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April 14, 2019: Two Cases of Independence--the Court and the Fed--and What They Tell Us About American Nihilism

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Title: Two Cases of Independence--the Court and the Fed--and What They Tell Us About American Nihilism

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4/14/2019--I will be speaking at Elon Law School in September--see events on the side. The occasion is a law review symposium on judicial independence at Elon on the anniversary of the Judiciary Act of 1869 that set the number of Justices on the Supreme Court at nine. It is a well-timed event, since calls for Court-packing are only getting louder every day. As readers know, I am appalled by such calls. But they contrast strangely with what is going on with the Federal Reserve. Donald Trump is packing the Fed with hacks--or trying to. But no one says, well, there are Trump Board Members and Obama Board members. There are, but people are willing to defend the idea of independent Fed decision-making. Not so with the Supreme Court. Here, in principle there are only influences. There is nothing objective or scientific about the underlying matter--no need for actual expertise. For the Court, it's just, which side has a majority. There is a lot one could say about this. Money is the most important thing. Capitalism is our main occupation. All of the nominees for the Court are competent, whereas, some of these Fed nominees or potential nominees are unqualified altogether. But in terms of nihilism, the conclusion is that economic performance is not a value whereas justice is. And values are subjective. Even people who would prefer a different tradeoff of unemployment and growth versus inflation don't want a President to have any say. They don't want to change the number of Board members to get their way. The reason is that they figure that any qualified member will have the same basic goals. So, why is this not the case for the Court? Dr. King said the arc of the moral universe bends toward justice. Brown was a unanimous opinion. The Court ended holding American citizens as enemy combatants without charge 8-1. Aren't there principles of justice as obvious and powerful as any theories of economics?