Hollow Hope Argument

# Carter, William Nelson Cromwell Professor of Law, Yale University, 1992 [Stephen L., 1/1/1992, Yale Law School, “Do Courts Matter?”, accessed 11/8/17, AR]

Most theorists have viewed the Court as one of many actors in the development of national policies on a variety of issues. The implication is that the Justices are serious players in the game of societal transformation. Political scientist Gerald Rosenberg,6 in his new book *The Hollow*

*Hope: Can Courts Bring About Social Change?,* challenges this conventional

wisdom. Rosenberg claims that the courts matter a good deal less than our rhetoric insists - or, more formally, that their power to produce significant social change, whether directly through their own decrees or indirectly through sparking other societal forces into activity, is less than Americans have come to believe

After analyzing a variety of hotly debated constitutional issues, Rosenberg comes out for a modified version of the much-maligned Constrained Court model which "best capture[s] the capacity of the courts to produce significant social reform"(p. 336). Under the Constrained Court model, various limitations on the Court's power make such influence minimal.

our politics, and even our scholarship, should be little concerned with the output of the courts because there is little that the courts can actually accomplish.

Publius really had in mind in insisting in *Federalist No. 78* that the judicial branch possesses neither force nor will. (Publius is a pen name for Alexander Hamilton, James Madison, and John Jay)

If we wish to influence public policy, we should not be so interested in the courts, for they cannot effect significant changes in American society. According to Rosenberg, the Supreme Court might be part of a social movement, but it is rarely the motive force and never the key player.

(The following is especially useful against deseg/discrimination affs)

Rosenberg's analysis of *Brown v. Board of Education,* the paradigmatic case of judicial involvement in social change, best illuminates his thesis.

"[T]here is little evidence that *Brown* helped produce positive change," he tells us, but "there is some evidence that it hardened resistance to civil rights among both elites and the white public" (p. 155).

Rosenberg offers evidence that rates of school desegregation changed little during the decade after *Brown,* as the courts pressed their lonely battle for supremacy (pp. 49-57).

He insists, "virtually *nothing happened"* (p. 52)

"Despite the unanimity and forcefulness of the *Brown* opinion, the Supreme Court's reiteration of its position and its steadfast refusal to yield, its decree was flagrantly disobeyed" (p. 52).

(This is absolutely essential to the argument)

"The only way to overcome such opposition," he writes, "is from a change of heart by electors and by national political leaders" (p. 81)

In the desegregation realm, he concludes, "it is clear that paradigms based on court efficacy are simply wrong" (p. 105). (Use against affs arguing discrimination/desegregation)

Rosenberg goes beyond the assertion that litigation strategies rarely if ever produce significant change. He argues, correctly, that they are often counterproductive, for they can distort perceptions about where resources are needed (pp. 339-42). (Discuss how their plan has no solvency)

Rosenberg's thesis: the courts can work some changes in the society, but far fewer than most people seem to think. People, not the courts, make social movements. (In the end, the judicial branch will only exacerbate the problem, no solvency)

Even if the courts actively try to make policy - as Rosenberg concedes they do, and often **-** they do not succeed.

But for most of the nation's history, the Justices have been indifferent to social change or have worked to prevent it.

Courts, like the law they interpret, are backward-looking, which renders judges essentially conservative creatures.

In our political world, it seems, left and right share a faith that judges should rule on cases before hearing them - indeed, before taking the bench. In so crazy a world, it is probably not a good thing if those judges actually have the power to do very much. (Talk about the Justice selection process)

#### There is follow through on legislation – social change comes from action

**Delgado 8 – Richard Delgado, University Distinguished Professor of Law & Derrick Bell Fellow, University of Pittsburgh School of Law; University Professor of Law Designate, Seattle University (beginning fall 2008). J.D., U.C. Berkeley School of Law (Boalt Hall), 1974. A COMMENT ON ROSENBERG’S NEW EDITION OF THE HOLLOW HOPE KKC**

Civil disobedience might appear to be a narrow exception to the rule that law generally shapes behavior.14 But the civil disobedient breaks the law openly, nonviolently, and prepared to suffer the consequences.15 Although one could think of it as illustrating law’s inefficacy, civil disobedience occurs rarely enough that it does not shake our faith in the system. it is scarcely a frontal challenge to that system as a whole.Everyday experience with cases like these, then, conveys the impression that law ―really works.‖ *How could Rosenberg seemingly maintain the opposite? The reason is that he is really not talking about individual, relatively routine cases where the only question is enforcement. Instead, he explores whether legal rules effectively change broad social attitudes, mores, and practices*.