike college students finishing term papers late into the night - push up against their self-imposed, end-of-June deadline.¶ In 2003, the last time the justices had college affirmative action and gay rights together on the docket, decisions came on June 23 and June 26, respectively. Last year, their decision on the constitutionality of the 2010 healthcare law signed by President Barack Obama came on the last day, June 28, before the justices recessed for the summer.¶ Justice Ruth Bader Ginsburg has called June “flood season.”

### Econ collapse doesn’t cause war – prefer our studies

Samuel Bazzi (Department of Economics at University of California San Diego) and Christopher Blattman (assistant professor of political science and economics at Yale University) November 2011 “Economic Shocks and Conflict: The (Absence of?) Evidence from Commodity Prices” <http://www.chrisblattman.com/documents/research/2011.EconomicShocksAndConflict.pdf?9d7bd4>

VI. Discussion and conclusions A. Implications for our theories of political instability and conflict The state is not a prize?—Warlord politics and the state prize logic lie at the center of the most influential models of conflict, state development, and political transitions in economics and political science. Yet we see no evidence for this idea in economic shocks, even when looking at the friendliest cases: fragile and unconstrained states dominated by extractive commodity revenues. Indeed, we see the opposite correlation: if anything, higher rents from commodity prices weakly 22 lower the risk and length of conflict. Perhaps shocks are the wrong test. Stocks of resources could matter more than price shocks (especially if shocks are transitory). But combined with emerging evidence that war onset is no more likely even with rapid increases in known oil reserves (Humphreys 2005; Cotet and Tsui 2010) we regard the state prize logic of war with skepticism.17 Our main political economy models may need a new engine. Naturally, an absence of evidence cannot be taken for evidence of absence. Many of our conflict onset and ending results include sizeable positive and negative effects.18 Even so, commodity price shocks are highly influential in income and should provide a rich source of identifiable variation in instability. It is difficult to find a better-measured, more abundant, and plausibly exogenous independent variable than price volatility. Moreover, other time-varying variables, like rainfall and foreign aid, exhibit robust correlations with conflict in spite of suffering similar empirical drawbacks and generally smaller sample sizes (Miguel et al. 2004; Nielsen et al. 2011). Thus we take the absence of evidence seriously. Do resource revenues drive state capacity?—State prize models assume that rising revenues raise the value of the capturing the state, but have ignored or downplayed the effect of revenues on self-defense. We saw that a growing empirical political science literature takes just such a revenue-centered approach, illustrating that resource boom times permit both payoffs and repression, and that stocks of lootable or extractive resources can bring political order and stability. This countervailing effect is most likely with transitory shocks, as current revenues are affected while long term value is not. Our findings are partly consistent with this state capacity effect. For example, conflict intensity is most sensitive to changes in the extractive commodities rather than the annual agricultural crops that affect household incomes more directly. The relationship only holds for conflict intensity, however, and is somewhat fragile. We do not see a large, consistent or robust decline in conflict or coup risk when prices fall. A reasonable interpretation is that the state prize and state capacity effects are either small or tend to cancel one another out. Opportunity cost: Victory by default?—Finally, the inverse relationship between prices and war intensity is consistent with opportunity cost accounts, but not exclusively so. As we noted above, the relationship between intensity and extractive commodity prices is more consistent with the state capacity view. Moreover, we shouldn’t mistake an inverse relation between individual aggression and incomes as evidence for the opportunity cost mechanism. The same correlation is consistent with psychological theories of stress and aggression (Berkowitz 1993) and sociological and political theories of relative deprivation and anomie (Merton 1938; Gurr 1971). Microempirical work will be needed to distinguish between these mechanisms. Other reasons for a null result.—Ultimately, however, the fact that commodity price shocks have no discernible effect on new conflict onsets, but some effect on ongoing conflict, suggests that political stability might be less sensitive to income or temporary shocks than generally believed. One possibility is that successfully mounting an insurgency is no easy task. It comes with considerable risk, costs, and coordination challenges. Another possibility is that the counterfactual is still conflict onset. In poor and fragile nations, income shocks of one type or another are ubiquitous. If a nation is so fragile that a change in prices could lead to war, then other shocks may trigger war even in the absence of a price shock. The § Marked 20:47 § same argument has been made in debunking the myth that price shocks led to fiscal collapse and low growth in developing nations in the 1980s.19 B. A general problem of publication bias? More generally, these findings should heighten our concern with publication bias in the conflict literature. Our results run against a number of published results on commodity shocks and conflict, mainly because of select samples, misspecification, and sensitivity to model assumptions, and, most importantly, alternative measures of instability. Across the social and hard sciences, there is a concern that the majority of published research findings are false (e.g. Gerber et al. 2001). Ioannidis (2005) demonstrates that a published finding is less likely to be true when there is a greater number and lesser pre-selection of tested relationships; there is greater flexibility in designs, definitions, outcomes, and models; and when more teams are involved in the chase of statistical significance. The cross-national study of conflict is an extreme case of all these. Most worryingly, almost no paper looks at alternative dependent variables or publishes systematic robustness checks. Hegre and Sambanis (2006) have shown that the majority of published conflict results are fragile, though they focus on timeinvariant regressors and not the time-varying shocks that have grown in popularity. We are also concerned there is a “file drawer problem” (Rosenthal 1979). Consider this decision rule: scholars that discover robust results that fit a theoretical intuition pursue the results; but if results are not robust the scholar (or referees) worry about problems with the data or empirical strategy, and identify additional work to be done. If further analysis produces a robust result, it is published. If not, back to the file drawer. In the aggregate, the consequences are dire: a lower threshold of evidence for initially significant results than ambiguous ones.20

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### Means-limitation doesn’t link to politics—the SPIN is key

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Avoiding Political Questions As previously mentioned, American courts have shown a willingness to scrutinize and even alter the political branches' conduct of the war against terrorism that is unusual for the judiciary during war-time. Becoming involved to such an extent treads contested ground. In few arenas has the notion of non-justiciable political questions been pressed as vigorously as in the national security arena, in which a vision of "unchecked executive discretion has claimed virtually the entire field of foreign affairs as falling under the president's inherent authority." 97 While acceptance of this vision has waxed and waned throughout American history, it emerges most strongly during war-time, and is often attributed to the Supreme Court's 1936 decision in United States v. Curtiss-Wright Export Corp. 98 The dissenting opinions in the major cases bearing on post-9/11 detention consistently have complained that the Court has overstepped its bounds by venturing into political questions. 99 In Rasul, Justice Scalia's dissent charged that the Court's decision would force "the courts to oversee one aspect of the Executive's conduct of a foreign war" and would bring "the cumbersome machinery of our domestic courts into military affairs." 100 In Hamdi, Justice Thomas' dissent insisted that "this Court has long ... held that the President has constitutional authority to protect the national security and that this authority carries with it broad discretion," adding that "judicial interference in these domains destroys the purpose of vesting primary responsibility in a unitary Executive" and avowing that "we lack the information and expertise to question whether Hamdi is actually an enemy combatant, a question the resolution of [\*114] which is committed to other branches." 101 In like vein, Justice Thomas' dissent in Hamdan complained that the Court's opinion "openly flouts our well-established duty to respect the Executive's judgment in matters of military operations and foreign affairs," arguing that the Court's "evident belief that it is qualified to pass on the "military necessity' of the Commander in Chief's decision to employ a particular form of force against our enemies is so antithetical to our constitutional structure that it simply cannot go unanswered." 102 Already, the Court was straying far enough into the contested borderland between the judiciary and the political branches to make its decisions deeply divided, at times forcing a plurality to speak for the Court. However, the complexity of the war's limiting factor being questioned by the Court - the war's means - masked the extent to which the judiciary really was contesting the political branches' war-making authority. In asserting jurisdiction, as in Rasul, or in demanding procedural protections for American citizens detained on American soil, as in Hamdi, or in rejecting the proposed procedures and charges for a military commission, as in Hamdan, the Court plausibly could claim merely to be delineating the scope of the law, rather than circumscribing the scope of the war. After all, it is the judiciary's job to uphold the law, while it is the political branches' responsibility to wage war. 103 In turn, the Court was able to portray itself as modestly ensuring that the law played some role in situations where judges and justices seemed to belong: the extent to which that role enmeshed the judiciary in the prosecution of the war against terrorism was at least partially obscured amidst the complexity that defines the means of war-making, a complexity that is heightened when those means involve detentions and military commissions on or near American soil.