# 1NC

### 1

#### Financial incentives must disburse federal funds for energy production—mandates and regulations are indirect incentive—that crushes limitsWebb 93 (Sessional lecture – Faculty of Law @ University of Ottawa, ’93 (Kernaghan, 31 Alta. L. Rev. 501)

One of the obstacles to intelligent discussion of this topic is the tremendous potential for confusion about what is meant by several of the key terms involved. In the hopes of contributing to the development of a consistent and precise vocabulary applying to this important but understudied area of regulatory activity, various terms are defined below. In this paper, "financial incentives" are taken to mean **disbursements18** **of** **public** **funds** or contingent commitments to individuals and organizations, intended to encourage, support or induce certain behaviours in accordance with express public policy objectives. They take the form of **grants, contributions**, repayable contributions, **loans, loan guarantees and** insurance, subsidies, procurement contracts and **tax expenditures.19** Needless to say, the ability of government to achieve desired behaviour may vary with the type of incentive in use: up-front disbursements of funds (such as with contributions and procurement contracts) may put government in a better position to dictate the terms upon which assistance is provided than contingent disbursements such as loan guarantees and insurance. In some cases, the incentive aspects of the funding come from the conditions attached to use of the monies.20 In others, the mere existence of a program providing financial assistance for a particular activity (eg. low interest loans for a nuclear power plant, or a pulp mill) may be taken as government approval of that activity, and in that sense, an incentive to encourage that type of activity has been created.21 Given the wide variety of incentive types, it will not be possible in a paper of this length to provide anything more than a cursory discussion of some of the main incentives used.22 And, needless to say, the comments made herein concerning accountability apply to differing degrees depending upon the type of incentive under consideration. By limiting the definition of financial incentives to initiatives where public funds are either disbursed or contingently committed, a large number of regulatory programs with incentive effects which exist, but in which no money is forthcoming,23 are excluded from direct examination in this paper. Such programs might be referred to as indirect incentives. Through elimination of indirect incentives from the scope of discussion, the definition of the incentive instrument becomes both more manageable and more particular. Nevertheless, it is possible that much of the approach taken here may be usefully applied to these types of indirect incentives as well.24 Also excluded from discussion here are social assistance programs such as welfare and ad hoc industry bailout initiatives because such programs are not designed primarily to encourage behaviours in furtherance of specific public policy objectives. In effect, these programs are assistance, but they are not incentives.

**For is a term of exclusion – requiring direct action upon**

US CUSTOMS COURT 39 AMERICAN COLORTYPE CO. v. UNITED STATES C. D. 107, Protest 912094-G against the decision of the collector of customs at the port of New York UNITED STATES CUSTOMS COURT, THIRD DIVISION 2 Cust. Ct. 132; 1939 Cust. Ct. LEXIS 35 The same reasons used by the appellate court may be adopted in construing the language of the statute herein involved. If the words "for industrial use" mean no more than the words "articles of utility," there could be no reason for inserting the additional words "for industrial use" in the paragraph. Therefore, it must be held that the [\*135] new language "for industrial use" was intended to have a different meaning from the words "articles of utility," as construed in the case of Progressive Fine Arts Co. v. United States, [\*\*8] supra. Webster's New International Dictionary defines the word "industrial" as follows: Industrial. 1. Relating to industry or labor as an economic factor, or to a branch or the branches of industry; of the nature of, or constituting, an industry or industries \* \* \* . The transferring of the scenes on an oil painting to a printed copy is a branch of industry under the definition above quoted. Some of the meanings of the preposition "for" signify intent, as shown by the following definition in the same dictionary: For. 2. Indicating the end with reference to which anything is, acts, serves, or is done; as: a. As a preparation for; with the object of; in order to be, become, or act as; conducive to. \* \* \*. d. Intending, or in order, to go to or in the direction of. Therefore, the words "articles for industrial use" in paragraph 1807 imply that Congress intended to exclude from that provision articles either purchased or imported with the intention to use the same in industry for manufacturing purposes.

#### Contextually Feed in tariffs are indirect and distinct from financial incentives – prefer this evidence because it is comparative

Joanna **Lewis and** Ryan **Wiser** – Gtown STIA Prof / LAWRENCE BERKELEY NATIONAL LABORATORY – November 20**05**, Fostering a Renewable Energy Technology Industry: An International Comparison of Wind Industry Policy Support Mechanisms, <http://eetd.lbl.gov/ea/emp/reports/59116.pdf>

Policy measures to support wind industry development can be grouped into two categories: direct and indirect measures. Direct measures refer to policies that specifically target local wind manufacturing industry development, while indirect measures are policies that support wind power utilization in general and therefore indirectly create an environment suitable for a local wind manufacturing industry (by creating sizable, stable markets for wind power). The discussion that follows covers both of these types of measures, and is a summary of the more detailed country case studies provided in Lewis and Wiser (2005). **4.1. Direct Support Mechanisms** Policies that directly support local wind turbine or components manufacturers can be crucial in countries where barriers to entry are high and competition with international leaders is difficult. A variety of policy options exist to directly support local wind power technology manufacturing, and several policy options have proven effective, as demonstrated in a number of countries (Table 4). These various policy mechanisms do not all target the same goal; some provide blanket support for both international and domestic companies to manufacture locally, while others provide differential support to domestically-owned wind turbine or components manufacturers. Most countries have employed a mix of the following policy tools. 13 Table 4. Policy Measures to Support Wind Power, Country Comparison Direct Policies Primary Countries Where Implemented Local content requirements Spain, China, Brazil, Canadian provinces Financial and tax incentives Canada, Australia, China, US states, Spain, China, Germany, Denmark Favorable customs duties Denmark, Germany, Australia, India, China Export credit assistance Denmark, Germany Quality certification Denmark, Germany, USA, Japan, India, China Research and development All countries to varying degrees; notable programs in Denmark, Germany, US, Netherlands Local Content Requirements The most direct way to promote the development of a local wind manufacturing industry is by requiring the use of locally manufactured technology in domestic wind turbine projects. A common form of this policy mandates a certain percentage of local content for wind turbine systems installed in some or all projects within a country. Such policies force wind companies interested in selling to a domestic market to look for ways to shift their manufacturing base to that country or to outsource components used in their turbines to domestic companies. Unless the mandate is specifically targeted to domestically owned companies, it will have the blanket effect of encouraging local manufacturing regardless of company nationality. Local content requirements are currently being used in the wind markets of Spain, Canada, Brazil and China. Spanish government agencies have long mandated the incorporation of local content in wind turbines installed on Spanish soil; the creation of Gamesa in 1995 can be traced in part to these policies. Even today, local content requirements are still being demanded by several of Spain’s autonomous regional governments that “see local wealth in the wind”—in Navarra alone, it is estimated that its 700 MW of wind power has created 4000 jobs (WPM, October 2004:45). Other regions, including Castile and Leon, Galicia and Valencia, insist on local assembly and manufacture of turbines and components before granting development concessions (WPM, October 2004:6). The Spanish government has clearly played a pro-active role in kickstarting a domestic wind industry, and the success of Gamesa and other manufacturers is very likely related to these policies. At least one provincial government in Canada—Quebec—is pursuing aggressive local content requirements in conjunction with wind farms developed in its region. In May 2003, Hydro-Quebec issued a call for tenders for 1000 MW of wind for delivery between 2006 and 2012 which included a local content requirement; this 1000 MW call was twice the size initially planned by the utility, but it was doubled by the Quebec government with the hope of contributing to the economic revival of the Gaspe Peninsula (WPM, May 2003:35; WPM, April 2004:41). The government also insisted that Quebec’s wind power development support the creation of a true provincial industry that included local manufacturing and job creation by requiring that 40% of the total cost of the first 200 MW be spent in the region—a proportion that rises to 50% for the next 100 MW and 60% for the remaining 700 MW (WPM, May 2003:35; April 2004:41). In addition, the government stipulated that the turbine nacelles be assembled in the region, and that project developers include in their project bidding documents a statement from a turbine manufacturer guaranteeing that it will set up assembly facilities in the region (WPM, May 2003:35). GE was selected to provide the turbines for a total of 990 MW of proposed projects 14 upon its agreement to meet a 60% local content requirement, and is currently establishing three manufacturing facilities in Canada (WPM, June 2005:36). In October 2005, another call for tenders was released, this time for 2000 MW to be installed between 2009-2013. This call requires that 30% of the cost of the equipment must be spent in the Gaspe region and 60% of the entire project costs must be spent within Quebec Province (Hydro-Quebec, 2005). The Brazilian government has also pursued policies governing wind farm development that include stringent local content requirements, primarily through the recent Proinfa legislation (the Incentive Program for Alternative Electric Generation Sources) that offers fixed-price electricity purchase contracts to selected wind projects. Starting in January 2005, the Proinfa legislation requires 60% of the total cost of wind plant goods and services to be sourced in Brazil; only companies that can prove their ability to meet these targets can take part in the project selection process. In addition, from 2007 onwards, this percentage increases to 90% (Cavaliero and DaSilva, 2005). China has also been using local content requirements in a variety of policy forms. China’s 1997 “Ride the Wind Program” established two Sino-foreign joint venture enterprises to domestically manufacture wind turbines; the turbines manufactured by these enterprises under technology transfer arrangements started with a 20 percent local content requirement and a goal of an increase to 80 percent as learning on the Chinese side progressed (Lew, 2000). China’s recent large government wind tenders, referred to as wind concessions, have a local content requirement that has been increased to 70% from an initial 50% requirement when the concession program began in 2003. Local content is also required to obtain approval of most other wind projects in the country, with the requirement recently increased from 40% to 70%. Local content requirements require a large market size in order to lure foreign firms to undertake the significant investments required in local manufacturing. If the market is not sufficiently sizable or stable, or if the local content requirements are too stringent, then the advantages of attracting local manufacturing may be offset by the higher cost of wind equipment that results. Some concerns of this nature have already been raised in Brazil, where only one wind turbine manufacturer appears currently able to meet the local content requirements. The potential negative impact of local content requirements on turbine costs has also been raised in Canada and China. These experiences suggest that local content requirements can work, but should generally be applied in a gradual, staged fashion and only in markets with sufficient market potential. Financial and Tax Incentives Preference for local content and local manufacturing can also be encouraged without being mandated through the use of both financial and tax incentives. Financial incentives may include awarding developers that select turbines made locally with low-interest loans for project financing, or providing financial subsidies to wind power generated with locally-made turbines. Tax incentives can be used to encourage local companies to get involved in the wind industry through, for example, tax credits or deductions for investments in wind power technology manufacturing or research and development. Alternatively, a reduction in sales, value-added-tax (VAT), or income tax for buyers or sellers of domestic wind turbine technology (or production) can increase the competitiveness of domestic manufacturers. In addition, a tax deduction could be permitted for labor costs within the local wind industry. Tax or financial incentives can also be applied to certain company types, such as joint ventures between foreign and local companies, in 15 order to promote international cooperation and technology transfer in the wind industry, and to specifically encourage some local ownership of wind turbine manufacturing facilities. Germany’s 100MW/250MW program provided a 10-year federal generation subsidy for projects that helped to raise the technical standard of German wind technology, and over twothirds of the total project funding for this subsidy went to projects using German-built turbines (Johnson and Jacobsson, 2003). Regional support for German industrial efforts with a bias towards local wind manufacturers have been reported as well (Connor, 2004). A further German policy that may have preferentially supported German turbine technology was the large-scale provision of “soft” loans (loans that are available significantly below market rates) for German wind energy projects. Canada has implemented a tax credit on wages paid out to local labor forces in an attempt to encourage large wind turbine manufacturers to shift jobs to Canada. To provide a further incentive for local manufacturing, a Quebec provincial government program also offers a 40% tax credit on labor costs to wind industries located in the region, and a tax exemption for the entire manufacturing sector through 2010 (WPM, June 2003:40). Spain’s production tax credit on windpowered electricity (supplemented by incentives offered in at least one province) is granted only to turbines that meet local content requirements (WPM, February 2001:20). In India, the excise duty is exempted for parts used in the manufacture of electric generators (Rajsekhar et al., 1999). Australia (at the national and provincial levels), China, and a number of US states have also employed a variety of different tax incentives to encourage localization of wind manufacturing. China provides a reduced VAT on joint venture wind companies to encourage technology transfer (NREL, 2004). China has also used financial incentives to promote domestic wind industry development since its 1997 “Ride the Wind Program,” which allocated new technology funds to two government-facilitated joint venture enterprises to domestically manufacture wind turbines. The Danish Government’s Wind Turbine Guarantee also offered long-term financing of large projects using Danish-made turbines and guaranteed the loans for those projects, significantly reducing the risk involved in selecting Danish turbines for a wind plant. Favorable Customs Duties Another way to create incentives for local manufacturing is through the manipulation of customs duties to favor the import of turbine components over the import of entire turbines. This creates a favorable market for firms (regardless of ownership structure) trying to manufacture or assemble wind turbines domestically by allowing them to pay a lower customs duty to import components than companies that are importing full, foreign-manufactured turbines. Customs duties that support local turbine manufacturing by favoring the import of components over full turbines have been used in Denmark, Germany, Australia, India, and China (Rajsekhar et al., 1999; Liu et al., 2002). This type of policy may be challenged in the future, however, as it could be seen to create a trade barrier and therefore be illegal for WTO member countries to use against other member countries. Export Credit Assistance Governments can support the expansion of domestic wind power industries operating in overseas markets through export credit assistance, thereby providing differential support to locally-owned manufacturers. Though such assistance may also come under WTO’s fire, export assistance can be in the form of low-interest loans or “tied-aid” given from the country where the turbine manufacturer is based to countries purchasing technology from that country. Export credit 16 assistance or development aid loans tied to the use of domestic wind power technology have been used by many countries, but most extensively by Germany and Denmark, encouraging the dissemination of Danish and German technology, particularly in the developing world. For example, the Danish International Development Agency (DANIDA) has offered direct grants and project development loans to qualified importing countries for use of Danish turbines. Quality Certification A fundamental way to promote the quality and credibility of an emerging wind power company’s turbines is through participation in a certification and testing program that meets international standards. There are currently several international standards for wind turbines in use, the most common being the Danish approval system and ISO 9000 certification. Standards help to build consumer confidence in an otherwise unfamiliar product, help with differentiation between superior and inferior products and, if internationally recognizable, are often vital to success in a global market. Denmark was the first country to promote aggressive quality certification and standardization programs in wind turbine technology and is still a world leader in this field; quality certification and standardization programs have since been used in Denmark, Germany, Japan, India, the USA, and elsewhere, and are under development in China. They were particularly valuable to Denmark in the early era of industry development when they essentially mandated the use of Danish-manufactured turbines, since stringent regulations on turbines that could be installed in Denmark made it very difficult for outside manufacturers to enter the market. Research and Development (R&D) Many studies have shown that sustained public research support for wind turbines can be crucial to the success of a domestic wind industry, and such efforts can and typically do differentially support locally owned companies. R&D has often been found to be most effective when there is some degree of coordination between private wind companies and public institutions like national laboratories and universities (Sawin, 2001; Kamp, 2002). For wind turbine technology, demonstration and commercialization programs in particular can play a crucial role in testing the performance and reliability of new domestic wind technology before those turbines go into commercial production. R&D funding has been allocated to wind turbine technology development by every country mentioned in this paper, with the success of R&D programs for wind technology seemingly more related to how the funding was directed than the total quantity of funding. Although the US has put more money into wind power R&D than any other country, for example, an early emphasis on multi-megawatt turbines and funding directed into the aerospace industry are thought (in retrospect) to have rendered US funding less effective in the early years of industry development than the Danish program (the same has been said about early German and Dutch R&D programs). Denmark’s R&D budget, although smaller in magnitude than some other countries, is thought to have been allocated more effectively among smaller wind companies developing varied sizes and designs of turbines in the initial years of industry development (Sawin, 2001; Kamp, 2002). 17 **4.2. Indirect Support Mechanisms** Earlier we demonstrated that success in a domestic market may be an essential foundation for success in the international marketplace, and that fundamental to growing a domestic wind manufacturing industry is a stable and sizable domestic market for wind power. Achieving a sizable, stable local market requires aggressive implementation of wind power support policies. The policies discussed below aim to create a demand for wind power at the domestic level. Feed-in Tariffs Feed-in tariffs, or fixed prices for wind power set to encourage development (Lauber, 2004; Rowlands, 2005; Sijm, 2002; Cerveny and Resch, 1998), have historically offered the most successful foundation for domestic wind manufacturing, as they can most directly provide a stable and profitable market in which to develop wind projects. The level of tariff and its design characteristics vary among countries. If well designed, including a long term reach and sufficient profit margin, feed-in tariffs have been shown to be extremely valuable in creating a signal of future market stability to wind farm investors and firms looking to invest in long-term wind technology innovation (Sawin, 2001; Hvelplund, 2001). As discussed earlier, Germany, Denmark and Spain have been the most successful countries at creating sizable, stable markets for wind power; all three of these countries also have a history of stable and profitable feed-in tariff policies to promote wind power development. The early US wind industry was also supported by a feed-in tariff in the state of California, though this policy was not stable for a lengthy period. Among the twelve countries emphasized in this paper, the Netherlands, Japan, Brazil, and some of the Indian and Chinese provinces have also experimented with feed-in tariffs, with varying levels of success.

7

**C. Prefer our interpretation**

**1. Limits - Broad definitions could include 40 different mechanisms**

2. **Ground – They do not spend federal money, this eliminates key ground on spending, politics, and trade-off debates – it also allows them to have highly specific evidence about their mechanism – they acquire additional solvency.**

**D. Topicality is a voting issue – if it were not the affirmative could run the same case year after year or unbeatable truths like sexual discrimination is harmful.**

### 2

#### Will pass – top Democrats.

Reuters 2-3. ["Reid predicts Congress will pass immigration legislation" -- news.yahoo.com/reid-predicts-u-congress-pass-immigration-legislation-172812947.html]

The top Senate Democrat on Sunday predicted that Congress will pass and send to President Barack Obama legislation overhauling the U.S. immigration system, saying "things are looking really good."¶ Obama last week expressed hope Congress can get a deal done on immigration, possibly in the first half of the year.¶ The president is proposing to give the roughly 11 million U.S. illegal immigrants - most of whom are Hispanics - a pathway to citizenship, a step that many Republicans have long fought.¶ Obama's fellow Democrats control the Senate, but Republicans control the House of Representatives.¶ Appearing on the ABC program "This Week," Senate Majority Leader Harry Reid was asked whether immigration legislation can win House passage.¶ "Well, it's certainly going to pass the Senate. And it would be a bad day for our country and a bad day for the Republican Party if they continue standing in the way of this. So the answer is yes," Reid said.¶ Obama choose Reid's home state of Nevada, with a sizable Hispanic population, as the site for a major speech last Tuesday pushing Congress to pass an immigration bill.¶ Hispanic voters were crucial in helping Obama beat Republican nominee Mitt Romney - who advocated "self-deportation" of illegal immigrants - in Nevada in November.¶ "It has to get done," Reid said of immigration legislation.¶ "It's really easy to write principles. To write legislation is much harder. And once we write the legislation, then you have to get it passed. But I think things are looking really good," Reid added.¶ After years on the back burner, immigration reform has suddenly looked possible as Republicans, chastened by the fact that more than 70 percent of Hispanic voters backed Obama in the November election, appear more willing to accept an overhaul.

#### PC key to get immigration compromise,

Hollander 1-21. [Catherine, reporter, "4 Ways Obama Could Boost Economy in His 2nd Term" National Journal -- www.nationaljournal.com/whitehouse/4-ways-obama-could-boost-economy-in-his-2nd-term-20130121]

3. Pass immigration reform. Obama has made clear that immigration reform is a top priority for his second term. A bipartisan group of senators has been working to draft a bill to overhaul the nation's immigration laws. The issue is teed up for the 113th Congress. On Sunday, top White House adviser David Plouffe said there was “no reason” immigration reform shouldn’t move through Congress this year. Still, passing legislation will be no easy feat. Republicans want to take up immigration initiatives piecemeal, while Obama is calling for comprehensive legislation.¶ If Congress can reach agreement on immigration policy, it could help the economy. “Comprehensive immigration reform that legalizes currently unauthorized immigrants and creates flexible legal limits on future immigration in the context of full labor rights would help American workers and the U.S. economy,” Raúl Hinojosa-Ojeda of the University of California-Los Angeles, wrote in the Cato Journal last winter. More recently, Kevin Hassett of the conservative American Enterprise Institute argued that a “vast expansion of legal immigration could feed the next economic boom.”

#### No political support for FITs -

Stokes 13 (Leah C., Department of Urban Studies and Planning, Massachusetts Institute of Technology, “The Politics of Renewable Energy Policies: The Case of Feed-in-Tariffs in Ontario Canada”) Energy Policy

However, there are also clear drawbacks associated with using FIT policies, many of which are political. First, governments have historically struggled with subsides for energy technologies, with prominent examples including the Synthetic Fuels Corporation and the Public Utility Regulatory Policies Act (Cudahy, 1995; Lesser and Su, 2008). Policymaking is difﬁcult, particularly when interest groups lobby for speciﬁc policy designs and price schedules. Early FITs seemed to set the price too low, leading to an increase in the tariff over time, rather than the decrease we would expect under innovation (International Energy Agency, 2008). This may occur because governments promoting a new policy are interested in seeing short-term success, and therefore favor an initially higher price (Stokes and Lee, 2012). Second, there is increasing evidence of political risk associated with FIT policies. Cost escalation can undermine public support for the policies (Frondel et al., 2008; Couture et al., 2010). In addition, FITs have a transparent cost structure opening them up to criticisms compared to other more opaque energy subsidies, for example those that come through tax breaks. While international support for renewable energy was $88 billion in 2011, fossil fuel subsidies were nearly 6 times at large, at $523 billion (International Energy Agency (IEA), 2012). As this suggests, FIT policies are typically small compared to other energy subsidies, however they are highly visible and may be disproportionately targeted.

#### Immigration reform expands skilled labor --- spurs relations and economic growth in China and India

Los Angeles **Times**, 11/9/**20**12 (Other countries eagerly await U.S. immigration reform, p. http://latimesblogs.latimes.com/world\_now/2012/11/us-immigration-reform-eagerly-awaited-by-source-countries.html)

"Comprehensive immigration reform will see expansion of skilled labor visas," predicted B. Lindsay Lowell, director of policy studies for the Institute for the Study of International Migration at Georgetown University. A former research chief for the congressionally appointed Commission on Immigration Reform, Lowell said he expects to see at least a fivefold increase in the number of highly skilled labor visas that would provide "a significant shot in the arm for India and China." There is widespread consensus among economists and academics that skilled migration fosters new trade and business relationships between countries and enhances links to the global economy, Lowell said. "Countries like India and China weigh the opportunities of business abroad from their expats with the possibility of brain drain, and I think they still see the immigration opportunity as a bigger plus than not," he said.

#### US/India relations averts South Asian nuclear war

Schaffer, Spring **200**2 (Teresita – Director of the South Asia Program at the Center for Strategic and International Security, Washington Quarterly, p. Lexis)

Washington's increased interest in India since the late 1990s reflects India's economic expansion and position as Asia's newest rising power. New Delhi, for its part, is adjusting to the end of the Cold War. As a result, both giant democracies see that they can benefit by closer cooperation. For Washington, the advantages include a wider network of friends in Asia at a time when the region is changing rapidly, as well as a stronger position from which to help calm possible future nuclear tensions in the region. Enhanced trade and investment benefit both countries and are a prerequisite for improved U.S. relations with India. For India, the country's ambition to assume a stronger leadership role in the world and to maintain an economy that lifts its people out of poverty depends critically on good relations with the United States.

### 2

**The United States Congress should give sanction to the setting of rates substantially above the avoided cost rate for the production of solar power citing its authority under the Commerce Clause. The Congress should exercise its Article III power to eliminate the jurisdiction of any Federal Court to hear any challenges to the constitutionality of this legislation or to the authority of Congressional interpretation of The Congress should direct that the judges of every state, pursuant to Article VI, treat this law as authoritative, that it must be followed, and that the United States Supreme Court, pursuant to its holdings in *Testa*, ensure that state courts both follow this directive and accept the interpretation of Congress of the Constitution as authoritative.**

**Solves the aff – The counterplan creates a progressive moment in Congress – it spills over and would empower the Congress to reassert its authority**

Robin West ‘94 Prof. of Law. Georgetown (*Progressive Constitutionalism* p. 218-220)

The concluding section of this chapter argues that even in the short term, and certainly in the long term, there are good reasons for developing an alternative, non- or postliberal, and explicitly progressive paradigm of constitutional interpretation, even if it is clear, as it seems to be, that the present conservative Supreme Court will not embrace it. It also argues, however, that for both strategic and theoretical reasons, the proper audi­ence for the development of a progressive interpretation of the Constitution is Congress rather than the courts. The progressive Constitution should be meant for, and therefore must be aimed toward, legislative rather than adjudicative change. The strategic reasons for this proposed reorientation of progressive con­stitutional discourse should be self-evident. Although the progressive Con­stitution is arguably consistent with some aspects of the liberal-legalist paradigm of the middle of this century, it is utterly incompatible with the conservative paradigm now dominating constitutional adjudication. It does not follow, however, that the progressive Constitution is incompatible with all constitutional decision making: both legislatures and citizens have constitutional obligations, engage in constitutional discourse, and can be moved, presumably, to bring electoral politics in line with the progressive mandates of the Constitution, as those mandates have been understood and interpreted by progressive constitutional lawyers and theorists. I also argue, however, that for theoretical and strategic reasons, the long-range success, the sense, and even more modestly the relevance of the progressive interpretation of the Constitution depend not only on the merits of its interpretive claims but also, and perhaps more fundamentally, on a federal Congress reenlivened to its constitutional obligations. First, of course, it is Congress, not the Supreme Court, that is specifically mandated under the Fourteenth Amendment to take positive action to ensure equal protection and due process rights—the core constitutional tools for attack­ing illegitimate social and private power. If Congress is ever to fulfill this obligation, it will need the guidance of interpretive theories of the mean­ing of equal protection, due process, equality, and liberty that are aimed explicitly toward the context of legislative action and are not constrained by the possibilities and limits of adjudicative law. But more fundamentally, the progressive Constitution, I argue, will never achieve its full meaning—and worse, will remain riddled with paradox and contradiction—so long as it remains in an adjudicative forum. This is not only because of the probable political composition of the Court over the next few decades, but also because of the philosophical and political meanings of adjudi­cative law itself: the possibilities of adjudicative law are constrained by precisely the same profoundly conservative attitudes toward social power that underlie conservative constitutionalism. By acquiescing in a definition of the Constitution as a source of adjudicative law, progressives seriously undermine its progressive potential. Only by reconceptualizing the Consti­tution as a source of inspiration and guidance for legislation, rather than a superstructural constraint on adjudication, can we make good on its richly progressive promise. Therefore, the concluding section of this chapter argues that, for struc­tural long-term as well as strategic short-term reasons, the progressive Constitution—the cluster of meanings found or implanted in constitu­tional guarantees by modern progressive scholars—should be addressed to the Congress and to the citizenry rather than to the courts. The goal of progressive constitutionalists, both in the academy and at the bar, over the coming decades should be to create what Bruce Ackerman has called in other contexts a "constitutional moment" 20 and what Owen Fiss might call more dramatically an "interpretive crisis.' Progressives need to cre­ate a world in which it is clear that a progressive Congress has embraced one set of constitutional meanings, and the conservative Court a contrast­ing and incompatible set. The Supreme Court does, and always has, as Fiss reminds us, read the Constitution so as to avoid crisis.22 The lesson to draw is surely that only when faced with such a constitutional moment will this conservative Court change paths.

### 3

#### A. Kennedy is the swing vote – will support Gay Marriage vote now

Kahlenberg 12/13

(“The Arguments for Gay Marriage Undermine Affirmative Action”, Richard, <http://www.slate.com/articles/news_and_politics/jurisprudence/2012/12/supreme_court_2012_how_justice_kennedy_could_vote_to_recognize_gay_marriage.html>, 2012, THE SLATE)

The Supreme Court’s [decision to hear gay-marriage cases from New York and California this spring](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/12/supreme_court_to_hear_gay_marriage_cases_the_justices_agree_to_hear_windsor.html) means the justices will weigh in on two highly fraught social questions this term—same-sex marriage and affirmative action in higher education. (Not to mention the[future of the Voting Rights Act](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/11/supreme_court_voting_rights_act_2012_will_the_2012_election_lead_the_justices.html).) Justice Anthony Kennedy is likely to be the swing vote in these cases, and many are predicting he will side with conservatives to limit racial preferences and with liberals to support gay marriage. Paradoxically, the very reasoning that could guide Kennedy to support marriage equality may bolster his decision to curtail race-based affirmative action, spurring colleges to adopt new approaches. Proponents of gay marriage advance two powerful arguments: Couples seeking to marry should not be discriminated against on the basis of an unchangeable factor like sexual orientation; and shifting attitudes, especially among young people, make gay marriage an inevitability. The problem for supporters of racial preferences is that these precise arguments can be, and have been, made by conservatives challenging the use of race in university admissions in the case of [Fisher v. University of Texas](http://www.scotusblog.com/case-files/cases/fisher-v-university-of-texas-at-austin/). Abigail Fisher, the plaintiff, says the fact that she was born white should not be used to disadvantage her in admissions; and large-scale trends over the past half century—the decline in racial discrimination coupled with growing economic inequality, a rise in racial intermarriage, and the “browning” of the U.S. population—all make affirmative action based on race look outdated. For centuries, marriage was synonymous with heterosexual union, but as science has come to understand homosexuality as an inborn trait, the basic argument for marriage equality and nondiscrimination has grown more powerful. Along with these insights has come a stunning shift in public opinion on gay marriage. In 1996, Americans opposed gay marriage by 2:1, but today, supporters [outnumber](http://fivethirtyeight.blogs.nytimes.com/2012/05/09/support-for-gay-marriage-outweighs-opposition-in-polls/)opponents by 50 percent to 45 percent and the trend line is clear. The biggest opponents of gay marriage—old people—are dying every year, while younger people (including [many](http://www.nola.com/religion/index.ssf/2011/09/young_adults_even_in_church_st.html)young evangelicals) see same-sex marriage as a nonissue. Just as opposition to racial intermarriage waned over time, we are witnessing the slow death of anti-gay marriage sentiments. Both these arguments may prove persuasive to Justice Kennedy—and analogous arguments may also lead him to significantly curtail racial preferences. Since the adoption of racial affirmative-action programs in college admissions in the late 1960s, a majority of Americans have consistently felt uncomfortable with the idea of using an innate factor like race in deciding who gets ahead—even for the positive goal of integrating selective colleges. Unlike gay marriage, there has been no shift in the public opinion of young people in favor of affirmative action. In a 2012 [survey](http://www.csmonitor.com/USA/Society/2012/1004/Poll-57-percent-of-Millennials-oppose-racial-preferences-for-college-hiring), millennials (aged 18-25) opposed racial preferences to promote diversity by 57 percent to 28 percent, according to the Berkeley Center for Religion, Peace, and World Affairs at Georgetown University and the Public Religion Research Institute. Only 9 percent of young Americans supported racial preferences to make up for past discrimination, once the central moral rationale for the policy. Even at the famously liberal Brown University, a [recent poll](http://www.browndailyherald.com/poll-most-students-opposed-to-use-of-race-in-admissions-1.2798318#.ULkmcFFbvTp) found that students opposed the university’s considering race in admissions by 58 to 34 percent. Racial preferences have survived until now because supporters said they were temporary and that there was no other means to produce racial diversity in our colleges short of using race. In the 1978 Bakke case, for example, Justice Harry Blackmun said it was not possible to find a race-neutral way of producing racial diversity in college admissions. “There is no other way,” except by using race, he suggested. Today, however, racial discrimination, while by no means conquered, does not play the same role in American life that it did three or four decades ago. Meanwhile, inequalities by economic status have grown dramatically. For example, whereas the racial achievement gap between black and white students used to be twice as large as the income achievement gap, Stanford researchers have [found](http://www.nytimes.com/2012/02/10/education/education-gap-grows-between-rich-and-poor-studies-show.html?pagewanted=all) that today the income achievement gap is twice as large as the racial achievement gap. Class-blind racial preferences that benefit advantaged students of color ignore these changing realities. Given the growing economic divide, it’s not surprising that in almost all cases where universities have dropped the use of race in admissions—usually because of a public referendum—they have adopted new programs to give a preference to socioeconomically disadvantaged students of all races. And Blackmun’s contention that race-neutral alternatives won’t produce racial diversity is no longer true. In a [study](http://tcf.org/publications/2012/10/a-better-affirmative-action-state-universities-that-created-alternatives-to-racial-prefences) I co-authored for the Century Foundation, we found that of 10 leading public universities that stopped using racial preferences, seven (including the University of Washington and the University of Florida) were able to maintain or exceed the proportion of black and Latino students with race-neutral alternatives. The three exceptions—U.C. Berkeley, UCLA, and the University of Michigan—are all highly selective institutions that draw on a national student population and are at a disadvantage in recruiting students of color because competitors, like Stanford for the California schools, can continue to use racial preferences. If universities employ income as the sole proxy for class, it’s true that they will see declines in racial diversity, because discrimination continues to create significant differences, in the aggregate, between black and white poverty. Racial discrimination in the housing market, for example, helps explain why low-income blacks are much more likely to live in neighborhoods of concentrated poverty than whites of similar income. And our history of slavery and segregation has made it harder for blacks to accumulate assets over generations, which helps explain why black Americans make 60 percent of what white Americans make in income on average but have just [5 percent of the wealth](http://pewresearch.org/pubs/2069/housing-bubble-subprime-mortgages-hispanics-blacks-household-wealth-disparity) that whites have. As a result, it’s crucial for class-based affirmative action programs to account for concentrated poverty and wealth—not just income—in order to be fair, and to produce greater levels of racial diversity. Here’s another reason why socioeconomic affirmative action that considers wealth is a better fit for the future than race-based policies: America is slated to become a majority minority nation by midcentury, and several states have already crossed that threshold. This is significant because the Supreme Court has long held that the 14th Amendment’s guarantee of equal protection under the law is especially necessary to bar discrimination against “discrete and insular minorities.” So long as white voters are in clear control of American institutions, racial preferences in favor of underrepresented minorities trigger less legal concern. But in instances where minorities are a political majority, judges become more skeptical. In a 1989 [case](http://supreme.justia.com/cases/federal/us/488/469/case.html) contesting Richmond, Va.’s racial set-aside in contracting, for example, the justices took note of the city’s 50 percent black population in striking down the program. As minorities gain in population and political power nationally, racial preferences are likely to come under increasing scrutiny from the courts. If the Supreme Court, guided by Justice Kennedy, supports gay marriage and curtails racial preferences, liberals will cheer one result and conservatives the other. But Kennedy could argue that he is being perfectly consistent, championing history’s slow march toward a requirement of equal treatment: for marriage equality in the first case and for racially neutral admissions in the second. So long as new forms of affirmative action are created—updated to reflect the growing problem of class inequality—Kennedy’s position would represent real-world equality of opportunity as well.

#### B. Kennedy perceives his court capital as limited – will balance one decision by reversing the next

Rappaport 4 (Michael B., University Prof @ University of San Diego Law School “The Rehnquist Court: It’s the O’Connor Court: A Brief Discussion of Some Critiques of the Rehnquist court and Their Implications for Administrative Law” 99 Nw. U.L. Rev 369)

One important element of O'Connor and Kennedy's judicial behavior is that they appear especially concerned with protecting the Court's political capital. Consequently, these Justices would be unlikely to reach too many decisions that would lead to significant attacks on the Court. Many of the decisions that have been criticized for excessive judicial supremacy are actually better understood as reflecting an undue concern with the Court's political capital. For example, Larry Kramer portrays United States v. Dickerson, which held unconstitutional a congressional statute that conflicted with Miranda v. Arizona, as reflecting a judicially supremacist view that took umbrage at, and refused to defer to, a constitutional interpretation by Congress. [n46](http://www.lexisnexis.com/lnacui2api/frame.do?reloadEntirePage=true&rand=1299732149289&returnToKey=20_T11435618625&parent=docview&target=results_DocumentContent&tokenKey=rsh-23.824480.0052541954#n46) In my view, however, Dickerson is better understood as deriving from the Court's unwillingness to be seen as overruling Miranda. Miranda arguably is the most famous decision in all of constitutional law. Citizens who know little else about constitutional law know from television and movies about "the right to remain silent." If the Rehnquist Court had overruled Miranda, it would have not only been criticized by elite opinion but also taken a highly visible action to eliminate "a constitutional right." As a result, Dickerson could have been used to suggest that the Court was demolishing the people's liberties generally. In this situation, the most politically sensitive "conservative" Justices - O'Connor, Kennedy, and Rehnquist - bolted. A similar analysis applies to Planned Parenthood v. Casey, where the joint opinion of Justices O'Connor, Kennedy, and Souter refused to overrule Roe v. Wade. [n47](http://www.lexisnexis.com/lnacui2api/frame.do?reloadEntirePage=true&rand=1299732149289&returnToKey=20_T11435618625&parent=docview&target=results_DocumentContent&tokenKey=rsh-23.824480.0052541954#n47) Kramer again views this case as involving undue judicial supremacy because the joint opinion was concerned about the appearance created to its independence and credibility if it were to "overrule under fire ... a watershed decision." [n48](http://www.lexisnexis.com/lnacui2api/frame.do?reloadEntirePage=true&rand=1299732149289&returnToKey=20_T11435618625&parent=docview&target=results_DocumentContent&tokenKey=rsh-23.824480.0052541954#n48) While I certainly do not want to defend the joint opinion on legal grounds, I see no reason to doubt that it was motivated by its stated fear for the political capital of the Court rather than disrespect for the public's constitutional views. Had the Court overruled Roe v. Wade, it was likely to have been subjected to a vehement attack by the political elite as well as by large numbers of ordinary citizens. These attacks could have charged not only that the Court had mistakenly eliminated a constitutional right, but that it had responded to political pressure.  [\*378]  It was much safer for the Court to approve the precedent while suggesting that the decision was wrong as an original matter. [n49](http://www.lexisnexis.com/lnacui2api/frame.do?reloadEntirePage=true&rand=1299732149289&returnToKey=20_T11435618625&parent=docview&target=results_DocumentContent&tokenKey=rsh-23.824480.0052541954#n49) Finally, the Court's federalism decisions can also be understood as an element of Justice O'Connor and Kennedy's political sensitivity. [n50](http://www.lexisnexis.com/lnacui2api/frame.do?reloadEntirePage=true&rand=1299732149289&returnToKey=20_T11435618625&parent=docview&target=results_DocumentContent&tokenKey=rsh-23.824480.0052541954#n50) While the five federalism Justices clearly seek to enforce constitutional federalism, the Court has not struck down any politically important legislation that might provoke the political branches to strongly attack it. Justices O'Connor and Kennedy have also adopted narrow positions regarding federalism, both in separate concurrences and in their votes. [n51](http://www.lexisnexis.com/lnacui2api/frame.do?reloadEntirePage=true&rand=1299732149289&returnToKey=20_T11435618625&parent=docview&target=results_DocumentContent&tokenKey=rsh-23.824480.0052541954#n51) It would seem that Justices O'Connor and Kennedy are wary of doing anything that would provoke the strong reactions that occurred during the New Deal.

#### C. US domestic exclusion of gay marriage hurts human rights abroad – causes global homophobia

Dorf & Bromley 10

, the Council for Global Equality, 10 (Julie & Mark, American Duty, 07/14, www.advocate.com/News/Daily\_News/2010/07/14/AmericanDuty/)

While we take issue with many of the points leveled against us in James Kirchick’s Advocate commentary [“Diplomatic Disconnect,”](http://www.advocate.com/Print_Issue/Features/Diplomatic_Disconnect/)we agree with his larger perspective. We share his belief that LGBT Americans can and should be engaged in making the world a better place for LGBT citizens in countries less democratic than our own, even while we simultaneously struggle to extend equality for all LGBT citizens at home**. But to have impact on the world stage,** we firmly believe that **the domestic and the international are interconnected** and that **we cannot advance one struggle without advancing both**. In that sense, we believe that **human rights begin “in small places close to home**,” as Eleanor Roosevelt, credited with founding the modern human rights movement, so famously observed. Unfortunately, Mr. Kirchick’s argument comes dangerously close to embracing the ugly specter of U.S. exceptionalism — the idea, in this case, that because things are relatively better in this country, the United States need not participate on an equal footing or with equal candor in reviewing its own human rights record. At heart, this argument stands in contrast to Eleanor Roosevelt’s equally famous human rights exhortation that “without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.” In the spirit, then, of Eleanor Roosevelt, we are indeed guilty of “concern for legislative minutia in Washington,” as Mr. Kirchick suggests, because such **minutia has been deployed against us for decades to deny full equality to LGBT Americans**. **In so doing, it also limits our credibility when our government speaks to human rights abuses** **against LGBT communities in Bishkek, Moscow, or Kampala.** **In contrast, by acknowledging our own shortcomings on the world stage, and by working to overcome that legislative minutia** as LGBT Americans did in pushing the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act through Congress last year, **we expand liberty at home and secure an important bully pulpit from which to encourage other countries to address the human rights of their own LGBT citizens**. And we do so with a sense of humility and candor about **our own domestic reality that is immensely powerful to those watching and listening around the world**.

#### D. Soft power is key to hegemony, the war on terror, and solving warming and disease.

**Nye 8** (Joseph S. Professor of Harvard’s Kennedy School of Government, 3-7-2008, <http://abs.sagepub.com/cgi/content/abstract/51/9/1351>)

Etzioni is correct that **a successful policy of security first will require the combi- nation of hard and soft power. Combining the two instruments so that they reinforce rather than undercut each other is crucial to success.** Power is the ability to get the outcomes one wants. In the past,it was assumed that military power dominated most issues, but in today’s world, the contexts of power differ greatly on military, economic, and transnational issues.These latter**problems, including everything from climate change to pandemics**to transnational **terrorism, pose some of the greatest challenges we face today, and yet few are susceptible to purely military solutions. The only way to grapple with these problems is through cooperation with others,**and that requires smart power—a strategy that combines the soft power of attraction with the hard power of coercion. For example,American and British intelligence agen- cies report that our use of hard power in Iraq without sufficient attention to soft power has increased rather than reduced the number of Islamist terrorists throughout the past 5 years. **The soft power of attraction will not win over the hard core terrorists but it is essential in winning the hearts and minds**of mainstream Muslims,without whose sup- port success will be impossible in the long term. Yet all the polling evidence suggests that American soft power has declined dramatically in the Muslim world. **There is no simple military solution that will produce the outcomes we want**. Etzioni is clear on this and highly critical of the failure to develop a smart power strategy in Iraq. One wishes, however, that he had spent a few more pages developing one for Iran.

#### E. ANOTHER TERRORIST ATTACK WOULD SPARK A GLOBAL NUCLEAR WAR

SID-AHMED, internationally renowned reporter and columnist in Al Ahram, 2004 (Mohamed, “Extinction!” Al-Ahram Weekly, http://weekly.ahram.org.eg/2004/705/op5.htm)

**What would be the consequences of a nuclear attack by terrorists? Even if it fails, it would further exacerbate the negative features of the new and frightening world in which we are now living. Societies would close in on themselves,** police measures would be stepped up at the expense of human rights, tensions between civilisations and religions would rise and ethnic **conflicts would proliferate. It** would also speed up the arms race and develop the awareness that a different type of world order is imperative if humankind is to survive**.**

**But the still more critical scenario is if the attack succeeds. This could lead to a third world war, from which no one will emerge victorious.** Unlike a conventional war which ends when one side triumphs over another, **this war will be without winners and losers. When nuclear pollution infects the whole planet, we will all be losers.**

### 4

#### The 1Ac presents itself as the hero that can save itself from environmental destruction at the tipping point of destruction – this type of disaster rhetoric fosters a desire to project masculine dominance over nature in order to conquer it. This parallels the societal belief that the feminine should be dominated by the masculine.

**Belmont, 7** (Cynthia. (2007), professor at Northland College, Ph.D. University of Wisconsin-Milwaukee, Milwaukee, WI 1996 M.A. University of Wisconsin-Milwaukee, Milwaukee, WI 1992 B.A. Grinnell College, Grinnell, IA 1990, Ecofeminism and the Natural Disaster Heroine. Women's Studies, 36(5), 349-372. doi:10.1080/00497870701420230)

Big-budget natural disaster films have swamped American theaters in recent years: the Jurassic Park series of the mid-1990s began a wave of disaster movies which has continued with blockbusters such as The Day After Tomorrow (2004) and Poseidon (2006). Although American filmmakers have consistently explored the theme of wayward/vengeful nature, lately Hollywood has outdone itself in bringing natural cataclysm to the big screen. While developments in film technologies are the driving force behind the subjects and style of disaster films as well as their number, their box-office success and wide audience may be explained not only by the visual feasts of massive destruction they purvey, but also by the ways in which they support dominant conceptions of gender, science and military technology, the United States as a world power, and especially the environment and the role of humans in it. 1 These films appeal to our worst fears about the unpredictability of natural phenomena, the consequences of capitalist greed, and the ramifications of our striving for control over every aspect of nature, from space to the gene. Specifically, they reflect the growing unease plaguing the culture: that we are heading toward the doom of civilization, and the Earth, if we continue on our current exploitative path. Of particular interest from an ecofeminist (ecological feminist) perspective is the representation of gender and nature in these films, where, as male protagonists battle toward victory over 1 Jurassic Park (at #11), Twister (at #42), Armageddon (at #70), and The Day After Tomorrow (at #80) remain among the 100 top-grossing American films (“All Time”). These are but a handful of the disaster films in the top 100. Address correspondence to Cynthia Belmont, Northland College, 1411 Ellis Ave, Ashland, WI 54806. E-mail: cbelmont@northland.edu 350 Cynthia Belmont an antagonistic, vindictive nature that threatens to annihilate “the American way of life,” heroines who are initially characterized as “modern women”—capable, intelligent, and employed— are quickly returned to the domestic sphere and to helpless dependence on masculine physical prowess and technological know-how. Ultimately, the disaster films, which in some cases overtly connect the destructive power of nature with a disapproving view of women in positions of authority, portray the trouble with nature as being tied to the dissolution of traditional gender roles: as they foster a fear of and drive to conquer nature, they also feed cultural anxiety about women’s empowerment and suggest that meekness and passivity are required of women if order is to be restored to a chaotic, unstable world.

**The impact is Extinction**

**Warren and Cady 94**—Warren is the Chair of the Philosophy Department at Macalester College and Cady is Professor of Philosophy at Hamline University (Karen and Duane, “Feminism and Peace: Seeing Connections”, p. 16, JSTOR, http://www.jstor.org/stable/pdfplus/3810167.pdf)

Operationalized, the evidence of patriarchy as a dysfunctional system is found in the behaviors to which it gives rise, (c), and the unmanageability, (d), which results. For example, in the United States, current estimates are that one out of every three or four women will be raped by someone she knows; globally, rape, sexual harassment, spouse-beating, and sado-masochistic pornography are examples of behaviors practiced, sanctioned, or tolerated within patriarchy. In the realm of environmentally destructive behaviors, strip-mining, factory farming, and pollution of the air, water, and soil are instances of behaviors maintained and sanctioned within patriarchy. They, too, rest on the faulty beliefs that it is okay to "rape the earth," that it is "man's God-given right" to have dominion (that is, domination) over the earth, that nature has only instrumental value, that environmental destruction is the acceptable price we pay for "progress."And the presumption of warism, that war is a natural, righteous, and ordinary way to impose dominion on a people or nation, goes hand in hand with patriarchy and leads to dysfunctional behaviors of nations and ultimately to international unmanageability. Much of the current" unmanageability" of contemporary life in patriarchal societies, (d), is then viewed as a consequence of a patriarchal preoccupation with activities, events, and experiences that reflect historically male-gender identified beliefs, values, attitudes, and assumptions. Included among these real-life consequences are precisely those concerns with **nuclear proliferation, war, environmental destruction, and violence toward women**, which many feminists see as the logical outgrowth of patriarchal thinking. In fact, it is often only through observing these dysfunctional behaviors-the symptoms of dysfunctionality that one can truly see that and how patriarchy serves to maintain and perpetuate them. When patriarchy is understood as a dysfunctional system, this "unmanageability" can be seen for what it is-as a predictable and thus logical consequence of patriarchy.'1 The theme that global environmental crises, war, and violence generally are predictable and logical consequences of sexism and patriarchal culture is pervasive in ecofeminist literature (see Russell 1989, 2). Ecofeminist Charlene Spretnak, for instance, argues that "militarism and warfare are continual features of a patriarchal society because they reflect and instill patriarchal values and fulfill needs of such a system. Acknowledging the context of patriarchal conceptualizations that feed militarism is a first step toward reducing their impact and preserving life on Earth" (Spretnak 1989, 54). Stated in terms of the foregoing model of patriarchy as a dysfunctional social system, the claims by Spretnak and other feminists take on a clearer meaning: Patriarchal conceptual frameworks legitimate impaired thinking (about women, national and regional conflict, the environment) which is manifested in behaviors which, if continued, **will make life on earth difficult, if not impossible**. It is a stark message, but it is plausible. Its plausibility lies in understanding the conceptual roots of various woman-nature-peace connections in regional, national, and global contexts.

**Vote neg to reject the hegemonic masculinity inherent in the ideational process of the 1AC**

**Beland 2009**

Daniel Beland. “Gender, Ideational Analysis, and Social Policy” Social Politics: International Studies in Gender, State and Society. Vol 16 Num 4. Pp 558-581. Winter 2009

To further illustrate the role of frames in politics and policy change, let me discuss three ways in which political actors can mobilize them. First, **frames can take the form of a public discourse used by speciﬁc political actors to convince others that policy change is necessary.** This is what political scientist Robert H. Cox (2001) calls “the social construction of the need to reform” and what politi- cal philosopher Nancy Fraser (1989) has called the “politics of needs interpretation.” From this perspective, **discursive frames can help convince political actors and the general public that existing policy legacies are ﬂawed, and that reforms should be enacted to solve perceived social and economic problems.** Thus, **policy learning can feed framing processes in the sense that experts, ofﬁcials, and interest groups can publicly voice their negative assessments of exist- ing policies to convince other actors that the time has come to improve or even replace them.** But “social learning remains analyti- cally distinct from framing activities in part because learning can occur without the emergence of a public discourse about the need to reform. An autonomous set of evaluative activities, social learning generally predates and, in only some cases, informs framing pro- cesses” (Be´ land 2006, 562). Overall, **discursive frames help actors make a case for policy change, and this activity generally involves a public discussion of the meaning and performance of existing policy legacies.** Second, **these frames help political actors convince other groups and individuals to form a coalition around a concrete proposal or vision for change.** As discussed above, ideational processes partici- pate in the construction of interests and the ranking of policy goals. In this context, **particular political actors can use frames and politi- cal discourse to inﬂuence the way other actors see their interests and identify with shared policy goals.** From this perspective, **policy debates are largely about the construction of interests, policy goals, and identities, without which political coalitions can hardly survive.** Although concrete quid pro quos between key political actors are a major aspect of coalition building (Bonoli 2000), **frames can help sell concrete policy alternatives to the public and build a stronger coalition around them.** On one hand, politicians can “speak to their base” and argue that the measures they support are consistent with the broad ideological principles that cement their existing coalition. On the other hand, ambiguous policy ideas and proposals can make many different actors believe that they have an interest in supporting a complex policy alternative, which can lead to seemingly paradoxi- cal coalitions (Palier 2005). Third, political actors can mobilize framing processes to counter criticism targeting the policy alternatives they support. Thus, one might expand Weaver’s notion of blame avoidance strategies (Weaver 1986) to take on a discursive form. For instance, ofﬁcials may blame economic cycles for higher unemployment rates to con- vince the public that their decisions are not at the origin of this negative situation. **Policymakers can also frame policy alternatives in a way that diverts attention away from their actual departure from well-accepted political symbols or policy paradigms.** For example, since the 1980s, Swedish politicians have referred to enduringly popular idea of “social democracy” to legitimize forms of policy change that are arguably closer to neoliberalism than to traditional social democratic ideals (Cox 2004). Blame avoidance frames such as these have a preventive component because political actors use them to shield the policy alternatives they support from criticism (Be´ land 2005, 11). **Scholars interested in the gender – social policy nexus have long analyzed discursive and framing processes** (Tannen 1994), and their potential impact on policy change (Lewis 2002). A good example of this type of scholarship is the research of Hobson and Lindholm (1997) on the mobilization of Swedish women during the 1930s. In order to understand this mobilization, the authors bridge the power resource approach and the sociological scholarship on social movements. **Their analysis of women’s mobilization emphasizes the role of what they call “discursive resources,” a concept that “acknowledges that social groups engage in struggles over the mean- ings and the boundaries of political and social citizenship. This includes the cultural narratives and metaphors that social actors exploit in their public representations as well as the contesting ideological stances that they take on dominant themes and issues on the political agenda.”** (Hobson and Lindholm 1997, 479) For these two scholars, **ideational processes clearly serve as powerful framing tools in struggles over gender and social policy change.** Once again, **this discussion of the gender scholarship points to the relationship between ideational processes and categorical inequalities, a major issue that is frequently overlooked in the general ideational literature on policy and politics. By pointing to this key relationship, students of gender and social policy make a strong and original contribution to this ideational literature.**

### Warming

**4. Warming doesn't cause extinction**

**Lomborg ‘8** (Director of the Copenhagen Consensus Center and adjunct professor at the Copenhagen Business School, Bjorn, “Warming warnings get overheated”, The Guardian, 8/15, <http://www.guardian.co.uk/commentisfree/2008/aug/15/carbonemissions.climatechange>

These alarmist predictions are becoming quite bizarre, and could be dismissed as sociological oddities, if it weren’t for the fact that they get such big play in the media. Oliver Tickell, for instance, writes that a global warming causing a 4C temperature increase by the end of the century would be a “catastrophe” and the beginning of the “extinction” of the human race. This **is simply** silly. His evidence? That 4C would mean that all the ice on the planet would melt, bringing the long-term sea level rise to 70-80m, flooding everything we hold dear, seeing billions of people die. Clearly, Tickell has maxed out the campaigners’ scare potential (because there is no more ice to melt, this is the scariest he could ever conjure). But he is **wrong**. Let us just remember that the UN climate panel, the IPCC, expects a temperature rise by the end of the century between 1.8 and 6.0C. Within this range, the IPCC predicts that, by the end of the century, sea levels will rise 18-59 centimetres – Tickell [he] is simply exaggerating **by a factor of** up to **400**. Tickell will undoubtedly claim that he was talking about what could happen many, many millennia from now. But this is disingenuous. First, the 4C temperature rise is predicted on a century scale – this is what we talk about and can plan for. Second, although sea-level rise will continue for many centuries to come, the **models unanimously show that** Greenland’s ice shelf will be reduced, but Antarctic ice will increase even more (because of increased precipitation in Antarctica) for the next three centuries. What will happen beyond that clearly depends much more on emissions in future centuries. Given that CO2 stays in the atmosphere about a century, what happens with the temperature, say, six centuries from now mainly depends on emissions five centuries from now (where it seems unlikely non-carbon emitting technology such as solar panels will not have become economically competitive). Third, Tickell tells us how the 80m sea-level rise would wipe out all the world’s coastal infrastructure and much of the world’s farmland – “undoubtedly” causing billions to die. But to cause billions to die, it would require the surge to occur within a single human lifespan. This sort of scare tactic is insidiously wrong and misleading, mimicking a firebrand preacher who claims the earth is coming to an end and we need to repent. While it is probably true that the sun will burn up the earth in 4-5bn years’ time, it does give a slightly different perspective on the need for immediate repenting. Tickell’s claim that 4C will be the beginning of our extinction is again many times beyond wrong and misleading, and, of course, made with no data to back it up. Let us just take a look at the realistic impact of such a 4C temperature rise. For **the Copenhagen Consensus**, one of the lead economists of the IPCC, Professor Gary Yohe, **did a survey of all the problems and all the benefits** accruing from a temperature rise over this century of about approximately 4C. And yes, there will, of course, also be benefits: as temperatures rise, more people will die from heat, but fewer from cold; agricultural yields will decline in the tropics, but increase in the temperate zones, etc. The model evaluates the impacts on agriculture, forestry, energy, water, unmanaged ecosystems, coastal zones, heat and cold deaths and disease. The bottom line is that benefits from global warming right now **outweigh the costs** (the benefit is about 0.25% of global GDP). Global warming will continue to be a net benefit until about 2070, when the damages will begin to outweigh the benefits, reaching a total damage cost equivalent to about 3.5% of GDP by 2300. **This is simply not the end of humanity**. If anything, **global warming is a net benefit now; and even in three centuries, it will not be a challenge to our civilisation.** Further**, the IPCC**

**IPCC Models are inaccurate – they are rigged and over exaggerated**

**Young ‘9** (Gregory, PhD, physicist and researcher @ University of Oxford, Graduate degrees @ University of Oxford, King's College, University of Aberdeen, Scotland, *American Thinker*, “It's the Climate Warming Models, Stupid!”March 31, 2009, http://www.americanthinker.com/2009/03/its\_the\_climate\_warming\_models.html)

Compounding the problems of inaccuracy in climate models is their subsequent and de facto publication, virtually assured if the study is favorable to AGW. Reporting in the journal Energy and Environment, Volume 19, Number 2, March 2008, Evidence for "publication Bias" Concerning Global Warming in Science and Nature by Patrick J. Michaels has found significant evidence for the AGW penchant in his survey of the two premier magazines, namely Science and Nature. Astoundingly, he found that it's more than 99.999% probable that Climate studies' extant forecasts are biased in these two publications. In contrast the AGW party-line believes that there is an equal probability that published findings will raise or lower extant forecasts. This is akin to believing the MSM is fair, objective and balanced. Michaels rightly warns that such bias "...has considerable implications for the popular perception of global warming science, for the nature of ‘compendia' of climate change research, such as the reports of the United Nations' Intergovernmental Panel on Climate change, and for the political process that uses those compendia as the basis for policy." And such bias did, does, and will continue to influence world politics. This predicament has been vigorously exposed by Lord Monckton, who previously revealed through consummate analysis that a whole bevy of proven modeling errors yet to be have been corrected, willfully resisted, and pugnaciously ignored by the IPPC continues to this day to prejudice world opinion in favor of AGW. Monckton specifically found that errors "via 30 equations that computer models used by the UN's climate panel (IPCC) -- [models] which were purposely pre-programmed with such overstated or falsified values for the three variables whose product is ‘climate sensitivity' (temperature increase in response to greenhouse-gas increase) -- resulted in a 500-2000% overstatement of CO2's effect on temperature in the IPCC's latest climate assessment report, published in 2007." Accordingly, and in total agreement with other published opinions, Lord Monckton stated most recently that there is an "overwhelming weight of evidence that the UN's climate panel, the IPCC, prodigiously exaggerates both the supposed causes and the imagined consequences of anthropogenic ‘global warming;' that too many of the exaggerations can be demonstrated to have been deliberate; and that the IPCC and other official sources have continued to rely even upon those exaggerations that have been definitively demonstrated in the literature to have been deliberate."

**An ice age is coming and will cause extinction- only maintaining emissions can solve**

**Kenny 2 (**July 14th, Andrew, The Sunday Mail, **“**The Ice Age Cometh”, <http://www.ourcivilisation.com/aginatur/iceage.htm>, FMF co-spokesperson on climate change)

**A new ice age is due now**, but you wont hear it from the green groups, who like to play on Western guilt about consumerism to make us believe in global warming.THE Earth's climate is changing in a dramatic way, with immense danger for mankind and the natural systems that sustain it. This was the frightening message broadcast to us by environmentalists in the recent past. Here are some of their prophecies.The facts have emerged, in recent years and months, from research into past ice ages. They imply that the threat of **a new ice age must now stand alongside nuclear war** as a likely source of wholesale death and misery for mankind [humynkind]. (Nigel Calder, former editor of New Scientist, in International Wildlife, July 1975) **The cooling has already killed thousands** of people in poor nations... If it continues, and no strong measures are taken to deal with it, **the cooling will cause world famine, world chaos, and probably world war,** and this could all come about by the year 2000. (Lowe Ponte, The Cooling, 1976) As recently as January 1994, the supreme authority on matters environmental, Time magazine, wrote :The ice age cometh? Last week's big chill was a reminder that the Earth's climate can change at any time ... The last (ice age) ended 10,000 years ago; the next one— for there will be a next on—could start tens of thousands of years from now. Or tens of years. Or it may have already started. The scare about global cooling was always the same: unprecedented low temperatures; the coldest weather recorded; unusual floods and storms; a rapid shift in the world's climate towards an icy apocalypse. But now, the scare is about global warming. To convert from the first scare to the second, all you have to do is substitute "the coldest weather recorded" with "the warmest weather recorded". Replace the icicles hanging from oranges in California with melting glaciers on Mt Everest, and the shivering armadillos with sweltering polar bears. We were going to freeze but now we are going to fry. Even the White House is making cautionary sounds about warming. What facts have emerged to make this dramatic reversal? Well, none really. The most reliable measurements show no change whatsoever in global temperatures in the past 20 years. **What has changed is the perception that global warming makes a better scare than the coming ice age.** A good environmental scare needs two ingredients. The first is impending catastrophe. The second is a suitable culprit to blame. In the second case, the ice age fails and global warming is gloriously successful. It is not the destruction itself of Sodom and Gomorrah that makes the story so appealing but the fact that they were destroyed because they were so sinful. One of the real threats to mankind is the danger of collision with a large asteroid. It has happened in the past with catastrophic effect, and it will probably happen again. But there are no conferences, resolutions, gatherings, protests and newspaper headlines about asteroid impacts. The reason is that you cannot find anyone suitable to blame for them. If you could persuade people that President Bush or the oil companies were responsible for the asteroids, I guarantee there would be a billion-dollar campaign to "raise awareness" about the asteroid danger, with sonorous editorials in all the papers. Global warming has the perfect culprit: naughty, industrialised, advanced, consuming, Western society, which has made itself very rich by burning a lot of fossil fuels (coal, oil and gas). This, so the scare goes, is releasing a lot of carbon dioxide. which is dangerously heating up the world. THERE are two facts in the scare. First, it is true that carbon dioxide is a greenhouse gas one which traps heat on Earth. (Without it, the Earth would be too cold for' life.) Second, it is true that the concentration of carbon dioxide in the atmosphere is rising. The rest is guesswork. The global warmers said the most accurate measure of climate change would be air temperatures. For the past 20 years or more, air temperatures have been measured with extreme accuracy. They show no warming whatsoever. Surface temperatures are much less reliable since the recording stations are often encroached on by expanding cities, which warm the local environment. The curve most often used by the global warmers is one showing surface temperatures rising by about half a degree in the past 100 years. (The curve, incidentally, is a bad match against rising carbon dioxide but a good one against solar activity, which suggests the sun might be the reason for the warming.) However, there are accurate methods of measuring sea temperatures going back much further. Past temperatures for the Atlantic Ocean have been found by looking at dead marine life. The isotope ratio of carbon-14 in their skeletons tells you when they lived. The ratio of other isotopes tells you the temperature then. Thus we are able to know temperatures in the Atlantic and northern Europe going back thousands of years. **They make nonsense of the global warming scare.** The last ice age ended about 10,000 years ago. Temperatures rose to the "Holocene Maximum" of about 5000 years ago when it was about l.5°C higher than now, dropped in the time of Christ, and then rose to the "Medieval Climate Optimum" in the years 600 to 1100, when temperatures. were about 1°C higher than now. This was a golden age for northern European. agriculture and led to the rise of Viking civilisation. Greenland, now a frozen wasteland, was then a habitable Viking colony. There were vineyards in the south of England. Then temperatures dropped to "The Little Ice Age" in the 1600s, when the Thames froze over. And they have been rising slowly ever since, although they are still much lower than 1000 years ago. We are now in a rather cool period. What caused these ups and downs of temperature? We do not know. Temperature changes are a fact of nature, and we have no idea if the claimed 0.3C heating over the past 100 years is caused by man's activities or part of a natural cycle. What we can say, though, is that if Europe heats up by 1°C it would do it a power of good. We can see this from records of 1000 years ago. Moreover, **increased carbon dioxide makes plants grow more quickly, so improving crops and forests.** The Earth's climate is immensely complicated, far beyond our present powers of understanding and the calculating powers of modern computers. Changes in phase from ice to water to vapour; cloud formation; convection; ocean currents; winds; changes in the sun: the complicated shapes of the land masses; the ability of the oceans to absorb carbon dioxide — all of these and a thousand other factors operating with small differences over vast masses and distances make it practically impossible for us to make predictions about long-term climate patterns, and perhaps make such predictions inherently impossible. The computer models that the global warmers now use are ludicrously oversimplified, and it is no surprise they have made one wrong prediction after another. If the global warming scare has little foundation in fact, **the ice-age scare is only too solidly founded**. For the past two million years, but not before, the northern hemisphere has gone through a regular cycle of ice ages: 90,000 years with ice: 10,000 years without. The last ice age ended 10,000 years ago. **Our time is up.** The next ice age is due. We do not know what causes the ice ages. It is probably to do with the arrangement of northern land masses and the path of the Gulf Stream, but we do not know. However, **a new ice age, unlike global warming, would be a certain calamity.** It may be that **increased levels of carbon dioxide in the atmosphere are actually warding off the ice age**. In this case, we should give tax relief to coal power stations and factories for every tonne of carbon dioxide they release.

### Adv 2

**India’s economy down now**

Pasricha 12/28 (Anjana Pasricha, Voice of America, “India’s Economy Looks to Rebound in 2013”, <http://www.voanews.com/content/indias-economy-looks-to-rebound-in-2013/1573681.html>, December 28, 2012)

NEW DELHI — India’s economy has experienced its worst slowdown in nearly a decade this year. But there are signs that the country, which is still among the world’s fastest growing economies, may soon begin to recover from the slump.¶ Month after month in 2012, virtually every sector of the Indian economy - agriculture, mining, manufacturing and services - slowed. At the end of the year, economic growth stood at 5.3 percent. ¶ It was a huge disappointment for a country whose economy had been racing ahead at eight percent plus for the last eight years.¶ ¶ Like many other countries, India was affected by the global slowdown as exports were hit. But several domestic factors also pulled down the economy.

#### No impact- econ decline doesn’t cause war

**Barnett ‘9** (Thomas P.M. Barnett, senior managing director of Enterra Solutions LLC, “The New Rules: Security Remains Stable Amid Financial Crisis,” 8/25/2009)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how **globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape**. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \* No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \* The usual frequency maintained in civil conflicts (in all the usual places); \* Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \* No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \* A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \* No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order.

### 5

#### A. Link and uniqueness – The affirmative plan has the Supreme Court Act without ruling on the basis of the test case – this is possible, but it violates the precedent of sua sponte undermining the legitimacy of the court

Esptein and Knight, Professors of Political Science, 1998 (THE CHOICES JUSTICE MAKE, p. 11) (PDBF393)  
Most of Goldberg’s colleagues were startled by his memo, complaining that it went well beyond their authority, that to implement his plan, the Court would have to proceed sua sponte (‘on its own, without prompting or suggestion’). In the end, the justices not only rejected the memo’s suggestion but also refused to hear the cases. This story suggests that a particular variant of the sua sponte doctrine, namely the practice of disfavoring the creation of issues not raised in the record before the Court, is a norm. We can speculate on why the majority of the Court was so taken aback by Goldberg’s memo and why it took the action it did: because the memo deviated from a norm the justices had come to accept, they ‘sanctioned’ Goldberg by rejecting his invitation to reconsider the constitutionality of capital punishment. Framed this way, the norm disfavoring the creation of issues is a vital to the functioning of the Court as the institutions we have discussed here and in Chapter Four. If the norm of sua sponte did not exist the justices would be free to raise any issue they wished in any case, even if the attorneys had not briefed the issue. The implications of such behavior are enormous. Justices would act a good deal more like members of Congress, who are free to engage in ‘issue creation,’ and less like jurists, who must wait for issues to come to them. We could imagine rational, policy-seeking justices attempting, as a matter of course, to append new issues to cases that had been accepted, briefed, and argued as a way to manipulate case outcomes, just as members of Congress add riders to legislative proposals. Additional implications of a Court operating free from a norm disfavoring issue creation are easy to develop. But the general point is simple: without this norm the Court would no longer resemble a legal body in the way that scholars, attorneys, and jurists-not to mention Article III of the U.S. Constitution-contemplate such fora. More to the point, regular deviations from this norm would undermine the Court’s legitimacy. The public believes that the Court’s legitimate judicial function involves resolving the issues before it, not the creation of new issues. As one scholar put it, ‘When the parties choose issues, there is little opportunity for judges to pursue their own agendas and, as a consequence, the proceedings are not only fairer, but are perceived to be fairer.’ But, if the Court departs from this practice, it raises questions as to the impartiality of [its] actions, and such speculation tarnishes the Court’s legitimacy. Litigant control of the issues is important to satisfy not only the parties, but society as well….When the Court discovers issues that the [litigants] have not presented, the Court erodes its credibility and trespasses on the soul of the adversarial system.

#### B. This turns your case LEGITIMACY CRITICAL TO THE COURT'S ABILITY TO ENFORCE ITS DECISIONS

Tom Tyler and Gregory Mitchell, Psychology professor and law clerk, 1994 (DUKE LAW JOURNAL, February, pp. 678-679) (PDBF403)

The Justices contrast legitimacy to other possible bases of authority, including purchasing or physically coercing obedience. They argue that the Court's authority rests heavily on legitimacy because the Court lacks the ability to be authoritative in other ways. The Justice's argument resonates with the work of political scientists, who also have emphasized the limited power of the Supreme Court to enforce its decisions." In a political system ostensibly based on consent, the Court's legitimacy --indeed, the Constitution's -- must ultimately spring from public acceptance...of its various roles."

# 2NC

## COURTS

**ALSO, Only in Congress – where the emphasis is on transformation, not conservation – can a truly progressive politics begin**

Robin West ‘94 Prof. of Law. Georgetown (*Progressive Constitutionalism* p. 313-314)

Within the congressional context, and given congressional purposes, it is not unreasonable to ascribe to the idea of law—and particularly the idea of a higher or supreme law—a quite different essential jurispruden­tial nature. Congress, again, does not exist to do legal justice, to treat like cases alike, or to judge in a way that respects the similarity of present circumstances with past precedent. To the contrary, Congress has as its central mission the alteration, the deviation, and the transformation—not the conservation—of the past. It exists to bring our present circumstances in line with our ambitions and aspirations of the future, not to bring our present circumstances in line with the authoritative traditions of the past. The law relevant to such an endeavor, then, including the constitutional law, would not, presumably, be a law of binding historical precedent in search of similarly situated present circumstances. It would be a law of ideal moral principles—those principles of distributive justice toward which our politics aspire. The congressional Constitution no less than the judicial Constitution would be law, but the significance of the appellation would be quite different. The law of which the congressional Constitution would be an instance would be a law of moral principle and high ideals, not, as is the case with the judicial Constitution, a law of precedent and past rule facilitating the provision of legal justice. For these two reasons alone, congressional interpretation of the Consti­tution might produce authoritative meanings more conducive to progres­sive change than those produced by the Court. And again, the argument is not simply that the constitutional text, like any text, can have an infinite number of meanings, can therefore have progressive as well as conservative meanings, and is therefore likely to be interpreted in a progressive manner by legislators who happen to be more progressive than the present political composition of the Supreme Court. Rather, congressional interpretation of the Constitution might be freed of the conservatism of judicial inter­pretation because of the quite different purposes that define each branch. The purpose of adjudicating law is conservation and preservation—re­spect for the traditions of the past is indeed at the heart of the work of doing legal justice. Maintaining continuity with what has gone before is a way of making sense of our present lives, and it is that form of integrity—that urge to maintain our collective identities through the affirmation of our similarities with our history—that constitutes much of the work of judicial or adjudicative law." Given that the Constitution is itself a part of law, it is inevitable that constitutional law, when understood as a part of judicial work, will take on a conservative hue: the idea of constitutionalism in that purposive context simply underscores the ideal of legalism. Law exists to provide a mechanism for maintaining continuity with the past, and constitutional law exists to provide a mechanism for maintaining continuity with the most definitive and ennobling moments of that past." But it does not follow that either law or the constitution, when undertaken by a community of interpreters unified by a very different set of motivating and defining purposes, will think of, perceive, or use either concept in the same way; in fact, what follows is quite the contrary. If the conservatism of constitutional law, of the concept of constitutionalism, and of the concept of law is in part a product of the purposes of the judicial community of its interpreters, as suggested by the reader-response work in interpretive and hermeneutic theory, it then follows that an interpretive community defined and constituted by a different set of purposes might develop quite different understandings.

**AND, only Congress can set out a distributive theory of justice, which is key –**

Robin **West ‘94** Prof. of Law. Georgetown (*Progressive Constitutionalism* p. 41-44)

Another reason that even a minimalist version of the abolitionist in­terpretation may not have prevailed is structural. As the Supreme Court has always been quick to point out, the federal judiciary is ill equipped to remedy the structural, institutional, and social inequalities, practices, and attitudes that result in constitutionally problematic states of affairs, such as unequal sentences for killers of white victims and black victims, or the unequal participation of blacks on the Washington, D.C., police force. The federal judiciary is similarly ill equipped to fashion the massive re‑ structuring of our market economy that would be necessary to end the millennium-long era of unpaid domestic labor and the subsequent under­valuing of women's work in the market economy. The judiciary could, of course, do some things: it could easily declare marital rape laws uncon­stitutional; it could reverse itself and affirm our right to protection by a police force; and it could insist that the state compensate victims of vio­lence such as Joshua DeShaney, who are now denied that protection. But it could do little or nothing to redirect our community resources to guarantee the funds necessary to meaningfully effectuate that promise: to actually create the programs needed to deter domestic violence, to provide addi­tional support for police forces assigned to high-crime neighborhoods, or to ensure that the social services agencies charged with protecting Joshua DeShaney would become a reality for the community at large, rather than for the rare individual who can marshal the funds and fortitude to file a lawsuit. The conservative Court and conservative theorists are probably right to insist that the reordering of priorities and redirecting of collective resources necessary to make these programs a reality must originate with legislative, not judicial action. They are wrong, though, to imply from that structural limit the nonexistence of the background constitutional right. The last obstacle I want to mention to modern implementation of inter­pretation of the equal protection clause is jurisprudential: it concerns the nature of the "law" discovered or created by courts, as contrasted with the nature of "law" created by legislative process. Here, a quick contrast with the formal equality model presently adopted by the current Supreme Court is helpful. To determine whether or not a statute violates the equal pro­tection clause under the formal equality model, the Court must essentially decide whether the legislature is "treating like groups alike." Whatever may be the shortcomings of this model, and I think there are many, it has one unassailable strength: the formal equality model of equal protection that requires rational categorization in legislation demands of the Court what might be called adjudicative virtues*.* The work required of the courts under the formal equality model in deciding whether a rule treats like cases alike converges perfectly with the essential core of the judicial task. De­ciding whether a precedent or a rule treats like cases alike is what courts do all the time, and, moreover, it is what courts should do all the time. To do this well, to decide whether rules and decisions are rational in precisely this way, is the mark of a good judge. The rationality and the conception of formal justice on which it depends, and which is the central demand of the formal equality model, is itself an "adjudicative virtue": to treat like cases alike is the ideal of good judging toward which judges aspire. It is not at all surprising that judges gravitate toward an understanding of the equal protection clause that, in turn, rests on an understanding of equality that, also in turn, requires of them the exercise of precisely this familiar virtue. By contrast, the general concept of equal protection advanced by the abolitionists (as well as modern antisubordinationists) requires the exer­cise not of this adjudicative virtue but of citizen and legislative virtues. To know what the equal protection clause requires us to protect, and what it requires us to protect against, requires a view, articulated or not, widely accepted or not, debated and debatable or not, of the content of liberty, of human nature, of natural rights, and, given our commitment to democracy, of human and citizen obligation. We need to know who we are and how we should distribute our collective resources/////: what we owe to whom. It ultimately demands a theory of distributive, not equal or formal, justice. These distributive and redistributive questions may not be questions that judges can or should answer. They are precisely the questions we need to ask of ourselves and of our representatives, however. If we are to make sense of the equal protection clause as understood by the abolitionists, and as understood by at least many of its framers, we need to do two things. First, we need to reacquaint ourselves with old ways of thinking about our human nature and the natural rights that follow—we need to suspend our postmodernist doubts that this is a sensible and fruitful way to think about political morality. Second, and to my mind of greater importance, if we are to take seriously the view of the equal protec­tion clause intended by its framers and advocates, we need to quit asking what that clause requires of our courts, what it directs our judges to do or refrain from doing, and how much of its vision is compatible with judicial review—whether it does or does not accord with our tripartite common-sensible conception of individual rights, majority rule, and judicial role. We need to ask instead what the clause demands of us as legislators, as citizens, as lawmakers, and as members of a community. When we ask what we are required to do to guarantee to each of us the equal protection of the law, rather than what judges are required to do, we may see very different answers. The answers to that question urged by the abolitionists well over a century ago—to which we may have blinded ourselves through our peculiarly modern intellectual focus on equality and rights rather than equal protection and responsibility and our peculiarly historic insistence on judicial enforcement rather than the congressional enforcement called for by the amendment itself—may be more progressive, more astute, more just, and more caring than either the color-blind or egalitarian charter of equality that we currently read into the clause, and which has stalemated debate and stalled our constitutional, as well as moral, progress.

**What’s more, only Congress is free of judicial constraints – courts must right narrow decision, treat all cases alike, and have respect for precedent.**

Robin West ‘94 Prof. of Law. Georgetown (*Progressive Constitutionalism* p. 142-143)

What this implies is simply that if we follow the suggestion of the growing number of commentators—neo-civic-republican and otherwise—arguing for an end to the monopolization by the Court of constitutional interpretation, then we should expect to see a far wider range of interpre­tations of the "liberty" which the state must respect, nurture, or "leave alone" than that represented by the Scalia-Brennan poles of debate in Michael H. v. Gerald D. Freed of the constraints of the panoply of demands imposed by the adjudicative virtues—the various needs to write narrow decisions, to respect the rights of similarly situated persons, to adhere to the patterns established by past decisions—constitutional interpreters, whether citizens, legislators, or commentators, may see any number of potential meanings in the due process clause to which the Court, by virtue of its identity as a court, is blind. It may be, for example, that liberty is impossible in the face of chronic homelessness, joblessness, or hunger and that this fact should operate as a constitutional constraint on what the state may refuse to do, as well as what the state may do. It may also be that lib­erty is impossible in the face of stultifying, demoralizing, constant, private oppression and that this fact as well should constrain constitutionally what the state may neglect as well as what it may do. The due process clause may grant us, in other words, both "affirmative" liberty rights and rights to be free of private oppression. Nonjudicial constitutional interpreters, freed of the constraints of judicial ethics, may find these arguments more persuasive than virtually any court would, not only as the conservative Rehnquist Court would. The modern Court, of course, has held to the contrary: it has ruled con­sistently that liberty does not embrace affirmative welfare rights and that the Fourteenth Amendment does not reach private action. Whether they were right or wrong in doing this is not the argument of this chapter. All I want to suggest is that they have reached these conservative interpreta­tions in large part because they are a court. Should other interpreters enter the debate—should Congress, for example, accept its section 5 burden of passing legislation for the purpose of enforcing the liberty guarantee of the Fourteenth Amendment—they may see very different and much broader meanings in the general phrases of the amendment than the Court has seen to date. Congress is not burdened by the ethical imperative to write deci­sions consistent with previous decisions. It is not burdened with the need to treat like cases alike. Nor is it charged with the task of "conserving" the societal traditions of the past. It has no reason to interpret liberty in such a way as to maintain a "seamless web" of precedent. It is charged with the task of enforcing the mandate of the Fourteenth Amendment, and it is generally charged with the work of distributing resources in a just manner. It is not asking too much, then, to expect Congress to do its distributive and redistributive work in a way that promotes rather than impedes or frustrates true individual "liberty"—understood not as societal tradition and not as judicial precedent, but as the necessary societal conditions for a genuinely free, autonomous life.

**Finally, progressive strategies will only succeed if they originate in the Congress**

Robin West ‘94 Prof. of Law. Georgetown (*Progressive Constitutionalism* p. 6)

Thus, taken collectively, the essays in this book urge a substantive, in­stitutional, and jurisprudential reorientation of our understanding of the Fourteenth Amendment. Substantively, I argue that the state action doc­trine, the formal understanding of the equal protection clause, and a nega­tive rather than positive understanding of the substantive due process clause are all untrue to the history and language of the Fourteenth Amendment. Institutionally, I urge that a progressive understanding of the Fourteenth Amendment is far more likely to be realized through legislative action than judicial intervention, and that, accordingly, progressive constitutional advocates should refocus their attention away from courts and toward the legislative arena. Finally, jurisprudentially, I argue that the Fourteenth Amendment should be grounded in a progressive conception of a respon­sible democratic state charged with the task of guaranteeing the conditions of positive freedom and guarding against the dangers of social or private enslavement. Such a conception, somewhat paradoxically, is closer to the overriding abolitionist concerns of the framers of the amendment than are the interpretations currently argued by both liberal commentators and the conservative Court. It is also, of the competing conceptions, the interpre­tation most likely to point us toward a more just society—a society worthy of the costs of the political and deliberative struggle undoubtedly necessary to achieve it.

### AT: Perm

**3. No Net Benefit- It’s a weak congressional challenge.**

Robert Justin Lipkin ‘6 Professor of Law, Widener University School of Law (28 Cardozo L. Rev. 1055)

A congressional override provides a safety net while at the same time permitting the benefits of judicial review to continue. Two conceptions of a congressional override exist: a weak version and a strong version. The weak version permits Congress to override a Supreme Court decision by passing the appropriate legislation, which the Court may then strike down. The strong version makes Congress the final arbiter. The weak version provides a cooperative inter-branch relationship within a **modified form** of judicial supremacy. In essence, the weak override requires the Court to defer to Congress whenever possible, and strike down an override only as a last resort. There is some value to a weak congressional override. Such an override is at  [\*1113]  least an improvement over our current form of judicial supremacy for two reasons. First, it makes Congress a partner - albeit a junior partner - in determining constitutional meaning. In short, it explicitly rejects the notion that courts have an exclusive role in constitutional interpretation. Second, this partnership may be enhanced by Congress publicly explaining its reasons for overriding the Court's decision. Then, if the Court strikes down that override, it in turn must explicitly reply to Congress's rationale and analysis. Accordingly, an explicit, dynamic constitutional dialogue between Congress and the Court is formally created. A Court acknowledging Congress' authority to weakly override its decisions might decline reviewing a challenge to an override by publicly requesting the electorate to chasten the legislators who enacted the override. If this fails, the Court has a choice to defer to the electorate or to strike down the override in an appropriate case. Though this is an improvement over our present system, in all probability it would be insufficient. The Court remains the final arbiter of constitutional meaning. The benefit, however, would be requiring the Court to respond analytically to serious objections from a co-equal branch of government. [172](https://www.lexis.com/research/retrieve?_m=b00d8e40303bbd2f1abee242874ec95d&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAb&_md5=7a15214eaa1deb8f698148329bfaa541#n172) In the end, however, congressional overrides should be made of sterner stuff. [173](https://www.lexis.com/research/retrieve?_m=b00d8e40303bbd2f1abee242874ec95d&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAb&_md5=7a15214eaa1deb8f698148329bfaa541#n173)

**4. This snowballs into total court control**

Mark Tushnet ‘3 (53 Univ. of Toronto L.J. 89)

Professor Roach's important examination of the extensive experience Canada has had in operating the world's leading weak-form system of judicial review shows that we should be cautious about endorsing weak-form judicial review as an alternative to strong-form judicial review. The materials he presents suggest that Canada's weak-form review has become strong-form judicial review, in part because of a lack of political will and in part because of structural obstacles to the legislature's actual ability to respond to Court decisions. The fact that in-your-face statutes are enacted will continue to place on the Canadian constitutional agenda the question of judicial restraint, as such statutes force us to consider whether weak-form systems require that courts exercise restraint when faced with constitutional interpretations with which the judges disagree but which they cannot fairly describe as unreasonable. In the end, then, the invention of weak-form judicial review may not displace the long-standing controversy in strong-form systems over judicial activism and restraint.

**5. AND, reliance Courts destroys progressivism, which is key to solvency. – Also impact is above**

(Conservativism fails)

Robin West ‘94 Prof. of Law. Georgetown (*Progressive Constitutionalism* p. 281-284)

In this conclusion I want to suggest briefly that there may be reasons to suspect some deeper tensions, not just between the progressive and con­servative interpretations of the Constitution, but between the progressive paradigm and the idea of adjudicative law within which both liberal and conservative courts operate. To the degree that progressives acquiesce in an understanding of the Constitution and of constitutional guarantees as a body of adjudicative law—as something that courts enforce as law against unwilling parties—they may be committed to a definition of constitution­alism that is antithetical to the goals of progressive politics; the phrase "progressive constitutionalism" may remain an anomaly. The idea of "adjudicative law" may be antithetical to the progressive understanding of the Constitution for at least four reasons. First, progres­sives understand constitutional law as possibilistic and open, as change rather than regularity, and as freedom rather than constraint. This under­standing of constitutionalism may be right, and it may even be right as an account of law, but as an account of adjudicative law—of what courts in fact do—it is perverse. Adjudicative law is persistently authoritarian: demonstration of the "truth" of legal propositions (arguably unlike other truth statements) relentlessly requires shows of positive authority. Existen­tialism may not be an odd foundation for a theory of politics, legislation, or constitutionalism, but it is certainly an odd (to say the least) ground­ing for a theory of adjudication. The lesson from this tension between the possibilistic Constitution envisioned by progressives and the authoritarian structure of adjudicative law is not necessarily that the conventional ac­count of adjudicative law as requiring demonstrations of binding authority is wrong; rather, the important point may be that the identification of con­stitutional process and choices with the sphere of adjudicative rather than legislative legality—with law rather than politics—is misguided. Second, the instrumental goal toward which the progressive Constitu­tion is aimed is the abolition of subordinating and damaging hierarchies. The justice to which it aspires is not corrective but distributive. Yet the ideal of justice to which adjudicative law aspires has historically been primarily corrective and compensatory, rather than redistributive.121 Another way to put the point is that adjudicative law has for the most part been essentially conservative: it maintains, stabilizes, and reifies the status quo against change. It exists to protect against change. Antisubordination is accordingly a peculiar goal to establish for adjudicative law. It is not, however, a peculiar goal for legislation, nor is it an odd or outlandish understanding of the import of the Fourteenth Amendment. Perhaps, again, we should conclude from this not that it is misguided to understand adjudicative law as aimed at corrective rather than redistributive justice, but, rather, that it is misguided to conceive of a progressive and radically redistribu­tive directive document such as the Fourteenth Amendment as a source of adjudicative law, rather than as a source of inspiration or guidance for legislative change. Third, the "morality" that adjudicative law undoubtedly absorbs from time to time is almost invariably conventional and traditional rather than aspirational or utopian. The Court may indeed read the "Law" through the lens of morality, but the morality that comprises the lens is the morality embraced by the dominant forces in the community,122 not an aspirational morality of unlived ideals informed by experiences of oppression.123 Adju­dicative law typically reflects a community's moral beliefs, and only rarely its aspirational ideals. Perhaps, then, we should conclude not that the conventional understanding of the relation between adjudicative law and conventional morality is wrong, but that the Constitution—because it is indeed open to an aspirational interpretation—is simply not exclusively a source of adjudicative law. Fourth, the form and processes of "adjudication" create additional ten­sions for the progressive paradigm, quite apart from and no less serious than those created by the idea of adjudicative law. As anyone who has ever been unwillingly caught in the process knows, adjudication is profoundly elitist, hierarchic, and nonparticipatory. It is itself a form of domina­tion that creates experiences of subordination. The protestations of mod­ern civic republicans notwithstanding, it is the antithesis of participatory democratic politics.// The obsessive attention given by civic republican and liberal constitutionalists alike to the "antimajoritarian difficulty" posed by aggressive judicial review has not done anything actually to solve the difficulty; it has only served to highlight the utter incompatibility of both liberals' and republicans' substantive commitment to egalitarian and par­ticipatory democracy with their simultaneous endorsement of nonpartici­patory, antidemocratic, and intensely hierarchical adjudicative processes for achieving it.124 There are still other distorting constraints imposed by adjudication on the progressive paradigm. To name just a few: Adjudication presupposes bipolar conflicts; progressivism does not. Adjudication requires at every turn in the road recitation of and support from "authority"; progressivism is constitutively distrustful of authority. Adjudication requires a recalci­trant, guilty, state defendant, one consequence of which is a judicially constructed "nightwatchman"-like Constitution that can act only against pernicious state action, while progressivism understands the problems of inequality, subordination, and bondage in our lives to stem not from state action, but from private and social action followed by state inaction—the failure of the state to act against private oppression. Adjudication is particularistic and individualistic; progressivism is anything but. Finally, adjudication blames, condemns, and punishes; progressivism is fundamen­tally uninterested, on many levels and for complex reasons, with blame and innocence. These are surely good reasons to fear that a progressive Constitution is not going to fare well in any adjudicative body, not just in front of a conservative Supreme Court. The consequence of the tension between adjudication and progressiv­ism is that the legalization of constitutional discourse may have seriously impoverished the progressive tradition. When we read our progressive poli­tics through the lens of the Constitution, and then read the Constitution through the lens of law, we burden progressivism with the constraints, limits, doctrines, and nature of law. Progressivism, its very content, be­comes identified with that which courts might do and that which lawyers can feasibly argue. In the process, progressivism in the courts becomes weak and diluted. The consequence of this tension is not only, however, that progressivism in the Supreme Court is impoverished, although clearly it is. The consequence is also that progressive politics outside the Court is robbed of whatever rhetorical and political support it might have re­ceived from a de-legalized conception of the progressive Constitution. In a culture that routinely identifies its political aspirations with constitu­tionalism, it becomes extremely difficult to demand progressive change of a nature that the adjudicated Constitution cannot support. Redistribu­tive progressive politics, for example, may be burdened by the "shadow effect" of the refusal, both on the Court and outside it, to understand poverty as a suspect basis of classification, or minimal material well-being as a fundamental right. More generally, any antisubordinationist progres­sive legislation is marginalized by the inability of the Court to "find" an antisubordination principle in the Constitution. Constitutionalism defines our public morality, to some extent, and the failure of the adjudicated Constitution to accommodate progressive ends accordingly impoverishes progressive morality. Thus, progressive politics is impoverished by the adjudicated Constitu­tion simply because it loses the force, and power, of constitutional thought. The legal profession pervasively, and the larger culture somewhat, has come to view the Constitution as the repository of public morality; as the source, genesis, and articulation of our political obligations. If our collective social morality and our moral aspirations are embedded in our Constitution, if the Constitution is a form of adjudicative "law," and if adjudicative law exists in a state of profound and perpetual (and not par­ticularly creative) tension with progressive morality and ideals, then this conclusion is inescapable: progressive morality will never become part of our public morality, regardless of the composition of the Supreme Court. Progressive constitutionalism may be part of the problem (as the saying goes), not part of the solution. If progressive constitutionalists care as much about progressive politics as they care about the Constitution (a big "if"), then the imperative is unavoidable: the circle must be broken.

## India Econ Adv

#### Their evidence relies on flawed models – economic collapse forces countries to focus inward – solves risk of conflict

**Bennett and Nordstrom 2k** –

/////////(1989, 267). An additional possible source of discrepancies in findings about diversionary conflict may be attributable to differences in research design and variable measurement. Studies have used a variety of research designs, different dependent variables (uses of force, major uses of force, militarized disputes), different estimation techniques, and different data sets covering different time periods and different states. Even the central concept of externalization, namely, domestic trouble, is unclear. Most studies to date have used presidential popularity, overall presidential success, the election calendar, or a misery index composed of inflation and unemployment as indicators of presidential problems. Cross-national studies have most frequently examined what James (1988, 103) categorizes as manifest conflict, a category which includes protest demon strations, political strikes, armed attacks, and deaths from domestic violence. This category can be opposed to latent conflict, which exists when sources of trouble are present but have not yet led to the physical manifestations of dissatisfaction. Diversionary conflict theory as presented is typically so general in its discussion of internal problems that it opens a Pandora's box of possible indicators of domestic conflict, and all of the types of measures discussed above fit with the theory. The vague nature of the theory may be contributing to this possible problem of model misspecification, but there are few arguments that suggest one indicator is superior to the others. Alternative relationships between domestic economic performance and international conflict also have been proposed, perhaps most importantly by Blainey (1973, 74). Blainey offers the alternative hypothesis about economics and war that economically challenged countries are more likely to be the target of aggressive military acts than their initiator (1973, 86). Faced with a poor target in a bad economic situation, who is faced with an unhappy populace and possibly limited resources, potential conflict initiators are likely to see opportunity. The argument also parallels the historical notion that leaders would only go to war when their coffers were full-in bad times, leaders may simply not be able to afford to go to conflict. Blainey's argument appears to pose a challenge to diversionary conflict theory in its emphasis on what is the most likely direction of conflict. Note, however, that its prediction (weak states become targets) differs from a strategic application of diversionary conflict theory. By coming at externalization from the substitutability perspective, we hope to deal with some of the theoretical problems raised by critics of diversionary conflict theory. Substitutability can be seen as a particular problem of model specification where the dependent variable has not been fully developed. We believe that one of the theoretical problems with studies of externalization has been a lack of attention to alternative choices; Bueno de Mesquita actually hints toward this (and the importance of foreign policy substitution) when he argues that it is shortsighted to conclude that a leader will uniformly externalize in response to domestic problems at the expense of other possible policy choices (1985, 130). We hope to improve on the study of externalization and behavior within rivalries by considering multiple outcomes in response to domestic conditions.5 In particular, we will focus on the alternative option that instead of externalizing, leaders may internalize when faced with domestic economic troubles. Rather than diverting the attention of the public or relevant elites through military action, leaders may actually work to solve their internal problems internally. Tying internal solutions to the external environment, we focus on the possibility that leaders may work to disengage their country from hostile relationships in the international arena to deal with domestic issues. Domestic problems often emerge from the challenges of spreading finite resources across many different issue areas in a manner that satisfies the public and solves real problems. Turning inward for some time may free up resources required to jump-start the domestic economy or may simply provide leaders the time to solve internal distributional issues. In our study, we will focus on the condition of the domestic economy (gross domestic product [GDP] per capita growth) as a source of pressure on leaders to externalize. We do this for a number of reasons. First, when studying rivalries, we need an indicator of potential domestic trouble that is applicable beyond just the United States or just advanced industrialized democracies. In many non-Western states, variables such as election cycles and presidential popularity are irrelevant. Economics are important to all countries at all times. At a purely practical level, GDP data is also more widely available (cross-nationally and historically) than is data on inflation or unemployment. 6 Second, we believe that fundamental economic conditions are a source of potential political problems to which leaders must pay attention. Slowing growth or worsening economic conditions may lead to mass dissatisfaction and protests down the road; economic problems may best be dealt with at an early stage before they turn into outward, potentially violent, conflict. This leads us to a third argument, which is that we in fact believe that it may be more appropriate in general to use indicators of latent conflict rather than manifest conflict as indicators of the potential to divert. Once the citizens of a country are so distressed that they resort to manifest conflict (rioting or engaging in open protest), it may be too late for a leader to satisfy them by engaging in distracting foreign policy actions. If indeed leaders do attempt to distract people's attention, then if protest reaches a high level, that attempt has actually failed and we are looking for correlations between failed externalization attempts and further diversion.

### TERROR

#### Growth causes terror

Ted Trainer 2 Senior Lecturer at the School of Social Work, University of New South Wales. “If You Want Affluence, Prepare for War,” Democracy & Nature 8.2, Ebsco.

Again, there is an extensive literature documenting these and many other cases.43 Herman and O’Sullivan present a table showing that in recent decades the overwhelming majority of terrorist actions, measured by death tolls, have been carried out by Western states. ‘State terror has been immense, and the West and it’s clients have been the major agents.’44 Any serious student of international relations or US foreign policy will be clearly aware of the general scope and significance of the empire that rich countries operate, and of the human rights violations, the violence and injustice this involves. Rich world ‘living standards’, corporate prosperity, comfort and security could not be sustained at anywhere near current levels without this empire, nor without the oppression, violence and military activity that keep in place conventional investment, trade and development policies. It should therefore be not in the least surprising that several hundred million people more or less hate the rich Western nations. This is the context in which events like those of 11 September must be understood. It is surprising that the huge and chronic injustice, plunder, repression and indifference evident in the global economic system has not generated much greater hostile reaction from the Third World, and more eagerness to hit back with violence. This is partly explained by the fact that it is in the interests of Third World rulers to acquiesce in conventional development strategies.

Ca their terror Mueller ev

### ASIA – indopak.china

Nuclear deterrence makes war in Southeast Asia extremely unlikely

Times of India 98 (“Arms Race Myth”, 4-30)

**The** Chinese **nuclear threat to India** has been there since 1964, and it **became a combined threat from Pakistan and China since 1987**. It was known to the government but Indian political leaders did not take the people into confidence. Their attitude was the same as that of Jawaharlal Nehru who felt he could manage the challenge of China in the 1950s without taking the Indian people into confidence. The nuclear threat is not of bombs being dropped on India, or of an arms race between India and Pakistan, or India and China. **The real threat is** far more subtle and sophisticated, and as Prof Cohen pointed out, **designed to paralyse decision- making by a weak Indian government by using**, among other things, **the nuclear factor**. Pakistan has tried it and failed. China may attempt it whenever an opportunity arises in future. While the Indian deterrent, in existence from 1990, was kept a secret from the Indian people it was known to the CIA Pakistan and probably China too. **Now that** the weapons are out in the open on both sides **mutual deterrence is fully established. It is** extremely unlikely **that India and Pakistan will have a high-intensity conventional war, let alone a nuclear war**.

## WARMING 2NC

### NO !

**Consensus of experts agree that there is no impact to warming**

**Hsu 10**

Jeremy, Live Science Staff, July 19, pg. <http://www.livescience.com/culture/can-humans-survive-extinction-doomsday-100719.html>

His views deviate sharply from those of **most experts**, who don't view climate change as the end for humans. Even the worst-case scenarios discussed by the Intergovernmental Panel on Climate Change don't foresee human extinction. "The scenarios that the **mainstream climate community** are advancing are not end-of-humanity, catastrophic scenarios," said Roger Pielke Jr., a climate policy analyst at the University of Colorado at Boulder. Humans have the technological tools to begin tackling climate change, if not quite enough yet to solve the problem, Pielke said. He added that doom-mongering did little to encourage people to take action. "My view of politics is that the long-term, high-risk scenarios are really difficult to use to motivate short-term, incremental action," Pielke explained. "The rhetoric of fear and alarm that some people tend toward is counterproductive." Searching for solutions One technological solution to climate change already exists through carbon capture and storage, according to Wallace Broecker, a geochemist and **renowned climate scientist** at Columbia University's Lamont-Doherty Earth Observatory in New York City. But Broecker remained skeptical that governments or industry would commit the resources needed to slow the rise of carbon dioxide (CO2) levels, and predicted that more drastic geoengineering might become necessary to stabilize the planet. "**The rise in CO2 isn't going to kill many people, and it's not going to kill humanity**," Broecker said. "But it's going to change the entire wild ecology of the planet, melt a lot of ice, acidify the ocean, change the availability of water and change crop yields, so we're essentially doing an experiment whose result remains uncertain."

No impact to warming – history and scientific study prove

Jaworowski 8 (Professor Zbigniew, Chairman of the Scientific Council of the Central Laboratory for Radiological Protection in Warsaw and former chair of the United Nations Scientific Committee on the Effects of Atomic Radiation, “Fear Propaganda,” http://www.ourcivilisation.com/aginatur/cycles/chap3.htm)

Doomsayers preaching the horrors of warming are not troubled by the fact that in the Middle Ages, when for a few hundred years it was warmer than it is now, neither the Maldive atolls nor the Pacific archipelagos were flooded. Global oceanic levels have been rising for some hundreds or thousands of years (the causes of this phenomenon are not clear). In the last 100 years, this increase amounted to 10 cm to 20 cm, (24) but it does not seem to be accelerated by the 20th Century warming. It turns out that in warmer climates, there is more water that evaporates from the ocean (and subsequently falls as snow on the Greenland and Antarctic ice caps) than there is water that flows to the seas from melting glaciers. (17) Since the 1970s, the glaciers of the Arctic, Greenland, and the Antarctic have ceased to retreat, and have started to grow. On January 18, 2002, the journal Science published the results of satellite-borne radar and ice core studies performed by scientists from CalTech's Jet Propulsion Laboratory and the University of California at Santa Cruz. These results indicate that the Antarctic ice flow has been slowed, and sometimes even stopped, and that this has resulted in the thickening of the continental glacier at a rate of 26.8 billion tons a year. (25) In 1999, a Polish Academy of Sciences paper was prepared as a source material for a report titled "Forecast of the Defense Conditions for the Republic of Poland in 2001-2020." The paper implied that the increase of atmospheric precipitation by 23 percent in Poland, which was presumed to be caused by global warming, would be detrimental. (Imagine stating this in a country where 38 percent of the area suffers from permanent surface water deficit!) The same paper also deemed an extension of the vegetation period by 60 to 120 days as a disaster. Truly, a possibility of doubling the crop rotation, or even prolonging by four months the harvest of radishes, makes for a horrific vision in the minds of the authors of this paper. Newspapers continuously write about the increasing frequency and power of the storms. The facts, however, speak otherwise. I cite here only some few data from Poland, but there are plenty of data from all over the world. In Cracow, in 1896-1995, the number of storms with hail and precipitation exceeding 20 millimeters has decreased continuously, and after 1930, the number of all storms decreased. (26) In 1813 to 1994, the frequency and magnitude of floods of Vistula River in Cracow not only did not increase but, since 1940, have significantly decreased. (27) Also, measurements in the Kolobrzeg Baltic Sea harbor indicate that the number of gales has not increased between 1901 and 1990. (28) Similar observations apply to the 20th Century hurricanes over the Atlantic Ocean (Figure 4,) and worldwide.

### IPCC

## ICE AGE

### OV

**An Ice Age causes extinction**

**Snook ‘7** (Ice age kills plants and species and leads to quick extinction Snook, BS Geology @ Wichita State University, 2007 (Jim Snook, March 2007, “Ice Age Extinction: Human Causes and Consequences”, http://books.google.com/books?id=L0MvQubypBwC&printsec=frontcover)

This study indicates that low atmospheric carbon dioxide was the major cause of the large animal extinction near the end of the last ice age. There was not enough carbon dioxide in the atmosphere for most plants in the higher latitude and low altitude areas. The reduction in carbon dioxide in the atmosphere occurred over thousands of years, and the dying off of the plants was a very gradual process. Without sufficient plants to eat, most of the large animals could not survive. These large animals had been on earth for many millions of years and had survived many previous threats to their existence. Yet in a geologically short period of time they became extinct. We will now look at the sequence of events involved in extinction.

### COMING NOW

**An Ice Age is coming now- it outweighs any impact to warming**

**Singer ‘7** (Singer, distinguished research professor at George Mason and Avery, director of the Center for Global Food Issues at the Hudson Institute, 2007 (S. Fred, Dennis T, “Unstoppable Global Warming: Every 1,500 Years” Page 13)

The climate event that deserves real concern is the next Big Ice Age. That is inevitably approaching, though it may still be thousands of years away. When it comes, temperatures may plummet 15 degrees Celsius, with the high latitudes getting up to 40 degrees colder. Humanity and food production will be forced closer to the equator, as huge ice sheets expand in Canada. Scandinavia. Russia, and Argentina. Even Ohio and Indiana may gradually be encased in mile-thick ice, while California and the Great Plains could suffer century-long drought. Keeping warm will become the critical issue, both night and day. Getting enough food for eight or nine billion people from the relatively small amount of arable land left unfrozen will be a potentially desperate effort. The broad, fertile plains of Alberta and the Ukraine will become sub-Arctic wastes. Wildlife species will be extremely challenged, even though they've survived such cold before-because this time there will be more humans competing for the ice-free land. That's when human knowledge and high-tech farming will be truly needed. **In contrast, none of the scary scenarios posited by today's global warming advocates took place during the Earth's past warm periods**

An ice age is coming- their models don’t assume Sun activity changes

Svensmark ‘9 (Henrik, PhD., director of the Center for Sun-Climate Research at DTU Space, “Svensmark: “global warming stopped and a cooling is beginning” – “enjoy global warming while it lasts”, 9-5-09, http://wattsupwiththat.com/2009/09/10/svensmark-global-warming-stopped-and-a-cooling-is-beginning-enjoy-global-warming-while-it-lasts/)

“In fact global warming has stopped and a cooling is beginning. No climate model has predicted a cooling of the Earth – quite the contrary. And **this means that the** projections of future climate are unreliable,” writes Henrik Svensmark. The star that keeps us alive has, over the last few years, been almost free of sunspots, which are the usual signs of the Sun’s magnetic activity. Last week [4 September 2009] the scientific team behind the satellite SOHO (Solar and Heliospheric Observatory) reported, “It is likely that the current year’s number of blank days will be the longest in about 100 years.” Everything indicates that the Sun is going into some kind of hibernation, and the obvious question is what significance that has for us on Earth. If you ask the Intergovernmental Panel on Climate Change (IPCC) which represents the current consensus on climate change, the answer is a reassuring “nothing”. But history and recent research suggest that is probably completely wrong. Why? Let’s take a closer look. Solar activity has always varied. Around the year 1000, we had a period of very high solar activity, which coincided with the Medieval Warm Period. It was a time when frosts in May were almost unknown – a matter of great importance for a good harvest. Vikings settled in Greenland and explored the coast of North America. On the whole it was a good time. For example, China’s population doubled in this period. But after about 1300 solar activity declined and the world began to get colder. It was the beginning of the episode we now call the Little Ice Age. In this cold time, all the Viking settlements in Greenland disappeared. Sweden surprised Denmark by marching across the ice, and in London the Thames froze repeatedly. But more serious were the long periods of crop failures, which resulted in poorly nourished populations, reduced in Europe by about 30 per cent because of disease and hunger. "The March across the Belts was a campaign between January 30 and February 8, 1658 during the Northern Wars where Swedish king Karl X Gustav led the Swedish army from Jutland across the ice of the Little Belt and the Great Belt to reach Zealand (Danish: Sjælland). The risky but vastly successful crossing was a crushing blow to Denmark, and led to the Treaty of Roskilde later that year...." - Click for larger image. It’s important to realise that the Little Ice Age was a global event. It ended in the late 19th Century and was followed by increasing solar activity. Over the past 50 years solar activity has been at its highest since the medieval warmth of 1000 years ago. But now it appears that the Sun has changed again, and is returning towards what solar scientists call a “grand minimum” such as we saw in the Little Ice Age.

### 2NC- Ice Age Coming- Will Cause Extinction

**An ice age will cause extinction- need to keep up emissions to survive**

**Chapman ‘8** (geophysicist and astronautical engineer, 2008 (Phil. April 23. “Sorry to ruin the fun, but an ice age cometh.” http://www.theaustralian.news.com.au/story/0,25197,23583376-7583,00.html)

Disconcerting as it may be to true believers in global warming, the average temperature on Earth has remained steady or slowly declined during the past decade, despite the continued increase in the atmospheric concentration of carbon dioxide, and now the global temperature is falling precipitously. All four agencies that track Earth's temperature (the Hadley Climate Research Unit in Britain, the NASA Goddard Institute for Space Studies in New York, the Christy group at the University of Alabama, and Remote Sensing Systems Inc in California) report that it cooled by about 0.7C in 2007. This is the fastest temperature change in the instrumental record and it puts us back where we were in 1930. If the temperature does not soon recover, we will have to conclude that global warming is over. There is also plenty of anecdotal evidence that 2007 was exceptionally cold. It snowed in Baghdad for the first time in centuries, the winter in China was simply terrible and the extent of Antarctic sea ice in the austral winter was the greatest on record since James Cook discovered the place in 1770. It is generally not possible to draw conclusions about climatic trends from events in a single year, so I would normally dismiss this cold snap as transient, pending what happens in the next few years. This is where SOHO comes in. The sunspot number follows a cycle of somewhat variable length, averaging 11 years. The most recent minimum was in March last year. The new cycle, No.24, was supposed to start soon after that, with a gradual build-up in sunspot numbers. It didn't happen. The first sunspot appeared in January this year and lasted only two days. A tiny spot appeared last Monday but vanished within 24 hours. Another little spot appeared this Monday. Pray that there will be many more, and soon. The reason this matters is that there is a close correlation between variations in the sunspot cycle and Earth's climate. The previous time a cycle was delayed like this was in the Dalton Minimum, an especially cold period that lasted several decades from 1790. Northern winters became ferocious: in particular, the rout of Napoleon's Grand Army during the retreat from Moscow in 1812 was at least partly due to the lack of sunspots. That the rapid temperature decline in 2007 coincided with the failure of cycle No.24 to begin on schedule is not proof of a causal connection but it is cause for concern. It is time to put aside the global warming dogma, at least to begin contingency planning about what to do if we are moving into another little ice age, similar to the one that lasted from 1100 to 1850. There is no doubt that the next little ice age would be much worse than the previous one and much more harmful than anything warming may do. There are many more people now and we have become dependent on a few temperate agricultural areas, especially in the US and Canada. Global warming would increase agricultural output, but global cooling will decrease it. Millions will starve if we do nothing to prepare for it (such as planning changes in agriculture to compensate), and millions more will die from cold-related diseases. There is also another possibility, remote but much more serious. The Greenland and Antarctic ice cores and other evidence show that for the past several million years, severe glaciation has almost always afflicted our planet. The bleak truth is that, under normal conditions, most of North America and Europe are buried under about 1.5km of ice. This bitterly frigid climate is interrupted occasionally by brief warm interglacials, typically lasting less than 10,000 years. The interglacial we have enjoyed throughout recorded human history, called the Holocene, began 11,000 years ago, so the ice is overdue. We also know that glaciation can occur quickly: the required decline in global temperature is about 12C and it can happen in 20 years. The next descent into an ice age is inevitable but may not happen for another 1000 years. On the other hand, it must be noted that the cooling in 2007 was even faster than in typical glacial transitions. If it continued for 20 years, the temperature would be 14C cooler in 2027. By then, **most of the advanced nations would have ceased to exist, vanishing under the ice, and the rest of the world would be faced with a catastrophe beyond imagining**. Australia may escape total annihilation but would surely be overrun by millions of refugees. Once the glaciation starts**, it will last 1000 centuries, an incomprehensible stretch of time. If the ice age is coming, there is a small chance that we could prevent or at least delay the transition**, if we are prepared to take action soon enough and on a large enough scale. For example: We could gather all the bulldozers in the world and use them to dirty the snow in Canada and Siberia in the hope of reducing the reflectance so as to absorb more warmth from the sun. 1 of methane (a potent greenhouse gas) from the hydrates under the Arctic permafrost and on the continental shelves, perhaps using nuclear weapons to destabilise the deposits. We cannot really know, but my guess is that the odds are at least 50-50 that we will see significant cooling rather than warming in coming decades. The probability that we are witnessing the onset of a real ice age is much less, perhaps one in 500, but not totally negligible. All those urging action to curb global warming need to take off the blinkers and give some thought to what we should do if we are facing global cooling instead.

# 1NR

## Politics

SOTOMAYOR MEANS OBAMA IS BLAMED FOR COURT DECISIONS.

SAMUEL 9 (Terence Samuel, Deputy Editor– The Root and Senior Correspondent - Prospect, “Obama's Honeymoon Nears Its End”, American Prospect, 5/29, http://www.prospect.org/cs/articles?article=obamas\_honeymoon\_nears\_its\_end)

This week, Barack Obama named his first nominee to the Supreme Court, then headed west to Las Vegas and Los Angeles to raise money for Democrats in the 2010 midterms. Taken together, these two seemingly disparate acts mark the end of a certain period of innocence in the Obama administration: The "blame Bush" phase of the Obama administration is over, and the prolonged honeymoon that the president has enjoyed with the country and the media will soon come to an end as well. Obama is no longer just the inheritor of Bush's mess. This is now his presidency in his own right. The chance to choose a Supreme Court justice is such a sui generis exercise of executive power -- it so powerfully underscores the vast and unique powers of a president -- that blame-shifting has become a less effective political strategy, and less becoming as well. Obama's political maturation will be hastened by the impending ideological fight that is now virtually a guarantee for Supreme Court nominations. Old wounds will be opened, and old animosities will be triggered as the process moves along**.** Already we see the effect in the polls. While Obama himself remains incredibly popular, only 47 percent of Americans think his choice of Judge Sonia Sotomayor is an excellent or good choice for the Court, according to the latest Gallup poll. The stimulus package scored better than that. The prospect of a new justice really seems to force people to reconsider their culture warrior allegiances in the context of the party in power. This month, after news of Justice David Souter's retirement, a Gallup poll showed that more Americans considered themselves against abortion rights than in favor: 51 percent to 42 percent. Those number were almost exactly reversed a year ago when Bush was in office and Obama was on the verge of wrapping up the Democratic nomination. "This is the first time a majority of U.S. adults have identified themselves as pro-life since Gallup began asking this question in 1995," according to the polling organization. Is this the same country that elected Obama? Yes, but with his overwhelmingly Democratic Senate, the public may be sending preemptory signals that they are not interested in a huge swing on some of these cultural issues that tend to explode during nomination hearings. Even though Obama will win the Sotomayor fight, her confirmation is likely to leave him less popular in the end because it will involve contentious issues -- questions of race and gender politics like affirmative action and abortion -- that he managed to avoid or at least finesse through his campaign and during his presidency so far.

CONTROVERSIAL COURT DECISIONS SPARK CONGRESSIONAL BACKLASH – CITIZENS PROVES.

ZELENY 10 [JEFF, “Political fallout from the Supreme Court ruling” New York Times -- Jan 21 -- http://thecaucus.blogs.nytimes.com/2010/01/21/political-fallout-from-the-supreme-court-ruling/]

Today’s ruling upends the nation’s campaign finance laws, allowing corporations and labor unions to spend freely on behalf of political candidates. With less than 11 months before the fall elections, the floodgates for political contributions will open wide, adding another element of intrigue to the fight for control of Congress. At first blush, Republican candidates would seem to benefit from this change in how political campaigns are conducted in America. The political environment – an angry, frustrated electorate seeking change in Washington – was already favoring Republicans. Now corporations, labor unions and a host of other organizations can weigh in like never before. But the populist showdown that was already brewing – President Obama on Thursday sought to limit the size of the nation’s banks – will surely only intensify by the Supreme Court’s ruling. The development means that both sides will have even louder megaphones to make their voices and viewpoints heard. Mr. Obama issued a statement – a rare instance of a president immediately weighing in on a ruling from the high court – and said his administration would work with Congressional leaders “to develop a forceful response to this decision.” “With its ruling today, the Supreme Court has given a green light to a new stampede of special interest money in our politics,” Mr. Obama said. “It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.” Republicans, of course, hailed the ruling as a victory for the First Amendment. “I am pleased that the Supreme Court has acted to protect the Constitution’s First Amendment rights of free speech and association,” said Senator John Cornyn of Texas, chairman of the National Republican Senatorial Committee. “These are the bedrock principles that underpin our system of governance and strengthen our democracy.” Democrats, not surprisingly, said the ruling would be bad for democracy. “Giving corporate interests an outsized role in our process will only mean citizens get heard less,” said Senator Robert Menendez of New Jersey, chairman of the Democratic Senatorial Campaign Committee. “We must look at legislative ways to make sure the ledger is not tipped so far for corporate interests that citizens voices are drowned out.”

CONTROVERSIAL DECISIONS EMBOLDEN CONGRESS AND THE MEDIA.

**Greenwald 6** (Glenn, Civil Rights Lawyer and Author “How would a Patriot Act?”, http://glenngreenwald.blogspot.com/2006\_06\_01\_glenngreenwald\_archive.html)

Additionally, court opinions historically have a political impact as well as legal effects. Despite the concerted, destructive attacks on the credibility of the Supreme Court by the likes of Mark Levin and Rush Limbaugh, who hate and wage war on any institution (such as the media) which dares to challenge the Powers of the President, Americans still retain a respect for the Supreme Court as an important and credible institution. The Court's proclamation that the President has been acting beyond his legal and constitutional authority strengthens that argument as a political matter. It is also likely to further galvanize those in Congress and the media who have been gradually taking a stand against the Administration. A Supreme Court ruling that is this decisive, on an issue this significant, is virtually never confined to the legal realm, but almost always has impact, often profound impact, in the political realm as well.

## Courts Disad

#### C. US domestic exclusion of gay marriage hurts human rights abroad – causes global homophobia

Dorf & Bromley 10

, the Council for Global Equality, 10 (Julie & Mark, American Duty, 07/14, www.advocate.com/News/Daily\_News/2010/07/14/AmericanDuty/)

While we take issue with many of the points leveled against us in James Kirchick’s Advocate commentary [“Diplomatic Disconnect,”](http://www.advocate.com/Print_Issue/Features/Diplomatic_Disconnect/)we agree with his larger perspective. We share his belief that LGBT Americans can and should be engaged in making the world a better place for LGBT citizens in countries less democratic than our own, even while we simultaneously struggle to extend equality for all LGBT citizens at home**. But to have impact on the world stage,** we firmly believe that **the domestic and the international are interconnected** and that **we cannot advance one struggle without advancing both**. In that sense, we believe that **human rights begin “in small places close to home**,” as Eleanor Roosevelt, credited with founding the modern human rights movement, so famously observed. Unfortunately, Mr. Kirchick’s argument comes dangerously close to embracing the ugly specter of U.S. exceptionalism — the idea, in this case, that because things are relatively better in this country, the United States need not participate on an equal footing or with equal candor in reviewing its own human rights record. At heart, this argument stands in contrast to Eleanor Roosevelt’s equally famous human rights exhortation that “without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.” In the spirit, then, of Eleanor Roosevelt, we are indeed guilty of “concern for legislative minutia in Washington,” as Mr. Kirchick suggests, because such **minutia has been deployed against us for decades to deny full equality to LGBT Americans**. **In so doing, it also limits our credibility when our government speaks to human rights abuses** **against LGBT communities in Bishkek, Moscow, or Kampala.** **In contrast, by acknowledging our own shortcomings on the world stage, and by working to overcome that legislative minutia** as LGBT Americans did in pushing the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act through Congress last year, **we expand liberty at home and secure an important bully pulpit from which to encourage other countries to address the human rights of their own LGBT citizens**. And we do so with a sense of humility and candor about **our own domestic reality that is immensely powerful to those watching and listening around the world**.

#### Unchecked disease spread will cause extinction

Yu 09 [Victoria, “Human Extinction: The Uncertainty of Our Fate,” Dartmouth Journal of Undergraduate Science, May 22, http://dujs.dartmouth.edu/spring-2009/human-extinction-the-uncertainty-of-our-fate]

In the past, humans have indeed fallen victim to viruses. Perhaps the best-known case was the bubonic plague that killed up to one third of the European population in the mid-14th century (7). While vaccines have been developed for the plague and some other infectious diseases, new viral strains are constantly emerging — a process that maintains the possibility of a pandemic-facilitated human extinction**.** Some surveyed students mentioned AIDS as a potential pandemic-causing virus.  It is true that scientists have been unable thus far to find a sustainable cure for AIDS, mainly due to HIV’s rapid and constant evolution. Specifically, two factors account for the virus’s abnormally high mutation rate: 1. HIV’s use of reverse transcriptase, which does not have a proof-reading mechanism, and 2. the lack of an error-correction mechanism in HIV DNA polymerase (8). Luckily, though, there are certain characteristics of HIV that make it a poor candidate for a large-scale global infection: HIV can lie dormant in the human body for years without manifesting itself, and AIDS itself does not kill directly, but rather through the weakening of the immune system.  However, for more easily transmitted viruses such as influenza, the evolution of new strains could prove far more consequential. The simultaneous occurrence of antigenic drift (point mutations that lead to new strains) and antigenic shift (the inter-species transfer of disease) in the influenza virus could produce a new version of influenza for which scientists may not immediately find a cure. Since influenza can spread quickly, this lag time could potentially lead to a “global influenza pandemic,” according to the Centers for Disease Control and Prevention (9). The most recent scare of this variety came in 1918 when bird flu managed to kill over 50 million people around the world in what is sometimes referred to as the Spanish flu pandemic. Perhaps even more frightening is the fact that only 25 mutations were required to convert the original viral strain — which could only infect birds — into a human-viable strain (10).

**Heg prevents great power war**

**Brooks, Ikenberry, and Wohlforth ’13** (Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51)

A core premise of **deep engagement** is that it prevents the **emergence** of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the **leverage** to restrain partners from taking provocative action. Perhaps more important, its core **alliance commitments** also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged **U.S. power dampens the** baleful **effects of anarchy** is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and **full-scale great power war.** 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. **Burgeoning** research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that **the withdrawal of** the **America**n pacifier **will yield** either a competitive regional **multipolarity complete with** associated insecurity, arms racing, **crisis instability, nuclear proliferation, and** the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional **great power war**). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world’s core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional **proxy wars and arming of client states**—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of “unforeseen crisis dynamics” that could **spin out of control** is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and “pass the buck” to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China’s rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, “The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves.” 81 Therefore, unless China’s rise stalls, “the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War.” 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, **the argument that U.S.** **security commitments are unnecessary for peace is countered by a lot of scholarship**, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difªcult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which **the case for retrenchment misses the** underlying **logic of** the **deep engagement** strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world’s key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States’ formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the “focused enmity” of the United States. 84 All of the world’s most modern militaries are U.S. allies (America’s alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85

### Human Rights Cred

#### Human Right Credibility solves extinction

Copelan 99 (Rhonda Copelan, law professor, NYU, NEW YORK CITY LAW REVIEW, 1999, p. 71-2)

The indivisible human rights framework survived the Cold War despite U.S. machinations to truncate it in the international arena. The framework is there to shatter the myth of the superiority. Indeed, in the face of systemic inequality and crushing poverty, violence by official and private actors, globalization of the market economy, and military and environmental depredation, the human rights framework is gaining new force and new dimensions. It is being broadened today by the movements of people in different parts of the world, particularly in the Southern Hemisphere and significantly of women, who understand the protection of human rights as a matter of individual and collective human survival and betterment. Also emerging is a notion of third-generation rights, encompassing collective rights that cannot be solved on a state-by-state basis and that call for new mechanisms of accountability, particularly affecting Northern countries. The emerging rights include human-centered sustainable development, environmental protection, peace, and security. Given the poverty and inequality in the United States as well as our role in the world, it is imperative that we bring the human rights framework to bear on both domestic and foreign policy.

### Readiness Impact

#### Overturning DADT not enough – need complete marriage equality to maintain military readiness

Philpott 12/3

(2013, “Military doesn’t recognize same-sex marriage”, Tom, http://www.heraldnet.com/article/20121203/BIZ/712039966)

With repeal last year of the Don't Ask, Don't Tell law, many military people, including senior leaders, assumed that married gay and lesbian couples had gained not only job security but also equality in allowances, benefits and access to family support. That assumption is wrong. Since the law took effect 14 months ago, the Department of Defense has kept in place policies that bar spouses of same-gender couples from having military identification cards, shopping on base, living in base housing or participating in certain family support programs. Repeal of Don't Ask, Don't Tell, says Army Lt. Col. Heather Mack, 39, "simply just prevented me from losing my job. It didn't do anything else." Mack's spouse, Ashley Broadway, also 39, can shop in stores on nearby Fort Bragg, N.C., only in the status of "caregiver" for their son, Carson. Lacking a military dependent ID card, Ashley has been challenged by checkout clerks when her shopping cart includes items such as deodorant that clearly aren't needed by their 2-year old. If Mack is reassigned, the couple will have to pay Ashley's travel and transportation costs out of pocket. Mack draws housing allowance at the higher "with-dependents" rate only because of their child. Marriage alone for same-sex couples, though recognized as legal by 11 states and the District of Columbia, doesn't qualify a military sponsor for married allowances or civilian spouses for entry onto bases. If Mack were killed during her next deployment, Ashley would not qualify for full "spousal" survivor benefits, even though, by paying higher premiums, she could be covered as an "insurable interest." And as a surviving widow, Ashley would not qualify for Dependency and Indemnity Compensation from the Department of Veterans or be eligible to receive the folded flag off the coffin at the graveside ceremony, Mack says, because, to the military and the VA, Ashley would not be next of kin, despite spending a career together. A heterosexual soldier "who meets someone on a Friday night and Saturday gets married would have full benefits," Mack says. "But you have partners who have been together 15 years or more and they can't even go on base and shop. ... That's a quality-of-life issue." Some disparities of treatment for same-sex couples won't end unless Congress repeals the 1996 Defense of Marriage Act, which defines marriage as solely between a man and a woman, or unless the U.S. Supreme Court rules that the law is unconstitutional. The high court was expected to announce soon if it will review and rule on conflicting opinions by appellate courts. While the law remains in effect, it prohibits the extension of many federal benefits, including military allowances, travel reimbursements and health coverage to same-sex spouses. But Stephen L. Peters II, president of the gay and lesbian advocacy group American Military Partner Association, says DoD has authority to do much more. It could give gay and lesbian spouses access to base housing, commissaries and exchanges, base recreation facilities and legal services. It could direct the services to open more family programs to them and to offer relocation and sponsorship at overseas duty stations. No DoD official would be interviewed on this issue. The department instead issued a statement explaining that a work group continues to conduct "a deliberative and comprehensive review of the possibility of extending eligibility for benefits, when legally permitted, to same-sex domestic partners." Life in service is better for gays and lesbians since repeal of Don't Ask, Don't Tell. But the department's unresponsiveness to quality-of-life concerns of married members, unrelated to DOMA, continue to impact not only families but readiness, Peters argues.

### AT: Thumpers/Affirmative Action

#### Kennedy is a swing vote only in 3 instances abortion, sex law, and affirmative action – abortion won’t be on the docket and affirmative action will be narrow

Wolf 9/30

(<http://www.usatoday.com/story/news/nation/2012/09/30/supreme-court-new-term/1600191/>, “Supreme Court to delve into more divisive issues”, Richard, USA Today)

Experts such as Santa Clara University School of Law professor Bradley Joondeph predict Kennedy will join the conservatives against the affirmative-action program but join the liberals in favor of gay marriage. The scope of those decisions, however, would be critical in determining their broader applicability. "On abortion, race and gays, Kennedy matters," says Lisa Blatt, a partner at Arnold & Porter who has argued 30 cases before the Supreme Court. Only abortion is likely to remain off the court's docket. Race, sex, education Three issues are getting most of the attention at the start of the term Affirmative action: In Fisher v. University of Texas, the court will decide whether the school's racial preferences went too far in passing over Abigail Fisher, a white high school student in 2008. The university applied two rules: It accepted the top 10% of students from all Texas high schools, including those dominated by African Americans and Hispanics. And it included race as a factor in reaching beyond the top 10%, in order to achieve diversity within --as well as among --racial and ethnic groups. The case has the potential to set a national precedent, just as two cases involving the University of Michigan did in 2006. Then, the court ruled that using race as a factor in admissions was constitutional, but a strict formula was not. Most experts, such as American University Washington College of Law professor Stephen Wermiel, predict a narrow decision against the university's affirmative-action program, but without national consequence. Still, proponents of racial preferences are nervous; the 2006 decision upholding Michigan's program was written by moderate Justice Sandra Day O'Connor, who since been replaced by conservative Justice Samuel Alito.

#### Kennedy will strike down affirmative action now he is leaning conservative help him balance same sex vote – different highlighting of 1nc card

Kahlenberg 12/13

(“The Arguments for Gay Marriage Undermine Affirmative Action”, Richard, <http://www.slate.com/articles/news_and_politics/jurisprudence/2012/12/supreme_court_2012_how_justice_kennedy_could_vote_to_recognize_gay_marriage.html>, 2012, THE SLATE)

The Supreme Court’s [decision to hear gay-marriage cases from New York and California this spring](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/12/supreme_court_to_hear_gay_marriage_cases_the_justices_agree_to_hear_windsor.html) means the justices will weigh in on two highly fraught social questions this term—same-sex marriage and affirmative action in higher education. (Not to mention the[future of the Voting Rights Act](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/11/supreme_court_voting_rights_act_2012_will_the_2012_election_lead_the_justices.html).) Justice Anthony Kennedy is likely to be the swing vote in these cases, and many are predicting he will side with conservatives to limit racial preferences and with liberals to support gay marriage. Paradoxically, the very reasoning that could guide Kennedy to support marriage equality may bolster his decision to curtail race-based affirmative action, spurring colleges to adopt new approaches. Proponents of gay marriage advance two powerful arguments: Couples seeking to marry should not be discriminated against on the basis of an unchangeable factor like sexual orientation; and shifting attitudes, especially among young people, make gay marriage an inevitability. The problem for supporters of racial preferences is that these precise arguments can be, and have been, made by conservatives challenging the use of race in university admissions in the case of [Fisher v. University of Texas](http://www.scotusblog.com/case-files/cases/fisher-v-university-of-texas-at-austin/). Abigail Fisher, the plaintiff, says the fact that she was born white should not be used to disadvantage her in admissions; and large-scale trends over the past half century—the decline in racial discrimination coupled with growing economic inequality, a rise in racial intermarriage, and the “browning” of the U.S. population—all make affirmative action based on race look outdated. For centuries, marriage was synonymous with heterosexual union, but as science has come to understand homosexuality as an inborn trait, the basic argument for marriage equality and nondiscrimination has grown more powerful. Along with these insights has come a stunning shift in public opinion on gay marriage. In 1996, Americans opposed gay marriage by 2:1, but today, supporters [outnumber](http://fivethirtyeight.blogs.nytimes.com/2012/05/09/support-for-gay-marriage-outweighs-opposition-in-polls/)opponents by 50 percent to 45 percent and the trend line is clear. The biggest opponents of gay marriage—old people—are dying every year, while younger people (including [many](http://www.nola.com/religion/index.ssf/2011/09/young_adults_even_in_church_st.html)young evangelicals) see same-sex marriage as a nonissue. Just as opposition to racial intermarriage waned over time, we are witnessing the slow death of anti-gay marriage sentiments. Both these arguments may prove persuasive to Justice Kennedy—and analogous arguments may also lead him to significantly curtail racial preferences. Since the adoption of racial affirmative-action programs in college admissions in the late 1960s, a majority of Americans have consistently felt uncomfortable with the idea of using an innate factor like race in deciding who gets ahead—even for the positive goal of integrating selective colleges. Unlike gay marriage, there has been no shift in the public opinion of young people in favor of affirmative action. In a 2012 [survey](http://www.csmonitor.com/USA/Society/2012/1004/Poll-57-percent-of-Millennials-oppose-racial-preferences-for-college-hiring), millennials (aged 18-25) opposed racial preferences to promote diversity by 57 percent to 28 percent, according to the Berkeley Center for Religion, Peace, and World Affairs at Georgetown University and the Public Religion Research Institute. Only 9 percent of young Americans supported racial preferences to make up for past discrimination, once the central moral rationale for the policy. Even at the famously liberal Brown University, a [recent poll](http://www.browndailyherald.com/poll-most-students-opposed-to-use-of-race-in-admissions-1.2798318#.ULkmcFFbvTp) found that students opposed the university’s considering race in admissions by 58 to 34 percent. Racial preferences have survived until now because supporters said they were temporary and that there was no other means to produce racial diversity in our colleges short of using race. In the 1978 Bakke case, for example, Justice Harry Blackmun said it was not possible to find a race-neutral way of producing racial diversity in college admissions. “There is no other way,” except by using race, he suggested. Today, however, racial discrimination, while by no means conquered, does not play the same role in American life that it did three or four decades ago. Meanwhile, inequalities by economic status have grown dramatically. For example, whereas the racial achievement gap between black and white students used to be twice as large as the income achievement gap, Stanford researchers have [found](http://www.nytimes.com/2012/02/10/education/education-gap-grows-between-rich-and-poor-studies-show.html?pagewanted=all) that today the income achievement gap is twice as large as the racial achievement gap. Class-blind racial preferences that benefit advantaged students of color ignore these changing realities. Given the growing economic divide, it’s not surprising that in almost all cases where universities have dropped the use of race in admissions—usually because of a public referendum—they have adopted new programs to give a preference to socioeconomically disadvantaged students of all races. And Blackmun’s contention that race-neutral alternatives won’t produce racial diversity is no longer true. In a [study](http://tcf.org/publications/2012/10/a-better-affirmative-action-state-universities-that-created-alternatives-to-racial-prefences) I co-authored for the Century Foundation, we found that of 10 leading public universities that stopped using racial preferences, seven (including the University of Washington and the University of Florida) were able to maintain or exceed the proportion of black and Latino students with race-neutral alternatives. The three exceptions—U.C. Berkeley, UCLA, and the University of Michigan—are all highly selective institutions that draw on a national student population and are at a disadvantage in recruiting students of color because competitors, like Stanford for the California schools, can continue to use racial preferences. If universities employ income as the sole proxy for class, it’s true that they will see declines in racial diversity, because discrimination continues to create significant differences, in the aggregate, between black and white poverty. Racial discrimination in the housing market, for example, helps explain why low-income blacks are much more likely to live in neighborhoods of concentrated poverty than whites of similar income. And our history of slavery and segregation has made it harder for blacks to accumulate assets over generations, which helps explain why black Americans make 60 percent of what white Americans make in income on average but have just [5 percent of the wealth](http://pewresearch.org/pubs/2069/housing-bubble-subprime-mortgages-hispanics-blacks-household-wealth-disparity) that whites have. As a result, it’s crucial for class-based affirmative action programs to account for concentrated poverty and wealth—not just income—in order to be fair, and to produce greater levels of racial diversity. Here’s another reason why socioeconomic affirmative action that considers wealth is a better fit for the future than race-based policies: America is slated to become a majority minority nation by midcentury, and several states have already crossed that threshold. This is significant because the Supreme Court has long held that the 14th Amendment’s guarantee of equal protection under the law is especially necessary to bar discrimination against “discrete and insular minorities.” So long as white voters are in clear control of American institutions, racial preferences in favor of underrepresented minorities trigger less legal concern. But in instances where minorities are a political majority, judges become more skeptical. In a 1989 [case](http://supreme.justia.com/cases/federal/us/488/469/case.html) contesting Richmond, Va.’s racial set-aside in contracting, for example, the justices took note of the city’s 50 percent black population in striking down the program. As minorities gain in population and political power nationally, racial preferences are likely to come under increasing scrutiny from the courts. If the Supreme Court, guided by Justice Kennedy, supports gay marriage and curtails racial preferences, liberals will cheer one result and conservatives the other. But Kennedy could argue that he is being perfectly consistent, championing history’s slow march toward a requirement of equal treatment: for marriage equality in the first case and for racially neutral admissions in the second. So long as new forms of affirmative action are created—updated to reflect the growing problem of class inequality—Kennedy’s position would represent real-world equality of opportunity as well.

### Court PC Finite

The Supreme Court Will Balance By Reigning In Controversy

Bentley 07 (Curt, J.D. from Brigham Young University, Lead Articles Editor for BYU Law Review, Recipient of the 2007 Scholarly Writing Award for this article, "Constrained by the Liberal Tradition: Why the Supreme Court has not Found Positive Rights in the American Constitution" Brigham Young University Law Review, 2007, vol 1721, Lexis)

I believe Sunstein misses the mark and reaches the wrong conclusion because he considers the merits of the institutional and cultural arguments separately. Because of this separation, he discounts the probability that the Supreme Court's "new property" retrenchment of the 1970s and Humphrey's defeat in 1968 resulted, at least in part, from a cultural backlash to the liberal movement of the Court's jurisprudence during previous Democratic administrations played out through institutional structures - as opposed to simply being a bit of bad political luck. This public response resulted from certain Supreme Court decisions that portended a course of action fundamentally hostile to American political culture and that seriously threatened to endanger the legitimacy of the Supreme Court. Because the Court's effective operation within American government depends upon its ability to maintain public confidence, the Court, rather than risk its legitimacy and influence, made significant course corrections - including abandoning any constitutional positive rights agenda.

**Perception outweighs practice/theory. Even if the justices are wrong, they act as if they have limited capital**

John **Yoo**, professor of law at the University of Texas, November **2004**, 83 Tex. L. Rev. 1, p. lexis

n443. This last point is quite controversial. Jesse Choper has argued, for example, that "the people's reverence and tolerance is not infinite and the Court's public prestige and **institutional capital is exhaustible**." The judiciary's ability to strike down laws without incurring severe institutional costs, therefore, "is determined by the number and frequency of its attempts to do so, the felt importance of the policies it disapproves, and the perceived substantive correctness of its decisions." Choper, supra note 35, at 139. Others, by contrast, have asserted that the Court may - at least in some circumstances - actually **enhance its legitimacy** by actively confronting the political branches. See, e.g., Peter M. Shane, Rights, Remedies and Restraint, 64 Chi.-Kent L. Rev. 531, 546 (1988) (suggesting that, in some cases, the Court may enhance its legitimacy through opposing the political branches). It would be exceptionally difficult to verify either proposition empirically; about all that can be said with confidence is that the Court sometimes seems to **behave as if it thinks its "institutional capital" is limited** in this way, and the notion may **at least constrain judicial behavior** in this sense. See Young, State Sovereign Immunity, supra note 92, at 58-60.

**Spillover occurs – the plan’s unpopular ruling minimizes the likelihood of other controversial decisions**

Jeffrey **Mondak**, professor of political science at Florida State, April **1991**, Substantive and procedural aspects of supreme court decisions as determinants of institutional approval, American Politics Quarterly, Vol. 19, No. 2, p. 185

The impact of the content of Supreme Court rulings has **important ramifications for the future credibility** of the Court. Because unpopular decisions **exert** **negative influence** on institutional approval, the Supreme Court would seem to be the master of its own institutional fate. As Choper (1980) explains: The Court’s prestige and authority is of a broad institutional nature, and when the Court expends its store of capital it tends to do so in a cumulative fashion…[I[f one or another of the Court’s rulings **sparks** a markedly **hostile reaction**, then the **likelihood** that subsequent judgments will be rejected is **greatly increased**. (P. 156) The substance of a majority of Court decisions does mirror the policy preferences of the American public (Marshall 1988, 1989), suggesting that the Court has been able to preserve its institutional credibility, whether deliberately or coincidentally, by **minimizing rulings likely to prompt hostile public reaction**.

**Justices view court political capital as finite**

Anke **Grosskopf**, professor of political science at Pittsburgh, **and** Jeff **Mondak**, professor of political science at Florida State, September **1998**, Political Research Quarterly, Vol. 51, No. 3, p. 635

The existence of a strong link between basic values and diffuse support does not necessarily preclude a role for specific decisions, particularly when we seek to understand how support comes to change over time (e.g. Caldeira and Gibson 1992: 658-61). We believe that any claim that the Supreme Court is fully immune to backlash against controversial decisions can be rejected on a prima facie level. First, consider the extreme case. Were the Supreme Court to make its occasional blockbusters – Brown v. Board of Education, Roe v. Wade, Texas v. Johnson, etc. – the norm by routinely ruling on the thorniest social questions, we see it as **implausible** that such actions would bring no cumulative impact on how people view the Court. Second, the Supreme Court’s typical mode of operation suggests that justices themselves view institutional support as an expendable political capital (Choper 1980). That is, the Court recognizes its own political limitations, and thus justices **pick their spots** carefully when approaching potentially **controversial cases**. From this perspective, the apparent dominance of democratic values as a determinant of institutional support (e.g., Caldeira and Gibson 1992) means not that the Court is insulated from backlash, but that strategic justices tread cautiously so as to **keep backlash to a minimum**. Consequently, how and where we examine whether public response to Supreme Court decisions affects institutional support may shape what answer we find.