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#### In order for detention to be rooted in a War Power Authority – it must cite the Commander in Chief Clause --- they violate this

Hanes 11 (2011¶ Brigham Young University Law Review¶ 2011 B.Y.U.L. Rev. 2283¶ LENGTH: 16243 words COMMENT: Challenging the Executive: The Constitutionality of Congressional Regulation of the President's Wartime Detention Policies NAME: William M. Hains\* BIO: \* William M. Hains received his Juris Doctor from the J. Reuben Clark Law School, Brigham Young University, in April 2011. He currently serves as a law clerk for the Honorable J. Frederic Voros Jr. on the Utah Court of Appeals. He would like to thank Professor Howard Nielson and Carla Crandall for their suggestions on an earlier draft of this paper and the BYU Law Review staff for their editorial assistance. He would also like to thank Chrisy for her support and patience. The views expressed in this Comment are his own.)

The authority to detain enemies in a time of war has long been viewed as an important war power of the government. [n118](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n118) As a war power, presidential detention authority would derive from the Commander-in-Chief Clause if its source is constitutional. History suggests that Congress also has concurrent detention authority. During the 1798-1800 Quasi-War with France, for example, Congress passed several laws authorizing detention of French captives, setting conditions on detention, and authorizing the [\*2306] exchange or release of prisoners. [n119](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n119) The regulations passed in the Quasi-War demonstrate the understanding of Congress that it had authority to regulate detention, but this history does not clearly reveal the source of that authority. [n120](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n120) Possible sources of congressional detention authority include the Captures Clause, the power of the purse, and the Law of Nations Clause. [n121](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n121)¶ 1. Commander-in-Chief Clause Wartime detention authority is rooted in the law of war, a branch of the law of nations, or, as it is known today, customary international law. "From the very beginning of its history [the Supreme] Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals." [n122](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n122) In Ex parte Quirin, the Supreme Court identified detention authority as "an important incident to the conduct of war," founded in the law of war. [n123](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n123) In a plurality decision, [\*2307] the Court recently affirmed in the context of the war on terrorism that detention - for the duration of the conflict - and prosecution of enemy combatants is justified under the law of war to secure the battlefield and preserve the ability of the President to prosecute the war. [n124](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n124)¶ Yet the law of war defines rather than grants authority. There must be some constitutional or legislative provision that supplies the authority, such as the Commander-in-Chief Clause or a congressional authorization of war. [n125](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n125) In Ex parte Quirin, the Court suggested that the President and Congress may have concurrent authority. The Court recognized that the President was acting pursuant to an act of Congress in creating military commissions during World War II to try detainees for offenses against the law of nations. [n126](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n126) But the President was also acting under "such authority as the Constitution itself gives the Commander in Chief, to direct the performance of those functions which may constitutionally be performed by the military arm of the nation in time of war." [n127](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n127) Similarly, the plurality in Hamdi v. Rumsfeld found congressional authorization for the executive detention of enemy combatants in the war on terrorism, and thus did not reach the President's claim of "plenary authority to detain pursuant to Article II of the Constitution." [n128](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n128) More specific to the power to prosecute detainees, the Court suggested in Hamdan v. Rumsfeld that the President's power derived solely from congressional authorization: "Congress cannot direct the conduct of campaigns, nor can the President, or any commander under him, without the sanction of Congress, institute tribunals for the trial and punishment of offences." [n129](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n129) The [\*2308] Court raised the possibility that the President may have independent power "in cases of a controlling necessity," but noted that the Court has never definitively resolved that issue and refused to do so in Hamdan as well. [n130](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n130)¶ Thus, the Court has suggested - but never squarely held - that when Congress authorizes the President's war powers, the Commander-in-Chief Clause grants the President powers incident to the conduct of war, including authority over wartime detainees.¶ 2. Captures Clause One common source cited for congressional detention authority is the Captures Clause. [n131](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n131) As discussed above, [n132](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n132) in setting forth a framework for analyzing limits on congressional power, the proper scope of each constitutional grant must be determined before deciding whether constitutional power over a particular matter is exclusive or concurrent. The Captures Clause appears on its face to grant Congress authority to regulate detention: Congress has power to "make Rules concerning Captures on Land and Water." [n133](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n133) Chief Justice John Marshall suggested as much in dicta in an 1814 case. [n134](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n134) Yet Professor Ingrid Wuerth has argued recently - and quite persuasively - that the original meaning of the Captures Clause was in fact intended only as a source of authority over enemy property. [n135](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n135) Wuerth argues that the Clause is best understood as granting power over "moveable property taken for adjudication as prize, but not persons," and "the power to authorize the making of captures and also to determine their legality."[n136](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n136) The natural implication of Professor Wuerth's analysis is that the Captures Clause cannot serve as a solid basis for congressional limitation on the President's [\*2309] detention authority. Congressional authority must be found in the power of the purse or the Law of Nations Clause.

#### Voting issue for precision and ground

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Text: The necessary United States Circuit Courts of Appeals should uniformly rule that certiarori of the federal district court case of Dhiab v. Obama and rule that the Commander-in-Chief of the United States does not have the authority to force feed detainees being indefinitely detained.

-- Competes – avoids disads to Supreme Court action

Solves 100% of case

Friedman 5

(Barry, Professor of Law – New York University School of Law, 84 Tex. L. Rev. 257, Lexis)

3. The Problematics of Supreme Court Supervision. - If lower court judges are inclined to willful or ideological behavior, how does the Supreme Court keep them in line? Much positive work has been devoted to figuring out exactly how the Supreme Court governs the judicial hierarchy - a problem normative scholars think about insufficiently, likely because of their assumption that lower courts simply follow precedents. The problem is a vexing one, because - as is common knowledge - the Court hears an infinitesimal number of the adjudicated cases by the lower courts and a small fraction of those that even are offered to it for review. n244 For positive scholars, reversal is the key weapon in the Supreme Court's arsenal, n245 yet on [\*303] its face, "Reversal is a particularly unimpressive sanction in the context of circuit-Supreme Court interactions, where the likelihood of reversal by the Supreme Court in any individual case is so small as to render it essentially meaningless as a sanction." n246 The models of Supreme Court governance offered by positive scholars are extremely creative and ought to be thought provoking for normative theorists. Some scholars explore the idea of the Supreme Court "auditing" lower court cases by some criteria to determine which require review. n247 Others examine techniques of "monitoring" and "signaling" by litigants and lower court judges. n248 Some conceptualize the appellate review game as a "tournament" in which judges compete to not get reversed. n249 These models pose a problem for normative constitutional theory because they are driven largely by ideology. One of the more intriguing models employs a "Nixon goes to China" strategy in which, for example, a conservative Supreme Court is most likely to hear cases involving liberal courts rendering liberal decisions, eschewing review of liberal outcomes by conservative lower courts and conservative outcomes by any court. n250 Empirical testing of the model in the area of search and seizure cases indicated good predictive capacity. n251 The implication is that the Supreme Court's ideology drives case selection (and outcomes), n252 with much else neglected. Similarly, models that rely on the threat of review assume lower courts can conform their decisions to the precedents of the higher court. n253But in cases that make it to the Supreme Court, the law is almost always [\*304] open-ended enough that if lower courts are "complying," it is likely by guessing the correct outcome based on an evaluation of the Supreme Court's ideology. n254 There is some empirical evidence that they do this, despite the Court's instructions otherwise. n255 Most important, these positive studies suggest that **lower courts can force the Supreme Court's hand** n256 **and**, in turn, **influence the substantive content of constitutional law.** n257 As Walter Murphy explained, "working in its interstices, inferior judges may materially modify the High Court's determinations." n258 In order to assure lower court compliance, the Supreme Court must modify constitutional doctrine. One interesting model suggests that when the preferences of lower court judges deviate substantially from those of the Supreme Court, the Court will have to widen the range of acceptable outcomes to ensure compliance. n259 Some empirical work, and some experience, suggest that at other times the Court will have to employ very specific tests to ensure its mandates are followed. A recent study of taxpayer standing law finds that "when the legal precedent is clear, unambiguous, and narrow (or it is perceived to be such) ... judges adhere to it, apparently in an effort to achieve "correct' outcomes." n260 The Miranda rule is a familiar example of lower court deviation driving the Supreme [\*305] Court's doctrine. n261

Strong and independent use of lower court rule-making is critical to effective rule of law

Bhagwat 00 Professor of Law at University of California, JD from University of Chicago Law School

[Ashutosh, "SEPARATE BUT EQUAL?: THE SUPREME COURT, THE LOWER FEDERAL COURTS, AND THE NATURE OF THE "JUDICIAL POWER"," 80 B.U.L. Rev. 967, October, Lexis]

Most notably, one of the gravest institutional problems the Court faces is its splendid isolation from facts, and from the practical experience gained by observing the legal system in action on a day to day basis. There is, however, an obvious place for the Court to look to reduce its isolation: the lower federal courts. Those courts, which share many of the institutional strengths of the Court, such as life tenure and a careful (albeit not as careful) selection process, are in the thick of the administration of justice, rather than situated in a temple on Capitol Hill. The Court could access a great deal of knowledge simply by paying more, and more systematic, attention to those courts' attempts to implement the doctrines promulgated by the Supreme Court. This, of course, would require the Court to take the theory of "percolation" seriously, not merely as an excuse for avoiding decision, but as a source of ideas and practical experience. Relatedly, the Court might take a more generous view of lower courts who in light of experience experiment with, or even deviate from, the Court's apparent preferences and doctrinal formulations. Of course, for this kind of interaction to succeed, the lower courts must themselves be willing to engage in independent and sometimes aggressive reasoning. Unfortunately, as recent, self-abnegating remarks made by lower court judges suggest, n212 such willingness is often lacking. Moreover, there is now a long tradition in the legal community, again dating back to Felix Frankfurter, of denigrating the significance and independence of lower federal courts, and instead portraying them as mere "intake" points for the Supreme Court. n213 The docility of the [\*1007] lower courts should not, however, be overstated. Over the years, the lower courts have displayed their independence often, both in creative decision-making and occasionally in a willingness to flout the Supreme Court. n214 Moreover, there exists an enormous wealth of talent in the lower federal courts, particularly in the Courts of Appeals; the Supreme Court's decision making would benefit from taking advantage that talent. If a system of independent, and aggressive lower courts could be created, it would reintroduce some of the strengths of the common law process, including notably the evolutionary nature of the common law, into the Court's formulation of legal rules.

Commitment to the rule of law is vital in preventing global nuclear conflict

Rhyne 58

(Charles, Former President - American Bar Association, "Law Day Speech for Voice of America," 5/1, http://www.abanet.org/publiced/lawday/rhyne58.html)

The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes . We in our country sincerely believe that mankind's best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. Man's relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. Men must either live together in peace or in modern war we will surely die together. History teaches that the rule of law has enabled mankind to live together peacefully within nations and it is clear that this same rule of law offers our best hope as a mechanism to achieve and maintain peace between nations.

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#### Short shutdown now- extension causes quick market collapse

**Reinhart et al 10-1**-13 [Vincent Reinhart, chief US economist, Morgan Stanley, Harm Bandholz, chief US economist, UniCredit, Aroop Chatterjee, FX strategist, Barclays, Vincent Chaigneau, rates strategist, Société Générale, Daniel Tenengauzer, US economist, Standard Chartered, Allan von Mehren, chief analyst at Danske, Trevor Greetham, director of asset allocation, Fidelity, “US shutdown reaction: ‘Odds favour a short event’,” <http://www.ft.com/cms/s/0/5bda1eb2-2a67-11e3-ade3-00144feab7de.html#axzz2gYttdnTn>]

The US government began shutting down a range of services on Tuesday after the Republican-controlled House of Representatives and the Democratic Senate failed to agree a short-term budget extension. The lack of an agreement by US politicians will lead to about 800,000 federal employees being placed on unpaid leave, a process known as furloughing. The following is a round-up of strategist and economist reaction:¶ Vincent Reinhart, chief US economist, Morgan Stanley:¶ The heat will build on politicians from constituents who were furloughed, inconvenienced, or fearful of market consequences. That is why we believe the odds favour a short event – over in one week.¶ Harm Bandholz, chief US economist, UniCredit:¶ I think it is only a matter of days, maybe hours, until the majority of Republicans will eventually free themselves from the pressure of the Tea Party minority and vote along with Congressional Democrats to reopen the government. But don’t forget, the government shutdown is merely the prelude to a much bigger issue, namely the forthcoming debt limit fight.¶ Aroop Chatterjee, FX strategist, Barclays:¶ In and of itself, the government shutdown appears to be a limited market event. The indirect effect, however, is on the other main risk scenario for markets – the deal on the debt ceiling. For example, a government shutdown could lead to a sharp increase in the public disapproval of Congress’s handling of fiscal matters and allow for a smoother agreement on the debt ceiling issue. Or on the flip side, it could embolden both sides to become more entrenched in their positions.¶ Vincent Chaigneau, rates strategist, Société Générale:¶ Keep calm and carry on. So it seems that is the message from the markets just now. The US government is going into partial shutdown for the first time in 17 years. This will hurt the economy, though not much if it’s short. Negotiations may keep us on tenterhooks for a couple more weeks, as we approach the debt ceiling. But there has been no sign of financial stress overnight.¶ Daniel Tenengauzer, US economist, Standard Chartered:¶ A shutdown lasting a few days would shave only a few decimal points off fourth-quarter economic growth. The hit to growth would come mainly from the impact of the furloughs on consumption – a similar event to the summer and the sequester-related furloughs of federal employees – and a potential hit to business confidence. The main risk to this expectation is that the shutdown continues for longer, potentially until or beyond the October 17 debt ceiling deadline.¶ Allan von Mehren, chief analyst at Danske:¶ The next FOMC [the monetary policy-setting Federal Open Market Committee] meeting is on 29-30 October. It is now more unlikely that tapering will start at this meeting as the Fed will probably wait to see the consequences of the increased uncertainty and effects of the shutdown. This strengthens our call that Fed tapering won’t start until December. If the shutdown drags out and has more negative effects on the economy the risk is tapering could start even later.¶ Given the increased uncertainty it also raises the odds of a further correction in stock markets. The reaction so far has been fairly muted. But given that markets have been technically overbought we think it’s likely we will see further declines in coming weeks. This should also add to downside pressure on bond yields. In the short term the risk is also that the dollar could weaken further.¶ Trevor Greetham, director of asset allocation, Fidelity:¶ We do not expect the fiscal stand-off in Washington to have a lasting impact and stock market weakness presents a buying opportunity.¶ The dispute has the power to depress economic activity temporarily and it will play havoc with the economic release calendar. But the US is four years into a steady, self-sustaining recovery and the Federal Reserve stands ready to offset any marginal fiscal tightening that may come out of the negotiations.

#### Capital is key to get a deal

CNN 10/1/13 (Interview with Rick Lazio, Former US Congressman, Transcript: Anderson Cooper 360 Degrees, "Government Shutdown; Views of Obamacare Shaped by Misinformation; Is Losing Good for Kids?"

LAZIO: Getting back to the earlier point about entitlements and out- year spending, here's -- Democrats will criticize Republicans on obsessing on Obamacare. Republicans will say why doesn't the president lead on the most pressing fiscal issue that faces the country over the next 20 or 30 years?  You have got an explosion of seniors, 10,000 seniors retiring every single day in America. The program Social Security was created, signed by FDR into law, average life expectancy was 64 years old, eligibility 65, pretty good deal. But now...  BLOW: But, Rick, you're pretending that they never tried to do that.   Last time we got close to the debt ceiling, they got very close to a global deal, and it fell apart at the last minute. It's not as if the president has never gone to Boehner and tried to figure out how to do this.   LAZIO: But the president has to provide cover for moderate Democrats who want to get a deal done. And that's what he's failed to do. He's got to engage.   He's got to lead. And he's got to address some of these big picture issues. That's when you get a win-win out of this thing. If you could get both sides to come together and say we're going to really try and solve at least part of this entitlement picture, we will create some momentum, some trust, and that's a way forward.   (CROSSTALK)  BROWN: ... what exactly Obama right now is supposed to really do? When we talk about him engaging and him doing -- what actually is he supposed to do? Who's he supposed to call? How does it work at this moment in this particular situation?   LAZIO: I think you start to go and you speak to individual senators. He's done this with Bob Corker and other people where he's tried to court them and bring them in.  I think you have got to have some agenda, you have got to be somewhat flexible. You have got to say, OK, what do you think is doable? This is an area where obviously I have got limited flexibility, but let's get something significant done and I will help provide some air cover.

#### DETENTION - Reforming indefinite detention makes Obama seem soft on terror – crushes capital for the rest of the agenda

Klaidman 5/15/13 (Daniel, Author for Newsweek Magazine and the Daily BEast, "How Gitmo Imprisoned Obama" The Daily Beast)

But one of his very first tactical moves on Guantánamo backfired spectacularly. Obama’s plan to bring to the United States a handful of detainees—Chinese Uighurs who were cleared by the courts—caused a political furor. Obama pulled the plug on the plan, and Congress soon began passing measures to restrict transfers out of Gitmo. For Obama’s political advisers, the episode demonstrated that the toxic politics of terrorism could overwhelm the administration’s domestic agenda; for civil libertarians, it was an ominous sign that Obama lacked the political will to aggressively engage Congress on one of their core concerns. Even some of Obama’s top national-security aides were frustrated with the White House’s timid approach toward Congress. John Brennan—then Obama’s counterterrorism czar, now his CIA chief—believed the administration needed to show more backbone in its dealings with Congress, according to a source who spoke with him at the time. Brennan’s outrage was fueled by the knowledge that many detainees, who were still at Guantánamo after years of detention, had no record of terrorism.¶ Christoph Bangert/Laif/Redux¶ Former Gitmo detainee Abdul Salam Zaeef.¶ A few weeks after the Uighur debacle, Obama made his first attempt to save his faltering Guantánamo policy: in a sweeping address at the National Archives, he laid out a detailed plan for closing the prison. But in the end, however eloquent, it was only a speech. It did not, in any measurable way, push the policy forward.¶ Things only got worse from there. On Christmas Day 2009, the so-called underwear bomber attempted to bring down a plane over Detroit—a plot that was directed by al Qaeda’s Yemen affiliate. The frightening near miss took a powerful psychic toll on the White House, which was still dogged by the perception that Democrats were weak on national security. Obama became convinced that he could not send any of the nearly 100 Yemeni detainees at Gitmo back to their home country, for fear they would link up with extremists and begin plotting attacks against America. Suddenly, the fate of the Yemenis was another giant obstacle to closing the prison.¶ Ed Alcock/eyevine/Redux¶ Former Gitmo detainee Lakhdar Boumediene.¶ Then came the unraveling of Attorney General Eric Holder’s plans to try some Gitmo detainees, including 9/11 mastermind Khalid Sheikh Mohammed, in New York. Obama had initially backed Holder’s decision. But when it blew up in Congress, he seemed to equivocate. His own chief of staff, Rahm Emanuel, actually worked behind the scenes with Republican senators to undermine Holder’s initiative, according to multiple sources with knowledge of the episode. Once the plan cratered, lawmakers smelled blood. They began passing ever more restrictive legislation tying the administration’s hands on Guantánamo.¶ For much of the past few years, without any signal that Obama was going to fight on Gitmo, the policy drifted. Daniel Fried, the veteran State Department official in charge of resettling detainees, was transferred to a different position. Even the steps Obama took to move things forward were of a highly limited nature. One of those steps came in March 2011, when Obama issued an executive order designed to solve a thorny problem. Forty-eight of the detainees could not be prosecuted, either for lack of evidence or because they had been tortured—yet they were nonetheless considered too dangerous to release. This meant they had to be held in indefinite detention, a prospect that troubled Obama. His compromise, issued via executive order, was to set up Periodic Review Boards—administrative bodies that would allow such prisoners to challenge their incarceration, including by presenting new evidence.

#### Economic collapse causes nuclear war

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

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#### Visual metaphors are rooted in a cultural bias toward visuality – the notion that a thing must be visible to be real. this visuality shapes our notions of identity and difference forming that basis for racism --- it means we cna

Hibbits 94 (Bernard J., Assoc. Prof of Law @ Pitt, “Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse” Cardozo Law Review, 229, <http://faculty.law.pitt.edu/hibbitts/meta_int.htm> )

A. Seeing Culture [2.2] In [Part I](http://faculty.law.pitt.edu/hibbitts/meta_p1.htm#part1) of this Article I argued that metaphors can reflect the circumstances and attitudes of the society that generates them. In light of this point, it seems reasonable to suggest that the traditional popularity of visual metaphors in American legal language has much to do with the bias towards visual expression and experience that has traditionally characterized American culture and, inevitably, American law. [2.3] The traditional American bias towards the visual is aptly captured by the observation that "[i]n our society, . . . to be real, a thing must be visible."[45](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d45) We[46](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d46) demonstrate our visual bias in numerous ways and in numerous contexts, usually without recognizing that such a bias even exists. Every time we sing the first line of the national anthem, we ask a question about looking: "Oh say can you see . . .?" We pay for goods and services with dollar bills that bear a staring eye on their backs.[47](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d47) We go on vacation not to hear the sounds, but to "see the sights"; we take along cameras, not tape recorders.[48](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d48) [2.4] We give aesthetic priority to visual effect. Our glass and steel buildings are monuments to the power of sight, rather than sound or touch.[49](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d49) Our idea of personal beauty is primarily visual.[50](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d50) So is our idea of art, to the point where, in ordinary discourse, that term denotes purely visual painting, not music or dance.[51](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d51) Our visual orientation even colors our approach to art forms which, at least in theory, are not altogether dependent on visual appreciation: we regularly highlight the visuality of sculpture-and, at the same time, neutralize its tactility-by posting signs in our museums and art galleries that read "Do Not Touch." Is it any wonder that in such a context, our sculpture should have become "painterly,"[52](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d52) i.e., designed much more for seeing than feeling? [2.5] Less obviously, but more fundamentally, our visuality shapes our sense of social identity and difference. We tend to group one another more on the basis of similar visual appearance than on, say, similar accent.[53](http://faculty.law.pitt.edu/hibbitts/meta_f2.htm#d53) This is most obvious when we categorize individuals according to the color of their skin: in our visualist culture, most Americans are "white" or "black." Visual identity has indeed become so important to us that we not only differentiate, but actually discriminate against one another on a visual basis. Having skin of a certain color may in practice entitle us to, or alternatively, it may disqualify us from educational opportunity, economic wealth, and political power.

#### We must reject all racism

Barndt 1991 (Joseph, Dismantling Racism: The Continuing Challenge to White America, p. 155-56)

To study racism is to study walls. We have looked at barriers and fences and limitations, ghettos and prisons. The prison of racism confines us all, people of color and white people alike. It shackles the victimizer as well as the victim. The walls forcibly keep people of color and white people separate from each other; in our separate prisons we are all prevented from achieving the human potential that God intends for us. The limitations imposed on people of color by poverty, subservience, and powerlessness are cruel, inhuman, and unjust; the effects of uncontrolled power, privilege, and greed, which are the marks of our white prison will inevitably destroy us as well. But we have also seen that the walls of racism can be dismantled. We are not condemned to an inexorable fate, but are offered the vision and the possibility of freedom. Brick by brick, stone by stone, the prison of individual, institutional, and cultural racism can be destroyed. You and I are urgently called to join the efforts of those who know it is time to tear down, once and for all, the walls of racism. The danger of self-destruction seems to be drawing ever more near. The results of centuries of national and worldwide conquest and colonization, of military buildups and violent aggression, of overconsumption and environmental destruction may be reaching the point of no return. A small and predominantly white minority of global population derives its power and privilege from sufferings of the vast majority of peoples of color. For the sake of the world and ourselves, we dare not allow it to continue.

#### The 1ac’s search for meaning through aesthetics is never-ending – it stops us from confronting boredom

Svendsen 05 (Lars, Norwegian Professor of Philosophy, *A Philosophy of Boredom*, p. 30-1)

Human beings are addicted to meaning. We all have a great problem: Our lives must have some sort of content. We cannot bear to live our lives without some sort of content that we can see as constituting a meaning. Meaninglessness is boring. And boredom can be described metaphorically as a meaning withdrawal. Boredom can be understood as a discomfort which communicates that the need for meaning is not being satisfied. In order to remove this discomfort, we attack the symptoms rather than the disease itself, and search for all sorts of meaning-surrogates. A society that functions well promotes man's ability to find meaning in the world; one that functions badly does not. In premodern societies there is usually a collective meaning that is sufficient.67 For us 'Romantics', things are more problematic, for even though we often embrace collectivist modes of thought, such as nationalism, they always ultimately appear to be sadly insufficient. Of course, there is still meaning, but there seems to be less of it. Information, on the other hand, there is plenty of. Modern media have made an enormous search for knowledge possible - some­thing that undeniably has positive aspects, but by far the most of it is irrelevant noise. If, on the other hand, we choose to use the word 'meaning' in a broad sense, there is no lack of meaning in the world - there is a superabun­dance. We positively wade through meaning. But this meaning is not the meaning we are looking for. The empti­ness of time in boredom is not an emptiness of action, for there is always something in this time, even if it is only the sight of paint drying. The emptiness of time is an emptiness of meaning.

#### This search to avoid boredom makes the largest atrocities possible

Svendsen 05 (Lars, Norwegian Professor of Philosophy, *A Philosophy of Boredom*, p. 69-77)

Patrick Bateman, the main character in Bret Easton Ellis's American Psycho/8 is William Lovell 200 years on. Admittedly, William's list of sins is fairly modest compared to Bateman's run of sadistic murders,79 for William merely murders a couple of people, carries out some predatory raids, abducts a woman, commits fraud... The extreme scenes of murder and torture in American Psycho were necessary because the crimes carried out by William are fairly anodyne by today's standards. Even so, William and Patrick are spiritual brothers who share boredom and transgression as their main perspectives on the world. Whereas the word Langeweile can be found on virtually every page of William Lovell, the term 'bored' only appears about ten times in American Psycho. Bateman is sick with boredom and resorts to bestiality in the hope of being able to get beyond this boredom. The relationship between an aesthetic lifestyle, boredom, transgression and evil is clearly formulated in Stendhal's On Love: One sees the ageing Don Juan blame the state of things, never himself, for his own satiety. One sees him being tormented by the poison that consumes him, carry on in all directions and continually change the object of his desire. But no matter what charisma he has, it is ultimately a choice between two evils - between still and bustling boredom. This is the sole choice left to him. Finally, he realises the fatal truth and admits it to himself, after which the only pleasure he has left is imposing his will on others, of doing evil for the sake of evil.80 Don Juan cannot, according to his own logic, blame himself for the boredom into which he has plunged ever more deeply because he has not wished for this to happen.81 Patrick Bateman, too, claims that he is guiltless.82 The transgression is ultimately neither liberating nor self-realizing, and yet is seems to the Romantic to be the only alternative. Romanticism leads to existentialism, and the Romantic William Lovell claims 'My existence is the only conviction which is necessary for me.'83 Sartre could easily have written that in Being and Nothingness. Perhaps I can reformulate the thesis: Romanticism is already existentialism and existentialism is incorrigibly Romantic. Of course, all of this is intimately connected to historical and political developments. With the emergence of the bourgeoisie and the death of God, ~~man~~ no longer set outs to serve something or someone else, but seeks to fulfil ~~him~~self and gain ~~his~~ own happiness. The adventurousness of the Romantic is an aesthetic reaction to the monotony of the bourgeois world. The human subject is to be the source of all meaning and value, but it is still tied to the limitations of the physical world. The Romantic self attempts to overcome this situation by appropriating the entire world, i.e., by transgressing or negating all outer limits and rejecting all corrective standards outside himself. The romantic self becomes a solipsistic self, one that has no belief in anything outside itself - for there cannot be any meaning other than what it has produced itself. While Tieck seems to condone the acts of William Lovell - not in the sense of defending his misdeeds, but rather because, like Holderlin, he harbours a deep respect for Romantic striving - Bret Easton Ellis rejects every aspect of Patrick Bateman. William is not a traditional villain. He has an unquenchable thirst for freedom, for fully realizing himself. This calls for a transgression of limits that are both outer (e.g. laws and customs) and inner (e.g. shame and conscience). He is, perhaps, the first fictional hero who consistently follows a transgressive logic. More of them were to follow, with Patrick Bateman as the most extreme to date. The first words in American Psycho are 'abandon all hope ye who enter here/ We recognize this as the injunction above the gate to the Inferno in Canto 111 of Dante's Commedia. The final words of the novel are 'this is not an exit'.84 The story is framed by these two sentences; as Bateman correctly observes: 'My life is a living hell.' But nobody ever listens to him when he points this out. One of the novel's mottos - taken from the song (Nothing But) Flowers by Talking Heads - is 'And as things fell apart / Nobody paid much attention.' There is no wholeness of meaning in American Psycho; all the events are like isolated atoms. The novel has a completely flat and episodic structure, without any genuine progression and an end that just tails off. It consists of little other than the affluent Patrick Bateman's descriptions of fashion, tv shows, murder, torture, drinks, superficial dialogues, etc. It is universe with no genuine qualitative differences, a world of levelling. And levelling creates boredom. One of the few episodes that has the strongest emotional impact on Bateman in the course of the novel is when one of his acquaintances has a smarter visiting card than himself.85 Everybody in Bateman's world is the same. They are all rich and trim, with fine physiques.86 Since everything appears to be the same, any difference, no matter how insignificant it would appear to be for the reader, becomes crucial for Bateman; he is, for example, full to bursting-point at the difference between two brands of mineral water!87 The only thing that matters is the surface: 'I feel like shit but look great.'88 Bateman is repeatedly described by others as 'the boy next door',89 but he himself claims to be 'a fucking evil psychopath',90 although without anyone paying any attention. His lack of identity is emphasised throughout the novel by his being confused with other people. Not even the doorman in his building seems to recognize his existence: 'I am a ghost to this man, I'm thinking. I am something unreal, something not quite tangible.'91 And later in the novel, during dinner with a woman he later tortures and murders: CI mean, does anyone really see anyone? Does anyone really see anyone else? Did you ever see me7. SeeV 92 He has no sense of personal identity, and attempts to achieve an identity by means of fashion and transgressions. The exteriorization of his personality is also indicated by his talking about himself in one chapter in the third person.93 He compensates for a minimal self by consistently attempting to transgress, to expand. Bateman tries to establish a sense of identity by making subtle distinctions between different designer brands, but this is such an abstract, impersonal meaning that it cannot serve a genuinely individuating function. He therefore attempts to create an experience of a self by means of transgressions. A distinction between transgression and transcendence could be useful here. Transgression simply means exceeding or going beyond a limit. It can be moderate or radical, but it always takes place within the same plane. Hence we can say that a transgression is always horizontal or flat. Transcendence, on the other hand, implies more of a qualitative leap into something radically other. The closest Bateman ever comes to transcendence is when he has a quasi-religious experience at a U2 concert: Suddenly I get this tremendous surge of feeling, this rush of knowledge and my own heart beats faster because of this and it's not impossible to believe that an invisible chord attached to Bono has now encircled me and now the audience disappears and the music slows down, gets softer, and it's just Bono onstage - the stadium's deserted, the band fades away.94 It is worth noting that this near-transcendence comes about without Bateman actively attempting to promote it - it forces itself on him from the outside. He first dismisses Bono's outstretched hand, but he finds himself affected nevertheless. Bono represents grace - grace can perfectly well assume an apparently trivial form, as Flannery O'Connor so brilliantly describes it in novels and short stories - but Bateman fails to hold on to the moment. He does not gain redemption, like Faust for example, but falls back into world and feels that information about business transactions is more important than the bond with Bono. The moment does not last, for there is no room for the moment in Bateman's world, as his deep boredom stifles even mystical experiences, and he slides back into immanence. For Patrick, transgression not transcendence is what counts. The problem is that after a while transgression ceases to mean anything to him; the atrocious is no longer capable of creating any sort of feeling in him.95 Patrick is like all the others around him, except that he is more extreme, and he also seems to suffer more under the all-embracing shallowness. Let us take a closer look at a passage near the end of the novel, where Patrick formulates something which can be taken as his philosophical outlook on life: where there was nature and earth, life and water, I saw a desert landscape that was unending, resembling some sort of crater, so devoid of reason and light and spirit that the mind could not grasp it on any sort of conscious level and if you came close the mind would reel backward, unable to take it in. It was a vision so clear and real and vital to me that in its purity it was almost abstract. This was what I could understand, this was how I lived my life, what I constructed my movement around, how I dealt with the tangible. This was the geography around which my reality revolved: it did not occur to me, ever, that people were good or that a man was capable of change or that the world could be a better place through one's taking pleasure in a feeling or a look or a gesture, of receiving another person's love or kindness. Nothing was affirmative, the term 'generosity of spirit' applied to nothing, was a cliche, was some kind of bad joke. Sex is mathematics. Individuality no longer an issue. What does intelligence signify? Define reason. Desire - meaningless. Intellect is not a cure. Justice is dead. Fear, recrimination, innocence, sympathy, guilt, waste, failure, grief, were things, emotions, that no one felt anymore. Reflection is useless, the world is senseless. Evil is its only permanence. God is not alive. Love cannot be trusted. Surface, surface, surface was all that anyone found meaning in ... this was civilisation as I saw it, colossal and jagged .. .96 God is dead, the world is devoid of meaning, justice is dead and sexuality fully quantified, reduced to a question of how much and how many. This is Bateman's world. There is nothing but surface, and this surface has no depth at all. How could one possibly find meaning in such a world? His answer is to push it to its limits and beyond, to transgress every conceivable and inconceivable limit, in order to create differences and thereby transgress the levelling. By wading in gore and ripping out guts, Bateman feels he actually manages to get hold of something real. 'This is my reality. Everything outside of this is like some movie I once saw.'97 Reality slips away from him, and the reader is unable to determine with any certainty what Bateman really does and what he merely imagines, for there is no corrective standard outside his own, solipsistic reality: 'This is simply how the world, my world, moves.'98 Such a solipsism is fully in compliance with traditional existentialist thought, with the use of such terms as 'anxiety', 'dread', 'nausea', etc. Anxiety espe-daily plays a central role in American Psycho. Bateman mentions a 'nameless dread' on a number of occasions." He says 'something about various forms of dread' to his secretary, without specifying further.100 This dread has little metaphysical depth. On one occasion he has an attack of anxiety because there are too many films to choose from in a video shop. The banality of the anxiety, however, does not make it any the less serious for the person affected by it. Bateman's evil probably has its roots in this feeling of dread. In C. Fred Alford's insightful study, What Evil Means to Us, precisely the feeling of dread is emphasised as a common feature of evil.101 The world appears to be completely contingent for Bateman, and all his acts seem to be completely random. He repeatedly claims that there is no ultimate reason for doing one thing rather than another. Everything he has previously learnt - 'principles, distinctions, choices, morals, compromises, knowledge, unity, prayer - all of it was wrong, without any final purpose.'102 The politically correct pronouncements that Patrick reels off have no substance and no relation at all to the life he is actually living. As when he says that it is vital to promote a return to traditional values and social conscience, and to fight materialism.103 There are three chapters in the book on music, for music is one of Bateman's main interests: one on Genesis, one on Whitney Houston and one on Huey Lewis and the News. In other words, he has a terrible taste in music. These chapters are interesting because the appalling banalities Bateman reels off about this music are actually more profound and mature than he normally is himself. He is deeply moved by a song by Genesis that expresses 'loneliness, paranoia and alienation', but also a 'hopeful humanism'.104 Lacking an emotional life of his own, the banal music becomes a surrogate. For instance, he praises Huey Lewis and the News for singing so much about love instead of posing as young nihilists.105 He is deeply moved by Whitney Houston's The Greatest Love of All, which he claims approaches the sublime and expresses a crucial message to mankind: 'Its universal message crosses all boundaries and instils one with the hope that it's not too late for us to better ourselves, to act kinder. Since it is impossible in the world to empathize with others, we can always empathize with ourselves. It's an important message, crucial really.'106 This nonsense naturally has an ironic effect in the novel. Where Bateman attempts to show some real depth, his abnormal shallowness is revealed. It is also worth noting a song by Madonna, Like a Prayer, which Bateman hears several times: 'life is a mystery, everyone must stand alone.'107 Bateman is alone in the world, cut off from any human contact that goes beyond the uncompromisingly superficial, and his life is incomprehensibly flat. Bateman's existential exile and lack of a real world, make any empathic relation to other people impossible, but they also drain him of all humanity: I had all the characteristics of a human being - flesh, blood, skin, hair - but my depersonalization was so intense, had gone so deep, that the normal ability to feel compassion had been eradicated, the victim of a slow, purposeful erasure. I was simply imitating reality, a rough resemblance of a human being, with only a dim corner of my mind functioning. He writes about his own Virtual absence of humanity'.109 Bateman has in fact a certain degree of self-knowledge, and realizes that he has no substance, but argues that it has been impossible to reach any sort of deeper understanding of himself.110 The impossibility stems from the fact that there is no depth there to understand, other than a desperate sense of boredom. No rational analysis can tell him who is, for cthere ... is ... no ... key'. Hegel makes the point that as soon as a certain level of self-consciousness is reached, a need for an identity emerges. Such an identity can exist in many different variants; the important thing for the present concern is that the lack of such an identity is incompatible with leading a meaningful life. Bateman's perversities make up his absolutely hopeless attempt at overcoming boredom in a world that contains no personal meaning for him.

## Case

#### Solvency

#### The ends justify the means

Isaac 2 (Jeffrey, Professor of PoliSci @ Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD Yale, “Ends, Means, and Politics,” Dissent Magazine Vol 49 Issue 2)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law [it] can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

#### Case outweighs

Ford ‘11 (Chris Ford, Senior Fellow at the Hudson Institute in Washington, D.C., He previously served as U.S. Special Representative for Nuclear Nonproliferation, Principal Deputy Assistant Secretary of State, and General Counsel to the U.S. Senate Select Committee on Intelligence, 1/10/11, Havea and Have-Nots: "Unfairness in nuclear Weapons possession," [www.newparadigmsforum.com/NPFtestsite/?p=658](http://www.newparadigmsforum.com/NPFtestsite/?p=658), 2011)

First, however, let’s provide some context. As I noted above, it is fascinating that in the long history of military technological have/have not dynamics, the international politics of nuclear weaponry has acquired such a strong flavor of moral critique. To my knowledge, after all, one did not see Xiongnu politics emphasizing how darned unfair it was of those nasty Chinese Emperors to monopolize the presumed secrets of China’s bingjia strategic literature. Nor does the unfairness of Byzantine efforts to control the recipe for Greek Fire seem to have become a prevalent trope of Frankish or Persian diplomacy. “Have nots” have surely always coveted powerful tools possessed by the “haves,” or at least wished that the “haves” did not possess them. It seems pretty unusual, however, for non-possessors to articulate such understandable envy and resentment in the moral language of “unfairness,” and to assume that this presumed injustice should motivate the “haves” to change their behavior. This argument seems to be a curiously modern phenomenon. One might respond that the very specialness of nuclear weapons makes such a position appropriate. After all, while a local monopoly on iron swords may have given the Vikings some advantage in skirmishes with Native Americans in what the Norsemen called Vinland, such technological asymmetry was not strategically decisive. (Indeed, the Vikings seem ultimately to have been pushed out of the New World entirely.) If iron had threatened to offer the Vikings an insuperable advantage, would the Skraelings have been justified in developing a moral language of “have/have not” resentment that demanded either the sharing of iron weaponry or Viking disarmament in the name of achieving a global “iron zero”? I’m skeptical, but for the sake of argument let’s say “maybe.” The argument that nuclear weapons are “special,” however, is a two-edged sword. Perhaps they are indeed so peculiarly potent and militarily advantageous that their asymmetric possession is sufficiently “unfair” to compel sharing or disarmament. Such an argument, however, sits only awkwardly – to say the least – with the simultaneous claim by many advocates of the “have/have not” critique that nuclear weapons have no real utility in the modern world and can therefore safely be abandoned by their possessors. After all, it is hard to paint nuclear weapons as being strategically decisive and useless at the same time. (If they are indeed useless, the conclusion of “unfairness” hardly sounds very compelling. If they aren’t useless, however, it may be appropriately hard to abolish them.) More importantly, any argument about the destructively “special” character of nuclear weaponry cuts against the “unfairness critique” in that it is this very specialness that seems to rob the “have/have not” issue of its moral relevance. Unlike iron swords, the bingjia literature, Greek Fire, or essentially all other past military technologies the introduction of which produced global control/acquisition dynamics, nuclear weapons have introduced existential questions about the future of human civilization which utterly swamp the conventional playground morality of unfair “have/have not” competition. No prior technology held the potential to destroy humanity, making nuclear weapons – with the possible exception of certain techniques of biological weaponry – a sui generis case to which the conventional “unfairness” critique simply does not very persuasively apply. III. Implications Let me be clear about this. The moral critique of nuclear weapons possession may yet speak to the issue of whether anyone should have them. (This is not the place for a discussion of the feasibility of the remedies proposed by the disarmament community, but let us at least acknowledge the existence of a real moral issue.) But this matter has nothing to do with “unfairness” per se – and to the extent that it purports to, one should give it little credence. If indeed nuclear weapons do menace the survival of humanity, it is essentially irrelevant whether their possession is “unfairly” distributed – and it is certainly no solution to make the global balance of weaponry more “fair” by allowing more countries to have them. (Disarmament advocates hope to address the fairness problem by eliminating nuclear weapons, of course, but this is just icing. Disarmament is almost never articulated as being driven primarily by fairness; the critical part of that argument is instead consequentialist, stressing the dangers that any nuclear weapons are said to present.) As a moral critique, in other words, the fair/unfair dichotomy fails to speak intelligibly to the world’s nuclear dilemma. It isn’t really about “fairness” at all. Given the entanglement of nuclear weapons issues with quasi-existential questions potentially affecting the survival of millions or perhaps even billions of people, moreover, it stands to reason that an “unfair” outcome that nonetheless staves off such horrors is a perfectly good solution. On this scale, one might say, non-catastrophe entirely trumps accusations of “unfairness.” Questions of stability are far more important than issues of asymmetric distribution. This, of course, has powerful implications for nonproliferation policy, because pointing out the hollowness of the “unfairness” argument as applied to nuclear weapons suggests the moral sustainability of nonproliferation even if complete nuclear disarmament cannot be achieved and the world continues to be characterized by inequalities in weapons possession. We forget this at our collective peril. Don’t get me wrong. “Unfairness” arguments will presumably continue to have a political impact upon the diplomacy of nuclear nonproliferation, either as a consequence of genuine resentment or as a cynical rationalization for the destabilizing pursuit of dangerous capabilities. (Indeed, one might even go so far as to suspect that the emergence of the “unfairness” critique in modern diplomatic discourse is in some sense partly the result of how morally compelling nonproliferation is, in this context, irrespective of the “fairness” of “have/have not” outcomes. Precisely because the moral case for nonproliferation-driven inequality is so obvious and so compelling if such imbalance serves the interests of strategic stability, perhaps it was necessary to develop a new rationale of “fairness” to help make proliferation aspirations seem more legitimate. Skraelings, one imagines, did not need an elaborate philosophy of “fairness” in order to justify trying to steal iron weapons; the desirability of such tools was simply obvious, and any effort to obtain them unsurprising and not in itself condemnable.) But even in this democratic and egalitarian age, merely to incant the mantra of “unfairness” – or to inveigh against the existence of “haves” when there also exist “have nots” – is not the same thing as having a compelling moral argument. Indeed, I would submit that we lose our moral bearings if we allow “unfairness” arguments to distract us from what is really important here: substantive outcomes in the global security environment. “Unfairness,” in other words, is an overrated critique, and “fairness” is an overrated destination. At least where nuclear weapons are concerned, there are more important considerations in play. Let us not forget this.

#### Extinction first – VTL inevitable

Bernstein ‘2 (Richard J., Vera List Prof. Phil. – New School for Social Research, “Radical Evil: A Philosophical Interrogation”, p. 188-192)

There is a basic value inherent inorganic being, a basic affirmation, "The Yes' of Life" (IR 81). 15 "The self-affirmation of being becomes emphatic in the opposition of life to death. Life is the explicit confrontation of being with not-being. . . . The 'yes' of all striving is here sharpened by the active `no' to not-being" (IR 81-2). Furthermore — and this is the crucial point for Jonas — this affirmation of life that is in all organic being has a binding obligatory force upon human beings. This blindly self-enacting "yes" gains obligating force in the seeing freedom of man, who as the supreme outcome of nature's purposive labor is no longer its automatic executor but, with the power obtained from knowledge, can become its destroyer as well. He must adopt the "yes" into his will and impose the "no" to not-being on his power. But precisely this transition from willing to obligation is the critical point of moral theory at which attempts at laying a foundation for it come so easily to grief. Why does now, in man, that become a duty which hitherto "being" itself took care of through all individual willings? (IR 82). We discover here the transition from is to "ought" — from the self-affirmation of life to the binding obligation of human beings to preserve life not only for the present but also for the future. But why do we need a new ethics? The subtitle of The Imperative of Responsibility — In Search of an Ethics for the Technological Age — indicates why we need a new ethics. Modern technology has transformed the nature and consequences of human action so radically that the underlying premises of traditional ethics are no longer valid. For the first time in history human beings possess the knowledge and the power to destroy life on this planet, including human life. Not only is there the new possibility of total nuclear disaster; there are the even more invidious and threatening possibilities that result from the unconstrained use of technologies that can destroy the environment required for life. The major transformation brought about by modern technology is that the consequences of our actions frequently exceed by far anything we can envision. Jonas was one of the first philosophers to warn us about the unprecedented ethical and political problems that arise with the rapid development of biotechnology. He claimed that this was happening at a time when there was an "ethical vacuum," when there did not seem to be any effective ethical principles to limit ot guide our ethical decisions. In the name of scientific and technological "progress," there is a relentless pressure to adopt a stance where virtually anything is permissible, includ-ing transforming the genetic structure of human beings, as long as it is "freely chosen." We need, Jonas argued, a new categorical imperative that might be formulated as follows: "Act so that the effects of your action are compatible with the permanence of genuine human life"; or expressed negatively: "Act so that the effects of your action are not destructive of the future possibility of such a life"; or simply: "Do not compromise the conditions for an indefinite continuation of humanity on earth"; or again turned positive: "In your present choices, include the future wholeness of Man among the objects of your will."

#### VTL inev

Frankl ’46 (Holocaust Survivor) 46 (Victor Frankl, Professor of Neurology and Psychiatry at the University of Vienna, Man’s Search for Meaning, 1946, p. 104)

But I did not only talk of the future and the veil which was drawn over it. I also mentioned the past; all its joys, and how its light shone even in the present darkness. Again I quoted a poet—to avoid sounding like a preacher myself—who had written, “Was Dii erlebst, k,ann keme Macht der Welt Dir rauben.” (What you have experienced, no power on earth can take from you.) Not only our experiences, but all we have done, whatever great thoughts we may have had, and all we have suffered, all this is not lost, though it is past; we have brought it into being. Having been is also a kind of being, and perhaps the surest kind. Then I spoke of the many opportunities of giving life a meaning. I told my comrades (who lay motionless, although occasionally a sigh could be heard) that human life, under any circumstances, never ceases to have a meaning, and that this infinite meaning of life includes suffering and dying, privation and death. I asked the poor creatures who listened to me attentively in the darkness of the hut to face up to the seriousness of our position. They must not lose hope but should keep their courage in the certainty that the hopelessness of our struggle did not detract from its dignity and its meaning. I said that someone looks down on each of us in difficult hours—a friend, a wife, somebody alive or dead, or a God—and he would not expect us to disappoint him. He would hope to find us suffering proudly—not miserably—knowing how to die.

**No solvency –**

**A. Court solvency takes years.**

**Powers and Rothman**, Research Associate for the Center for Social and Political Change at Smith College and Professor of Gov and Director of the Center for Social and Political Change at Smith College, **2k2**

[Stephen and Stanley, *The Least Dangerous? Consequences of Judicial Activism*, p179]

A recurrent problem with the judiciary’s extension of fundamental rights to the institutions we have studied is that when courts intervene, they do not merely point out a constitutional or statutory violation that must be corrected. They typically dictate a detailed set of remedies to address the issue. This type of intervention has generated a notoriously rigid approach to institutional reform. The judiciary was not designed to legislate or to execute the laws, only to interpret their meaning. It lacks the accountability required of a policy-making body. Judges are only accountable to the public under the most rare and extreme circumstances. Yet in the wake of elaborate court orders, prisons, mental hospitals, schools, police departments, and corporations must all continue to balance individual rights against group or societal interests. Unfortunately, judges do not have the expertise, the time, or the inclination to make the kind of long-term incremental adjustments that may be critical to institutional stability and progress. That is why court-ordered remedies rarely work as planned and have so many unanticipated consequences. Moreover, as we have seen, modification or reversal of court rulings adversely impacting social and political institutions generally takes years.

**B. No enforcement or funding**

**Pacelle**, poli sci prof and legal studies coordinator at the univ of Missouri at St. Louis, **2k2**

[Richard, *The Role of the Supreme Court in American Politics: The Least Dangerous Branch?*, p81]

Even if the Supreme Court was to carve out some sphere of power for itself, there would be significant limitations. Any Court decision has to be enforced, but enforcement power is the province of the president and the executive branch. Thus, the Court is at their mercy. If the president does not like the decision, he does not have to enforce it. Indeed, history books report that Andrew Jackson, upset at the Worcester v. Georgia (1832) decision, growled that “John Marshall made his decision, now let him enforce it.” There was concern that Dwight Eisenhower would not back the Brown decision when the Southern states resisted. Ultimately, though quite reluctantly, Eisenhower sent troops to Little Rock to support the decision. What if the Court’s decision requires active policy intervention and the allocation of resources to help carry out the directives? If the courts determine that prisons are overcrowded or schools are substandard, will the legislature, which has the taxing and spending power, be willing to raise and spend money to correct the problem? It took a decade before serious legislative support for the Brown decision was provided. Title VI of the Civil Rights Act of 1964 empowered the government to cut off federal funds to school districts that did not comply with the desegregation directive (Halpern 1995, 30—59). The bottom line is the adage “the Court lacks the sword and the purse”—it lacks the ability to enforce its decisions and the power over the resources to do so. This places a limitation on the justices. If they stray too far from the acceptable boundaries set by Congress or the president, they risk a negative response from the branches with the real power. If the Court can safely be ignored by the other branches and the public, the cost is its institutional legitimacy.

CP won’t shape future precedent

Brownt 8.(Daniel A. Brownt, J.D. candidate, Seattle University School of Law, 31 Seattle Univ. L. R. 707, Spring 2008)

Yet inaction by Congress would unquestionably have profound effects. Professor Hellerstein, another prominent tax authority, contends that if Congress does not act, thereby leaving the validity of state tax incentives to the mercy of existing **Commerce** **Clause jurisprudence, judicial uncertainty and inconsistency will continue to undermine the legitimacy of state tax incentives**. n200 He argues that it would take decades for courts to definitively determine the general validity of the tax incentives that exist in practically every state. n201 Moreover, even if the Court were to choose to squarely address the question, it is unlikely that this would lead to a comprehensive resolution of the issue: **the Court typically confines its decisions to the facts of individual cases, thereby avoiding questions closely related to those presented in the case before** it. n202 Touching upon this very point almost fifty years ago, Justice Frankfurter wrote: At best, this Court can only act negatively; it can determine whether a specific state tax is imposed in violation of the Commerce Clause. . . . . . . Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing freedom of the States and the needed limits on such state taxing power. n203

#### Authoriatiarn states inev

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. Ilya Somin Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

### Biopolitics 1nc

#### Biopolitics not so bad

**Dickinson** **2004** – University of Cincinnati (Edward Ross, “Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About “Modernity,” Central European History, vol. 37, no. 1, March)

In short, the continuities between early twentieth-century biopolitical discourse and the practices of the welfare state in our own time are unmistakasble. Both are instances of the “disciplinary society” and of biopolitical, regulatory, social-engineering modernity, and they share that genealogy with more authoritarian states, including the National Socialist state, but also fascist Italy, for example. And it is certainly fruitful to view them from this very broad perspective. But that analysis can easily become superficial and misleading, because it obfuscates the profoundly different strategic and local dynamics of power in the two kinds of regimes. Clearly the democratic welfare state

is not only formally but also substantively quite different from totalitarianism. Above all, again, it has nowhere developed the fateful, radicalizing dynamic that characterized National Socialism (or for that matter Stalinism), the psychotic logic that leads from economistic population management to mass murder. Again, there is always the potential for such a discursive regime to generate coercive policies. In those cases in which the regime of rights does not successfully produce “health,” such a system can —and historically does— create compulsory programs to enforce it. But again, there are political and policy potentials and constraints in such a structuring of biopolitics that are very different from those of National Socialist Germany. Democratic biopolitical regimes require, enable, and incite a degree of self-direction and participation that is functionally incompatible with authoritarian or totalitarian structures. And this pursuit of biopolitical ends through a regime of democratic citizenship does appear, historically, to have imposed increasingly narrow limits on coercive policies, and to have generated a “logic” or imperative of increasing liberalization. Despite limitations imposed by political context and the slow pace of discursive change, I think this is the unmistakable message of the really very impressive waves of legislative and welfare reforms in the 1920s or the 1970s in Germany.90

Of course it is not yet clear whether this is an irreversible dynamic of such systems. Nevertheless, such regimes are characterized by sufficient degrees of autonomy (and of the potential for its expansion) for sufficient numbers of people that I think it becomes useful to conceive of them as productive of a strategic configuration of power relations that might fruitfully be analyzed as a condition of “liberty,” just as much as they are productive of constraint, oppression, or manipulation. At the very least, totalitarianism cannot be the sole orientation point for our understanding of biopolitics, the only end point of the logic of social engineering.

This notion is not at all at odds with the core of Foucauldian (and Peukertian) theory. Democratic welfare states are regimes of power/knowledge no less than early twentieth-century totalitarian states; these systems are not “opposites,” in the sense that they are two alternative ways of organizing the same thing. But they are two very different ways of organizing it. The concept “power” should not be read as a universal stifling night of oppression, manipulation, and entrapment, in which all political and social orders are grey, are essentially or effectively “the same.” Power is a set of social relations, in which individuals and groups have varying degrees of autonomy and effective subjectivity. And discourse is, as Foucault argued, “tactically polyvalent.” Discursive elements (like the various elements of biopolitics) can be combined in different ways to form parts of quite different strategies (like totalitarianism or the democratic welfare state); they cannot be assigned to one place in a structure, but rather circulate. The varying possible constellations of power in modern societies create “multiple modernities,” modern societies with quite radically differing potentials.

#### Their vision of a democratic politics liberates the human mind --- advances in orientation recycle the same utopian ideals of progressivism

Ophuls ’11 - former member of the U.S. Foreign Service and has taught political science at Northwestern University (Ophuls, William. “Plato's Revenge: Politics in the Age of Ecology.” 19 August 2011. P. 1-9)

From this perspective, the rise of civilization constitutes a Faustian bargain or even a tragic fall from primal grace. When human beings abandoned the ecological niche in which they had evolved, they left a state of natural plenitude, however rough, for a life of toil in ﬁeld and mine. They became more numerous and prosperous but less healthy. 4 The technological means that they used to enrich themselves also harmed nature and turned war from a blood sport into a vehicle for conquest or extermination. Liberty was replaced by authority, equality by hierarchy, and fraternity by disunity. The many, who had once lived in small bands as kinsmen and equals, became subject to the few — to the emperors, kings, and tyrants who expropriated the wealth they produced. Natural religion gave way to organized religion, whose priests, rites, and doctrines served mostly the oppressors ’ interests, even as they gave some solace to the estranged denizens of the ancient cities. In short, the indisputable advantages of civilization were purchased at a high price. 5 Much of this was apparent to the philosophers and states- men who created the modern world, but their diagnosis of the disease — and therefore their proposed treatment — was ﬂawed. They sought to cure two of the ﬁve great ills (economic inequality and political oppression) by intensifying two others — ecological exploitation and military aggression. As a result, the modern age is marked by the ethos of the conquis- tador. Scientists master nature in their laboratories so that engineers can build arsenals and factories, manufacturers can make arms and goods, and soldiers and merchants can domi- nate the lands and markets of the world. These thinkers were driven by a quest for power — for dominion over nature, which would foster dominion over the world. But as Lord Acton famously said, power corrupts, and the more absolute the power, the worse the corruption. Indeed, power seems to drive men and women mad, with hubris being the worst symptom of the disease. The response of the Enlightenment philosophes to the ﬁfth great ill was equally problematic. They set about liberating men and women from clerical religion because they detested the venality, inquisitorial zeal, and reactionary politics of the established church, and they succeeded all too well in crushing Voltaire ’ s inf â me . When the babe of morality was thrown out with the bathwater of superstition, the consequence was a process of demoralization that began slowly but has now become a rout. This demoralization has three aspects — the corruption of morals and mores, the undermining of morale, and the spread- ing of confusion — and has resulted in the loss of almost all sense of honor, duty, and responsibility. Solidarity, too, has eroded, as individuals and groups engage in a **winner-take-all struggle** for power and wealth. However glutted with goods people in rich countries may be, they feel that they are subject to a vast, impersonal, out-of-control system that gives them the vote, that mostly abides by juridical rules, but that denies them real liberty and equality. Fraternity is not even an issue. Last but not least, because God is dead and only instrumental reason counts, all authority and orientation have been over- thrown — so men and women have lost not only their intellectual and spiritual bearings but even the means by which to take them. The ﬁ ve great ills of civilization therefore have become evils that threaten the continued existence of human society. Eco- logical exploitation has degenerated into the systematic and ruthless abuse of nature, causing an accelerated degra dation and depletion of our natural milieu. We ourselves have begun to suffer certain inconveniences, and our grandchildren stand to inherit a poisoned and impoverished planet. Indeed, as the age of petroleum draws to a close, the material basis for an advanced technological culture capable of supporting billions of people in sprawling megacities is by no means assured. Similarly, military aggression has escalated **into potential [omnicide**] holocaust, as Weapons of Mass Destruction are ever more widely disseminated. And wars are no longer fought by brave warriors and wily generals who meet face to face on a battle- ﬁeld but by military bureaucrats and technicians who risk nothing as they rain electronic death on remotely seen enemies — or unarmed innocents. In the same way, our economic system has vastly ampliﬁ ed the scope and scale of economic inequality. Despite a general rise in material well-being, wealth is radically maldistributed, and billions of people continue to live in destitution and misery. In addition, the rich command resources unimaginable to ancient kings, so the rod by which deprivation is measured has grown enormously. Nor has political oppression vanished. Even in states where the principle of liberty is well established, the burden of bureaucratic regulation becomes ever more minute, all encom- passing, and suffocating. Traditional liberties are being eroded in the name of expediency in efforts to defend national security and ﬁ ght terrorism, crime, drugs, and tax evasion. A sphere of privacy hardly exists anymore. Meanwhile, democracy is mostly a sham: either money rules, or remote policy elites in cahoots with powerful economic interests make all the important decisions. Lastly, spiritual malaise is pandemic. As a result, demo- ralized individuals must struggle to keep their psychic footing. Many resort to diseased methods of coping, not only physical addiction to drugs, alcohol, and tobacco but also psychological addiction to eating, entertainment, gambling, pornography, sex, shopping, and sports. Many simply cannot cope. The armies of social workers and psychotherapists may help a handful of individuals, but they can do little to save society, which becomes fertile ground for every form of mania. This demoralization was never intended by the thinkers who created the modern world. Believing as they did (and not without reason) that organized religion was an almost unmiti- gated evil, they sought to liberate us from religious politics — from the interference of an established church in the public affairs of the state and the private affairs of the individual. Thanks to their efforts, we in the West are no longer subject to clerical oppression or to a despotic form of spirituality, for which we must be eternally grateful. But we have paid a steep price for this liberation. Indeed, far from creating a rational utopia, banishing superstition and exalting reason have created a spiritual void that has been ﬁ lled by absurd and dangerous political, social, and economic ideologies that have often proven to be as patho- logical in their historical consequences as the dogmatic religions of old. In retrospect, it may seem surprising that the philosophes had so few qualms about crushing the established church, one of the pillars of the existing social order. But they believed that traditional religion was dispensable precisely because they were certain that human reason, once liberated from theology, would soon discover the moral order implicit within the cosmos — an order to which men and women, being reasonable beings, would naturally and willingly accede. That did not happen. The secularization promoted by the Enlightenment took on a logic and momentum of its own. Rationalism displaced reason, so the only permissible natural laws were mechanical, not moral. Human beings also turned out to be far less reasonable and **much more irrational** than these thinkers assumed. The triumph of secularism has had consequences that are devastating in the political sphere. A purely rational and material politics — a politics without a moral code or a vision of the good life or a sense of the sacred — is a contradiction in terms. As Aristotle pointed out, no polity can long exist as “ a mere alliance ” of self-interested individuals. 6 What makes a political community cohere is what Aristotle called “ a rule of life ” — that is, a shared ethos. 7 But the rule of life of modern politics is that we shall have no positive rules, only negative ones that keep us from harming others but that otherwise leave us at liberty. The citizens themselves must sustain community through social institutions — churches, schools, voluntary associations, infor- mal networks — that inculcate a shared ethos and foster a sense of common destiny. In other words, the indispensable linchpin of the modern state is civil society, for it alone supplies the cohesion that a liberal polity lacks. Unfortunately, the process of demoralization described above has effectively destroyed the morals, mores, and morale of civil society. As a result, polity today is more and more a mere alliance of self-interested individuals who pursue their own private ends and who accept only minimal restraints on their actions. Liberty has become license, and the social basis of the modern, liberal state has eroded away. In effect, the project of modern politics has failed. When Hobbes took the radical step of severing politics from virtue and founding the polity on the self-interested individual, he started a movement that **liberated men and women** from subservience to king and bishop, but he ***also* set in motion** a **vicious circle of moral decay** that has all but overwhelmed civil society. The legal and bureaucratic machinery of government has grown larger and more oppressive in a mostly vain attempt to make up for social decline. We are being driven toward an administrative despotism that extinguishes both liberty and privacy because it is the most expedient way to deal with the moral breakdown caused by our basic political principles. It is bad enough that a secular and rational politics has destroyed its own foundation and now seems bent on creating a Leviathan. What is even more dangerous is that casting men and women loose from their traditional cultural and religious moorings leaves them adrift in a meaningless cosmos, lacking clear metaphysical or practical answers to the basic problems of life. The resulting spiritual vertigo is responsible for much of the social and personal dysfunction mentioned above and also for the calamitous history of the twentieth century. Only a few artists, philosophers, and free spirits thrive on the radical openness of cultural nihilism. The average person hates it, and if people do not get satisfactory answers to the questions of life from their inherited culture, then they will seek them else- where. This explains the popular appeal of the fanatical ide- ologies that drenched the last century in blood (and of the religious fundamentalism that now threatens to do the same in this one). In reality, the Enlightenment did not so much abolish reli- gion as redirect the spiritual drive of the Judeo-Christian tradi- tion toward worldly ends. We moderns are just as religious as our premodern ancestors, but we have chosen to worship two savage gods — Moloch and Mammon. Those who worship Moloch turn politics into a **perverted religion**. They try to ﬁll the void caused by cultural nihilism with eschatological secular creeds **dedicated to achieving a utopian ideal** of social perfec- tion. Those who worship Mammon turn politics into a religion of the self. They try to fill the void by glutting themselves with pleasure, exalting their **own self-gratification into a moral principle** and exploiting the state for selﬁ sh ends. These are both false gods. Neither ideology nor self-indulgence can satisfy the spiritual needs of human beings or make them truly happy, and both tend toward destruction. Our secular, rational, amoral way of life is failing. Our cultural myth to the contrary notwithstanding, this way of life represents **not a ﬁnal progressive advance** of civilization to “ the end of history ” but an **intensiﬁcation** of civilization’s ***inherent* ﬂaws** that can **end only in tragedy**. We must reinvent civilization so that it once again rests on a moral foundation by discovering a new “ rule of life ” that moderates, rather than magniﬁ es, the ﬁve great ills. And we now have the means to do so. The epistemological and ontological revolution of the twentieth century that produced systems ecology, particle physics, and depth psychology reveals a moral order that is immanent within the scientiﬁc description of the universe. From this order — “ written on the tablets of eternity ” — we can derive principles that could form the basis for humane and prudent governance. In other words, we have rediscovered the kind of natural law that the philosophes envisioned. We now understand, better than our Enlightenment ancestors, the means by which we can actualize these principles without resurrecting the evils of organized religion. In this book, I begin by examining the role played by law in human society before showing that ecology, physics, and psychology all agree in pointing us toward a politics of consciousness dedicated to expanding human awareness rather than extending human dominion. Unless the means of civilization are soon directed to an end that is higher than the endless accumulation of wealth and power, then the very enterprise of civilization itself, not just our particular form of it, may not long survive.

#### And a transition to environmental authoritarianism’s coming now---solves extinction

Beeson 10, Mark Beeson, Professor and Head of the Department of Political Science & International Studies, University of Birmingham, 2010, “The coming of environmental authoritarianism,” Environmental Politics, Vol. 19, No. 2, DOI:10.1080/09644010903576918

The environment has become the defining public policy issue of the era. Not only will political responses to environmental challenges determine the health of the planet, but continuing environmental degradation may also affect political systems. This interaction is likely to be especially acute in parts of the world where environmental problems are most pressing and the state's ability to respond to such challenges is weakest. One possible consequence of environmental degradation is the development or consolidation of authoritarian rule as political elites come to privilege regime maintenance and internal stability over political liberalisation. Even efforts to mitigate the impact of, or respond to, environmental change may involve a decrease in individual liberty as governments seek to transform environmentally destructive behaviour. As a result, ‘environmental authoritarianism’ may become an increasingly common response to the destructive impacts of climate change in an age of diminished expectations.

# 2nc

#### Obama will circumvent Congress and the courts

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

“The expectation is that they all do this,” said Ken Mayer, a political science professor at the University of Wisconsin-Madison who wrote “With the Stroke of a Pen: Executive Orders and Presidential Power.” “That is the typical way of doing things.”¶ But, experts say, Obama’s actions are more noticeable because as a candidate he was critical of Bush’s use of power. In particular, he singled out his predecessor’s use of signing statements, documents issued when a president signs a bill that clarifies his understanding of the law.¶ “These last few years we’ve seen an unacceptable abuse of power at home,” Obama said in an October 2007 speech.. “We’ve paid a heavy price for having a president whose priority is expanding his own power.”¶ Yet Obama’s use of power echoes that of his predecessors. For example, he signed 145 executive orders in his first term, putting him on track to issue as many as the 291 that Bush did in two terms.¶ John Yoo, who wrote the legal opinions that supported an expansion of presidential power after the 2001 terrorist attacks, including harsh interrogation methods that some called torture, said he thought that executive orders were sometimes appropriate – when conducting internal management and implementing power given to the president by Congress or the Constitution – but he thinks that Obama has gone too far.¶ “I think President Obama has been as equally aggressive as President Bush, and in fact he has sometimes used the very same language to suggest that he would not obey congressional laws that intrude on his commander-in-chief power,” said Yoo, who’s now a law professor at the University of California at Berkeley. “This is utterly hypocritical, both when compared to his campaign stances and the position of his supporters in Congress, who have suddenly discovered the virtues of silence.”¶ Most of Obama’s actions are written statements aimed at federal agencies that are published everywhere from the White House website to the Federal Register. Some are classified and hidden from public view.¶ “It seems to be more calculated to prod Congress,” said Phillip J. Cooper, the author of “By Order of the President: The Use and Abuse of Executive Direct Action.” “I can’t remember a president being that consistent, direct and public.”¶ Bush was criticized for many of his actions on surveillance and interrogation techniques, but attention has focused on Obama’s use of actions mostly about domestic issues.¶ In his first two years in the White House, when fellow Democrats controlled Capitol Hill, Obama largely worked through the regular legislative process to try to achieve his domestic agenda. His biggest achievements – including a federal health care overhaul and a stimulus package designed to boost the economy –came about with little or no Republican support.¶ But Republicans took control of the House of Representatives in 2010, making the task of passing legislation all the more difficult for a man with a detached personality who doesn’t relish schmoozing with lawmakers. By the next year, Obama wasn’t shy about his reasons for flexing his presidential power.¶ In fall 2011, he launched the “We Can’t Wait” campaign, unveiling dozens of policies through executive orders – creating jobs for veterans, adopting fuel efficiency standards and stopping drug shortages – that came straight from his jobs bills that faltered in Congress.¶ “We’re not waiting for Congress,” Obama said in Denver that year when he announced a plan to reduce college costs. “I intend to do everything in my power right now to act on behalf of the American people, with or without Congress. We can’t wait for Congress to do its job. So where they won’t act, I will.”¶ When Congress killed legislation aimed at curbing the emissions that cause global warming, Obama directed the Environmental Protection Agency to write regulations on its own incorporating some parts of the bill.¶ When Congress defeated pro-union legislation, he had the National Labor Relations Board and the Labor Department issue rules incorporating some parts of the bill.¶ “The president looks more and more like a king that the Constitution was designed to replace,” Sen. Charles Grassley, R-Iowa, said on the Senate floor last year.¶ While Republicans complain that Obama’s actions cross a line, experts say some of them are less aggressive than they appear.¶ After the mass shooting in Newtown, Conn., in December, the White House boasted of implementing 23 executive actions to curb gun control. In reality, Obama issued a trio of modest directives that instructed federal agencies to trace guns and send information for background checks to a database.¶ In his State of the Union address last month, Obama instructed businesses to improve the security of computers to help prevent hacking. But he doesn’t have the legal authority to force private companies to act.¶ “The executive order can be a useful tool but there are only certain things he can do,” said Melanie Teplinsky, an American University law professor who’s spoken extensively on cyber-law.¶ Executive actions often are fleeting. They generally don’t settle a political debate, and the next president, Congress or a court may overturn them.¶ Consider the so-called Mexico City policy. With it, Reagan banned federal money from going to international family-planning groups that provide abortions. Clinton rescinded the policy. George W. Bush reinstated it, and Obama reversed course again.¶ But congressional and legal action are rare. In 1952, the Supreme Court threw out Harry Truman’s order authorizing the seizure of steel mills during a series of strikes. In 1996, the District of Columbia Court of Appeals dismissed an order by Clinton that banned the government from contracting with companies that hire workers despite an ongoing strike.¶ Obama has seen some pushback.¶ Congress prohibited him from spending money to move inmates from the Guantanamo Bay U.S. naval base in Cuba after he signed an order that said it would close. A Chinese company sued Obama for killing its wind farm projects by executive order after he said they were too close to a military training site. A federal appeals court recently ruled that he’d exceeded his constitutional powers when he named several people to the National Labor Relations Board while the Senate was in recess.¶ But Obama appears to be undaunted.¶ “If Congress won’t act soon to protect future generations,” he told Congress last month, “I will.”

#### \*[By obligating a ballot for the purpose of assisting politics with ethical politics] …… the 1AC is justified with a moralizing politics, which removes us from true responsibility

BAUMAN 95 - Professor of sociology at the University of Leeds (Zygmunt, Life in fragments. Essays in postmodern Moralities, 1995)

In effect, the focus of moral concerns has been shifted from the self-scrutiny of the moral actor to the philosophical/political task of working out the prescriptions and proscriptions of an ethical code; meanwhile the ‘responsibility for the responsibility’—that is the responsibility for deciding that practical steps the responsibility requires to be taken and what steps are not called for (go beyond the call of duty)—has been shifted from the moral subject to supra-individual agencies **now endowed with exclusive ethical authority**.

From the moral actor’s points of view, the shift has much to be commended. (Indeed, this shift was one of the main reasons why the surrender of autonomy could be credibly represented as emancipation and increase of freedom). Having reduced the vague notoriously under defined responsibility to a finite list of duties or obligations, it spares the actor a lot of anxious groping in the dark, and helps to avoid the gnawing feeling that the account can never be closed, the work never finally done. The agony of choice (Hannah Arendt’s ‘tyranny of possibilities) is largely gone, as is the bitter aftertaste of a choice never ultimately proved right. The substitution of rule-following for the intense, yet never really successful, listening to infuriatingly taciturn, moral impulses, results in the almost unimaginable feat of not just absolving the actor from the personal responsibility for the wrongs done, but freeing the actor from the **very possibility of having sinned**. More promptly than the equivalent religious remedies—because in advance, before the act has been committed—the guilt is eliminated from choice, which is now simplified to the straightforward dilemma of obedience or disobedience to the rule. All in all, the modern shift from moral responsibility to ethical ruling offered a compensatory drug for an ailment induced by another modern accomplishment: the foiling of many determines threat once kept the actor’s actions within tight and strictly circumscribed limits, so producing an ‘unencumbered’, ‘disembodied’ personality that is allowed. ( and forced to) self-define and self-assert. To the moral self, modernity offered freedom complete with patented ways of escaping it.

In what are commonly called ‘postmodern’ times the modern ailment of autonomy persists, while the compensatory drug is not longer available on the National Ethical Service prescriptions. It can be purchased only in the free market, in the thick of the cutthroat publicity war between drug companies calling each other’s bluff, extolling their own products and undercutting the claims of the competition. With the state ethical monopoly (and indeed, the state’s desire for monopoly) in abeyance, and the supply of ethical rules by and large privatized and abandoned to the care of the marketplace, the tyranny of choice returns, though this time it taxes not so much the moral competence, as the shopping skills of the actor. The actor is responsible not for the contents with which the responsibility has been filled, but for the choice of an ethical code from among many, each of which ports expert endorsement and/or the/or the credentials of box-office success

**This justifies inevitable violence and turns case ----- we can never embrace real ethics**

BAUMAN 95 - Professor of sociology at the University of Leeds (Zygmunt, Life in fragments. Essays in postmodern Moralities, 1995)

(Reject the gendered language)\*\*

Such conditions—conditions without which there would be no camps and no genocide, conditions which turned the unthinkable into reality—are accomplishments of our modern civilization, and in particular of three features which underlie, simultaneously, its glory and its misery: the ability to act at a distance, the neutralization of the moral constraints of action, and its ‘gardening posture’—the pursuit of artificial, rationally designed order.

That **one can kill today without ever looking the victim in the face**, is a banal observation. Once sinking a knife into the body, or strangling, or shooting at close distance have been replaced with moving dots over a computer screen—just like one does in amusement arcade games or on the screen of a portable Nintendo—the killer does not need to be pitiless; ~~he~~ does not have the occasion to feel pity. This is, however, the most obvious and trivial, even if the most dramatic, aspect of ‘action at a distance’. The less dramatic and spectacular manifestations of our new, modern, skills of distant action are more consequential yet—all the more so for not being so evident. They consist in creating what may be called a social and psychological, rather than a merely physical and oplical, distance between actors and the targets of their actions. Such social psychological distance is produced an reproduced daily, and ubiquitously, and on a massive scale, by the modern management of action, with its three different, yet complementary aspects.

First, in a modern organization every personally performed action is a mediated action, and every actor is cast in what Stanley Milgram called the ‘magnetic state’: almost no actor ever has a chance to develop the ‘authorship’ attitude towards the final outcome of the operation, since each actor is but an executor of a command and giver of another; not a writer, but a translator of someone else’s intentions.

Second, there is the horizontal, functional division of the overall task: each actor has but a specific, self-contained job to perform and produces an object with no written-in destination, no information on its future uses; no contribution seems to ‘determine’ the final outcome of the operation, and most retain but a tenuous logical link with the ultimate effect—a link which the participants may be in good conscience claim to be visible only in retrospect.

Third, the ‘targets’ of the operation, the people who by design or by default are affected by it, hardly ever appear to the actors as ‘total human beings’, objects of moral responsibility and ethical subjects themselves. As Michael Schluter and David Lee wittily yet aptly observed, ‘in order to be seen at the higher levels you have to be broken up into bits and most of you thrown away’. As a result, most actors in organizations deal not with human beings, but with facets, features, statistically represented traits; while only total human persons can be bearers or moral significance.

The global impact of all these aspects of modern organization is what I have called borrowing the term from the vocabulary of the medieval Church—the moral adiaphorization of action: for all practical purposes, the moral significance of the ultimate and combined effect of individual actions is excluded from the criteria by which individual actions any measure. And so the latter are perceived and experienced as morally neutral. More exactly out with the same effect.

The fragmentation of the objects of action is replicated by the fragmentation of actors. The vertical and horizontal division of the global operation into partial jobs makers every actor into a role-performer. Unlike ‘the person’, the role-performer is an eminently replaceable and exchangeable incumbent of a site in the complex network of tasks—there is always a certain impersonality, a distance, a less-than-authorship relationship between the role-performer and the role performed. In none of the roles is the role-performer a whole person, as each role’s performance engages but a selection of the actor’s skills and personality features, and in principle should neither engage the remaining parts nor spill over and affect the rest of the actor’s personality. This again makes the role-performance ethically adiophoric: only total persons, only unique persons (‘unique’ in the sense of being irreplaceable in the sense that the deed would remain undone without them’) can be moral subjects, bearers of moral responsibility—but modern organization derives its strength from its uncanny capacity for splitting the fragmentation, while on the other hand providing occasions for the fragments to come together again has never been modern organization’s forte. Modern organization is the rule of nobody. It is, we may say, a contraption to the float responsibility—most conspicuously, moral responsibility.

Thanks to all these inventions, often discussed under the name of ‘scientific management’, **modern action has been liberated from the limitations imposed by ethical sentiments**. The modern way of doing things does not call for the mobilization of sentiments and beliefs. On the contrary, the silencing and cooling off of the sentiments is its prerequisite and the paramount condition of its astounding effectiveness. Moral impulses and constraints have not been so much extinguished, as neutralized and made irrelevant. Men and women have been given the opportunity to commit inhuman deeds without feeling in the least inhuman themselves. It is only when (to quote Hannah Atend again) ‘the old spontaneous bestiality gave way to an absolutely cold and systematic destruction of human bodies’, that the ‘average German whom the Nazis notwithstanding years of the most furious propaganda could not induce to kill a Jew on his own account (not even when they made it quite clear that such a murder would go unpunished)’ served ‘the machine of destruction without opposition. Modernity did not make people more cruel; it only invented a way in which cruel things could be done by non-cruel people. Under the sign of modernity, evil does not need any more evil people. Rational people, men and women well riveted into the impersonal, adiaphorize network of modern organization, will do perfectly.

#### Rejecting that is better for ethical systems

BAUMAN 95 - Professor of sociology at the University of Leeds (Zygmunt, Life in fragments. Essays in postmodern Moralities, 1995)

One modern possible interpretation of what is happening is that post-modernity preserves the precious gain of modernity—the ‘unencumbered’ autonomy of the actor—while simultaneously removing the price tag and the strings that modernity attacked to it. Now, at long last, you may eat your cake and have it too. (Or, rather, as cakes tend to get stale and unappetizing faster than before—you may eat your cake and recycle it .) Post modernity (or, more appropriately still in this context, ‘late modernity’), one hears time and again, is the ultimate crowing of the modern dream of freedom and of the long and tortuous effort to make the dream come true. So let us celebrate the world **unencumbered by imagined obligations** and fake duties. With universal principles and absolute truths dissipated or kicked out of fashion, it does not matter much anymore what personal principles and private truth one embraces (the embrace must be never tight anyway) and follows (the following need not be too loyal and committed, to be sure). Does it or does it not matter?—this is the question. And it remains a question—perhaps the crucial, constitutive question of postmodern (late modern) life. One might say with considerable conviction that precisely the opposite to the postmodernist account of post modernity is the case; that the demise of the power-assisted universals and absolutes has made the responsibilities of the actor more profound and, indeed, more consequential, than ever before. One might say with still greater conviction, that, between the demise of universal absolutes and absolute universals on the other hand and ‘everything goes’ license on the other. One would rather say that it is precisely **because** of **the demise of the** allegedly unified and ostensibly unique **ethical code,** that the ‘regulative idea’ of **moral responsibility may rise into full flight.** Choices between good and evil are still to be made, this time, however, in full daylight, and with full knowledge that a choice has been made. With the smokescreen of centralized legislation dispersed and the power-of-attorney returned to the signatory, the choice is blatantly left to the moral person’s own devices. With choice comes responsibility. And if choice is inevitable, responsibility is unavoidable. Will this new condition make us do good things more often than before and evil things less often? Will it make better beings? Neither a “yes” nor a “no” answer can be responsibly given to those questions. As always, the moral situation is one of inherent ambivalence and would not be moral without a choice between good and vil. What this new condition does spell out, however, is the prospect of a greater awareness of the moral character of our choice, and seeing their moral content more clearly.

# 1NR

#### War Powers are the “Power to wage war successfully”

SCOTUS 1948 (LICHTER ET AL., DOING BUSINESS AS SOUTHERN FIREPROOFING CO., v. UNITED STATES¶ No. 105¶ SUPREME COURT OF THE UNITED STATES¶ 334 U.S. 742; 68 S. Ct. 1294; 92 L. Ed. 1694; 1948 U.S. LEXIS 2705¶ November 20-21, 1947, Argued June 14, 1948, Decided¶ PRIOR HISTORY: CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT. [\*](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-23.770161.6902095558&target=results_DocumentContent&returnToKey=20_T17977466602&parent=docview&rand=1376730771592&reloadEntirePage=true" \l "fnote1)¶ [\*](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-23.770161.6902095558&target=results_DocumentContent&returnToKey=20_T17977466602&parent=docview&rand=1376730771592&reloadEntirePage=true" \l "ref1) Together with No. 74, Pownall et al. v. United States, on certiorari to the Circuit Court of Appeals for the Ninth Circuit; and No. 95, Alexander Wool Combing Co. v. United States, on certiorari to the Circuit Court of Appeals for the First Circuit, argued November 21, 1947.¶ The cases are stated concisely in the opinion with citations to the decisions below, pp. 746-753. Affirmed, p. 793.

The war powers of congress and the president are only those which are to be derived from the Constitution of the United States but the primary implication of a war power is that it shall be an effective power to wage the war successfully. While the constitutional structure and controls of our government are our guides equally in war and in peace, they must be read with the realistic purposes of the entire instrument fully in mind.

#### Must restrict ability to conduct MILITARY CHAIN OF COMMAND

Bajesky 13 (2013¶ Mississippi College Law Review¶ 32 Miss. C. L. Rev. 9¶ LENGTH: 33871 words ARTICLE: Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers NAME: Robert Bejesky\* BIO: \* M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown). The author has taught international law courses for Cooley Law School and the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami.)

A numerical comparison indicates that the Framer's intended for Congress to be the dominant branch in war powers. Congressional war powers include the prerogative to "declare war;" "grant Letters of Marque and Reprisal," which were operations that fall short of "war"; "make Rules for Government and Regulation of the land and naval Forces;" "organize, fund, and maintain the nation's armed forces;" "make Rules concerning Captures on Land and Water," "raise and support Armies," and "provide and maintain a Navy." [n25](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n25) In contrast, the President is endowed with one war power, named as the Commander-in-Chief of the Army and Navy. [n26](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n26)¶ The Commander-in-Chief authority is a core preclusive power, predominantly designating that the President is the head of the military chain of command when Congress activates the power. [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n27) Moreover, peripheral Commander-in-Chief powers are bridled by statutory and treaty restrictions [n28](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n28) because the President "must respect any constitutionally legitimate restraints on the use of force that Congress has enacted." [n29](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n29) However, even if Congress has not activated war powers, the President does possess inherent authority to expeditiously and unilaterally react to defend the nation when confronted with imminent peril. [n30](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n30) Explicating the intention behind granting the President this latitude, Alexander Hamilton explained that "it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n31) The Framers drew a precise distinction by specifying that the President was empowered "to repel and not to commence war." [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n32)

#### Econ growth key

**Friedman**, **Harvard Economics Professor**, **5**

[Benjamin, Economics Department Director of Undergraduate Studies, The Moral Consequences of Economic Growth, 4-5]

Economic growth—meaning a rising standard of living for the clear majority of citizens—more often than not fosters greater opportunity tolerance of diversity, social mobility, commitment to fairness, and dedication to democracy. Ever since the Enlightenment, Western thinking has regarded each of these tendencies positively, and in explicitly moral terms. Even societies that have already made great advances in these very dimensions, for example, most of today’s Western democracies, are more likely to make still further progress when their living standards rise. But when living standards stagnate or decline, most societies make little if any progress toward any of these goals, and in all too many instances they plainly retrogress. As we shall see, many countries with highly developed economies, including America, have experienced alternating eras of economic growth and stagnation in which their democratic values have strengthened or weakened accordingly How the citizens of any country think about economic growth, and what actions they take in consequence, is therefore a matter of far broader importance than we conventionally assume, In many countries today, even the most basic qualities of any society—democracy or dictatorship, tolerance or ethnic hatred and violence, widespread opportunity or economic oligarchy—remain in flux. In some countries where there is now a democracy, it is still new and therefore fragile. Because of the link between rising or falling living standards and just these aspects of social and political development, the absence of growth in so many of what we usually call “developing economies,” even though many of them are not actually developing, threatens their prospects in ways that standard measures of national income do not even suggest. But the same concern applies, albeit in a more subtle way, to mature democracies as well. Even in America, I believe, the quality of our democracy—more fundamentally, the moral character of American society—is similarly at risk. The central economic question for the United States at the outset of the twenty- first century is whether the nation in the generation ahead will again achieve increasing prospering as in the decades immediately following World War IT, or lapse hack into the stagnation of living standards for the majority of our citizens that persisted from the early 1970s until the early 1990s. And the more important question that then follows is how these different economic paths would affect our political institutions and the broader character of our society. As the economic historian Alexander Gerschenkron once observed, “even a long democratic history does not necessarily immunize a country from becoming a ‘democracy without democrats.’” And as we shall see from our own experience as well as that of other countries, merely being rich is no bar to a society’s retreat into rigidity and intolerance once enough of its citizens lose the sense that they are getting ahead.

### GITMO

#### Detention policies are massively controversial – bipartisan opposition and it gets wrapped into larger debates about national security

Kliegman 8/2/13 (Julie, Writer for Polifacts, "New Developmments But Congressional Opposition Remains" PoliFacts)

A genuine ‘closure' of Guantanamo would have to accept the possibility of letting someone out who could still be dangerous,” he said.¶ And a July 24 congressional subcommittee hearing on closing Guantanamo didn't make the outlook for Obama seem more promising. Republicans showed apprehension about moving prisoners to Marion, Ill. or any other U.S. location. "I would note we have had multiple instances of individuals in federal prisons engaging in terrorism,” said Sen. Ted Cruz, R-Texas.¶ Republican opposition to national or international detainee transfers leaves Democrats unsure of how they can proceed. Sen. Dianne Feinstein, D-Calif., who chairs the Intelligence Committee, poked at that larger issue by asking, "If there is no alternative prosecution in a federal court, they remain without charge or trial until the end of time?” There's nothing Congress can do with prisoners who can't be tried, short of setting them free.¶ Matthew Waxman, who chairs the Columbia Law School's national security program and has previously worked for the State and Defense departments, said for Obama to close Guantanamo is "[probably impossible](http://www.lawfareblog.com/2013/07/closing-guantanamo-would-still-leave-some-toughest-decisions-for-the-next-president/),” given the political barriers.¶ Even if Obama could close the prison before leaving office, Waxman noted that he is bound to leave his successor with a host of legal battles. Closing Guantanamo would bring up many more debates about armed conflict with al-Qaida and when the war on terror should be declared over.¶

#### Ending indefinite detention policies are a political nightmare – massive public opposition

Posner, 13 (Eric, writer for Slate, "President Obama Can Shut Guantanamo Whenever He Wants", May 2 [www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/president\_obama\_can\_shut\_guantanamo\_whenever\_he\_wants\_to.html](http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/05/president_obama_can_shut_guantanamo_whenever_he_wants_to.html) NL)

The real issue here, of course, is that Congress has given the president a convenient excuse for not doing something he doesn’t really want to do anyway. The public [wants](http://takingnote.blogs.nytimes.com/2012/02/09/hurray-for-guantanamo-bay/) to keep Guantanamo open. Shutting it would generate a serious backlash that enraged members of Congress would whip up. It also matters that President Obama does not object to indefinite detention, but to the island prison itself. That is why he wants to move detainees to a supermax in the United States, not release them. But doing so would make clear that his campaign promise to shut down Guantanamo Bay was an empty one. The place of indefinite detention would change; the system supporting it would not. He does better with headlines like “[Congress, rules keep Obama from closing Guantanamo Bay](http://www.mcclatchydc.com/2012/01/09/135179/congress-rule-keep-obama-from.html#.UYK7EHfLkUK)” than with “Obama moves detainees to U.S. soil where they will remain forever.” The president will not shut Guantanamo, and the reason is politics, not law. If you don’t like this choice, blame him.

#### Obama gets the blame for limiting detention -

Klaldman 6/12/13 (Daniel, Former Managing Editor of the Daily Beast, "Wait What About Gitmo? Quietly, Obama May Be Moving Ahead" The Daily Beast)

THREE WEEKS ago, President Obama tried to seize the initiative in balancing the war on terror with civil liberties. In a major address at the National Defense University in Washington, D.C., he announced his intention to reform the drone wars and revive his long-dormant effort to close the detention facility at Guantánamo Bay. What a long three weeks it’s been: since then, the national-security conversation has been dominated by the Justice Department’s aggressive crackdown on leaks and blockbuster revelations about the National Security Agency’s surveillance activities.One might expect those controversies to have overwhelmed Obama’s efforts on drones and Guantánamo. But, at least on Gitmo, there seem to be some small signs that Obama is quietly pressing on. Late last week came word of a fact-finding trip to the prison by Sens. Dianne Feinstein and John McCain. What was especially notable was who accompanied them: White House Chief of Staff Denis McDonough. According to a congressional source, McDonough heard about the trip and asked if he could tag along. The excursion was seen as a positive signal by those who want Obama to close Gitmo because it suggests that he is putting muscle behind his promise and that he understands he can succeed only by engaging Congress.

### courts link to politics – shell

#### Controversial Court decisions spur a constituent backlash in Congress

**Canon and Johnson 99**- Professors of political science (Bradley Canon- professor of political science at the University of Kentucky and Charles Johnson- dept. head of political science at Texas A&M, Judicial policies: Implementation and impact)

More than any other public agency, Congress tends to be the focal point for public reaction to judicial policies. As a political body, Congress cannot ignore any sizeable or prominent group of constituents. Some groups become especially agitated when they are unhappy with some judicial decision or doctrine, and they are unhappy with some judicial decision or doctrine, and they make their dissatisfaction known to members of Congress. If the pressure is great enough and is not counterbalanced by pressure from groups that support the judicial policy, Congress will, if feasible take action. At the very least, numerous members of Congress will score political points by showing righteous indignation on behalf of the disaffected groups. Clashes between Congress and the courts are virtually as old as the two branches. Marbury v. Madison (1803) was a political finesse of a hostile Congress by the Supreme Court Constitutional crises have been provoked by such decisions in the 1930s. Strained relationships just short of crises have developed from numerous other decisions. Of course, not all differences between the courts and Congress are emotionally charged. Many of the differences arise over mundane issues such as pension or admiralty law. Either way, almost every year Congress reacts to judicial decisions.

#### The Court’s not insulated from politics anymore – public opinion proves

**Wittes 07** **–** Fellow and Research Director in Public Law, Governance Studies, The New Republic (Benjamin, 6/25. “The Supreme Court’s Looming Legitimacy Crisis.” Brookings. http://www.brookings.edu/opinions/2007/0625governance\_wittes.aspx)

Yes, the justices may be tackling hot-button issues like race in school placement and partial-birth abortion. Yes, conservatives may shriek about judicial activism and liberals may wring their hands that the sky is falling and that *Roe v. Wade* hangs by a thread. But the public isn't buying any of it. The court has some serious Teflon. Or not. When Gallup's pollsters ask a slightly different question, they get a dramatically different figure. Gallup this month released polling data on public confidence in American institutions, including the Supreme Court. Only 34 percent of those surveyed reported having "a great deal" or "quite a lot" of confidence in the court. This figure is the lowest since Gallup started tracking this particular metric back in 1973. The Court's confidence rating has only once before dipped below 40 percent. Yet in the past few years, confidence in the Court has been in steep decline. If you take these numbers seriously, the Court has an incipient legitimacy crisis on its hands. So which is it? Are Americans somehow losing confidence in their Court or cheering it on? My guess is that they're doing both at the same time. The Court's high approval rating is certainly no aberration. In Gallup polling, it has fluctuated since 2000 from a high of 62 percent to an outlying and never-repeated low of 42 percent, most often falling somewhere between 50 and 60 percent. Gallup actually polled the Court's approval twice in May. The first time, using the usual formulation, the Court garnered 51 percent approval; the second time, using a slightly different question, the figure was even higher, at 63 percent, including 55 percent of Democrats. By contrast, only 8 percent of Democrats approve of Bush's performance. Other recent polls likewise suggest significant public contentment with the Court's job performance. Quinnipiac University's most recent poll has the Court at 58 percent. A CBS News/*New York Times* poll in March showed that 44 percent of Americans think that Bush's nominees to the Court have been "about right" politically, with 24 percent thinking they were too conservative and 17 percent thinking they were not conservative enough. A Gallup poll last fall found a similar plurality (43 percent) thinking the Court's politics were "about right," with 31 percent believing it "too conservative" and 21 percent believing it "too liberal." The Court's approval rating tends to stay high because its actions stray much less from the center of gravity of American politics than either its conservative or liberal critics imagine. Partial-birth abortion laws may offend liberal constituencies, but they are overwhelmingly popular with the public at large, for example. Social conservatives may get riled up in defense of sodomy laws, but the public doesn't. In the most important and high-profile cases, the Court has quite simply has not taken dramatic steps that deeply offend the majority of Americans. In many ways, in fact, it reflects the center of gravity of American politics better than either party's caucus in either house of Congress. So how then to understand the declining institutional confidence figure? This number has shown more decided trends over time--and since 2002 the trend has been a sharp and continuous decline. Confidence in the Court rose steadily over the course of the 1990s, from its previous trough of 39 percent in 1991 to around 50 percent in 1997; it stayed in that range through June 2002, weathering the firestorm around *Bush v. Gore* without much of a flicker. But then it started falling. One could simply dismiss this drop. It comes amid a much-broader decline in public confidence in institutions over the same period. In the same Gallup poll that this month showed confidence in the Court eroding to record lows, for example, confidence in Congress had plummeted to an all-time low of 14 percent, and the presidency, the press, labor unions, the medical system, and the criminal justice system all took hits too. It is possible that confidence in the Court is being dragged down by collapsing confidence in institutions in general. People are grouchy, this explanation might go, and the Court is feeling their wrath a lot less than are other institutions. Interestingly, other confidence measures concerning the Court have not shown the same degree of slippage; when Gallup asks about confidence in "the judicial branch, headed by the U.S. Supreme Court" and allows respondents to express a "fair amount" of confidence, the confidence rating skyrockets and the decline seems far less dramatic. Maybe this one particular trend line is just noise. But there is, at least, some reason to take it more seriously than that. For one thing, it's been going on for the past five years. For another, it coincides with a protracted period in which the Court has presented itself as just another polarized institution in American life. The justices split 5-to-4 along ideological lines in case after case, writing bitter opinions laden with political-sounding rhetoric. Both Democrats and Republicans fight over the Court, and the lower courts for that matter, as though they were simply a political prize, rather than a branch of government supposedly outside of politics. One has to worry, at least a little bit, that the Court's institutional prestige is suffering as a consequence. Earlier in this Supreme Court term, TNR's Jeffrey Rosen published an interview with Chief Justice John Roberts in which Roberts fretted about the tendency of justices to write separate opinions and to make a fetish of their own jurisprudence, rather than the jurisprudence of the Court as a whole. "If the Court in [Chief Justice John] Marshall's era had issued decisions in important cases the way this Court has over the part thirty years, we would not have a Supreme Court today of the sort that we have," he said. "That suggests that what the Court's been doing over the past thirty years has been eroding, to some extent, the capital that Marshall built up." Perhaps it is this erosion that the declining institutional confidence rating is capturing--even as the continued high approval rating captures a general public satisfaction with the substance of what the Court is actually doing. One can, after all, harbor no special anxiety about the aggregate direction of the Court's decisions and still find oneself disgusted by the oh-so-predictable manner in which the justices have been dividing--and will likely divide in coming cases about campaign finance and race-conscious public school placements. One can agree with a lot of what the Court does, in other words, and still recognize that this is not, in fact, an institution insulated from the grime.

#### And, granting cert causes the link – this means you trigger politics before you solve

**Cross and Nelson, 01** – Professor of Business Law, University of Texas, and Professor of Political Science, Penn State (Frank B. and Blake J. “STRATEGIC INSTITUTIONAL EFFECTS ON SUPREME COURT DECISIONMAKING.” Northwestern University Law Review, Summer)

A second, and perhaps more critical, shortcoming of Segal's analysis is that the study of actual decisions ignores the Supreme Court's ability to control its own agenda. Issuing a writ of certiorari is a discretionary action, so the Court may adapt the opinions it reviews in response to institutional pressures, an adaptation not addressed in studies of decisions such as Segal's. A truly unconstrained Court would review whatever cases it wishes and make whatever decisions it wishes. A constrained Court might be limited in the decisions it makes but it alternatively might merely be limited in the cases that it takes. 249 Segal's study of Supreme Court decisions means he cannot consider the Court's decision not to grant certiorari in a case ("the dog that didn't bark"). The institutional influence on the Court may take the form of persuading it not to rule in a case. A strategic Court would plausibly think as follows: "If I take case A and decide it as I wish it to come out, Congress will become upset and may retaliate, so I just won't take case A. Instead, [\*1477] I'll take case B about which Congress does not care so much, so that I can have the outcome closer to the one that I desire." That choice would be a strategic institutional one and yet would produce results consistent with those produced by Segal. By taking cases in which it must defer to Congress, the Court is wasting its scarce decisionmaking resources and strengthening an outcome that it does not desire. Why would a strategic Court behave in this manner, when it can just not take cases where institutional response is a serious threat? Refusing to take such a case may leave an undesirable circuit court precedent in place, but it does not give that precedent nationwide effect and it does not require the Court to devote resources to the case.