## Inequality Adv

### 1AC – Stem

#### School segregation is still rampant—intervention by the federal court is key, other actors have failed for decades.

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(Derek W., June 6, 2017, The Conversation, “Why schools still can’t put segregation behind them,” <https://theconversation.com/why-schools-still-cant-put-segregation-behind-them-78575>, accessed 7/2/17, CD)

A federal district court judge has decided that Gardendale – a predominantly white city in the suburbs of Birmingham, Alabama – can move forward in its effort to secede from the school district that serves the larger county. The district Gardendale is leaving is 48 percent black and 44 percent white. The new district would be almost all white. The idea that a judge could allow this is unfathomable to most, but the case demonstrates in the most stark terms that school segregation is still with us. While racial segregation in U.S. schools plummeted between the late 1960s and 1980, it has steadily increased ever since – to the the point that schools are about as segregated today as they were 50 years ago. As a former school desegregation lawyer and now a scholar of educational inequality and law, I have both witnessed and researched an odd shift to a new kind of segregation that somehow seems socially acceptable. So long as it operates with some semblance of furthering educational quality or school choice, even a federal district court is willing to sanction it. While proponents of the secession claim they just want the best education for their children and opponents decry the secession as old-school racism, the truth is more complex: Race, education and school quality are inextricably intertwined. Rationalizing Gardendale’s segregation In some respects, Gardendale is no different from many other communities. Thirty-seven percent of our public schools are basically one-race schools – nearly all white or all minority. In New York, two out of three black students attend a school that is 90 to 100 percent minority. In many areas, this racial isolation has occurred gradually over time, and is often written off as the result of demographic shifts and private preferences that are beyond a school district’s control. The Gardendale parents argued their motivations were not about race at all, but just ensuring their kids had access to good schools. The evidence pointed in the other direction: In language rarely offered by modern courts, the judge found, at the heart of the secession, “a desire to control the racial demographics of [its] public schools” by “eliminat[ing]… black students [from] Gardendale schools.” Still, these findings were not enough to stop the secession. As in many other cases over the past two decades, the judge conceded to resegregation, speculating that if she stopped the move, innocent parties would suffer: Black students who stayed in Gardendale would be made to feel unwelcome and those legitimately seeking educational improvements would be stymied. Simply put, the judge could not find an upside to blocking secessionists whom she herself characterized as racially motivated. As such, the court held that Gardendale’s secession could move forward. Two of its elementary schools can secede now, while the remaining elementary and upper-level schools must do so gradually. The problem with conceding to segregation Unfortunately, there’s no middle ground in segregation cases. No matter what spin a court puts on it, allowing secessions like Gardendale’s hands racism a win. While it’s true that stopping the secession may come with a cost to members of that community who have done nothing wrong, our Constitution demands that public institutions comply with the law. That is the price of living in a democracy that prizes principles over outcomes. In this case, the constitutional principles are clear. In Brown v. Board of Education, the Supreme Court held that there is no such thing as separate but equal schools: Segregated schools are “inherently unequal.” Rather than stick to these principles, the judge in the Gardendale case seemingly tried to strike a bargain with segregation. As long as Gardendale appoints “at least one African-American resident” to its school board and does not do anything overtly racist moving forward, the court will allow the city to pursue its own agenda. The sordid roots of school quality – and inequality The ruling in Gardendale is a step toward reinforcing an unfortunate status quo in Alabama. Alabama is one of a handful of states that amended its state constitution in an attempt to avoid desegregation in the 1950s. The amendment gave parents the right to avoid sending their kids to integrated schools and made clear that the state was no longer obligated to fund public education. Alabama preferred an underfunded and optional educational system to an integrated one. Courts quickly struck down the discriminatory parts of the new constitution, but the poor state education system remained. Today, student achievement in Alabama ranks dead last – or near it – on every measure. Most communities don’t have the resources to do anything about it. Funding is relatively low – and unequal from district to district. Even after adjusting for variations in regional costs, a recent study shows that the overwhelming majority of schools in Alabama are funded at ten percent or more below the national average and another substantial chunk is thirty-three percent or more below the national average. Parents trapped in under-resourced schools understandably feel like they need to take action. But rather than demanding an effective and well-supported statewide system of public schools, parents with the means often feel compelled to isolate their children from the larger system that surrounds them. And while whites and blacks struggle over the future of Gardendale’s schools, the real culprits – the current state legislature and the segregationists who gutted public education in Alabama decades ago – go unchallenged. The path forward leads through equal public education The education system in Alabama, like in so many other states, is rigged against a large percentage of families and communities: Those with less money tend to get a worse education. Until these states reform their overall education funding systems, the inequalities and inadequacies that they produce will continue to fuel current racial motivations. The lawsuit in Gardendale was a poor vehicle for fixing Alabama’s education system: The state’s overall education system was not on trial. The only issue before the court was a racially motivated district line in one small community. But our small communities are connected to larger education systems. In my view, we cannot fix those systems by way of more individual choice, charters, vouchers or school district secessions. The fact is, educational funding is down across the board, when compared to a decade ago. If we want all students to have a decent shot at better education, we need to recommit to statewide systems of public education. Only then will our base fears and racial biases begin to fade into the background.

#### Integration is key to narrowing the achievement gap – studies prove

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(George, Oct. 23, 2015, The Washington Post, “‘Forced busing’ didn’t fail. Desegregation is the best way to improve our schools,” <https://www.washingtonpost.com/posteverything/wp/2015/10/23/forced-busing-didnt-fail-desegregation-is-the-best-way-to-improve-our-schools/?utm_term=.ba0762dde701>, accessed 7/2/17, CD)

Since the Reagan administration’s “A Nation at Risk” report pronounced that schools across the country were failing, every president has touted a new plan to close the racial academic achievement gap: President Obama installed Race to the Top; George W. Bush had No Child Left Behind; and Clinton pushed Goals 2000. The nation has commissioned studies, held conferences and engaged in endless public lamentation over how to get poor students and children of color to achieve at the level of wealthy white students — as if how to close this opportunity gap was a mystery. But we forget that we’ve done it before. Racial achievement gaps were narrowest at the height of school integration. U.S. schools have become more segregated since 1990, and students in major metropolitan areas have been most severely divided by race and income, according to the University of California at Los Angeles’s Civil Rights Project. Racially homogenous neighborhoods that resulted from historic housing practices such as red-lining have driven school segregation. The problem is worst in the Northeast — the region that, in many ways, never desegregated — where students face some of the largest academic achievement gaps: in Connecticut, Maryland, Massachusetts and the District of Columbia. More than 60 years after Brown v. Board of Education, federal education policies still implicitly accept the myth of “separate but equal,” by attempting to improve student outcomes without integrating schools. Policymakers have tried creating national standards, encouraging charter schools, implementing high-stakes teacher evaluations and tying testing to school sanctions and funding. These efforts sought to make separate schools better but not less segregated. Ending achievement and opportunity gaps requires implementing a variety of desegregation methods – busing, magnet schools, or merging school districts, for instance – to create a more just public education system that successfully educates all children. Public radio’s “This American Life” reminded us of this reality in a two-part report this summer, called “The Problem We All Live With.” The program noted that, despite declarations that busing to desegregate schools failed in the 1970s and 1980s, that era actually saw significant improvement in educational equity. When the National Assessment of Educational Progress began in the early 1970s, there was a 53-point gap in reading scores between black and white 17-year-olds. That chasm narrowed to 20 points by 1988. During that time, every region of the country except the Northeast saw steady gains in school integration. In the South in 1968, 78 percent of black children attended schools with almost exclusively minority students; by 1988, only 24 percent did. In the West during that period, the figure declined from 51 percent to 29 percent. But since 1988, when education policy shifted away from desegregation efforts, the reading test score gap has grown — to 26 points in 2012 — with segregated schooling increasing in every region of the country. Research has shown that integration is a critical factor in narrowing the achievement gap. In a 2010 research review, Harvard University’s Susan Eaton noted that racial segregation in schools has such a severe impact on the test score-gap that it outweighs the positive effects of a higher family income for minority students. Further, a 2010 study of students’ improvements in math found that the level of integration was the only school characteristic (vs. safety and community commitment to math) that significantly affected students’ learning growth. In an analysis of the landmark 1966 “Coleman Report,” researchers Geoffrey Borman and Maritza Dowling determined that both the racial and socioeconomic makeups of a school are 1¾-times more important in determining a student’s educational outcomes than the student’s own race, ethnicity or social class. But we continue to think about segregation as a problem of the past, ignoring its growing presence in schools today. Desegregating schools has become a political third rail, even though it is an essential solution to one of our nation’s most persistent problems. This month, Education Secretary Arne Duncan announced he would step down in December and his deputy, John King, would replace him. King, during his tenure as New York state’s education commissioner, visited both school districts mentioned above to advance the national Race to the Top agenda, but he never acknowledged the increasing school segregation apparent in the region. In 1989, Syracuse city schools were about 60 percent white, and just 20 percent of black and Latino students attended predominately minority schools. Today, the district is 28 percent white, while 55 percent of Latino students and 75 percent of black students attend predominately minority schools. Racial and economic segregation affects schools in various ways. Federal and state policies that impose sanctions on poor-performing schools — state takeovers and forced replacement of school leaders, for example — often make matters worse. For example, Westside Academy , the Syracuse middle school where no students passed the state eighth-grade math assessment, has has had multiple principals and saw 44-percent teacher turnover in the 2012-2013 school year. About a decade ago, the elementary schools that feed into Westside Academy and Wellwood Middle School adopted the same math curriculum program, touted as one of the best standards-based elementary programs available. As is typical, both districts struggled to implement the new curriculum initially. But a decade later, the schools in Wellwood’s district are still using it, with teachers becoming more skilled and comfortable with the new way to teach math. The schools in Westside’s district, however, changed their math program at least two more times, leaving teachers, students, and families in a constant state of churn and undoubtedly affecting student learning and test scores. In this era of accountability, this instability is not forced upon white, upper-middle class families. While much has been said about the failure of busing, it’s time to move beyond this myth. In one of the most famous examples of court-ordered desegregation, Boston began busing students between white and black neighborhoods in 1974, sparking violent white protests and boycotts by white students. White families fled to the suburbs. Supporting neighborhood schools and opposing school bus rides became rhetoric to fight desegregation without overtly racist language. But as black activists in Boston noted at the time, “It’s not the bus, it’s us.” Before the court order, nearly 90 percent of high school students rode a bus to school without protest. Today, most children get on a school bus to attend a segregated school. Busing ended because of a combination of white protest, media that overemphasized resistance, and the lack of systematic collection to judge the impact of desegregation. So we need to be sober about our history: Busing didn’t fail; the nation’s resolve and commitment to equal and excellent desegregated schools did. Busing is not the only way to desegregate our schools. We can unify school districts so they encompass racially and economically diverse neighborhoods. The countywide district centered in Raleigh, for instance, has been successful in integrating schools and achieving academic success, in contrast to the 18 schools districts across the metropolitan Syracuse area. Shaping districts like pie pieces, so they cut across urban, suburban and even rural spaces, could have the same effect. Creating more open-enrollment magnet schools would also bring families of various races and incomes into well-funded and themed schools. For existing public schools, we could merge two neighborhood campuses in segregated communities, so they attend one neighborhood school together from kindergarten through second grade and the other from third through fifth grades. Or we can incentivize school districts to take action, imposing segregation and providing financial resources to districts with aggressive desegregation plans. Certainly, none of these approaches is easy or perfect, and desegregation alone is not a magic bullet to end the achievement and opportunity gaps. Even integrated schools face racial gaps. Many black and Latino kids end up in lower academic tracks and white parents protect exclusive opportunities for their kids. Still, knowing the benefits of integrated learning environments, we can’t continue to ignore the growing hold segregation has on our schools. We’ve heard soaring words from Duncan and Obama touting education as the route to a better life, saying it is a moral imperative that we work tirelessly to improve the education of our most vulnerable children. But rhetoric is no match for our failure of will to change the disparate realities of our separate educational systems. It is no match for our failure of courage to call out the persistent segregation of our schools. Some scholars have argued that King will be good for school integration. Time will tell if we are entering a moment that moves beyond rhetoric toward substantial desegregation. In this time of transition for the Education Department — in the last year of the Obama administration — are we going to continue ignoring the moral implications of separate schools? Our history shows that policy cannot focus on improving “failing” schools; it needs to also emphasize desegregating them. No matter how much we seek to improve the back of the education bus, it will always be the back.

#### Closing the academic achievement gap directly challenges social inequality and boosts health outcomes

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(Robert and Patrick, Nov. 10, 2014, Center for American Progress, “The Economic Benefits of Closing Educational Achievement Gaps,” <https://www.americanprogress.org/issues/race/reports/2014/11/10/100577/the-economic-benefits-of-closing-educational-achievement-gaps/>, accessed 7/2/17, CD)

Our nation is currently experiencing growing levels of income and wealth inequality, which are contributing to longstanding racial and ethnic gaps in education outcomes and other areas. These large gaps, in combination with the significant demographic changes already underway, are threatening the economic future of our country. Thus, closing racial and ethnic gaps is not only key to fulfilling the potential of people of color; it is also crucial to the well-being of our nation. This report quantifies the economic benefits of closing one of the most harmful racial and ethnic gaps: the educational achievement gap that exists between black and Hispanic children and native-born white children. Gaps in academic achievement are a function of a host of factors, such as income and wealth inequality, access to child care and preschool programs, nutrition, physical and emotional health, environmental factors, community and family structures, differences in the quality of instruction and school, and educational attainment. This suggests there are a wide range of public policies that could help narrow educational achievement gaps; this report demonstrates that there are enormous payoffs to closing the gaps through public policies. It also outlines effective public policy strategies to achieve this goal, though their details are left to future research. After briefly summarizing the analysis’s findings, this report places the educational achievement gaps in context to help explain their significance and the reasons they exist. In particular, the report reviews data on growing inequality, demographic changes, and intensifying global economic competition. This clarifies the need to address educational achievement gaps and helps explain why the benefits of closing gaps are great. The report then describes factors that cause educational achievement gaps and offers public policies that could help close them. The subsequent sections of the report discuss the literature on the importance of academic achievement to economic growth, the methodology used in the analysis, and its detailed findings. This report illustrates one aspect of the staggering economic cost of the failure to adequately invest in the development of our people: It estimates the increases in U.S. economic growth that would occur if racial and ethnic achievement gaps were closed and the educational playing field were leveled. Specifically, this analysis projects how much greater U.S. gross domestic product, or GDP, would be from 2014 to 2050 if the educational achievements of black and Hispanic children were raised to match those of native-born white children. This study does not examine gaps that exist among other groups—such as Native Americans, Asians, and children of more than one race—because of data limitations and small sample sizes. This does not imply that achievement differentials among other groups do not exist, are not harmful, or do not deserve attention. If the United States were able to close the educational achievement gaps between native-born white children and black and Hispanic children, the U.S. economy would be 5.8 percent—or nearly $2.3 trillion—larger in 2050. The cumulative increase in GDP from 2014 to 2050 would amount to $20.4 trillion, or an average of $551 billion per year. Thus, even very large public investments that close achievement gaps would pay for themselves in the form of economic growth by 2050. WinningEconomy-webfig1 Closing racial and ethnic achievement gaps—by raising incomes and increasing the size of the economy—would also have significant positive impacts on federal, state, and local tax revenues. From 2014 to 2050, federal revenues would increase by $4.1 trillion, or an average of $110 billion per year. State and local government revenues would increase by another $3.3 trillion, or $88 billion annually. Therefore, government investments in closing educational achievement gaps that cost less than an average of $198 billion annually over the next 37 years would pay for themselves even in strictly budgetary terms. To put this figure in perspective, consider that the annual cost to implement the Obama administration’s high-quality, universal pre-K program averages $7.5 billion per year over the first 10 years. As explained in the report, these projections understate the impact of closing achievement gaps for at least three reasons. First, they assume that educational achievement improvements are limited to black and Hispanic children; in the real world, policies that increase these children’s educational achievement are likely to improve all children’s achievement. Second, the model does not take into account any of the social benefits—such as better health outcomes—that are likely to occur as a result of educational improvement. Finally, the model does not calculate the potential positive effects on children born to future parents who, because of improved academic achievement, will have higher incomes and thus be able to provide them better educational opportunities. If the model properly accounted for all of these factors, the benefits of improving educational achievement would be substantially larger than those estimated in this study. The benefits of closing educational achievement gaps amount to much more than just increased GDP and tax revenues. The current generation of children will be better off when they are adults because they will have higher earnings, higher material standards of living, and an enhanced quality of life. Future generations of children will be more likely to grow up in families that can offer them the enriching opportunities of a middle-class lifestyle; they will therefore be less likely to grow up in families struggling in poverty. Present-day adults, whether working or in retirement, will benefit from the fact that higher-earning workers will be better able to financially sustain public retirement benefit programs such as Medicaid, Medicare, and Social Security. The retirement of the Baby Boomers will put pressure on the federal budget in the coming decades as more retirees draw from these benefit programs. Investing in the nation’s educational achievement will provide future budget relief as Americans earn more and, thus, pay more in taxes. For example, closing racial and ethnic educational achievement gaps would lift Social Security tax contributions by $877 billion by 2050. Similarly, Medicare tax revenues for the Hospital Insurance Fund would increase by $265 billion from 2014 to 2050, providing a substantial boost to Medicare solvency.6 In other words, strengthening the educational achievement of our youth will help provide economic security for us, the elderly, and future generations.These potential economic gains illustrate in stark terms the massive waste of human talent and opportunity that we risk if achievement gaps are not closed. They also suggest the magnitude of the public investments the nation should be willing to make now and in the decades to come to close achievement gaps. Even from a very narrow budgetary perspective, the tax revenue gains this study forecasts suggest that investments to close racial and ethnic achievement gaps could amply pay for themselves in the long run.

#### The plan solves education disparities by creating a court remedy to state policies that create a race to the bottom.

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[Christian B., 2017, Georgetown University Law Center (J.D., 2002), Mercer Law Review, “Positive Education Federalism: The Promise of Equality after the Every Student Succeeds Act,” file:///Users/anthonywinchell/Downloads/68MercerLRev351.pdf, pp. 384-386, accessed 6/28/17, AW]

A positive conception of federalism is particularly justified when attempting to divine the appropriate federal role in public education. As discussed previously, the primary constitutional basis for federal involvement in public education is premised on the government's responsibility to take positive action to remedy racial and class inequalities.18 6 The Brown constitutional doctrine and the "War on Poverty" driven by the ESEA forged an understanding of education federalism rooted in positive social justice. It is particularly appropriate today that we restore this fundamental understanding of education federalism, given evidence of increasing racial disparities in public education and the noted failures of modern education federalism policy.

The federal guarantee of equal public education is critically important to the functioning of our democracy. As a public good, education helps our society develop those "fundamental values necessary to the transmission of our democratic society." 187 The provision of an equitable public education, devoid of identity-based disparities, is critical to provide children with "the knowledge needed to understand and participate effectively in the democratic process and to cultivate among children respect for and the ability to interact with others as beings of inherently equal moral worth."1 88 Indeed, both classic and contemporary constitutional scholars argue that equal public education should be regarded as "a fundamental duty, or positive fundamental right because education is a basic human need and a constituent part of all democratic rights."1 89 The need, then, for a robust application of positive education federalism principles in this context cannot be stronger.

The purpose of this Article is not to provide specific curricular recommendations to guide the future of public education. 190 Rather, this Article has attempted to define a new vision of positive education federalism-one that is rooted in a historical understanding of the constitutional obligation of the federal government to shape education policy goals in a manner that responds to unrelenting racial and class disparities. A few core principles regarding the substantive dimension of positive education federalism can be gleaned from this discussion:

1. First Principle: Providing an equal public education is a federal responsibility that cannot be transferred to or assumed by private market forces.

The overarching conclusion of this Article is that ESSA, NCLB, and RTT unconstitutionally transfer federal responsibility for positively eliminating racial and class inequality in public education to private market forces under the auspices of competitive federalism.191 This reading of the federal role in public education is ahistorical and undermines the core principles of equality informing Brown-era education federalism. 192

2. Second Principle: Positive federal action is justifiable in public education when necessary to rectify historical patterns of racial and class oppression.

It follows from the first principle that positive federal intervention in public education is justified when employed to directly respond to our unbroken history of racial and class disparities in educational outcomes. The original vision of the ESEA and Brown anticipated future positive efforts by the federal government to wield its block grant powers to actively dismantle old systems of oppression.1 93 The current statutory framework has abandoned this vision of equality in its misguided pursuit to harness the market forces of consumer choice, accountability, and competition to limit the federal role in education.1 94

3. Third Principle: Our education federalism must acknowledge that racial discrimination and class oppression are the true roots of current educational disparities.

Third, it is of the utmost importance that our education federalism fully acknowledge the historical and continuing causes of education disparities: racial discrimination and poverty. 195 The race and class-based roots of educational inequality are well-known and well-documented, and our education federalism can no longer hide behind the veil of ignorance provided by ESSA, NCLB, and RTT.196 Far from acknowledging the reality of educational disparities, our current competitive federalist framework for education actively attempts to conceal these roots, with the specious promise that the free market principles of choice, accountability, and competition will eventually equalize education. 197 Modeling our education federalism around such race and class "neutral" market principles have led to a deepening of the crisis while allowing society to ignore the ways in which privilege shapes outcomes. 198

4. Fourth Principle: Our education federalism must strive to promote racial and class integration.

Finally, any equality-based vision of education federalism must promote the social integration of our public schools. The current competitive conception of education policy has failed those "faces at the bottom of [the] well"199 and led to a rampant racial re-segregation of our schools. 200 This failure evinces a lack of faith and duty in fulfilling the original integrationist goals of Brown and the ESEA. Therefore, a positive theory of education federalism must promote federal efforts to integrate our public schools.

These core principles, on a theory of positive education federalism, can be used to inform future reauthorizations of the ESEA. While this Article does not attempt to advance specific changes in statutory law, it has attempted to redefine the substantive dimension of our education federalism in a manner that restores our faith in Brown, the ESEA, and the promise of racial and class equality.

### 1AC – Structural Violence Impact

#### Inequality kills tens of thousands each year

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(Stephen, 2014, New Press, “Inequality Kills,” <https://depts.washington.edu/eqhlth/pages/BezruchkaInequalityKillsBkPubInfo14.pdf>, accessed 6/30/17, pg. 194-195, CD)

Everyone in a society gains when children grow up to be healthy adults. The rest of the world seems to understand this simple fact, and only three countries in the world don’t have a policy, at least on the books, for paid maternal leave – Liberia, Papua New Guinea, and the United States. What does that say about our understanding , or concern about the health of our youth? Differences in mortality rates are not just a statistical concern—they reflect suffering and pain for very real individuals and families. The higher mortality in the United States is an example of what Paul Farmer, the noted physician and anthropologist, calls structural violence. The forty-seven infant deaths occur every day because of the way society in the United States is structured, resulting in our health status being that of a middle-income country, not a rich country. There is growing evidence that the factor most responsible for the relatively poor health in the United States is the vast and rising inequality in wealth and income that we not only tolerate, but resist changing. Inequality is the central element, the upstream cause of the social disadvantage described in the IOM report. A political system that fosters inequality limits the attainment of health. The claim that economic inequality is a major reason for our poor health requires that several standard criteria for claiming causality are satisfied: the results are confirmed by many different studies by different investigators over different time periods; there is a dose-response relationship, meaning more inequality leads to worse health; no other contending explanation is posited; and the relationship is biologically plausible, with likely mechanisms through which inequality works. The field of study called stress biology of social comparisons is one such way inequality acts. Those studies confirm that all the criteria for linking inequality to poorer health are met, concluding that the extent of inequality in society reflects the range of caring and sharing, with more unequal populations sharing less. Those who are poorer struggle to be accepted in society and the rich also suffer its effects. A recent Harvard study estimated that about one death in three in this country results from our very high income inequality. Inequality kills through structural violence. There is no smoking gun with this form of violence, which simply produces a lethally large social and economic gap between rich and poor.

#### The structural violence of inequality outweighs other impacts. There is an ethical obligation to address it.

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[David A., Michael E. Kelly Professor of Medicine, MD, 4-21-17, The Death Gap: How Inequality Kills, University of Chicago Press, pp. 22-26, accessed 6/29/17, AW] \*\*book\*\*

There are many different kinds of violence. Some are obvious: punches, attacks, gunshots, explosions. These are the kinds of interpersonal violence that we tend to hear about in the news. Other kinds of violence are intimate and emotional.

But the deadliest and most thoroughgoing kind of violence is woven into the fabric of American society. It exists when some groups have more access to goods, resources, and opportunities than other groups, including health and life itself. This violence delivers specific blows against particular bodies in particular neighborhoods. This unequal advantage and violence is built into the very rules that govern our society. In the absence of this violence, large numbers of Americans would be able to live fuller and longer lives.

This kind of violence is called structural violence, because it is embedded in the very laws, policies, and rules that govern day-to-day life.8 It is the cumulative impact of laws and social and economic policies and practices that render some Americans less able to access resources and opportunities than others. This inequity of advantage is not a result of the individual’s personal abilities but is built into the systems that govern society. Often it is a product of racism, gender, and income inequality. The diseases and premature mortality that Windora and many of my patients experienced were, in the words of Dr. Paul Farmer, “biological reflections of social fault lines.”9 As a result of these fault lines, a disproportional burden of illness, suffering, and premature mortality falls on certain neighborhoods, like Windora’s. Structural violence can overwhelm an individual’s ability to live a free, unfettered, healthy life.

As I ran to evaluate Windora, I knew that her stroke was caused in part by lifelong exposure to suffering, racism, and economic deprivation. Worse, the poverty of West Humboldt Park that contributed to her illness is directly and inextricably related to the massive concentration of wealth and power in other neighborhoods just miles away in Chicago’s Gold Coast and suburbs. That concentration of wealth could not have occurred without laws, policies, and practices that favored some at the expense of others. Those laws, policies, and practices could not have been passed or enforced if access to political and economic power had not been concentrated in the hands of a few. Yet these political and economic structures have become so firmly entrenched (in habits, social relations, economic arrangements, institutional practices, law, and policy) that they have become part of the matrix of American society. The rules that govern day-to-day life were written to benefit a small elite at the expense of people like Windora and her family. These rules and structures are powerful destructive forces. The same structures that render life predictable, secure, comfortable, and pleasant for many destroy the lives of others like Windora through suffering, poverty, ill health, and violence. These structures are neither natural nor neutral.

The results of structural violence can be very specific. In Windora’s case, stroke precursors like chronic stress, poverty, and uncontrolled hypertension run rampant in neighborhoods like hers. Windora’s illness was caused by neither her cultural traits nor the failure of her will. Her stroke was caused in part by inequity. She is one of the lucky ones, though, because even while structural violence ravages her neighborhood, it also abets the concentration of expensive stroke- intervention services in certain wealthy teaching hospitals like mine.

If I can get to her in time, we can still help her.

Income Inequality and Life Inequality

Of course, Windora is not the only person struggling on account of structural violence. Countless neighborhoods nationwide are suffering from it, and people are dying needlessly young as a result. The magnitude of this excess mortality is mind-boggling. In 2009 my friend Dr. Steve Whitman asked a simple question, “How many extra black people died in Chicago each year, just because they do not have the same health outcomes as white Chicagoans?” When the Chicago Sun-Times got wind of his results, it ran them on the front page in bold white letters on a black background: “HEALTH CARE GAP KILLS 3200 Black Chicagoans and the Gap is Growing.” The paper styled the headline to look like the declaration of war that it should have been.

In fact, we did find ourselves at war not long ago, when almost 3,000 Americans were killed. That was September 11, 2001. That tragedy propelled the country to war. Yet when it comes to the premature deaths of urban Americans, no disaster area has been declared. No federal troops have been called up. No acts of Congress have been passed. Yet this disaster is even worse: those 3,200 black people were in Chicago alone, in just one year. Nationwide each year, more than 60,000 black people die prematurely because of inequality.10

While blacks suffer the most from this, it is not just an issue of racism, though racism has been a unique and powerful transmitter of violence in America for over four hundred years.11 Beyond racism, poverty and income inequality perpetuated by exploitative market capitalism are singular agents of transmission of disease and early death. As a result, there is a new and alarming pattern of declining life expectancy among white Americans as well. Deaths from drug overdoses in young white Americans ages 25 to 34 have exploded to levels not seen since the AIDS epidemic. This generation is the first since the Vietnam War era to experience higher death rates than the prior generation.12 White Americans ages 45 to 54 have experienced skyrocketing premature death rates as well, something not seen in any other developed nation.13 White men in some Appalachian towns live on average twenty years less than white men a half-day’s drive away in the suburbs of Washington, DC. Men in McDowell County, West Virginia, can look forward to a life expectancy only slightly better than that of Haitians.14

But those statistics reflect averages, and every death from structural violence is a person. When these illnesses and deaths are occurring one at a time in neighborhoods that society has decided not to care about—neighborhoods populated by poor, black, or brown people—they seem easy to overlook, especially if you are among the fortunate few who are doing incredibly well. The tide of prosperity in America has lifted some boats while others have swamped. Paul Farmer, the physician-anthropologist who founded Partners in Health, an international human rights agency, reflects on the juxtaposition of “unprecedented bounty and untold penury”: “It stands to reason that as beneficiaries of growing inequality, we do not like to be reminded of misery of squalor and failure. Our popular culture provides us with no shortage of anesthesia.”15

That people suffer and die prematurely because of inequality is wrong. It is wrong from an ethical perspective. It is wrong from a fairness perspective. And it is wrong because we have the means to fix it.

#### Challenging institutional racism is a prior ethical question— it makes violence structurally inevitable and foundationally negates morality making defenses of utilitarianism incoherent

Memmi, 2k --- Professor Emeritus of Sociology @ U of Paris, Naiteire (Albert, Racism, Translated by Steve Martinot, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved. Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark history in which we still largely live. it is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?. Racism illustrates, in sum, the inevitable negativity of the condition of the dominated that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animosity to humanity. In that sense, we cannot fail to rise to the racist challenge. However, it remains true that one’s moral conduit only emerges from a choice: one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is ‘the truly capital sin. It is not an accident that almost all of humanity’s spiritual traditions counsels respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in banishing injustice, because injustice engenders violence and death. Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. Bur no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. “Recall.” says the Bible, “that you were once a stranger in Egypt,” which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal—indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

satisfied: the results are confirmed by many different studies by different investigators over different time periods; there is a dose-response relationship, meaning more inequality leads to worse health; no other contending explanation is posited; and the relationship is biologically plausible, with likely mechanisms through which inequality works. The field of study called stress biology of social comparisons is one such way inequality acts. Those studies confirm that all the criteria for linking inequality to poorer health are met, concluding that the extent of inequality in society reflects the range of caring and sharing, with more unequal populations sharing less. Those who are poorer struggle to be accepted in society and the rich also suffer its effects.

A recent Harvard study estimated that about one death in three in this country results from our very high income inequality. Inequality kills through structural violence. There is no smoking gun with this form of violence, which simply produces a lethally large social and economic gap between rich and poor.

### 1AC – Growth Impact

#### Educational inequalities slow the U.S. economy—equal opportunity creates massive growth

**Hsu, Florida State University Associate Dean of Environmental Programs, 2016**

[Shi-Ling, 2016, Indiana Journal of Law and Social Equality, Vol. 5, Issue 1, “Inefficient Inequality,” Gonzaga HeinOnline, <http://www.heinonline.org/HOL/Page?handle=hein.journals/injlaseq5&div=3&start_page=1&collection=journals&set_as_cursor=1&men_tab=srchresults>, Accessed 7.1.17 CT @ GDI]

The empirical evidence strongly suggests that inequality is negatively correlated with investment in human capital and thereby dampens economic growth. 107 Economists have long intuited the importance of education to economic growth.os Claudia Goldin and Lawrence Katz, in their book The Race Between Education and Technology,109 argue that the economic dominance of the United States for the latter half of the twentieth century was largely due to its broad public schooling system, which created an educated workforce able to adapt to technological changes and increase productivity. 110 Young women,111 as well as young African Americans, 112 benefited broadly and greatly. But more importantly for our purposes, the dissipation of inequalities in education did not place white males at a relative disadvantage; rather, the breadth of education in the American populace lifted up an entire populace, **creating economic growth** in excess of what could have been achieved without compulsory schooling. 113 And by contrast, Goldin and Katz argue, **the American failure to maintain that educational advantage after 1970 largely explains the country's economic underperformance over this same period**. 114 In the United States, inequality that stratifies schooling into one system for haves and another for have nots is not only unjust but grossly inefficient. 115

#### Declining incomes collapse the liberal order

Martin **Wolf 17**, chief economics commentator at the Financial Times, 1-5-2017, "Martin Wolf: The long and painful journey to world disorder," Financial Times, https://www.ft.com/content/ef13e61a-ccec-11e6-b8ce-b9c03770f8b1?mhq5j=e3

It is not true that humanity cannot learn from history. It can and, in the case of the lessons of the dark period between 1914 and 1945, the west did. But it seems to have forgotten those lessons. We are living, once again, in an era of strident nationalism and xenophobia. The hopes of a brave new world of progress, harmony and democracy, raised by the market opening of the 1980s and the collapse of Soviet communism between 1989 and 1991, have turned into ashes. What lies ahead for the US, creator and guarantor of the postwar liberal order, soon to be governed by a president who repudiates permanent alliances, embraces protectionism and admires despots? What lies ahead for a battered EU, contemplating the rise of “illiberal democracy” in the east, Brexit and the possibility of Marine Le Pen’s election to the French presidency? What lies ahead now that Vladimir Putin’s irredentist Russia exerts increasing influence on the world and China has announced that Xi Jinping is not first among equals but a “core leader”? The contemporary global economic and political system originated as a reaction against the disasters of the first half of the 20th century. The latter, in turn, were caused by the unprecedented, but highly uneven, economic progress of the 19th century. The transformational forces unleashed by industrialisation stimulated class conflict, nationalism and imperialism. Between 1914 and 1918, industrialised warfare and the Bolshevik revolution ensued. The attempted restoration of the pre-first world war liberal order in the 1920s ended with the Great Depression, the triumph of Adolf Hitler and the Japanese militarism of the 1930s. This then created the conditions for the catastrophic slaughter of the second world war, to be followed by the communist revolution in China. In the aftermath of the second world war, the world was divided between two camps: liberal democracy and communism. The US, the world’s dominant economic power, led the former and the Soviet Union the latter. With US encouragement, the empires controlled by enfeebled European states disintegrated, creating a host of new countries in what was called the “third world”. Contemplating the ruins of European civilisation and the threat from communist totalitarianism, the US, the world’s most prosperous economy and militarily powerful country, used not only its wealth but also its example of democratic self-government, to create, inspire and underpin a transatlantic west. In so doing, its leaders consciously learnt from the disastrous political and economic mistakes their predecessors made after its entry into the first world war in 1917. Domestically, the countries of this new west emerged from the second world war with a commitment to full employment and some form of welfare state. Internationally, a new set of institutions — the International Monetary Fund, the World Bank, the General Agreement on Tariffs and Trade (ancestor of today’s World Trade Organisation) and the Organisation for European Economic Co-operation (the instrument of the Marshall Plan, later renamed the Organisation for Economic Co-operation and Development) — oversaw the reconstruction of Europe and promoted global economic development. Nato, the core of the western security system, was founded in 1949. The Treaty of Rome, which established the European Economic Community, forefather of the EU, was signed in 1957. This creative activity came partly in response to immediate pressures, notably the postwar European economic misery and the threat from Stalin’s Soviet Union. But it also reflected a vision of a more co-operative world. From euphoria to disappointment Economically, the postwar era can be divided into two periods: the Keynesian period of European and Japanese economic catch-up and the subsequent period of market-oriented globalisation, which began with Deng Xiaoping’s reforms in China from 1978 and the elections in the UK and US of Margaret Thatcher and Ronald Reagan in 1979 and 1980 respectively. This latter period was characterised by completion of the Uruguay Round of trade negotiations in 1994, establishment of the WTO in 1995, China’s entry into the WTO in 2001 and the enlargement of the EU, to include former members of the Warsaw Pact, in 2004. The first economic period ended in the great inflation of the 1970s. The second period ended with the western financial crisis of 2007-09. Between these two periods lay a time of economic turmoil and uncertainty, as is true again now. The main economic threat in the first period of transition was inflation. This time, it has been disinflation. Geopolitically, the postwar era can also be divided into two periods: the cold war, which ended with the Soviet Union’s fall in 1991, and the post-cold war era. The US fought significant wars in both periods: the Korean (1950-53) and Vietnam (1963-1975) wars during the first, and the two Gulf wars (1990-91 and 2003) during the second. But no war was fought among economically advanced great powers, though that came very close during the Cuban missile crisis of 1962. The first geopolitical period of the postwar era ended in disappointment for the Soviets and euphoria in the west. Today, it is the west that confronts geopolitical and economic disappointment. We are at the end of both an economic era and a geopolitical one, says Martin Wolf. What lies ahead? The Middle East is in turmoil. Mass migration has become a threat to European stability. Mr Putin’s Russia is on the march. Mr Xi’s China is increasingly assertive. The west seems impotent. These geopolitical shifts are, in part, the result of desirable changes, notably the spread of rapid economic development beyond the west, particularly to the Asian giants, China and India. Some are also the result of choices made elsewhere, not least Russia’s decision to reject liberal democracy in favour of nationalism and autocracy as the core of its post-communist identity and China’s to combine a market economy with communist control. Rising anger Yet the west also made big mistakes, notably the decision in the aftermath of 9/11 to overthrow Iraqi leader Saddam Hussein and spread democracy in the Middle East at gunpoint. In both the US and UK, the Iraq war is now seen as having illegitimate origins, incompetent management and disastrous outcomes. Western economies have also been affected, to varying degrees, by slowing growth, rising inequality, high unemployment (especially in southern Europe), falling labour force participation and deindustrialisation. These shifts have had particularly adverse effects on relatively unskilled men. Anger over mass immigration has grown, particularly in parts of the population also adversely affected by other changes. Some of these shifts were the result of economic changes that were either inevitable or the downside of desirable developments. The threat to unskilled workers posed by technology could not be plausibly halted, nor could the rising competitiveness of emerging economies. Yet, in economic policy, too, big mistakes were made, notably the failure to ensure the gains from economic growth were more widely shared. The financial crisis of 2007-09 and subsequent eurozone crisis were, however, the decisive events. These had devastating economic effects: a sudden jump in unemployment followed by relatively weak recoveries. The economies of the advanced countries are roughly a sixth smaller today than they would have been if pre-crisis trends had continued. The response to the crisis also undermined belief in the system’s fairness. While ordinary people lost their jobs or their houses, the government bailed out the financial system. In the US, where the free market is a secular faith, this looked particularly immoral. Finally, these crises destroyed confidence in the competence and probity of financial, economic and policymaking elites, notably over the management of the financial system and the wisdom of creating the euro. All this together destroyed the bargain on which complex democracies rest, which held that elites could earn vast sums of money or enjoy great influence and power as long as they delivered the goods. Instead, a long period of poor income growth for most of the population, especially in the US, culminated, to almost everyone’s surprise, in the biggest financial and economic crisis since the 1930s. Now, the shock has given way to fear and rage. The succession of geopolitical and economic blunders has also undermined western states’ reputation for competence, while raising that of Russia and, still more, China. It has also, with the election of Donald Trump, torn a hole in the threadbare claims of US moral leadership. Martin Wolf The risks that threaten global growth An important possibility is that the economic engine is running out of steam We are, in short, at the end of both an economic period — that of western-led globalisation — and a geopolitical one — the post-cold war “unipolar moment” of a US-led global order. The question is whether what follows will be an unravelling of the post-second world war era into deglobalisation and conflict, as happened in the first half of the 20th century, or a new period in which non-western powers, especially China and India, play a bigger role in sustaining a co-operative global order. Free trade and prosperity A big part of the answer will be provided by western countries. Even now, after a generation of relative economic decline, the US, the EU and Japan produce just over half of world output measured at market prices and 36 per cent of it measured at purchasing power parity. They also remain homes to the world’s most important and innovative companies, dominant financial markets, leading institutions of higher education and most influential cultures. The US should also remain the world’s most powerful country, particularly militarily, for decades. But its ability to influence the world is greatly enhanced by its network of alliances, the product of the creative US statecraft during the early postwar era. Yet alliances also need to be maintained. The essential ingredient in western success must, however, be domestic. Slow growth and ageing populations have put pressure on public spending. With weak growth, particularly of productivity, and structural upheaval in labour markets, politics has taken on zero-sum characteristics: instead of being able to promise more for everybody, it becomes more about taking from some to give to others. The winners in this struggle have been those who are already highly successful. That makes those in the middle and bottom of the income distribution more anxious and so more susceptible to racist and xenophobic demagoguery. In assessing responses, two factors must be remembered. First, the post-second world war era of US hegemony has been a huge overall success. Global average real incomes per head rose by 460 per cent between 1950 and 2015. The proportion of the world’s population in extreme poverty has fallen from 72 per cent in 1950 to 10 per cent in 2015. Globally, life expectancy at birth has risen from 48 years in 1950 to 71 in 2015. The proportion of the world’s people living in democracies has risen from 31 per cent in 1950 to 56 per cent in 2015. Second, trade has been far from the leading cause of the long-term decline in the proportion of US jobs in manufacturing, though the rise in the trade deficit had a significant effect on employment in manufacturing after 2000. Technologically driven productivity growth has been far more powerful. Similarly, trade has also not been the main cause of rising inequality: after all, high-income economies have all been buffeted by the big shifts in international competitiveness, but the consequences of those shifts for the distribution of income have varied hugely. US and western leaders have to find better ways to satisfy their people’s demands. It looks, however, as though the UK still lacks a clear idea of how it is going to function after Brexit, the eurozone remains fragile, and some of the people Mr Trump plans to appoint, as well as Republicans in Congress, seem determined to slash the frayed cords of the US social safety net. A divided, inward-looking and mismanaged west is likely to become highly destabilising. China might then find greatness thrust upon it. Whether it will be able to rise to a new global role, given its huge domestic challenges, is an open question. It seems quite unlikely. By succumbing to the lure of false solutions, born of disillusion and rage, the west might even destroy the intellectual and institutional pillars on which the postwar global economic and political order has rested. It is easy to understand those emotions, while rejecting such simplistic responses. The west will not heal itself by ignoring the lessons of its history. But it could well create havoc in the attempt.

### Inequality Key to Growth

#### Income inequality is the biggest internal link to a lack of economic growth – plan solves

**Sherman**, Forbes contributor, **14**

(Erik, Dec. 9, 2014, Forbes, “Income Inequality Hurts Economic Growth,” <https://www.forbes.com/sites/eriksherman/2014/12/09/income-inequality-hurts-economic-growth/#e0546f5591a3>, accessed 7/1/17, CD)

There's a continuing debate as to the broader impact of income inequality. Some claim that while it hurts those who experience it, there's not a wider effect. On the other side of the issue are the theories that with more concentration of wealth in fewer hands, there's an impact on the economy overall.

According to a new study from the Organization for Economic Co-operation and Development, the latter are right. **There is and has been a reduction of economic growth because of the growing concentration of income** among a smaller portion of the global population.

According to the OECD, the gap between the richest and poorest in most member countries is at its highest in the last 30 years. In addition, a broader measure of inequality called the Gini constant (0 when everyone has the same income and 1 when a single person has all income) has been on the rise. The U.S. is at the top of the scale except for Mexico, which has by far the worst income inequality of the OECD states.

The new OECD analysis found a "negative and statistically significant" correlation between income inequality and economic growth. Specifically, the 3 Gini point rise in inequality that was the average for OECD states over the last 20 years meant 0.35 percent less economic growth per year for the same time, or a total 8.5 percent GDP loss in that period. Here's a graph that shows the hit various national economies have taken as a result, along with an explanation of the impact.

Even at 6 points, that would be a 0.3 percent hit to U.S. GDP every year for the last 20.

The inequality problem is not one of the poorest of the poor in a country. It's the bottom 40 percent by income, according to the OECD study, which makes sense if you consider the rationale behind why inequality can hurt an economy. Growth happens when lots of people spend money. In the U.S., for example, the small number of people at the top of the economic ladder can't consume and spend at the rate that the broader population can. And the distribution of income means that there are many more in the bottom 40 percent by income than there are in the top 40 percent by income. Unless a policy addresses lower incomes, and not just official poverty, it won't succeed in helping the economy.

The OECD said that certain types of income redistribution -- specifically, high-value services **like good education** and healthcare -- increase, and not decrease, economic growth if effectively targeted without inefficiency and waste.

### Education Solves Growth

#### Education revitalizes the economy—every level of education passed helps

**Wright, economics writer for Economic Modeling, 2010**

[Joshua, 8.12.17, Economic Modeling, “The Relationship Between Education and the Economy,” <http://www.economicmodeling.com/2010/08/12/the-relationship-between-education-and-the-economy/>, Accessed 7.1.17 CT @ GDI]

This week, in a speech at the University of Texas, President Obama said, “The single most important thing we can do is to make sure we’ve got a world-class education system **for everybody**. That is a prerequisite for prosperity.” The comment followed this statement from the president:

Now, when I talk about education, people say, well, you know what, right now we’re going through this tough time. We’ve emerged from the worst recession since the Great Depression. So, Mr. President, you should only focus on jobs, on economic issues. And what I’ve tried to explain to people …. (is that) education is an economic issue. Education is the economic issue of our time.

It’s an economic issue when the unemployment rate for folks who’ve never gone to college is almost double what it is for those who have gone to college. Education is an economic issue when nearly eight in 10 new jobs will require workforce training or a higher education by the end of this decade. Education is an economic issue when we know beyond a shadow of a doubt that **countries that out-educate us today, they will out-compete us tomorrow**.

Right now, all levels of government in the US find themselves mired in a quagmire of fiscal deficits and entrenched unemployment. Government deficits are increasing as high levels of unemployment have persisted and added additional expenses for state and local governments, while simultaneously reducing tax revenues.

In many ways, both of these problems can be traced back to education. With higher educational attainment and fewer dropouts, our nation will necessarily have better-skilled, more autonomous workers. Such a workforce can use its education to be more creative and build wealth, which will ultimately help the economy and take pressure off of government programs. In addition, a more productive and independent workforce will produce increased tax revenues through increased earnings, consumption, and property values.

The first chart makes it clear: **Every level of education passed decreases the chances of unemployment, and raises personal income**. In other words, **every level of education** passed lessens the the costs of unemployment insurance, creates additional taxable income, and thus strengthens our economy.

### Plan Solves Inequality

#### The federal government must initiate the push for a fundamental right to education—4 warrants

Greenspahn, Junior Doctorate from The George Washington University School of Law, 08

[Daniel S., former associate at the Campaign for Fiscal Equity, the organization that successfully challenged New York State’s system for financing public schools. He previously handled issues related to education in New York City as Legislative Assistant and Legislative Director to U.S. Congressman Anthony D. Weiner, and served as a research officer for the Institute of International Education, nonprofit administrator of international exchanges, including the Fulbright program, South Carolina Law Review, “A CONSTITUTIONAL RIGHT TO LEARN: THE UNCERTAIN ALLURE OF MAKING A FEDERAL CASE OUT OF EDUCATION,” file:///Users/anthonywinchell/Downloads/SSRN-id1094072.pdf, pp. 764-767, accessed 7/1/17, AW]

III. A RETURN TO FEDERAL COURT?

A. Practical Reasons to Pursue a Federal Right to Education

Despite significant successes in state courts, some advocates and reformers suggest pursuing a federal right to education.90 Leading legal scholars Cass Sunstein, Erwin Chemerinsky, and Goodwin Liu are among those who argue that the federal government has a constitutional duty to guarantee every child an education.91 These scholars and others have identified four key reasons to consider returning to federal court to pursue a federal right to education.

1. Greater Uniformity in Educational Standards and Funding

All citizens of a just society should have the same basic rights regardless of where they live.92 Children, in particular, should not be subjected to a substandard education solely because of their residence, a matter over which they have no control. Only a federally enforceable right can provide a basic national standard in education93 and overcome funding disparities between states, disparities which comprise the majority of educational inequities.94

Furthermore, the federal government is also in a better position to coordinate interstate steps towards more uniform standards and equitable funding.95 It has “the greatest ability to redistribute wealth” and “address substandard academic performance of students nationwide.”96 Thus, the argument goes, educational shortcomings across the country require a national response, not piecemeal and protracted litigation in each of the fifty states.97

2. Growing Federal Participation in Education

The second reason for returning to federal courts to pursue a federal right to education involves federal legislation regulating certain aspects of public education. NCLB and related laws have sufficiently federalized education so that our national government must accept a corollary responsibility to provide students and schools with the resources necessary to meet heightened accountability requirements.98 For these reasons, the Sixth Circuit recently revived a suit in which the plantiffs argued that NCLB imposes financial obligations on states and school districts without providing enough funding to cover the associated costs.99

States facing sanctions and negative publicity for not meeting achievement targets under NCLB have strong incentives to preemptively lower their educational standards.100 A “race to the bottom”101 can best be avoided by holding the federal government accountable for a uniform educational baseline, impartial evaluation of state education data, and oversight of states’ progress.102

3. Fulfilling Brown I’s Unfinished Legacy

The third reason for returning to federal court to pursue a federal right to education focuses on fulfilling the unfinished legacy of Brown I. Brown I’s declaration that education be made available to all on equal terms is one of the Supreme Court’s most well-known pronouncements; yet fifty years later, its vision of equal opportunity remains incomplete. For some, school integration was inherently an indirect and ineffective means of ensuring every student received a quality education.103 For others, including realists and race theorists, desegregation faced insurmountable barriers, including racial housing patterns, white flight, social resistance, and racism.104 Brown I’s vision has also been limited by the Supreme Court’s own concerns about “race-conscious decision-making” in public education,105 most recently in the Parents Involved decision in 2007.106 Although Justice Kennedy’s concurrence suggested some potentially acceptable raceconscious actions by educators,107 the plurality opinion was adamant in its colorblind insistence that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”108

A race-neutral federal right to education sidesteps these limitations but still provides valuable assurance that the national struggle for equal educational opportunity is not over. Furthermore, increased resources, in contrast to racial integration, directly ensures quality teaching, school facilities, and instructional materials.109 Although some scholars still believe that integration plays a key role in boosting academic achievement,110 a growing consensus views resources as the critical tool for improving our nation’s worst public schools.111 Focusing on greater funding also benefits parents tired of underresourced schools without engendering as much opposition from those who are apprehensive about racial integration in their own communities.112 Finally, pursuing a race-neutral federal right to education avoids the Court’s exacting scrutiny with regard to race. In short, it is a right with a greater capacity to make education available to all on equal terms.

4. Continuing to Help the Students Most in Need

The fourth reason for returning to federal court to pursue a federal right to education emphasizes assisting the most disadvantaged students. Federal funding is highly directed towards helping educate students with the greatest needs. For example, funding provided by Title I of the Elementary and Secondary Education Act of 1965 targets school districts with high student poverty levels,113 and funding provided by the Individuals with Disabilities Education Act (IDEA) helps educators teach students with disabilities. 114 A federal right to education would further guarantee that students at a true disadvantage are provided resources commensurate with their needs. As a policy matter, targeting greater educational resources to schools with disadvantaged students will boost student performance irrespective of race.115 Fighting for an adequate education for every student also has political advantages. A federal right to education avoids alienating the support of poor Whites, exacerbating white racism, or merely benefiting minority elites because it focuses on the opportunity for all children, not just children of a certain race or class.116 Such a right would promise Internet access to poor white students in the rural Midwest, quality bilingual instruction to Hispanic immigrant children in the Southwest, and fewer crowded classrooms to impoverished Blacks in urban East Coast schools. A right to learn builds on a societal consensus that those most in need deserve a chance at a quality education, without regard to the color of their skin.

### Plan Solves Funding

#### the aff causes massive shifts in economic structures – solves financial distribution

Urchick, Administrative Law Attorney-Advisor, 7

(Krysten, Spring 2007, Michigan State University College of Law, “U.S. Education Law: Is the Right to Education in the U.S. in compliance with International Human Rights Standards?”, <http://www.law.msu.edu/king/2007/Urchick.pdf>, p. 29-31, DL)

Either way the U.S. decides to handle the right, it will vastly change the way the U.S. manages education. Since federalization of the right might be the only viable option to come into compliance with international human rights standards, the federal government would be faced with shifting financial resources and political backlash from more wealthy and supportive lobbying groups or states.229 The U.S. educational history is so grounded in localization and state control over education it would be difficult to create uniformity of the education process without vast shifts in power.

The most glaring problem will be the financial redistribution.230 As mentioned in the opening paragraph to this paper, the U.S. is the wealthiest country in the world. It has the resources to provide the federal positive right to education but it does not have the prioritization that such a task would require. Ratifying the conventions would take the U.S. out of the signatory bracket where respect for the object and purpose of the mission needs to be given and place it into the obligation bracket where it would have to fulfill the mandates in the conventions and the recommendations of the Committee. Without alleviating the highly visible racial discrimination and the apparent economic disparity, the U.S. would never pass muster under the Committee guidelines. **Funding would need to be re-allocated so that more equal distribution occurred**. It would be unacceptable to continue the current structure of local taxes because it would continually feed the inequality in the educational system.231 **The Supreme Court and the federal government would have to find themselves taxing on a national level to fund the right to education**. Congress could no longer condition funds and make allocations on a discretionary basis.232 The political branches would have to allocate funds in the budget for education and debates would shift regarding funding to how to make allocation equal among the districts based on an affirmative right to education.233

Affirmative steps to end discrimination would also need to be taken. This might even require the recognition by the Supreme Court of a suspect class under economic disparity which it would not be ready for. According to Kadrmas v. Dickinson Public Schools and Papasan v. Allain, the Supreme Court has refused to recognize a higher level of scrutiny than rational basis for claims of economic disparity.234 The Supreme Court declined to recognize wealth as a suspect class and therefore, most cases are upheld in light of apparent economic disparity.235 However, with a reorganization of the public funds and the guaranteed right to education, more people would be able to exercise and demand equality. This financial redistribution would eliminate some of the race and wealth issues prevalent in our educational system. Educational funding would be equal. In doing so, each child in U.S. public schools would be obtaining the same opportunities to acquire learning instead of the opportunities the local taxes could provide.

### Segregation Key

#### Racial inequality in schools destroy devastate educational attainment and exacerbates economic disparities

**Chen, St. Louis University PhD candidate, social inequity researcher, 2015**

[Amy Yun-Ping, May 2015, Sociology Study, May 2015, Vol. 5, No. 5, 382‐390, “Educational Inequality: An Impediment to True Democracy in the United States,” <http://www.davidpublisher.org/Public/uploads/Contribute/55f62bc2bf7b8.pdf>, Accessed 7.1.17 CT @ GDI]

During the school year 2009-2010, one in four Black students and nearly one in five Hispanic students still attended high schools where graduating was not the norm (National Center for Education Statistics [NCES] 2013). Furthermore, a study from Harvard’s Kennedy School of Government shows that a mere 11% of Black students and 15% of Hispanic students were well-advanced in math, as opposed to 42% of Whites and 50% of Asians (Love 2011). And in reading, only 13% of Black students and 4% of Hispanic students were proficient, compared with 40% of White students and 41% of Asian students (Love 2011). The data indicate that **the racial and ethnic gap in academic achievement represents the significant educational disparities** among different populations in the United States. Thus, what are the major factors causing achievement disparities? One of the most important answers is often attributed to race.

Throughout the history of the United States, race has existed as a set of interpretative codes and meanings that operate in the interactions of every aspect of life (Kozol 1991; Kozol 2006; Lipman 2003; Murrell 2008; Nieto 2005; Pollock 2010). In spite of the abolition of slavery, the decision of Brown v. Board of Education in 1954, and the passage of the Civil Rights Act of 1964, racial segregation and inequality continue to affect the quality of education nationwide (Carter and Welner 2013; Kozol 1991; Kozol 2006; Murrell 2008; Ravitch 2010). **Racial categorizing is never a finished product; instead, it functions as a powerful, dynamic, and artificial context that applies to each individual.** Public education plays a role in the production of race as a social category through both implicit and explicit lessons and practices. Racial inequality has consistently been a troublesome and disheartening reality in the U.S. education system, and it deprives many children of equal opportunity (Lipman 2003; Nieto 2005; Putnam 2015).

Today, numerous states’ public schools remain nearly as segregated as in earlier years, especially in urban communities where Black children are in the majority (Carter and Welner 2013; Pollock 2010). In many metropolitan areas, White children exclusively attend suburban public schools or private academies; by contrast, Black children primarily attend public schools in the city (Holme 2002; Murrell 2008). Continued school segregation leads to divided resources, low taxpayer support, and poor quality of education in these urban schools. Additionally, reformers often ignore racial segregation and accept it as inevitable. The consequences have been devastating for educational attainment and continuing economic disparities between racial groups.

## Legitimacy Adv

### 1AC

#### US legitimacy is on the brink – boosting soft power is key to resolve allies anxiety

Drezner, Tufts University IR Professor, 17

(Daniel, June 5, 2017, Financial Times, “Can America lead in the age of Trump?”, https://www.washingtonpost.com/posteverything/wp/2017/06/05/can-america-lead-in-the-age-of-trump/?utm\_term=.b5874d92f177, accessed 7/2/17, DL)

From a hard-power perspective, the United States is still in decent shape, although China is catching up. The problem is twofold. First, there are other components of power beyond guns and butter. Second, leadership in world politics is about power and purpose. The Trump administration has been derelict or worse on the latter. On the power dimension, soft power matters as well as hard power. Trying to get other actors to want the same things you want is a useful trait, and I fear that the Trump administration’s God-awful messaging guarantees that won’t happen. Realists might argue that such concepts are mushy, but there’s evidence that Trump’s blunders will complicate the next steps in Afghanistan. The Pentagon is proposing that U.S. allies shoulder an increased fraction of the troops in that country. The thing is: That proposal depends on nailing down commitments from NATO and other allies — a task that former officials said had gotten harder after Mr. Trump’s stormy visit to Europe, where he chided allies for not paying their fair share of the alliance’s upkeep and declined to reaffirm America’s commitment to mutual defense. “Trump has made it harder, not easier, to follow the U.S. lead,” said Douglas E. Lute, a former ambassador to NATO who advised both Mr. Obama and President George W. Bush on Afghanistan. “Questioning U.S. leadership makes it more difficult for the allies to send troops into harm’s way.” Withdrawing from the Paris accord further weakens U.S. soft power, as Meghan O’Sullivan, an official in the George W. Bush administration, pointed out in Bloomberg News last week. Dougherty suggests that America remains an attractor for others because of our university system, but that can erode quickly under president Trump.

#### continued human rights hypocrisy undermines US leadership - federal positive right to education solves

Urchick, Administrative Law Attorney-Advisor, 7

(Krysten, Spring 2007, Michigan State University College of Law, “U.S. Education Law: Is the Right to Education in the U.S. in compliance with International Human Rights Standards?”, <http://www.law.msu.edu/king/2007/Urchick.pdf>, p. 32-33, accessed 6/30/17, DL)

The right to education in the U.S. has a long and varied history. It has always been a localized practice provided by the states and local authorities without formal recognition of a federal fundamental positive right to education. However, in an ever smaller world, the necessity to be a true democratic leader grows. Central to a true democratic government is the availability and right to education for its citizens. Without ratification of the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, the U.S. continues to exude hypocrisy for its efforts worldwide, spouting its superior democracy but not practicing it, specifically in regard to a positive right to education.

This paper specifically focused on the status of the right to education. With the U.S. political landscape, a federal positive right to education would create vast changes in the economic structure. It would also require the federal government to deal with racism and an inadequate voice for children which will present difficulties for the courts and legislature. Even though the Committees used to enforce the conventions would have no real enforcement power over the U.S., it would still be subject to even more criticism and embarrassment than it is currently. Under the current structure, the U.S. hides behind its Constitution and creates illusory statements of upholding human rights. To bring the U.S. in compliance with international human rights standards on education, the federal government would need to be willing to affirmatively recognize the right to education and prioritize its vast resources in different ways. It would also have to make a firm commitment to the international community to assist and continue to further the right to education internationally.

#### Protecting civil rights in education is key to US perception abroad.

**Willie, Harvard professor emeritus, 2014,**

(Charles, Brown at 60 and Milliken at 40,” 6-4, https://www.gse.harvard.edu/news/ed/14/06/brown-60-milliken-40

Michelle Obama has reminded us to remember this: "Movements for real and lasting change are sustained by the relationships we build with one or others." The idea suggests that real success is based on a mutually collective relationship or a community. The quotation from our first lady reminds me of a statement made by former Morehouse College president Benjamin Mays, who told me and the other undergraduates, including Martin Luther King Jr., in the class of 1948 that "No [one] is wise enough or strong enough to go it alone." Brown v. Board of Education of 1954 and the Civil Rights Act of 1964 gave us the help we needed to stay on the right road to a nation-state of the people by the people and for the people that was created to establish justice, insure domestic tranquility, and promote general welfare. Also, our Declaration of Independence adopted in 1776 declared that "all are created equal." We know that the United States has not always lived up to the democratic principles of community life. However, it is never too late to do the right thing. Sixty years after the Supreme Court Brown opinion and 50 years after the United States Congress law that required justice for all in public institutions is a good time to assess the effects of these historical events. We know that it is right and our bound duty to give thanks for the good that we have experienced with others in public or private relations in public or private spaces. Many scholars have recognized that Brown was in part based upon the 14th Amendment of the United States Constitution, which declares that "No state shall make or enforce any law which shall abridge the privileges … of citizens … nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." My guess is that sooner or later, this amendment is going to be used against people who kill people in the theaters and streets and elsewhere simply because they do not like how one looks or where one may be going. The Brown v. Board of Education decision was in part based upon this amendment. It has been said that the 14th Amendment strengthened the Supreme Court opinion in Brown. And it could be used against many other contentious issues with reference to race and gender. In our technology society today, the words of the Brown opinion ring again: "Today, education is perhaps the most important function of state and local governments." Brown declared that education "is the very foundation of good citizenship," and I would add so is diversity. Diversity is in the air. Diversity is everywhere because no one is strong enough to go it alone, especially in education and public service. We know that the United States has not always lived up to the democratic principles of community life, including the value of diversity. A very important reason for examining closely the Brown v. Board of Education case is that it quickly addresses the question of whether racially segregated schools are inherently unequal. Law professor Norman Vieira, in his 1978 book, Civil Rights in a Nutshell, wrote, "In its historical context, state enforced racial separation would almost certainly [have been] by whites who were politically and economically dominant." A famous historian, John Hope Franklin, wrote in his book From Slavery to Freedom, "No public question in the United States in the twentieth century arouses more interest at home and abroad than the debate about the constitutionality of segregated public schools." Franklin further said, "The decision of the court in Brown v. Board of Education, May 17, 1954, was unequivocal in outlawing segregated public schools." Another famous historian, Richard Kluger, also agreed with John Hope Franklin. In 1977, Kluger said, "Scholars have assigned the case known as Brown v. Board of Education … a highpoint in America's willingness to face the consequence of centuries of racial discrimination." I will close this part of the Brown v. Board of Education story by sharing with you how one country, the Republic of South Africa, has reacted to the Brown case. I will share with you my observations while visiting South Africa to participate as one of the speakers in the conference on Equal Educational Opportunities Comparative Perspective in Education Law: Brown v. Board of Education at 50 years and Education Law at 10 years. Please note that the conference name included the United States and South Africa. Conference leaders said, "The year 2004 marked two momentous occasions: The 50th anniversary of the United States Supreme Court's ruling in Brown v. Board of Education and the first 10 years of democratic government in South Africa." The conference planners further said, "In Brown, the American Supreme Court struck down the notion of separate but equal education, and the dawn of democracy in South Africa was accompanied by legislation guaranteeing equality and the right to equal educational opportunities." Judge Albie Sachs of the Constitutional Court of South Africa — similar to the U.S. Supreme Court — gave the first public speech on equal educational opportunities and the Constitutional Court. He began his speech with these words: "I, speaking now as a judge, have no hesitation in saying that as far as I am concerned, the greatest legal decision of the 20th century in the world was Brown. It set a marker in terms of creativity, in terms of resonance, in terms of integrity — philosophical and legal integrity — for the whole world. It also included what judges could do. The role and scope of a judiciary in a society that proclaimed itself as one based on fundamental value was demonstrated in it. The justices were saying that there are certain forms of conduct that are just not sustainable, that just cannot be tolerated in a society with pretentions to justice." The whole conference burst into a very loud and long clapping of hands. I, of course, was very happy to hear those remarks from a member of the Constitutional Court in South Africa. Personally, I realized that what we do in the United States is watched carefully elsewhere. I know this to be true because my wife and I visited the Constitutional Court after the conference that I addressed; we were presented a small book of the Constitution of the Republic of South Africa prepared in 1996 that is similar in some ways to the Constitution of the United States.

#### Courts enforcement of equal protection is key to international legitimacy.

Knowles, New York University Law Assistant Professor, 09

(Robert, October 2009, Arizona State Law Journal, “American Hegemony and the Foreign Affairs Constitution”, Volume: 41, Number 87, p. 65-71, DL)

The Administration’s detainee policy made clear that—due to America’s power—the content of enforceable international law applicable to the detainees would largely depend on interpretation by the U.S. government. Under the classic realist paradigm, international law is less susceptible to judicial comprehension because it cannot be taken at face value; its actual, enforceable meaning depends on ever-shifting political dynamics and complex relationships among great powers. But in a hegemonic system, while enforceable international legal norms may still be political, their content is heavily influenced by the politics of one nation—the United States.411 As an institution of that same government, the courts are well positioned to understand and interpret international law that has been incorporated into U.S. law. Because the courts have the capacity to track international legal norms, there was no longer a justification for exceptional deference to the Administration’s interpretation of the Geneva Conventions as applied to the detainees.

Professors Posner and Sunstein have argued for exceptional deference on the ground that, unless the executive is the voice of the nation in foreign affairs, other nations will not know whom to hold accountable for foreign policy decisions.412 But the Guantánamo litigation demonstrated that American hegemony has altered this classic assumption as well. The transparent and accessible nature of the U.S. government made it possible for other nations to be informed about the detainee policy and, conceivably, to have a role in changing it. The Kuwaiti government hired American attorneys to represent their citizens held at Guantánamo.413 In the enemy combatant litigation, the government was forced to better articulate its detainee policies, justify the detention of each detainee, and permit attorney visits with the detainees.414 Other nations learned about the treatment of their citizens through the information obtained by attorneys.415

Although the political climate in the U.S. did not enable other nations to have an effect on detainee policy directly—and Congress, in fact, acted twice to limit detainees’ access to the courts 416—this was an exceptional situation. Foreign governments routinely lobby Congress for favorable foreign affairs legislation, and are more successful with less politically charged issues.417 Even “rogue states” such as Myanmar have their lobbyists in Washington.418 In addition, foreign governments facing unfavorable court decisions can and do appeal or seek reversal through political channels.419 The accessibility and openness of the U.S. government is not a scandal or weakness; instead, it strengthens American hegemony by giving other nations a voice in policy, drawing them into deeper relationships that serve America’s strategic interests.420 In the Guantánamo litigation, the courts served as an important accountability mechanism when the political branches were relatively unaccountable to the interests of other nations.

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424

The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429

In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436

Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438

At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440

The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.

Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449

Conclusion

When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Legitimacy of U.S. hegemony’s key to global stability-prevents great power war

**Fujimoto, US Army Lt. Colonel, 2012**

(Kevin, “Preserving U.S. National Security Interests Through a Liberal World Construct”, 1-11, <http://www.strategicstudiesinstitute.army.mil/index.cfm/articles/Preserving-US-National-Security-Interests-Liberal-World-Construct/2012/1/11>)

The emergence of peer competitors, not terrorism, presents the greatest long-term threat to our national security. Over the past decade, while the United States concentrated its geopolitical focus on fighting two land wars in Iraq and Afghanistan, China has quietly begun implementing a strategy to emerge as the dominant imperial power within Southeast Asia and the Indian Ocean. Within the next 2 decades, China will likely replace the United States as the Asia-Pacific regional hegemonic power, if not replace us as the global superpower.1 Although China presents its rise as peaceful and non-hegemonic, its construction of naval bases in neighboring countries and military expansion in the region contradict that argument. With a credible threat to its leading position in a unipolar global order, the United States should adopt a grand strategy of “investment,” building legitimacy and capacity in the very institutions that will protect our interests in a liberal global construct of the future when we are no longer the dominant imperial power. Similar to the Clinton era's grand strategy of “enlargement,”2 investment supports a world order predicated upon a system of basic rules and principles, however, it differs in that the United States should concentrate on the institutions (i.e., United Nations, World Trade Organization, ASEAN, alliances, etc.) that support a world order, as opposed to expanding democracy as a system of governance for other sovereign nations. Despite its claims of a benevolent expansion, China is already executing a strategy of expansion similar to that of Imperial Japan's Manchukuo policy during the 1930s.3 This three-part strategy involves: “(i) (providing) significant investments in economic infrastructure for extracting natural resources; (ii) (conducting) military interventions (to) protect economic interests; and, (iii) . . . (annexing) via installation of puppet governments.”4 China has already solidified its control over neighboring North Korea and Burma, and has similarly begun more ambitious engagements in Africa and Central Asia where it seeks to expand its frontier.5 Noted political scientist Samuel P. Huntington provides further analysis of the motives behind China's imperial aspirations. He contends that “China (has) historically conceived itself as encompassing a “‘Sinic Zone'. . . (with) two goals: to become the champion of Chinese culture . . . and to resume its historical position, which it lost in the nineteenth century, as the hegemonic power in East Asia.”6 Furthermore, China holds one quarter of the world's population, and rapid economic growth will increase its demand for natural resources from outside its borders as its people seek a standard of living comparable to that of Western civilization. The rise of peer competitors has historically resulted in regional instability and one should compare “the emergence of China to the rise of. . . Germany as the dominant power in Europe in the late nineteenth century.”7 Furthermore, the rise of another peer competitor on the level of the Soviet Union of the Cold War ultimately threatens U.S. global influence, challenging its concepts of human rights, liberalism, and democracy; as well as its ability to co-opt other nations to accept them.8 This decline in influence, while initially limited to the Asia-Pacific region, threatens to result in significant conflict if it ultimately leads to a paradigm shift in the ideas and principles that govern the existing world order. A grand strategy of investment to address the threat of China requires investing in institutions, addressing ungoverned states, and building legitimacy through multilateralism. The United States must build capacity in the existing institutions and alliances accepted globally as legitimate representative bodies of the world's governments. For true legitimacy, the United States must support these institutions, not only when convenient, in order to avoid the appearance of unilateralism, which would ultimately undermine the very organizations upon whom it will rely when it is no longer the global hegemon. The United States must also address ungoverned states, not only as breeding grounds for terrorism, but as conflicts that threaten to spread into regional instability, thereby drawing in superpowers with competing interests. Huntington proposes that the greatest source of conflict will come from what he defines as one “core” nation's involvement in a conflict between another core nation and a minor state within its immediate sphere of influence.9 For example, regional instability in South Asia10 threatens to involve combatants from the United States, India, China, and the surrounding nations. Appropriately, the United States, as a global power, must apply all elements of its national power now to address the problem of weak and failing states, which threaten to serve as the principal catalysts of future global conflicts.11 Admittedly, the application of American power in the internal affairs of a sovereign nation raises issues. Experts have posed the question of whether the United States should act as the world's enforcer of stability, imposing its concepts of human rights on other states. In response to this concern, The International Commission on Intervention and State Sovereignty authored a study titled, The Responsibility to Protect,12 calling for revisions to the understanding of sovereignty within the United Nations (UN) charter. This commission places the responsibility to protect peoples of sovereign nations on both the state itself and, more importantly, on the international community.13 If approved, this revision will establish a precedent whereby the United States has not only the authority and responsibility to act within the internal affairs of a repressive government, but does so with global legitimacy if done under the auspices of a UN mandate. Any effort to legitimize and support a liberal world construct requires the United States to adopt a multilateral doctrine whichavoidsthe precepts of the previous administration: “preemptive war, democratization, and U.S. primacy of unilateralism,”14 which have resulted in the alienation of former allies worldwide. Predominantly Muslim nations, whose citizens had previously looked to the United States as an example of representative governance, viewed the Iraq invasion as the seminal dividing action between the Western and the Islamic world. Appropriately, any future American interventions into the internal affairs of another sovereign nation must first seek to establish consensus by gaining the approval of a body representing global opinion, and must reject military unilateralism as a threat to that governing body's legitimacy. Despite the long-standing U.S. tradition of a liberal foreign policy since the start of the Cold War, the famous liberal leviathan, John Ikenberry, argues that “the post-9/11 doctrine of national security strategy . . . has been based on . . . American global dominance, the preventative use of force, coalitions of the willing, and the struggle between liberty and evil.”15 American foreign policy has misguidedly focused on spreading democracy, as opposed to building a liberal international order based on universally accepted principles that actually set the conditions for individual nation states to select their own system of governance. Anne-Marie Slaughter, the former Dean of the Woodrow Wilson School of Public and International Affairs, argues that true Wilsonian idealists “support liberal democracy, but reject the possibility of democratizing peoples . . .”16 and reject military primacy in favor of supporting a rules-based system of order. Investment in a liberal world order would also set the conditions for the United States to garner support from noncommitted regional powers (i.e., Russia, India, Japan, etc.), or “swing civilizations,” in countering China's increasing hegemonic influence.17 These states reside within close proximity to the Indian Ocean, which will likely emerge as the geopolitical focus of the American foreign policy during the 21st century, and appropriately have the ability to offset China's imperial dominance in the region.18 Critics of a liberal world construct argue that idealism is not necessary, based on the assumption that nations that trade together will not go to war with each other.19 In response, foreign affairs columnist Thomas L. Friedman rebukes their arguments, acknowledging the predicate of commercial interdependence as a factor only in the decision to go to war, and argues that while globalization is creating a new international order, differences between civilizations still create friction that may overcome all other factors and lead to conflict.20 Detractors also warn that as China grows in power, it will no longer observe “the basic rules and principles of a liberal international order,” which largely result from Western concepts of foreign relations. Ikenberry addresses this risk, citing that China's leaders already recognize that they will gain more authority within the existing liberal order, as opposed to contesting it. China's leaders “want the protection and rights that come from the international order's . . . defense of sovereignty,”21 from which they have benefitted during their recent history of economic growth and international expansion. Even if China executes a peaceful rise and the United States overestimates a Sinic threat to its national security interest, the emergence of a new imperial power will challenge American leadership in the Indian Ocean and Asia-Pacific region. That being said, it is more likely that China, as evidenced by its military and economic expansion, will displace the United States as the regional hegemonic power. Recognizing this threat now, the United States must prepare for the eventual transition and immediately begin building the legitimacy and support of a system of rules that will protect its interests later when we are no longer the world's only superpower.

#### The alternative is regional blocs and great power war

**Zhang et al., Carnegie Endowment researcher, 2011**

(Yuhan, “America’s decline: A harbinger of conflict and rivalry”, 1-22, <http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/>)

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However, as the hegemony that drew these powers together withers, so will the pulling power behind the US alliance. The result will be an international order where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that a post-hegemonic world would return to the problems of the 1930s: regional blocs, trade conflicts and strategic rivalry. Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy. Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). A world without American hegemony is one where great power wars re-emerge, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

### Education Key

#### International treaties are equivalent to federal law - The US risks its commitments

Imoukhuede, Professor of Law, Nova Southeastern University2013

[Areto A, 2013, BA (Economics); JD. Shepard Broad Law Center, Fort Lauderdale, Florida, USA. Member of the Bars of Illinois, the District of Columbia, and the US District Court for the Northern District of Illinois. Member of American Bar Association (ABA) and Society of American Law Teachers (SALT)., Nova South Eastern University, Freedom from Ignorance: the International Duty to Provide Public Education”, http://nsuworks.nova.edu/law\_facarticles/48/, p. 64-65, Accessed 6/30/2017, RV]

U.S. courts ought to recognise the Universal Declaration of Human Rights as binding, both because the Universal Declaration has been ratified by the U.S. and because **it is widely viewed to have now attained the status of customary international law its actual existence under federal law.** 8

Given that international treaties are on the same level as federal statutes on the domestic hierarchy of laws, the fact that the U.S. is a party to this Convention serves as more than a nonnative justification for the right, but describes its actual existence under federal law. 9 The Paquete Habana case of 1900 is the foundation for the domestic recognition of international law and ratified treaties are binding upon U.S. courts. 10 Despite San Antonio v. Rodriquez, the right to public education ought to at least be recognised as a right out of respect for existing treaty obligations, which carry the weight of federal statutory law. In fact, at least on state court in the U.S. has followed this approach. The West Virginia Supreme Court has held that education is a fundamental right under its state constitution and based part of its reasoning on a reading of the Universal Declaration of Human Rights.

The significance of the U.S. being a signatory or a full party to so many international treaties that proclaim a right to public education is two-fold. First, as previously mentioned, ratification of such treaties makes the right a part of federal law, which has the significance of creating a statutory right to public education that ought to trump state laws, pursuant to the Supremacy Clause of Article VI to the U.S. Constitution. 1

Second~ the fact that the U.S. has entered into treaties and international agreements calling for international recognition and state protection of the right to public education is demonstrative of a national commitment to education as a human necessity that should not be denied. 2 Entering into these treaties is a mechanism through which the U.S. shares democratic and humanitarian values across the world. If the U.S. continues to be an advocate on the international stage for human rights, such as education, but leaves the protection of such rights to the local authority of its individual states, then the U.S. risks breaching its international commitments.

### Legitimacy Key

#### legitimacy is the only internal link to unipolarity – it’s stable, sustainable, and peaceful – no alternatives

Knowles, New York University Law Assistant Professor, 09

(Robert, October 2009, Arizona State Law Journal, “American Hegemony and the Foreign Affairs Constitution”, Volume: 41, Number 87, p. 53-57, DL)

These factors make the current system much more stable, peaceful and durable than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. The lack of balancing means that the United States faces weak structural pressure.330 The internal processes of the U.S. matter now more than any other nations’ have in history.331 As one realist scholar has argued, the U.S. can best ensure the stability of this unipolar order by ensuring that its predominance appears legitimate.332

Hegemonic orders take on hierarchical characteristics, with the preeminent power having denser political ties with other nations than in a unipolar order.333 Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization among nations.334 For example, if Nation X’s security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, the preeminent state has “the power to shape the rules of international politics according to its own interests.”335 The hegemon, in return, provides public goods for the system as a whole.336 The hegemon possesses not only superior command of military and economic resources but “soft” power, the ability to guide other states’ preferences and interests.337 The durability and stability of hegemonic orders depends on other states’ acceptance of the hegemon’s role. The hegemon’s leadership must be seen as legitimate.338

The United States qualifies as a global hegemon. In many ways, the U.S. acts as a world government.339 It provides public goods for the world, such as security guarantees, the protection of sea lan es, and support for open markets.340 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions such as the United Nations, NATO, the International Monetary Fund, and the World Bank that remain in place today. The U.S. provides security for allies such as Germany and Japan, maintaining a strong military presence in Asia and Europe.341 Because of its overwhelming military might, the U.S. possesses what amounts to a “quasi-monopoly” on the use of force.342 This prevents other nations from launching wars that would tend to be truly de-stabilizing. Similarly, the United States provides a public good through its efforts to combat terrorism and confront—even through regime change—rogue states.343

The United States also provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest “consumer” of such law and the only nation capable of enforcing it on a global scale.344 The U.S. “was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law.”345 Moreover, controlling international norms are sometimes embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law. For example, whether terrorist threats will be countered effectively depends “in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants.”346

These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it. The transnational political and economic institutions created by the United States provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to “bandwagon” with the U.S. rather than seek to create alternative centers of power.347 American hegemony also coincided with the rise of globalization—the increasing integration and standardization of markets and cultures—which tends to stabilize the global system and reduce conflict.348

The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government. The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively in foreign affairs is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government.349 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made.350 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers.351 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form “ethnic lobbies” for the purpose of affecting foreign policy.352 The courts, too, are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an important vehicle for adjudicating tort claims among non-citizens in U.S. courts.353

Empires are more complex than unipolar or hegemonic systems. Empires consist of a rimless hub-and-spoke structure, with an imperial core—the preeminent state—ruling the periphery through intermediaries.354 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery.355 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other.356 The success of imperial governance depends on the lack of a “rim.”357 Stability in imperial orders is maintained through “divide and rule,” preventing the formation of countervailing alliances in the periphery by exploiting differences among potential challengers.358 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication—legitimating imperial rule by signaling “different identities to different audiences.”359

Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison.360 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing “crucial military, economic, or political support” if they refuse to comply.361 The “status of force agreements” (SOFAs) that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided.362 And the U.S. occupations in Iraq and Afghanistan have a strong imperial dynamic because those regimes depend on American support.363

But the management of empire is increasingly difficult in the era of globalization. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control “the flow of information about its bargains and activities around the world.”364 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign.365 Another classic imperial tactic—the use of brutal, overwhelming force to eliminate resistance to imperial rule—is also unlikely to be effective today. The success of counterinsurgency operations depends on winning a battle of ideas, and collateral damage is used by violent extremists, through the Internet and satellite media, to “create widespread sympathy for their cause.”366 The abuses at Abu Ghraib, once public, harmed America’s “brand” and diminished support for U.S. policy abroad.367 Imperial rule, like hegemony, depends on maintaining legitimacy.

### Court Solvency

#### domestic court signals are key to sustainable unipolar legitimacy – it’s the only internal to decline – transition causes great power wars

Knowles, New York University Law Assistant Professor, 09

(Robert, October 2009, Arizona State Law Journal, “American Hegemony and the Foreign Affairs Constitution”, Volume: 41, Number 87, p. 58-61, DL)

Constructing a Hegemonic Model

International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some ways, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. “[W]orld power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington.”368 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs.

One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations – liberalism. Liberal IR theory generally holds that internal characteristics of states – in particular, the form of government – dictate states behavior, and that democracies do not go to war against one another.369 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world.370 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states.371 Because domestic and foreign issues are “more convergent” among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches’ powers.372 With respect to non-liberal states, the position of the U.S. is more “realist,” and courts should deploy a high level of deference.373

A strength of Dean Slaughter’s binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has criticized this approach because it would put courts in the difficult position of determining which countries are liberal democracies.374 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake?

To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness—which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the 21st Century, America’s global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political—if not as much as in the past— but it is American politics that matters most. If the U.S. is truly an empire— and in some respects it is—the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, the management of hegemony or unipolarity requires a different set of competences. Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order.375 The hegemonic model I offer here adopts common insights from the three IR frameworks—unipolar, hegemonic, and imperial—described above.

First, the “hybrid” hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America’s security and prosperity, than the alternatives. If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place.376 The result would be radical instability and a greater risk of major war.377 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most.

Second, the hegemonic model assumes that American hegemony is unusually stable and durable.378 As noted above, other nations have many incentives to continue to tolerate the current order.379 And although other nations or groups of nations—China, the European Union, and India are often mentioned—may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades to come. In 2025, the U.S. economy is projected to be twice the size of China’s.380 The U.S. accounted for half of the world’s military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors.381 Predictions of American decline are not new, and they have thus far proved premature.382

Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy.383 All three IR frameworks for describing predominant states—although unipolarity less than hegemony or empire—suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control.384 Legitimacy as a method of maintaining predominance is far more efficient.

The hegemonic model generally values courts’ institutional competences more than the anarchic realist model. The courts’ strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts’ treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this “domestication” reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations—liberty, accountability, and effectiveness—against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

The domestic deference doctrines—such as Chevron and Skidmore —are hardly models of clarity, but they are applied and discussed by the courts much more often than foreign affairs deference doctrines, and can be usefully applied to foreign affairs cases as well.385 The domestic deference doctrines are a recognition that legal interpretation often depends on politics, just as it does in the international realm.386 Most of the same functional rationales—expertise, accountability, flexibility, and uniformity—that are advanced in support of exceptional foreign affairs deference also undergird Chevron. Accordingly, Chevron deference provides considerable latitude for the executive branch to change its interpretation of the law to adjust to foreign policy requirements. Once courts determine that a statute is ambiguous, the reasonableness threshold is easy for the agency to meet; that is why Chevron is “strong medicine.”387 At the same time, Chevron’s limited application ensures that agency interpretations result from a full and fair process. Without such process, the courts should look skeptically on altered interpretations of the law.

### Legitimacy UQ

#### massive leadership uncertainty now – Trump leadership transition – clarity key

Pollack, Brookings Senior Fellow, 17

(Jonathan, March 10, 2017, Brookings, “Donald Trump and the future of U.S. leadership”, https://www.brookings.edu/research/donald-trump-and-the-future-of-u-s-leadership/, accessed 7/2/17, DL)

The United States has never had a president like Donald Trump. He is a real estate investor, golf course developer, casino owner, product brander and television personality with no prior experience in government or in competing for elective office. He ran for president on the Republican ticket, but he has no enduring loyalties to either political party, although he has undeniably tied his political fortunes to the Republican Party. In decided contrast with other recent administrations, there is not a single Democrat in the Trump cabinet, and African-Americans, Asian-Americans, Latinos and women are all minimally represented.

Many observers characterize Trump as a populist who speaks on behalf of marginalized citizens, especially those whose economic status has severely eroded during decades of deindustrialization and job loss. This support might have been pivotal to his victory in November, but his actions since the election do not reflect this supposed commitment. Some observers even characterize the new president as a working class billionaire, which constitutes an extraordinary feat in public relations. His cabinet consists largely of individuals with great personal wealth, including a billionaire (Wilbur Ross, the Secretary of Commerce) who profited handsomely from the purchase of depressed industrial assets and shuttered coal mines at bargain prices. Trump’s closest economic advisors include several with ample fortunes garnered at Goldman Sachs. Apart from ideas and policies that he has personally espoused, he enters office with remarkably few political obligations or commitments.

Donald Trump was elected President by exploiting grievances evident across a broad swath of the American electorate. Despite receiving only 46% of the popular vote, he claims a mandate for major change. Trump asserts that he is leading a movement more than a government, and his inaugural address displayed open contempt for many of the practices and policies pursued by his predecessors over the past seven decades.

Donald Trump’s open disregard for the established rules of the game and Republican dominance of both Houses of Congress present the new president with an unparalleled opportunity to disrupt the status quo, triggering ample uncertainty in the United States and across the world about the future of U.S. leadership in global and regional affairs. Transitions in American leadership (especially when political power passes between the major parties) are inherently stressful, but rarely has a transition been as anxiety-laden and as uncertain as the one from Barack Obama to Donald Trump.

There is keen interest outside the United States in what Donald Trump might undertake as president. But in many respects nobody knows what Trump might do, nor (based on his often contradictory statements) does he appear to know. It is also far from clear how he and his subordinates intend to organize the inter-agency process and pursue identifiable foreign policy goals. There is the additional question of whether his words should be taken literally as well as seriously. Though he has moved quickly to carry out an array of campaign pledges (for example, seeking to reverse the Affordable Care Act and to initiate work on extending the wall along America’s border with Mexico), many of these policy declarations are intended to placate core support groups, without any clear conception of how to proceed, who will pay for major shifts in policy and what the resulting consequences might be.

#### US bandwagoning is faltering – continued signaling failures solidify abandonment

Wolf, Chief Economics Commentator, 17

(Martin, May 30, 2017, Financial Times, “Donald Trump and the surrendering of US leadership”, <https://www.ft.com/content/f0b9fba6-4241-11e7-9d56-25f963e998b2?mhq5j=e3>, accessed 7/2/17, DL)

Mr Trump’s “alt-right” supporters see not a divide between the democracies and the despotisms; but rather between social progressives and globalists, whom they despise, and social traditionalists and nationalists, whom they support. For them, western Europeans are on the wrong side: they are enemies, not friends.

Deep down, Mr Trump might agree. He is surrounded by orthodox advisers, such as James Mattis, defence secretary. Yet the president’s heart seems not to be in it. The west may not be dead. But as a set of countries with shared interests and values, it is moribund.

Now consider the west and, above all, the US in the world. The rise of China has reduced its economic and political weight. A recent history of failed wars and financial crises has savaged its leaders’ credibility. The choice of Mr Trump, a man so signally lacking in the virtues, abilities, knowledge and experience to be expected of a president, has further damaged the attractions of the democratic system.

Now the west seems deeply divided internally too. Across the world, people question the future role of the US. Would it not be wiser, they wonder, to move closer to China?

Mr Trump would not appear to mind if this did happen. He voluntarily withdrew the US from the Trans-Pacific Partnership, aimed at being an alternative to Chinese leadership. Under him, the US seems to be abandoning the notion of soft power. Indeed, the proposed budget tells us that the administration sees the idea as largely empty: guns matter, diplomacy does not.

The soft power of democracy is not what it was. It has produced Mr Trump as leader of the world’s most important country. It is not an advertisement.

Yet much is at stake in the world. Three big challenges exist: prosperity, peace and protection of the commons.

#### low threshold for collapse – threat proliferation means leadership internal links outweigh

Burns, Carnegie International Peace Endowment President, 17

(William, Michèle Flournoy, and Nancy Lindborg, May 30, 2017, Financial Times, “U.S. Leadership and the Challenge of ‘State Fragility’”, https://www.usip.org/publications/2016/09/us-leadership-and-challenge-state-fragility, accessed 7/2/17, DL)

At the very moment when challenges to the post-World War II U.S.-led international order are growing in number and complexity, Americans are asking hard questions about the type of global leadership role they want their country to play. After a decade and a half of unceasing war and sustained economic unease in the wake of the worst financial crisis in a generation, Americans—and their elected representatives—are increasingly looking homeward. The temptation to hunker down and wait for this moment of disorder to pass is understandable, but shortsighted. We simply do not have that luxury. There is too much at stake—for American interests, for the interests of our allies and partners, and for global peace and security.

The simultaneity of proliferating challenges and constrained appetite and resources to address them will require the incoming administration to demonstrate remarkable discipline and imagination in where and how it chooses to deploy American leadership.

### at: fill in

#### no fill in – withdrawal guarantees instability

Bremmer, New York University Global Research Professor, 17

(Ian, Dec 18, 2016, Financial Times, “The Era of American Global Leadership Is Over. Here's What Comes Next”, <http://time.com/4606071/american-global-leadership-is-over/>, accessed 7/2/17, DL)

While America's withdrawal will create uncertainty, no one is rushing in to fill the vacuum. China's investments in Asia, Africa and Latin America boost Beijing's influence in dozens of countries, and Trump's renunciation of the Trans-Pacific Partnership, an enormous trade deal, gives China an excellent opportunity to expand its web of regional trade ties. But Beijing can't match Washington's military reach or cultural appeal. It's not a major producer of energy, food or the latest advanced technology. And China's leaders have their hands full at home. They must ensure that the nation's economy continues to develop and modernize to maintain their monopoly of domestic political power. The reality is that there is no emerging power ready, willing and able to take the leadership role the U.S. will no longer play.

### at: multipolarity

#### **multipolarity increases the risk of war – it’s the worst option**

Mearsheimer, Chicago University Political Science Professor, 14

(John, October 25, 2014, National Interest, “Can China Rise Peacefully?”, http://nationalinterest.org/commentary/can-china-rise-peacefully-10204?page=show, accessed 7/2/17, DL)

War is more likely in multipolarity than in bipolarity, in part because there are more great powers in multipolar systems and therefore more opportunities for great powers to fight with each other as well as with smaller countries. In addition, imbalances of power are more common in multipolarity, because the greater number of countries in multipolarity increases the chances that the underpinnings of military power will be distributed unevenly among them. And when you have power asymmetries, the strong are hard to deter when they are bent on aggression. Finally, there is greater potential for miscalculation in multipolarity, in terms of assessing both the resolve of opponents and the strength of rival coalitions. This is due in good part to the more fluid nature of international politics in a multipolar world, where there are shifting coalitions and significant potential for states to buck­pass to each other.

To make matters worse, unbalanced multipolarity is the most dangerous distribution of power, because it contains a potential hegemon, which not only has markedly more power than any other state in the region but also has strong incentives to use the sword to gain hegemony. A potential hegemon can, moreover, elevate the level of fear among its rivals, which sometimes causes them to pursue risky strategies that might lead to war.

### at: economy turns

#### security first – policymakers prioritize survival and nationalism over prosperity

Mearsheimer, Chicago University Political Science Professor, 14

(John, October 25, 2014, National Interest, “Can China Rise Peacefully?”, http://nationalinterest.org/commentary/can-china-rise-peacefully-10204?page=show, accessed 7/2/17, DL)

It would be wrong to argue that economic interdependence does not matter at all for the fostering of peace. Leaders do care greatly about their country’s prosperity, and in certain circumstances that concern will help dampen any enthusiasm they might have for war. The key question, however, is whether such calculations are likely to decisively influence policymakers in a wide variety of circumstances. In other words, will the impact of economic interdependence be weighty enough to serve as a firm basis for peace between China and its potential rivals over a long period of time? I believe there are good reasons to doubt that concerns about mutual prosperity will keep Asia peaceful as China grows more powerful.

At the most basic level, political calculations often trump economic ones when they come into conflict. This is certainly true regarding matters of national security, because concerns about survival are invariably at stake in the security realm, and they are more important than worries about prosperity. As emphasized, if you do not survive, you cannot prosper. It is worth noting in this regard that there was substantial economic interdependence and prosperity among the European great powers before 1914. Nevertheless, World War I happened. Germany, which was principally responsible for causing that conflict, was bent on preventing Russia from growing more powerful while at the same time trying to become a hegemon in Europe. Politics overwhelmed economics in this important case.

Politics also tends to win out over concerns about prosperity when nationalism affects the issue at stake. Consider Beijing’s position on Taiwan. Chinese leaders have stressed that they will go to war if Taiwan declares its independence, even though they believe the ensuing conflict would damage China’s economy. Of course, nationalism is at the core of Chinese thinking on Taiwan; that island is considered sacred territory. One might also note that history is littered with civil wars, and in almost every case there was substantial economic interdependence between the combatants before the fighting broke out. But political calculations proved to be more influential in the end.

### at: peaceful china rise

#### no peaceful rise – offensive realism dominates Chinese strategic thinking and history

Mearsheimer, Chicago University Political Science Professor, 14

(John, October 25, 2014, National Interest, “Can China Rise Peacefully?”, http://nationalinterest.org/commentary/can-china-rise-peacefully-10204?page=show, accessed 7/2/17, DL)

There are two problems with this theory of Confucianism. First, it does not reflect how Chinese elites have actually talked and thought about international politics over their long history. In other words, it is not an accurate description of China’s strategic culture over the centuries. More important, there is little historical evidence that China has acted in accordance with the dictates of Confucianism. On the contrary, China has behaved just like other great powers, which is to say it has a rich history of acting aggressively and brutally toward its neighbors.

There is doubtless a prominent Confucian strand in Chinese culture going back more than 2,000 years. But as Alastair Iain Johnston points out, a second and more powerful strand is at play in Chinese thinking about international politics. He calls it the “parabellum paradigm” and notes that it places “a high degree of value on the use of pure violence to resolve security conflicts.” This paradigm, he emphasizes, “does not make significantly different predictions about behavior from that of a simple structural realpolitik model.” That is why he uses the term “parabellum paradigm” interchangeably with “cultural realism,” which is the title of his book. Very important is Johnston’s contention that Confucianism and cultural realism “cannot claim separate but equal status in traditional Chinese strategic thought. Rather, the parabellum paradigm is, for the most part, dominant.”

The discussion up to now has assumed that Confucianism is essentially peaceful and does not advocate initiating war for any reason. But that assumption is not true. As Yan Xuetong makes clear, the high premium Confucianism places on morality does not rule out employing war as an instrument of statecraft. Indeed, it mandates that China be willing to wage just wars when another country is behaving in ways that China’s leaders deem immoral. Yan writes, “Some claim that Confucius and Mencius advocate ‘no war’ and are opposed to all war. In fact, they are not opposed to all war, only to unjust wars. They support just wars.” He further says, “Confucius thinks that reliance on preaching to uphold the norms of benevolence and justice is inadequate. Hence he thinks the way of war should be employed to punish the princes who go against benevolence and justice.”

Of course, this justification for war is remarkably pliable. As almost every student of international politics knows, political leaders and policymakers of all persuasions are skilled in figuring out clever ways of defining a rival country’s behavior as unjust or morally depraved. Hence, with the right spinmeister, Confucian rhetoric can be used to justify aggressive as well as defensive behavior. Like liberalism in the United States, Confucianism makes it easy for Chinese leaders to speak like idealists and act like realists.

And there is abundant evidence that China has behaved aggressively toward its neighbors whenever it could over the course of its long history. In his survey of Chinese foreign policy since the second millennium BCE, the historian Warren Cohen writes, “In the creation of their empire, the Chinese were no less arrogant, no less ruthless, than the Europeans, Japanese, or Americans in the creation of theirs.” He adds, “Historically, a strong China has brutalized the weak—and there is no reason to expect it to act differently in the future, to behave any better than other great powers have in the past.” The political scientist Victoria Tin-bor Hui observes that when we look at Chinese foreign policy over time, what we see is “the primacy of brute force rather than ‘humane authority.’” She notes, “It is difficult to understand such prevalence of military conflicts throughout Chinese history from only the perspective of Confucian thought.”

Numerous other scholars make similar arguments. Yuan-Kang Wang, for example, writes, “Confucian culture did not constrain Chinese use of force: China has been a practitioner of realpolitik for centuries, behaving much like other great powers have throughout world history. . . . Chinese leaders have preferred to use force to resolve external threats to China’s security, take on a more offensive posture as the country’s power grew, and adopted expansive war aims in the absence of systemic or military constraints.” Finally, the historian Hans J. van de Ven writes, “No one even with only a casual interest in Chinese history can be unaware that China’s capacity for war in the last few centuries has proved truly awesome. . . . It is plain that China’s history has in fact been at least as violent as Europe’s.”

One might concede that China has done little more than pay lip service to Confucianism in the past, but argue that it has undergone an epiphany in recent years and now embraces that peaceful worldview while rejecting balance-of-power logic. There is little evidence, however, that such a change has taken place. Indeed, it is not unusual for experts on China to note that realism is alive and well there. Thomas Christensen, for example, argues that “China may well be the high church of realpolitik in the post–Cold War world,” while Avery Goldstein says, “China’s contemporary leaders, like their predecessors in Imperial China, prize the practice of realpolitik.”

In sum, there is little basis for the claim that China is an exceptional great power that eschews realist logic and instead behaves in accordance with the principles of Confucian pacifism. Almost all of the available evidence indicates that China has a rich history of trying to maximize its relative power. Furthermore, there is no good reason to think China will act differently in the future.

#### multiple sites for escalation – realism dominates china’s framing

Mearsheimer, Chicago University Political Science Professor, 14

(John, October 25, 2014, National Interest, “Can China Rise Peacefully?”, http://nationalinterest.org/commentary/can-china-rise-peacefully-10204?page=show, accessed 7/2/17, DL)

Why should we expect China to act differently than the United States? Are the Chinese more principled than we are? More ethical? Are they less nationalistic? Less concerned about their survival? They are none of these things, of course, which is why China is likely to follow basic realist logic and attempt to become a regional hegemon in Asia.

Although maximizing its prospects of survival is the principal reason China will seek to dominate Asia, there is another reason, related to Beijing’s territorial disputes with some of its neighbors. As Taylor Fravel points out, China has managed to settle most of its border conflicts since 1949—seventeen out of twenty-three—in good part because it has been willing to make some significant concessions to the other side. Nevertheless, China has six outstanding territorial disagreements, and there is little reason—at least at this juncture—to think the involved parties will find a clever diplomatic solution to them.

Probably China’s most important dispute is over Taiwan, which Beijing is deeply committed to making an integral part of China once again. The present government on Taiwan, however, believes it is a sovereign country and has no interest in being reintegrated into China. Taiwanese leaders do not advertise their independence, for fear it will provoke China to invade Taiwan. In addition, China has ongoing disputes with Vietnam over control of the Paracel Islands in the South China Sea, and with Brunei, Malaysia, the Philippines, Taiwan, and Vietnam over the Spratly Islands, which are also located in the South China Sea.

More generally, China maintains that it has sovereignty over almost all of the South China Sea, a claim disputed not only by its neighbors but by the United States as well. Farther to the north in the East China Sea, Beijing has a bitter feud with Japan over who controls a handful of small islands that Tokyo calls the Senkaku Islands and China labels the Diaoyu Islands.

Finally, China has land border disputes with Bhutan and India. In fact, China and India fought a war over the disputed territory in 1962, and the two sides have engaged in provocative actions on numerous occasions since then. For example, New Delhi maintains there were 400 Chinese incursions into Indian-controlled territory during 2012 alone; and in mid-April 2013, Chinese troops—for the first time since 1986—refused to return to China after they were discovered on the Indian side of the Line of Actual Control. It appears that China has been stepping up its cross-border raids in recent years in response to increased Indian troop deployments and an accompanying growth in infrastructure.

Given the importance of these territorial disputes to China, coupled with the apparent difficulty of resolving them through the give-and-take of diplomacy, the best way for China to settle them on favorable terms is probably via coercion. Specifically, a China that is much more powerful than any of its neighbors will be in a good position to use military threats to force the other side to accept a deal largely on China’s terms. And if that does not work, China can always unsheathe the sword and go to war to get its way. It seems likely that coercion or the actual use of force is the only plausible way China is going to regain Taiwan. In short, becoming a regional hegemon is the best pathway for China to resolve its various territorial disputes on favorable terms.

### at: china bandwagon

#### no China economic coercion – survival realism forces balancing over bandwagoning

Mearsheimer, Chicago University Political Science Professor, 14

(John, October 25, 2014, National Interest, “Can China Rise Peacefully?”, http://nationalinterest.org/commentary/can-china-rise-peacefully-10204?page=show, accessed 7/2/17, DL)

In essence, this is a situation in which economic and political-military considerations are in conflict; that raises an important question: which factor will ultimately prevail? My argument is that security considerations almost always trump economic considerations and that states opt for balancing over bandwagoning whenever they must choose between those strategies. The underlying logic of my position should be clear by now. Countries balance against powerful rivals because it is the best way to maximize their prospects of survival, which must be their highest goal. Bandwagoning with a more powerful state, in contrast, lessens the bandwagoner’s prospects for survival, because the more formidable state is free to become even more powerful and thus more dangerous. The economic-coercion argument, however, has a different logic; it stresses prosperity over survival. The core claim is that a state with significant market power can seriously hurt the economy of the target state, and that the threat of economic punishment will be enough to coerce the vulnerable country into bandwagoning with the more powerful state. There is no question that severe economic pain is a scary prospect, but not surviving looms as an even greater peril. Survival, in other words, is a more powerful imperative than prosperity, which is why realist logic usually trumps arguments based on economic coercion, and why China’s neighbors will balance against it.

## Democracy Adv

### 1AC

#### Democracy is seriously at risk now --- Trump’s victory proves that reinvigorating public education is necessary to reverse the tide

**Kahlenberg, The Century Foundation Senior Fellow, and Janey, The Century Foundation Contributor, 2016**

[Richard D. and Clifford, 11.10.16, The Century Foundation, “Putting Democracy Back into Public Education,” <https://tcf.org/content/report/putting-democracy-back-public-education/>, Accessed 7.2.17 CT @ GDI]

Today, however, we are seeing the costs of an unbalanced approach to public education that focuses on markets far more than democracy: dangerously low levels of civic knowledge, and a reduced faith in democratic values among Americans. These developments are particularly troublesome because they have occurred alongside two larger societal trends that undermine our democracy: a decline in labor unions, and increased political polarization by residential areas, all of which we explore below.

Low Levels of Civics Knowledge

Americans’ knowledge of basic civics is frighteningly scant. A 2015 survey conducted by the Annenberg Public Policy Center of the University of Pennsylvania found that only 31 percent of Americans can name all three branches of government, and 32 percent cannot identify a single one. (See Figure 1.) The survey found that only 53 percent of Americans understood that a 5–4 decision by the U.S. Supreme Court constitutes law and must be followed; 15 percent believed that a 5–4 decision is sent back to Congress for reconsideration, and 13 percent thought that the decision would be returned to lower courts and decided there.40

Performance among students on the 2010 National Assessment of Educational Progress (NAEP) was also disturbingly low. Only 27 percent of fourth-graders, 22 percent of eighth-graders, and 24 percent of twelfth-graders performed at or above the proficient level in civics. Thirty-six percent of twelfth grade students failed to even reach the basic level in civics, signifying that they were unable to describe forms of political participation in a democracy, or draw simple conclusions from basic graphs, charts, maps, or cartoons.41

What is particularly disturbing is that civic literacy has not risen despite considerable gains in educational attainment. As scholar William Galston observed in 2003, “Although the level of formal schooling in the United States is much higher than it was fifty years ago, the civic knowledge of today’s students is at best no higher than that of their parents and grandparents.”42 Among college graduates, older respondents perform significantly better than younger ones according to the American Council of Trustees and Alumni. While over 98 percent of college graduates over 65, for example, knew that the president cannot establish taxes, only 74 percent of graduates aged 25–34 understood this concept.43

Adherence to Democratic Values

If schools are doing a poor job of imparting civic knowledge, they are also doing a poor job of inculcating an appreciation for the democratic values embodied in the Bill of Rights. In the 2015 Annenberg Survey, for example, over one-quarter of people (26 percent) would vote to alter or eliminate the Fifth Amendment so that courts could require a person testify against herself. Almost half (46 percent) opposed a prohibition on “double jeopardy”; the same percentage of people believe that the government should be permitted to prohibit a peaceful march down a main street if those marching expressed offensive views; and only half of respondents thought that the government should not be able to prohibit practice of a religion if a majority of voters perceived it to hold “un-American” views.44

The problem has grown over time, giving rise to some startling attitudes. Columnist Catherine Rampell points out that Americans have become, “steadily more open to anti-democratic, autocratic ideals.”45 As researchers Roberto Stefan Foa and Yascha Mounk note, trends in the World Values Survey show that Americans have shown a declining trust in institutions, including democracy.46 When asked whether democracy is a good or bad way to run a country, 17 percent said bad or very bad, up from 9 percent in the mid-1990s. Among those ages 16 to 24, about a quarter said democracy was bad or very bad, an increase of one-third from a decade and a half earlier (see Figure 2).

Some 25 percent of millennials said it is “unimportant,” that in a democracy, people should “choose their leaders in free elections.” Among U.S. citizens of all ages, the proportion who said it would be “fairly good” or “very good” for the “army to rule,” has risen from one in sixteen in 1995, to one in six today.47 Likewise, a June 2016 survey by the Public Religion Research Institute and the Brookings Institution found that a majority of Americans showed authoritarian (as opposed to autonomous) leanings. Moreover, fully 49 percent of Americans agreed that “because things have gotten so far off track in this country, we need a leader who is willing to break some rules if that’s what it takes to set things right.”48

Decline in Unions as Schools of Democracy

The decline of public schools’ emphasis on democracy has been particularly disturbing because it has been accompanied by a parallel decline of labor unions, which serve as critical civic associations in healthy democracies. From the 1950s to today, union membership fell precipitously, from one in three to one in ten. This decline is closely associated with the hollowing out of the American middle class, which thriving democracies need to survive. But the drop in labor membership also has reduced the role of unions as incubators of democratic practice. Throughout much of the twentieth century, labor unions served as what Harvard political scientist Robert Putnam calls “schools for democracy.”49 Being involved in workplace decisions and collective bargaining, and voting for union leadership are important drivers of “democratic acculturation.” Union members also staff phone banks and go door to door recruiting voters, which increases civic participation among union members and nonmembers alike.50 Relatedly, research shows that unions played an important role in countering “an authoritarian streak” among working-class voters. Seymour Martin Lipset found that organized labor made workers more inclined to embrace democratic norms by inculcating “civic virtues in its members.”51 That critical force is greatly diminished today.

Political Polarization through Residential Segregation

Finally, the crisis in civic education in our public schools comes at a time of increasing political polarization—including by residential areas—that makes it harder for democracy to operate well. Part of the democratic process is the education of citizens—by neighbors and news sources—that will help them consider a wide range of views and make up their minds about candidates and policy issues. But that continuing lifelong education through dialogue in a democracy no longer works the way it used to in the United States.

Sociologist Robert Cushing and political analyst Bill Bishop have found that Americans have become increasingly likely to live in close proximity to those who share a political ideology. In the presidential election of 1976, 27 percent of voters lived in so called “landslide counties”—counties in which the winning presidential candidate won by twenty points or more. By the 2004 election, that number had reached 48 percent.52 In 2016, a poll of Virginia voters found that more than half of Hillary Clinton supporters said they had no close friends of family voting for Donald Trump, and vice versa.53

We also are increasingly engaging with news sources and social media that confirm our preexisting hunches, creating political echo chambers that inhibit critical thinking. According to the Pew Research Center, consistently liberal voters are most likely to block, un-follow, or defriend someone on social media because they disagreed with that person’s political stance. Meanwhile, consistent conservatives do the same and tend to receive their news from one conservative source, FOX News.54 In this way, political polarization is helping compound the ineffectiveness of schools in making us good citizens.

Case Study: Donald Trump’s Presidential Candidacy—A Twenty-First-Century Sputnik Moment

These anti-democratic developments came to a head in the 2016 election and the disturbing rise of an authoritarian presidential candidate, Donald Trump, who ran on a platform that consistently rejected mainstream liberal democratic norms that historically have been embraced by Republicans and Democrats alike and nevertheless managed to win the presidency. The rise of a candidate who questioned several elements of constitutional democracy—including freedom of religion, freedom of the press, the rule of law, the independence of the judiciary, and the peaceful transition of power following elections—should serve as a Sputnik moment for civics education and the need to model democratic values in how our schools are run. Just as Soviet technological advances triggered investment in science education in the 1950s, the 2016 election should spur renewed emphasis on the need for schools to instill an appreciation for liberal democratic values.

Attack on Widely Accepted Constitutional Norms

Against a backdrop in which the American public school system has deemphasized democratic citizenship, and in which Americans have demonstrated less commitment to democratic institutions, Trump called for a series of attacks on liberal democratic values. While candidates have often been chided by the opposing party for rejecting constitutional norms, Trump’s candidacy was different in kind. Fellow Republicans repeatedly had to distance themselves from their own standard-bearer for rejecting essential democratic norms.

Michael Gerson, a former speechwriter for President George W. Bush, said that with Donald Trump, “we have reached the culmination of the founders’ fears: Democracy is producing a genuine threat to the American form of self-government.”55 Peter Wehner, another veteran Republican official, wrote of Trump’s candidacy: “The founders, knowing history and human nature, took great care to devise a system that would prevent demagogues and those with authoritarian tendencies from rising up in America. That system has been extraordinarily successful. We have never before faced the prospect of a political strongman becoming president. Until now.”56 What set Trump apart, wrote University of Texas historian Jeffrey Tulis, is that “no other previous major party presidential candidate has felt so unconstrained by . . . constitutional norms.”57 Consider:

Freedom of Religion. The First Amendment provides for the free exercise of religion, yet during the campaign, Trump proposed a religious test on immigration, calling for “a total and complete shutdown of Muslims entering the United States.”58 He called for heavily surveillance of Muslim communities and their houses of worship, which Anthony Romero of the ACLU noted “would infringe upon American Muslims’ First Amendment right to exercise their religion freely without fear or intimidation.”59 While these policies were widely rejected by mainstream Republican leaders, Trump’s announcements, disturbingly, were associated with his rise in the polls.

Freedom of the Press. The free press is essential for holding government officials accountable, which is why the U.S. Supreme Court more than a half century ago suggested special protection from libel suits brought by public figures.60 During the campaign, however, Trump promised to “open up” the nation’s libel laws. He revoked the press credentials of critical reporters from newspapers such as the Washington Post and Politico, “an almost unheard-of practice for a modern presidential candidate.”61

Rule of Law. While President George W. Bush and Vice President Dick Cheney were criticized for engaging in water-boarding of terrorism suspects, Trump suggested he would do “a hell of a lot worse than waterboarding.”62 Trump also called for murdering family members of terrorists, which is a violation of the Geneva Conventions.63 When Trump was asked by a Fox News host what would happen if the military refused to follow orders to torture, Trump responded, “They’re not going to refuse me.” Such “impatience with constraints placed on democratic governments,” Dalibor Rohac of the American Enterprise Institute notes, is the hallmark of “authoritarianism.”64

An Independent Judiciary. During the campaign, Trump famously criticized a federal judge presiding over a lawsuit against Trump University. He suggested an Indiana-born jurist of Mexican heritage, Gonzalo Curiel, was incapable of being neutral in the suit. Paul Ryan, Republican Speaker of the House, said, “Claiming a person can’t do their job because of their race is sort of like the textbook definition of a racist comment.”65 Trump was scolded by Republican judge and former Attorney General Michael Mukasey, who called Trump’s position, “baseless and squalid.”66

Scapegoating Minorities. More generally, Trump used the classic tactic of demagogues seeking to enhance their own power by whipping up animosity against society’s minorities. Trump focused mostly on Muslims and immigrants from Mexico, whom he broad brushed as “rapists.”67 The founders warned against a “tyranny of the majority” that overrode the rights of minorities. Some of the founders were particularly concerned about the rights of elites who owned property, but Trump used the classic ploy of going after elites who allegedly “coddle minorities.”68

Celebrating the Violence of the Mob. Authoritarians often rely on violence to intimidate. During the campaign, when Trump was asked what would happen if he were denied the Republican nomination, he responded, “I think you’d have riots.” When protesters interrupted his rallies, Trump mused, “In the old days, protesters would be “carried out in a stretcher.”69 Journalist Andrew Sullivan observes, “No modern politician who has come this close to the presidency has championed violence in this way.”70 For Trump, violence is linked to the promise of strength, says Brookings Institution scholar Robert Kagan. “What [Trump] offers is an attitude, an aura of crude strength and machismo, a boasting disrespect for the niceties of the democratic culture that he claims, and his followers believe, have produced national weakness and incompetence.”71

Imprisoning Political Opponents. The hallmark of authoritarian regimes, Dana Milbank notes, is the imprisonment of political opponents, which is what made chilling the constant refrain from the Republican National Convention’s lynch mob regarding the presumptive Democratic presidential nominee: “Lock her up!”72 Donald Trump then doubled down on this idea, telling Hillary Clinton in the second presidential debate that if he wins, he would “instruct my attorney general to get a special prosecutor to look into your situation,” and adding that “you’d be in jail,” if he ran the country. “It’s a chilling thought,” said Michael Chertoff, head of the Justice Department’s criminal justice division in the administration of George W. Bush. “It smacks of what we read about tin-pot dictators in other parts of the world, where when they win an election their first move is to imprison opponents,” he said.73

Threatening Not To Respect Election Results. Before the ultimate outcome of the election was known, during the third presidential debate with Clinton, Trump astounded observers by refusing to say he would respect the results of the election, a hallmark of American democracy for centuries. Trump would not commit to this principle despite the plea of the moderator, Chris Wallace of FOX News, who noted, “But sir, one of the prides of this country is the peaceful transition of power and that no matter how hard-fought a campaign is, that at the end of the campaign that the loser concedes to the winner.”74 John McCain, the 2008 Republican presidential nominee, noted that while he did not like losing the election, he had “a duty to concede.” He said, “A concessions isn’t just an exercise in graciousness. It is an act of respect for the will of the American people.”75

Strongman to the Rescue. Like a Central American strongman, Trump claimed in his acceptance speech at the Republican National Convention, “I am your voice.” He declared, “Nobody knows the system better than me, which is why I alone can fix it.”76 This sentiment, that Trump was the “man on the horseback to save a frightened and supine nation,” wrote Gerson, is a notion the founders would have held “in utter contempt.”77

A Preference for Authoritarians. During the campaign, Trump famously and repeatedly showered admiration on Vladimir Putin, at one point saying the Russian dictator was “a leader far more than our leader.” Russian chess champion Garry Kasparov responded, “Vladimir Putin is a strong leader in the same way that arsenic is a strong drink.” He continued: “Praising a brutal K.G.B. dictator, especially as preferable to a democratically elected U.S. president, whether you like Obama or hate him, is despicable and dangerous.”78 Trump also expressed admiration for Iraq’s dictator Saddam Hussein, Kim Jong Un of North Korea, and the Chinese leaders behind the Tiananmen Square massacre.79 “There is no precedent for what Trump is saying,” notes former Mitt Romney advisor Max Boot. “George McGovern was not running around saying ‘what a wonderful guy Ho Chi Minh is!’”80 Trump is not a totalitarian, Eric Chenoweth, an expert on democracy notes, because he does not have a fixed ideology. But he does seem to identify with authoritarians, who gain “political power with a clear aim to dominate and control the state.”81

The 2016 election stood apart from other elections, Chenoweth wrote. Historically, both parties, while differing on the size of government, regulation, taxation, and other issues “have remained within a broad democratic range and commit themselves to adhering to America’s constitutional foundations that establish and protect basic rights and a democratic system of governance.” During the midst of the 2016 campaign, however, we faced “an abnormal situation: one of America’s two major parties has nominated an explicitly authoritarian candidate for the presidency,” which posed “a present danger to American democracy.”82 Reflecting on Trump’s campaign through July, Chenoweth wrote that the candidate “adopted many parts of the authoritarian toolkit from the last century: chauvinism, preying on people’s fears of national decline, promising an idyllic vision for the future based on a unique individual’s ability to lead the people and encouraging mass adulation for a political savior of the nation.”83

Running on this platform, Trump, a newcomer to politics, stunningly defeating sixteen other candidates for the Republican presidential nomination, several of them respected governors and senators with decades of political experience between them.84 Along the way, he won more primary votes than any other Republican candidate in the party’s history.85 America has long seen demagogues who rejected civil rights and civil liberties —from Huey Long to Father Charles Coughlin, and from Joseph McCarthy to George Wallace—but never before has a major political party nominated for presidency an individual who so thoroughly questioned widely accepted democratic norms of their era. “In terms of liberal democracy and constitutional order,” Andrew Sullivan wrote, “Trump is an extinction-level event.”86 And then the unthinkable happened: Trump was elected president of the United States.

Pronounced Success with Less-Educated Voters

It has been broadly noted that Donald Trump performed particularly well with working-class white voters who lack college degrees. In a July 2016 poll, for example, this group supported Trump over Clinton 60 percent to 33 percent, compared with college-educated whites who polled 43 percent for Trump, 42 percent for Clinton.87 Working-class whites constituted Trump’s base, providing between 58 percent and 62 percent of his overall support.88At one point during the primaries, Trump himself memorably observed that he loved “the poorly educated,” who supported him so strongly.

Of course, these voters have every right to make the political choices they would like in a democracy. And they have a right to be angry about a political establishment that has ignored their economic needs and created a vacuum for right-wing populism.89 To be clear, people can legitimately agree or disagree with candidates on a variety of issues. Trump may be right or wrong on world trade, American involvement in NATO, taxes, gun control, or abortion. What sets this election apart, however, is the attack on the very principles of liberal democracy. And an authoritarian candidate’s resonance with less-educated voters in particular raises the critical role public education can play in supporting democratic values and norms. The point, then, is not that Trump supporters are all “deplorable”; rather, what is deplorable is the failure of our education system to instill an essential belief in the values of constitutional democracy.

#### Restoring public education is necessary for the survival of American democracy in the face of Trump.

**Whitaker, UNG teacher education professor, 2017**

(Westry, The Dying of the Light: The Cause to Illuminate in this State of Fragile Democracy” in Deconstructing the Education-Industrial Complex in the Digital Age, pg 98-100)

Giroux (2015) refers to the fact that our democracy is in a “fragile state” (p. 11). Our schools are therefore the first line of defense against tyranny of the mind. Because public schools have been tasked by our founding fathers with providing a common education to public citizens, they must be considered vital pieces of our democracy. Given the reform minded attempt to create a more corporate, commodity driven public school system modeled after Microsoft or Apple, however, perhaps we should consider the public school model envisioned by our founders as un-common. Perhaps, we should re-imagine these public spaces more effectively and more intrinsically align them with that mission to “illuminate as far as possible” the minds of all our people rather than the property owning or more contemporary enculturated elite. By re-imagining this design, we may be reminded that public schools are supposed to be bastions of a common education. As such, they should be well positioned on the front lines of the war for our minds. They should be the first place we turn in order to engage and one day eradicate systemic educational inequality, racism, repression and violence. Following the model provided by our founding fathers, we must recommit to a more constant devotion to maintain, rise up, and fight against those that work to limit our role as public intellectuals. Doing so will empower our teachers to provide our students with the tools that are needed to navigate this ever-complicated world. These are troubled times (Giroux, 2010, 2015). We look into an abyss that stares back at us; we teachers are being dared to react. Speaking toward the death of his father, Dylan Thomas (1952) wrote, “Do not go gentle into that good night”. In terms of the war on education and the newly un-common mission of the public school to illuminate the minds of all people regardless of wealth or circumstance, I ask us to reimagine this poem as a response to our role as public intellectuals: we teachers must, “Rage, rage against the dying of the light”. We must, in other words, resist pedagogies of numbness and re-commit ourselves to the historic, philosophical and political foundation, the focus and the objective of America’s public schools. In an era dominated by a constant barrage of digital information predicated by Trump twitter feeds, so called flat-Earthers, and a war on public education, we teachers must commit ourselves to brightening the darkness. The survival of our democracy depends on it.

#### Right to education ensures a more engaged minority participation in the political process --- that bolsters democracy

**Campoy, Quartz reporter and winner of Gerald Loeb award for journalism on BP oil spill, 2016**

[Ana, 12.11.16, Quartz, “Teaching our children to cherish democracy will be all the more critical in Trump’s America,” <https://qz.com/839041/american-values-are-at-risk-if-we-dont-teach-kids-what-it-is-to-be-american/>, Accessed 7.2.17 CT @ GDI]

America’s founding fathers viewed education as an essential tool for preserving democracy. In school, Americans would learn democratic ideals, foster a meritocracy, and become savvy enough to sniff out demagogues who could threaten the republic. But America’s schools are failing at moving the US toward a more perfect union. How else to explain the startling lack of civics knowledge among today’s Americans? The disturbing new research suggesting a widespread attitude of indifference to democratic systems? The preference, by more than a quarter of the American voting public, for a presidential candidate who repeatedly challenged American constitutional values? The abstention of the 42% who didn’t vote, skirting what is arguably an adult citizen’s most important responsibility? At the same time, public education is struggling to come up with a narrative of the American experience that encompasses the expanding diversity of the country’s population. To some, the definition of what it is to be American, as it’s taught in the classroom, feels too limiting; to others, it’s being stretched beyond recognition. Either way, the overall effect is disorienting, and public discourse is feeling the strain. “As our nation becomes increasingly diverse, we don’t really have any choice but to find ways to reach across racial and ethnic divides to find common ground,” says Richard Kahlenberg, senior fellow at The Century Foundation, a progressive public-policy think tank. As one of the few neutral zones where Americans of all stripes meet, public schools are a good place to take that on. A Sputnik moment Kahlenberg has called Trump’s election a “Sputnik moment” that should spur the same kind of investment in civics education as the Soviet satellite did for science back in the late 1950s and 1960s. As the US seeks to compete with other world economies, practical subjects such as reading and math have crowded out civics lessons, he argued in a recent report. That strategy has taken its toll. Only a third of Americans can name the three branches of government, according to a 2015 survey by the Annenberg Public Policy Center at the University of Pennsylvania. Perhaps even more worrisome, a large number of Americans are straying from the founders’ democratic ideals. Roughly 30% of those polled believe their Constitution need not stop the government from interfering in religious practices and public protests if they are offensive or un-American—in clear contradiction to what the Constitution says. Other polls show a disturbing bent towards authoritarianism. One in six US citizens agree that it would be “good” or “very good” for the army to rule, up from one in 16 in 1995, according to another analysis, which was based on World Values Surveys and published in the Journal of Democracy in July. Yet another alarming survey, conducted by PRRI and the Brookings Institution in May and April, found that nearly 60% of Americans have authoritarian tendencies. More than half of those with a highly authoritarian streak said the US needs a leader willing to break the rules to set the country on track. Trump’s America They might have just gotten that kind of leader in Trump, who throughout the campaign displayed an inclination to dispense with longstanding democratic norms. (His threat to jail his political opponent and his refusal to commit to the election results are two examples of that.) To be sure, president Trump might distance himself from his brash political candidate persona once he takes over the Oval Office. But the fact remains that the millions of Americans who voted for him, some whom see themselves as patriots for doing so, didn’t feel that his attacks on core American principles disqualified him from filling the highest office in the land. Why? Pundits and academics have been struggling with that question even before Trump’s electoral victory. Jonathan Haidt, a business ethics professor at New York University’s Stern School of Business, suggests the answer lies beyond the racism and xenophobia espoused by some Trump supporters, or the economic desperation of others. He points to the work of Karen Stenner, a former Princeton University professor who developed a simple formula that can explain what is going on: intolerance = authoritarianism × threat (pdf). These days, authoritarian-prone Americans are definitely feeling under threat. The PRRI/Brookings survey found that more than 60% of respondents with highly authoritarian leanings believe the American way of life has gone down hill from the 1950s. Roughly the same proportion live in fear that they or their families could be attacked by terrorists or violent criminals. They believe Islam is un-American, and interacting with non-English speaking immigrants bothers them. Haidt sees that kind of behavior as a reaction to the rise of a cosmopolitan citizenry that, in the eyes of authoritarians, has given up allegiance to its country of origin and culture in favor of broader global society. “Authoritarians are not being selfish,” he writes in The American Interest. “They are not trying to protect their wallets or even their families. They are trying to protect their group or society.” (Italics his.) Since the source of the threat is diversity, trying to better acquaint insurgent authoritarians with “the other” will only make things worse, he concludes. He quotes Stenner: “[We] can best limit intolerance of difference by parading, talking about, and applauding our sameness. Ultimately, nothing inspires greater tolerance from the intolerant than an abundance of common and unifying beliefs, practices, rituals, institutions, and processes.” E pluribus unum For public education, the implication is that schools should avoid polices that single out difference, such as multicultural curriculums and bilingual programs. Robert Pondiscio, a senior fellow at the Thomas B. Fordham Institute, suggests instead to revive the “melting pot” metaphor, making it “more capacious and generous” than the original. The melting pot image was forged during a period in which the US was taking in millions of European immigrants, and for a long time served as shorthand for the American experience. But in the 1960s, social scientists and minorities began to question the assumption that immigrants were melding into the dominant culture—and whether they should. The pot was replaced by the “salad bowl,” to represent American society as an assemblage of different ingredients, each retaining its characteristics but coated with a common dressing. Now there’s pushback against the salad bowl concept from people who believe it favors diversity to the point of undermining American identity. Bruce Thornton, a professor at California State University in Fresno, expresses that sentiment in a 2012 piece published by the Hoover Institution. [S]o the common identity shaped by the Constitution, the English language, and the history, mores, and heroes of America gives way to multifarious, increasingly fragmented micro-identities. But without loyalty to the common core values and ideals upon which national identity is founded, without a commitment to the non-negotiable foundational beliefs that transcend special interests, without the sense of a shared destiny and goals, a nation starts to weaken as its people see no goods beyond their own groups’ interests and successes. It doesn’t sound all that different from the threat to society perceived by authoritarians described by Haidt. Against that kind of backlash, “it’s worth asking whether the best way to increase tolerance and honor diversity is by focusing on shared civic ideals,” said Pondiscio. Will they listen? Getting schools to focus on Americans’ shared identity won’t be easy. Take the Rust Belt towns that switched parties to elect Trump, becoming one of the biggest election stories. People in these communities tend to see their local schools as a source of local identity; they don’t take well to outside edicts, particularly those that originate in big cities, says Katherine Cramer, a professor at University of Wisconsin-Madison whose research for the past 10 years has involved chatting with rural Midwest residents. “How do you not make it sound like ‘Oh, yet again urbanites are telling us that we are backward and we need to be brought back in line with urban society?’” she said. Trump hasn’t elaborated on his education policies, but he has vowed to get rid of the national academic standards known as “common core.” “Education has to be at a local level,” he says in this campaign spot. “We cannot have the bureaucrats in Washington telling you how to manage your child’s education.” American identities Convincing Trump supporters on the shared-identity question is only half the hurdle. The melting pot image doesn’t have a very good reputation among minorities, many of whom would argue that they were never allowed to fully blend into the US’s bubbling cauldron. They feel just as marginalized and misunderstood as Trump rural voters—and also threatened, now that a candidate who was openly hostile to (or plainly ignorant of) their communities has won the presidency. Americans in these communities want to be acknowledged, and for many of them, that means including their accomplishments in K-12 curriculums. They’re unlikely to back down, as demonstrated by an ongoing textbook fight in Texas. The state’s population is nearly 40% Hispanic, including people whose ancestors, before the American Revolution, settled in what is now Texas. Hispanic activists and scholars have long argued that this experience should be reflected in what Texas children are learning in school. They say that rather than displace American values, ethnic studies are an opportunity to teach all Americans how connected they are through history. “Learning about each other’s diversity is a sign of strength for our nation,” says Celina Moreno, a lawyer at Latino civil rights group MALDEF. MALDEF and other groups involved in the Texas textbook dispute won a small victory in 2015, when the State Board of Education made a call for Mexican-American history textbooks for optional courses. The sole submission, however, contained factual errors and assertions such as the one below: Stereotypically, Mexicans were viewed as lazy compared to European or American workers… Mexican laborers were not reared to put in a full day’s work so vigorously. There was a cultural attitude of “mañana,” or “tomorrow,” when it came to high-gear production. It was also traditional to skip work on Mondays, and drinking on the job could be a problem. Hispanic activists revolted against the book, calling it racist and inaccurate. In a telling sign of the country’s gaping cultural divide, some just didn’t see their point. “It’s really kind of perplexing as to what all the controversy is,” education board member David Bradley told the Texas Tribune. “I am French-Irish, and you don’t see the French or the Irish pounding the table wanting special treatment, do you?” He also indicated in an email obtained through an open records request that board members should skip the meeting to discuss the text to “deny the Hispanics a record vote,” according to the Tribune. He was the only member who didn’t show up to the Nov. 16 meeting. Dozens of Hispanic activists attended. They prevailed: The board rejected the book. But the curriculum remains unchanged, so they’re still losing on that front. Research shows that minorities benefit when they learn about their communities. A paper published by Stanford Center for Education Policy Analysis earlier this year looked at the effects of ethnic studies courses in San Francisco high schools and found that they increased ninth-grade attendance by 21% and GPA by 1.4 grade points. Another one, from the University of Arizona, showed that students who took Mexican-American studies courses were more likely to pass state standardized texts and graduate from high school. (Some academics suggest that white students also benefit from the exposure.) The gains go beyond report cards, says Albert Camarillo, a Stanford University professor credited with helping start the Mexican-American studies field. “It gives people a sense that they too are part of the fabric of the larger society, rather than marginal people on the side of it,” he says. That feeling might go a long way in turning out minorities to the polls. Hispanics and Asians, two of the fastest-growing demographic groups, vote at much lower rates than their white peers. Their failure to fully participate in the political process is as big a risk to representative democracy as an authoritarian insurgency. Learning together In the end, the curriculum may be less important than the overall school experience. As Thurgood Marshall, the country’s first black Supreme Court justice, put it: “Unless our children begin to learn together, there is little hope that our people will ever learn to live together.” He wrote that in a 1974 opinion on a case about school segregation. More than 40 years later, US classrooms are still not integrated. In fact, the share of intensely segregated schools, those that are 90% to 100% nonwhite, has been rising in past decades, according to a May report by the Civil Rights Project at the University of California, Los Angeles. That kind of segregation, says Kahlenberg, of the Century Foundation, “undercuts the message that in a democracy everyone is equal and should have equal voice.” But that’s the message Americans need to figure out how to restore, whether by civics courses or ethnic studies, school integration, or any other methods, if they want to preserve their democracy.

#### Democracy is key to international stability-US backsliding causes global derailment

**Basora, director of the Foreign Policy Research Institute Eurasia Program, 2017**

(Adrian, “Democracy Promotion Is Smart Security Policy” 2-16, http://nationalinterest.org/feature/democracy-promotion-smart-security-policy-19469)

We cannot “make America great again” unless America is secure both at home and in its global position. But what does this have to do with democracy? During the first decade after the 1991 fall of the Soviet Union, President George H. W. Bush’s goal of “a Europe whole and free” and a wider world largely at peace seemed within reach. The deadly threats of the Cold War were gone, and the democratic revolutions that appeared to be sweeping through eastern Europe and elsewhere created optimism as to the continuing progress of a liberal international order. Now, two and a half decades later, that promising trend is being reversed. The authoritarian resurgence in Europe and elsewhere over the past decade has shaken our confidence that liberal democracy, free markets and peaceful borders will continue to dominate the post–Cold War international order. From our being the “sole superpower” in the 1990s, U.S. global influence and effective power are now challenged by China and Russia, the weakening of the European Union and the sharp domestic divisions revealed by the U.S. presidential campaign. The United States and Europe are threatened by radical terrorists, challenged by territorially expansionist autocracies, and targeted by covert action, massive disinformation and propaganda offensives. Russia and China, the world’s two principal autocratic powers, lead the way in consolidating their model domestically, but also in advocating internationally for an alternative authoritarian model based on strident nationalism, autocratic leadership, and repression of human rights and the rule of law. Russia, through its covert intervention in the U.S. election, military actions in Ukraine and support of right-wing populist forces in Europe, is working to undermine the system of liberal institutions, laws and behavioral norms that have bound Europe and the United States. Sadly, this alternative model is gaining ground in Europe and elsewhere. The list includes formerly promising new democracies such as Hungary, Turkey, Thailand, the Philippines—and now even Poland. What is the connection between America’s security and the state of democracy in the world? Democratic countries rarely, if ever, go to war with each other or prey on their neighbors. Democratic systems and free markets support each other and sustain individual and group freedoms. Also, the rule of law, which subsumes all, is best guaranteed by democratic systems. Protection of the democratic order, now under challenge, must therefore be one of the priorities weighed in our strategic decisionmaking analysis and policy process. And democracy promotion via a revised, realistic and targeted approach must remain a fundamental national-security objective for the United States and its allies. At a recent conference at the Woodrow Wilson International Center for Scholars in Washington, DC on this subject, eleven experts of varying political and operational perspectives all concluded that the national-security interests of the United States and its allies not only permit, but require, America to support democracy abroad. Not to do so would ignore an existential threat to democracies, and to the international order that has allowed the United States to remain secure and prosper. The new administration will need a democracy-promotion strategy. We suggest a triage approach, which will concentrate on three categories of countries where external support is most likely to succeed. Excluded from these efforts will be countries like Russia and Uzbekistan, where the effort would be futile and/or discredit democracy promotion by validating regime propaganda that equates these programs with aggressive intrusion into domestic affairs. The most promising cases are found in countries where autocratic regimes have recently fallen or have agreed to a negotiated transition (e.g., Tunisia, Ukraine, Myanmar and Indonesia) or where semi-autocratic governments are visibly weak and opposed by broad-based indigenous movements (Venezuela). The second group is made up of countries undergoing democratic regression resulting from the aggressive nature and partial success of the authoritarian counteroffensive. Existing democracies such as Poland and Hungary must be helped from falling backwards. Emerging democracies such as Ukraine, Moldova and Georgia need assistance in fending off foreign attempts to subvert them. The third group is comprised of nondemocratic countries that fall in between regimes transitioning to democracy and consolidated dictatorships. This category includes autocratic countries such as Armenia, Thailand and Belarus, where the regimes have retained some democratic trappings such as controlled elections to maintain a degree of popular legitimacy. These openings may be used to lay the groundwork for democratic transition through carefully calibrated democracy promotion programs. Understandably, much of the focus of the new U.S. administration will be on countering terrorist threats and dampening the appeal of radical ideology to susceptible young people. Yet, we must pay attention to prospects for democratic transition and meet the authoritarian counteroffensive. At the same time, Americans must reaffirm their own democratic commitments and standards as they manage their economic divisions and challenges. If democracy is to continue to flourish, nothing is more important than being true to American values and principles and protecting them globally.

#### Solves global conflict

**Kasparov, Chairman of the Human Rights Foundation, 2017**

Garry, “Democracy and Human Rights: The Case for U.S. Leadership” 2-16, http://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you

### Segregation Key

#### Re-segregation provided the foundation for Trump’s rise to power --- reforming education policies is essential to transform society and check racial scapegoating

**Klein, Huffington Post Education Reporter, 2016**

[Rebecca, 11.15.16, Huffington Post, “What School Segregation Has To Do With The Rise Of Donald Trump,” <http://www.huffingtonpost.com/entry/donald-trump-segregation_us_582a36f7e4b060adb56ff7ff>, Accessed 7.2.17 CT @ GDI]

Donald Trump’s personal life ― in all likelihood ― has not been directly impacted by the patterns of public school segregation. Trump attended a private school in Queens as a child, before transferring to a private military boarding school as a teen. His four older kids attended private high schools, and his youngest is also currently enrolled at a private school in Manhattan. But his rise to power ― as the nation’s newest president-elect ― is likely related to the dismantling of school desegregation policies, according to several researchers and academics who study school diversity. In recent years, integration of schools has largely been abandoned as a national priority ― an indicator that various racial groups are spending less time interacting. This lack of familiarity makes it easy for students, parents and stakeholders to demonize groups who don’t look like them ― a staple of Trump’s campaign, said Gary Orfield, distinguished professor and co-director of the Civil Rights Project at UCLA. “The American dream is very, very similar across racial and ethnic lines. People who actually experience interracial contact, especially under appropriate conditions, develop more positive attitudes,” said Orfield, who has been studying this issue for decades. “Racial segregation fosters prejudice. It fosters false understandings.” Trump’s strategy to embolden racists with hate rhetoric ― speaking of Mexican immigrants as “rapists” and proposing a ban on Muslims entering the country ― did not become a winning one in a vacuum. In part, the dismantling of school desegregation efforts ― coupled with demographic changes that have resulted in the country being more diverse ― may have created the landscape that allowed Trump’s racially-charged agenda to thrive. However, when people from different groups spend time together ― whether it be at a school soccer game or PTA meeting ― prejudices typically fade. Latinos ― who bore the brunt of much of Trump’s rhetoric ― are especially segregated in schools. Because of this isolation and a sustained population surge, it makes sense that Latinos have been targeted by Trump and his supporters, says Orfield. The average Latino student attends a school that is 57 percent Latino, while the average white student attends a school that is 73 percent white ― suggesting that these two populations are not often in situations where they are raising families together. Decades of evidence on racial integration suggest that racially integrated school environments reduce racial prejudice and bias, according to Richard Kahlenberg, a senior fellow at the Century Foundation, a public policy research group. “That’s been a major setback in this country where we’ve seen resegregation by race and class in the public schools,” Kahlenberg said. This can open the door to “scapegoat minorities.” Trump’s election has emboldened racists so much so that in the days since Nov. 8, a rash of racial and religiously-based hate crimes have broken out around the country. Research shows that GOP voters who feel most warmly about Trump seem to have the most negative attitudes about immigrants, Islam and living in a majority-minority nation. In schools’ demographics we see how these negative attitudes may have been borne. Between 1968 and 2011, there was a 28 percent decline in white public school enrollment, and a 495 percent increase in levels of Latino students, according to Orfield’s research. Nationwide, school populations now have a majority of minority children. Black students in regions like the south and west are now more segregated than they were in the late 80s and 90s, and schools in the northeast are more segregated than they were before 1968. This is partly because Brown v. Board of Education ― the supreme court case that made state-sanctioned segregation unconstitutional in 1954 ― only dealt with the question of white and black students, making Latinos largely invisible in subsequent school desegregation policies. “We just assumed we could go through this very dramatic demographic change without really working on it, from either side really,” Orfield said. “Its been a change so dramatic and so fast, I think many whites are stunned. Especially older whites, they think their society is going away. And it is. We’re creating a different society.” But it’s not just in schools where populations can be exposed to diversity. In previous decades, the military brought together groups from different racial and economic backgrounds, Kahlenberg said. Once the draft ended in 1973, the military no longer served such a function. Religious institutions, too, could make a difference in promoting racial tolerance, although there is little indication that this is happening, said Matthew Delmont, a professor of history at Arizona State University. “We’re really left with public schools as the place where people of different backgrounds can come together and learn from one another,” Kahlenberg said. The most recent election cycle has brought explicit hate back into the national discourse, Delmont said. Schools could provide a long-term solution to this by providing “more daily interactions across racial and ethnic lines,” he said. There’s opportunity for more nuanced and informed conversations to take place. “Watching how the debates unfolded in this last presidential cycle, white Americans and people of color are talking past each other and fundamentally understand issues of race and prejudice in very different terms,” said Delmont, who wrote a book about resistance to school desegregation in the north. He said he couldn’t guarantee that racially integrated schools would change the political outlook, but it does encourage people to talk to each other. “When you have conditions of segregation as we do in this country,” he said, “It’s easy for people to let their fears dominate how they view the world.”

#### Educational inequality contradicts the fundamental notion of democracy—absent the plan democracy cannot be realized

**Chen, St. Louis University PhD candidate, social inequity researcher, 2015**

[Amy Yun-Ping, May 2015, Sociology Study, May 2015, Vol. 5, No. 5, 382‐390, “Educational Inequality: An Impediment to True Democracy in the United States,” <http://www.davidpublisher.org/Public/uploads/Contribute/55f62bc2bf7b8.pdf>, Accessed 7.1.17 CT @ GDI]

The ultimate aim of democracy and education is to meet the need for freedom, liberty, and equality for all (Allen and Reich 2013; Barber 2001; Dewey 1916; Gutmann 1999; Gutmann 2001; Noddings 2013). A true democracy never advocates segregation and inequality with regard to race and class. On the contrary, many American children grow up without the skills and knowledge they need to thrive in the contemporary era **due to relentless inequalities**. **Racial and socioeconomic discrimination has the ability to distinguish two types of citizens, privileged and unprivileged, which contradicts the core notion of democratic education**.

Education is the major pillar upon which the future of the United States rests (Allen and Reich 2013; Dewey 1916; Gutmann 1999). It is constructed for the public good, and everyone should share in it equally. Schools should produce educated citizens who are capable of changing the destiny of a country and creating better opportunities for future generations. In order to help schools deliver high-quality education to every child, state governments and civic society must provide sufficient educational resources, equal public funding appropriations, and equal educational opportunities. With the aid of such support, schools will be able to help children develop their knowledge of democracy, prepare them for citizenship, and gain professional skills. However, the **persistent failures of urban education** and repeated efforts to change the problematic situations have shaped many of the educational policies and reforms over time. Unfortunately, the realities of racial segregation, **educational inequalities**, high dropout rates, low academic achievement, and insufficient resources **have remained constant and have become complex challenges** (Duncan and Murnane 2014; Lipman 2003; Ravitch 2010). These crises are deeply embedded in the intersection of racial oppression and socioeconomic inequality.

Public school funding comes from state and local sources, and nearly half of the money is derived from local taxes. This generates a large gap between wealthy and poor communities. The subject of poverty is often associated with race; hence, low-income minority students are the most affected by social and educational inequalities and face severe discrimination in their daily lives (Nieto 2005; Nieto and Bode 2008; Ravitch 2010; Ravitch 2013; Sleeter 2007). Take an in-depth instance, the current state of educational inequity in the Saint Louis Region, as represented by the Normandy School District which exemplifies the failure of urban education in regard to poverty and race. In the 2014 demographic profile of Normandy School District, nearly 98% of the student population was Black, and 91.5% of the students received free and reduced lunch plans (Department of Elementary & Secondary Education Missouri [DESE] 2014). Many city residents invest in the outcomes of students in high-income and White-dominated areas. Numerous educational resources and sufficient funding bolster the schools in these high-property districts. In contrast, the Normandy School District usually faces limited educational support which negatively impacts student performance. Loss of accreditation also forces the district to close schools, which takes away from students’ educational opportunities. And the gap between low-income minority students and students of other racial and class groups becomes wider.

Since the early 1970s, the public has resisted the idea of racial integration and presently individual and parental choices in education increase the gap between racial and socioeconomic groups (Bartlett et al. 2002; Ravitch 2010; Ravitch 2013). Many low-income minority students have lost equal access for quality education. **Citizens neglect the notion of public good and the goal of democracy** (Barber 1993). Such ignorance and egotistical behavior among residents of urban areas destroy the progress of democratic education in inner-city public schools (Bartlett et al. 2002; Beal and Hendry 2012; Lipman 2003; Nieto 2005; Ravitch 2010; Ravitch 2013).

The fundamental concept of democracy aims to offer equal access to all members of society and to ensure that they are empowered to make a good life for themselves and establish the public good for the country. **Quality education is a method to eliminate poverty** and encourage the engine of shared prosperity for generations of Americans. When education improves the preparation and productivity of young members of the community, it increases the wealth of the country and leads many people to their American dreams. Nevertheless, the persistent and long-standing educational inequalities are an obstacle for the United States becoming a nation with true democracy and equal liberty. Thus, **democracy becomes a superficial aspect and a beautiful bubble**, **and it is not realized in practice**.

## Urban Growth Adv

### 1AC – Stem

#### Resolving urban school segregation fuels city growth.

Orfield, Institute for Metropolitan Opportunity Director, 15

[Myron, 2015, “Milliken, Meredith, and Metropolitan Segregation” UCLA Law Review, http://www.uclalawreview.org/pdf/62-2-3.pdf pg. 457-460, Accessed 6-30-2017, BP]

Had Milliken been decided more consistently with historical local government law and the Court’s four most recent desegregation decisions, and had it not ignored the clear factual findings of housing discrimination and that single district remedies would increase white flight, U.S. schools would be more integrated and our racial achievement gaps would almost certainly be narrower. In addition, metropolitan neighborhoods would be both more integrated and more racially stable. Race relations and the housing markets of many central cities and fully developed suburbs of America would be stronger. This stability would have encouraged urban and older suburban redevelopment rather than the decline and blight that almost always occur when neighborhoods re-segregate and become majority nonwhite. American prosperity might have been greater and more fully shared. And American democracy might have been more vibrant and hopeful. Richard Nixon resigned a disgraced president because of the cover-up of political burglaries. His ethical lapses disillusioned a generation of Americans. Yet, an arguably even greater disservice was his appointment of justices who, in the service of a divisive political vision, distorted the law and ignored clear factual findings in order to stop the rapid progress toward equality that had begun under Brown584 and Title VI of the Civil Rights Act of 1964.585 Should Justice Kennedy be replaced with someone more like Chief Justice Roberts, the Supreme Court would likely sustain a pattern of racial apartheid more severe and unyielding than it allowed under Plessy v. Ferguson. 586 For all its perfidy, Plessy did not forbid integration; it simply did not require it. Moreover, Plessy was decided in an America where the suburbs were nascent and whites and nonwhites by and large still shared the same local governments and local tax base. Today in most parts of metropolitan America, affluent whites and poor blacks live in different jurisdictions, with predominantly white school districts endowed with far more local tax resources. Because the Court in San Antonio v. Rodriquez587 declared the federal courts were powerless to equalize state school finance,588 nonwhites will not only be stranded in segregated cities and school districts but in jurisdictions, unless the state has chosen to intervene, without the local tax resources to either exercise meaningful “local control” or to be “separate but equal.”589 The next Supreme Court decision on school desegregation will be another version of Meredith. Will the Supreme Court look at the evidence and allow locally elected officials the discretion to create stable integration plans that improve student achievement and help integrate neighborhoods? Or will it continue to limit the authority of elected officials to integrate schools, forcing local, state, and federal governments to helplessly watch now-integrated neighborhoods resegregate? There is a clear scholarly consensus that integration is beneficial to individuals and communities, and that segregation destroys the lives of individuals and prospects of neighborhoods. Segregation hurts regions, the American economy, and the cohesiveness and fairness of American democracy. It is hard to accept that a court-imposed return to the school segregation levels of the past can be consistent with equal protection under the law in the twenty-first century. The urban and metropolitan history of Detroit and Louisville demonstrate the clear benefits of regional cooperation on issues of educational segregation and the terrible harms that arise in its absence. There is no region in the United States that would have chosen Detroit’s fate over Louisville’s if it had the chance. While this Article has been about the lost opportunity represented by Milliken, it is important to remember that nothing until Meredith could have stopped the elected officials in the State of Michigan from solving the problems of segregation themselves had they wanted to. Going forward, given the position of our federal courts on race, this is realization is central. Until different judges occupy our courts, electoral politics are the principle route for reform. Today, America’s regions have the chance to decide to be more like Louisville than Detroit. But in order to do so, political understandings, and then the law, must evolve. In 2010, 80 percent of our nation lived in the 235 metropolitan areas with more than 50,000 people. Last year, for the first time, a majority of the children born in the United States were not white.590 By 2043, there will be no racial majority in the population at large.591 There is profound inequality between the races, in education attainment, income, and health: a gap that, after improving, is now growing wider. Much of this inequality is rooted in racial and social segregation that is caused by continuing public and private discrimination. Divergent perceptions of the causes and consequences of our racial inequality have always polarized our politics and sense of common citizenship. While they do not yet perceive it, stably integrated metropolitan schools and neighborhoods, which will prevent expanding ghettos from sweeping into America’s suburbs, are in the clear and immediate self-interest of the majority of metropolitan voters. The lessons of Detroit and Louisville should be used to persuade elected officials and their voters of this fact. Elected officials must use their power to enforce and improve the law to end racial segregation, a goal that can now be seen more clearly to be in the long-term self-interest of all Americans. Perhaps someday the Supreme Court will again require racial fairness from elected governments, rather than forbid it. Milliken is an unprincipled decision and should someday be corrected. In the meanwhile, it can be rendered less oppressive by building metropolitan political coalitions between cities and older di-verse suburbs to legislatively reform local government law in a manner that can reduce the nation’s profound residential and educational segregation.

### Econ Impact – 1AC

#### urban expansion quantitatively grows the economy – absent city development growth is unsustainable

Noah, Stony Brook University assistant professor of finance, 16

[Smith, 5-3-2016 “Want Economic Growth? Try Urban Density” <https://www.bloomberg.com/view/articles/2016-05-03/want-to-boost-economic-growth-empty-the-suburbs> accessed: 6-30-2016 BP]

Here's a big economic and political thesis: The U.S. has run out of frontiers, both literal and figurative. At first, growth was fueled by expansion into the West, use of natural resources and the build-out of national infrastructure. In the early- and mid-20th century, an unprecedented explosion of new technologies -- electricity, automobiles, airplanes and others -- opened up the suburbs, which acted like a new frontier. More recently, the Internet and globalization, especially China, were frontiers that gave the economy yet more room to expand.

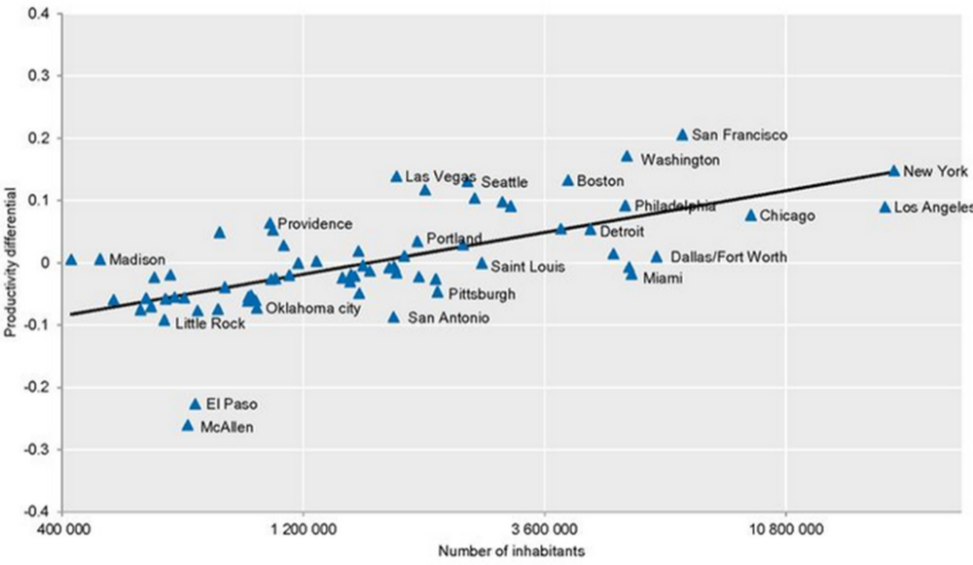
But these growth opportunities may now be running out. Information technology is improving our lives by giving us more fun things to do with our leisure time, but it isn't providing the kind of productivity boost gained from previous technological revolutions. And the heyday of expansion into China may be over, given that country’s economic slowdown, its decreasing openness to Western companies and the broader slump in world trade.

So where is the next frontier? It’s possible that -- at least until the next technological revolution or wave of globalization -- there just isn’t one on the immediate horizon. If that’s the case, maybe the U.S. should shift from extensive growth to intensive growth.

Extensive growth is based on greater inputs. More energy, more cheap labor, more land. When you use existing technologies to build more roads and more buildings, that’s extensive growth. Intensive growth, on the other hand, is about getting more output for a given about of input -- doing a lot with a little. One famous example of intensive growth was early modern Dutch agriculture, in which the Netherlands created flooded basins called polders to reclaim land from the sea. Improved production technology, of course, is one of the biggest generators of intensive growth.

The U.S. isn’t as good at intensive growth as it should be. For example, the country uses too much energy to produce each dollar of economic output -- though it is improving. The U.S. has very low urban population density relative to other advanced countries. Though the country is considered highly urbanized, many so-called urban residents actually live in far-flung suburbs. Where Europe and Asia cluster, America sprawls.

Sprawl probably reduces productivity. When people cluster more tightly together, they become more productive -- this is known in economics as an agglomeration externality. This explains why the same person will produce more economic output in New York City than in a small town. Here is a picture of the correlation between city size and productivity:



Size gives an approximation of density, though some cities sprawl more than others. In fact, density itself is correlated with productivity, even holding size constant. So there is a big opportunity for the U.S. to take better advantage of agglomeration: increase urban density by making it easier for people to move into big cities.

In other words, the U.S.’s next frontier may be its own cities.

#### Growth solves war

Porter, 15- columnist at the NYT covering economics with an MS in quantum fields and fundamental forces from the Imperial College of Science and Technology in London (Eduardo Porter, 12/1/15, “Imagining a World Without Growth,” <http://www.nytimes.com/2015/12/02/business/economy/imagining-a-world-without-growth.html?_r=1>)

Could the world order survive without growing? It’s hard to imagine now, but humanity made do with little or no economic growth for thousands of years. In Byzantium and Egypt, income per capita at the end of the first millennium was lower than at the dawn of the Christian Era. Much of Europe experienced no growth at all in the 500 years that preceded the Industrial Revolution. In India, real incomes per person shrank continuously from the early 17th through the late 19th century. As world leaders gather in Paris to hash out an agreement to hold down and ultimately stop the emissions of heat-trapping greenhouse gases that threaten to make Earth increasingly inhospitable for humanity, there is a question that is unlikely to be openly discussed at the two-week conclave convened by the United Nations. But it is nonetheless hanging in the air: Could civilization, as we know it, survive such an experience again? The answer, simply, is no. Economic growth took off consistently around the world only some 200 years ago. Two things powered it: innovation and lots and lots of carbon-based energy, most of it derived from fossil fuels like coal and petroleum. Staring at climactic upheaval approaching down the decades, environmental advocates, scientists and even some political leaders have put the proposal on the table: World consumption must stop growing. “This is a subtle and largely unacknowledged part of some folks’ environmental/climate plan,” said Michael Greenstone, who directs the Energy Policy Institute at the University of Chicago. Sometimes it is not so subtle. The Stanford ecologist Paul Ehrlich has been arguing for decades that we must slow both population and consumption growth. When I talked to him on the phone a few months ago, he quoted the economist Kenneth Boulding: “Anyone who believes exponential growth can go on forever in a finite world is either a madman or an economist.” The proposal that growth must stop appears frequently along the leftward edge of the environmental movement, in publications like Dissent and the writing of the environmental advocate Bill McKibben. It also shows up in academic literature. For instance, Peter Victor of York University in Canada published a study titled “Growth, degrowth and climate change: A scenario analysis,” in which he compared Canadian carbon emissions under three economic paths to the year 2035. Limiting growth to zero, he found, had a modest impact on carbon spewed into the air. Only the “de-growth” situation — in which Canadians’ income per person shrank to its level in 1976 and the average working hours of employed Canadians declined by 75 percent — managed to slash emissions in a big way. And it is creeping into international diplomacy, showing up forcefully in India’s demand for “carbon space” from the rich world, which at its logical limit would demand that advanced nations deliver negative emissions — suck more carbon out of the atmosphere than they put in — so the world’s poor countries could burn their way to development as the rich countries have done for the last two centuries. Working for the Sustainable Development Commission, set up in 2001 to advise the Labour government in Britain, Tim Jackson of the University of Surrey produced a nifty calculation. Accept that citizens of developing nations are entitled to catch up with the living standards of Europeans by midcentury, and assume that Europe will grow, on average, by 2 percent a year between now and then. To stay within the 2 degree Centigrade (3.6 degrees Fahrenheit) average temperature increase that scientists generally consider the upper bound to avoid catastrophic climate change would require the world economy in 2050 to emit no more than six grams of carbon dioxide for every dollar of economic output. To put that in perspective, today the United States economy emits 60 times that much. The French economy, one of the most carbon-efficient because it is powered extensively by nuclear energy, emits 150 grams per dollar of output. Drawing what he saw as the inevitable conclusion, Professor Jackson published a book in 2009 called “Prosperity Without Growth” (Earthscan/Routledge). Whatever the ethical merits of the case, the proposition of no growth has absolutely no chance to succeed. For all the many hundreds of years humanity survived without growth, modern civilization could not. The trade-offs that are the daily stuff of market-based economies simply could not work in a zero-sum world. “It would be a nonstarter to have zero growth within a given country in terms of creating conflict between groups,” Professor Greenstone told me. “If one were to take this further and make it international, it feels like an even bigger stretch.” Let’s examine what our fossil-fueled growth has provided us. It has delivered gains in living standards in even the poorest regions of the world. But that’s only the beginning. Economic development was indispensable to end slavery. It was a critical precondition for the empowerment of women. Indeed, democracy would not have survived without it. As Martin Wolf, the Financial Times commentator has noted, the option for everybody to become better off — where one person’s gain needn’t require another’s loss — was critical for the development and spread of the consensual politics that underpin democratic rule. Zero growth gave us Genghis Khan and the Middle Ages, conquest and subjugation. It fostered an order in which the only mechanism to get ahead was to plunder one’s neighbor. Economic growth opened up a much better alternative: trade. The Oxford economist Max Roser has some revealing charts that show the deadliness of war across the ages. It was a real killer in the era of no growth. Up to half of all deaths among hunter-gatherers, horticulturalists and other ancient cultures were caused by conflict. The bloody 20th century — stage for two world wars, the Holocaust and other war-based genocides — still doesn’t even come close. Naomi Klein, a champion of the leftward fringe newly converted to the environmental cause, gleefully proposes climate change as an opportunity to put an end to capitalism. Were she right, I doubt it would bring about the workers’ utopia she appears to yearn for. In a world economy that does not grow, the powerless and vulnerable are the most likely to lose. Imagine “Blade Runner,” “Mad Max” and “The Hunger Games” brought to real life. The good news is that taking action against climate change need do no such thing. It will not be easy, but we can glimpse technological paths that will allow civilization to keep growing and afford the world economy a positive-sum future. More than how to stop growth, the main question brought out by climate change is how to fully develop and deploy sustainable energy technologies — in a nutshell, to help the world’s poor, and everybody else, onto a path to progress that doesn’t rely on burning buried carbon.

### Climate Impact – 1AC

#### Urbanization fuels clean energy use

Fankhauser from the Grantham Research Institute on Climate Change and Jotzo from the Australian National University, 17 (Sam Fankhauser and Frank Jotzo, 3/21/17, The Center for Climate change economics and policy, “ Economic growth and development with low-carbon energy”,http://www.indiaenvironmentportal.org.in/files/file/Economic%20growth%20and%20development%20with%20low-carbon%20energy.pdf, accessed 7/2/17, MJ)

Virtually all pathways to a low-carbon economy start with the rapid decarbonization of the electricity sector. The carbon intensity of energy decreases much faster than emissions in any other sector (Bataille et al 2016; Fankhauser 2013; Williams et al 2012). This is for three main reasons. First, energy is the dominant source of greenhouse gas emissions, accounting for about two thirds of global emissions. Second, low-carbon power generation is well-understood technologically. A number of low-carbon options are available, including renewable energy (wind, solar, biomass, hydro), nuclear energy and (as yet less well developed) carbon capture and storage (CCS). They create options for lowcarbon power generation. Third, decarbonized electricity has an important role to play in reducing emissions in other sectors, chief among them transport, residential energy demand and perhaps some parts of industry. That is, low-carbon energy pathways go hand in hand with an increased electrification rate. “Electrification” of the economy will drive up power generation, but will reduce overall emissions if the carbon intensity of electricity is low. 9 The carbon intensity of energy depends on the choice of fuels, specifically the balance between the different fossil fuels, as well as the balance between fossil fuels and renewables and nuclear power. Fossil fuel currently accounts for around 80 percent of global energy supply. Coal and oil account for around 30 percent each, and gas just over 20 percent (IEA 2015). Of the remainder, the majority is from biomass, followed by nuclear power. Modern renewables such as solar thermal, solar PV and wind are growing fast but from a low base. Differences between countries are a function of resource endowments, income, the economic structure (e.g. the importance of heavy industry) but also wider socio-economic factors. Calvin et al. (2012) found that the use of solid fuels in residential energy use decreases sharply with the level of urbanization.

#### Global warming causes mass deaths and civilization collapse

Pamlin Global Risks Global Challenges Foundation Executive Project Manager and Armstrong Future of Humanity Institute Oxford Martin School University of Oxford Research Fellow, 15

(Dennis Pamlin and Dr Stuart Armstrong, Global Challenges Foundation, “The Case for a New Risk Category”, <https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf>, accessed: 7/2/17, MJ)

As for all risks there are uncertainties in the estimates, and warming could be much more extreme than the middle estimates suggest. Feedback loops could mean global average temperatures increase by 4°C or even 6°C over pre-industrial levels. Feedbacks could be the release of methane from permafrost or the dieback of the Amazon rainforest. The impact of global warming would be strongest in poorer countries, which could become completely uninhabitable for the highest range of warming. Mass deaths and famines, social collapse and mass migration are certainly possible in this scenario. Combined with shocks to the agriculture and biosphere-dependent industries of the more developed countries, this could lead to global conflict and possibly civilisation collapse. Further evidence of the risk comes from signs that past civilisation collapses have been driven by climate change.

### Urban Growth Down

#### Urban growth is collapsing – poverty and education are the driving factors

Kolko, Indeed Chief Economist, 17

[Jed, 3-23-2017, “Americans’ Shift To The Suburbs Sped Up Last Year” FiveThirtyEight, <https://fivethirtyeight.com/features/americans-shift-to-the-suburbs-sped-up-last-year/> Accessed 7-1-2017, BP]

The suburbanization of America marches on. Population growth in big cities slowed for the fifth-straight year in 2016,1 according to new census data, while population growth accelerated in the more sprawling counties that surround them.

The Census Bureau on Thursday released population estimates for every one of the more than 3,000 counties in the U.S. I grouped those counties into six categories: urban centers of large metropolitan areas; their densely populated suburbs; their lightly populated suburbs; midsize metros; smaller metro areas; and rural counties, which are outside metro areas entirely.2

The fastest growth was in those lower-density suburbs. Those counties grew by 1.3 percent in 2016, the fastest rate since 2008, when the housing bust put an end to rapid homebuilding in these areas. In the South and West, growth in large-metro lower-density suburbs topped 2 percent in 2016, led by counties such as Kendall and Comal north of San Antonio; Hays near Austin; and Forsyth, north of Atlanta.3

Those figures run counter to the “urban revival” narrative that has been widely discussed in recent years. That revival is real, but it has mostly been for rich, educated people in particular hyperurban neighborhoods rather than a broad-based return to city living. To be sure, college-educated millennials — at least those without school-age kids — took to the city, and better-paying jobs have shifted there, too. But other groups — older adults, families with kids in school, and people of all ages with lower incomes — either can’t afford or don’t want an urban address.

### Schools Key to Cities

#### Fixing inner city schools solves metropolitan growth

Mckoy, Center for Cities and Schools executive director et al, 8

[Deborah, Jeffrey M. Vincent deputy director of the Center for Cities and School, and Carrie Makarewicz PhD student in City and Regional Planning at the University of California, Berkeley “Integrating Infrastructure Planning: The Role of Schools” Access, <http://www.accessmagazine.org/wp-content/uploads/sites/7/2016/04/access-33-04.pdf> accessed: 6-30-2008 BP]

Excellence in public schools is one of the most important factors contributing to metropolitan vitality. Many stakeholders, recognizing these links, seek to define what makes a “good school” and a “quality education.” The State of California, for example, measures and ranks every school based on test scores. Other educational organizations focus on different measures. What is often left out of nearly all definitions of a high-quality school, however, is the condition of school facilities—despite increasing evidence of its importance to teaching and learning, as well as the vitality of the community. Natural light, indoor air quality, temperature, cleanliness, acoustics, and classroom size can positively or negatively affect learning and productivity. Poor ventilation, dust, and mold in ceilings and walls—all factors found in many older urban school buildings and portables—can lead to respiratory infections, headaches, sleepiness, and absenteeism. Several studies have found that students attending school in newer facilities outperform similar pupils in ageing schools, even when controlling for socioeconomic differences. Studies are beginning to find that the size of schools also matters. Smaller schools (less than 500 students) and small learning communities within larger schools have been associated with better student performance, less absenteeism, and increased student engagement. Research shows that teacher retention is higher when school facilities are in better shape. School quality also affects housing demand and housing affordability, as parents of school age children bid up housing prices in communities with high public school rankings. In turn, this affects public finances. Higher housing prices mean more tax dollars, but financing their share of schools also may push local governments to compete for more commercial and retail development to increase the tax base, in part to support the schools. School locations affect how children and staff get to school, which affects local traffic, congestion, and pollution. At least one fifth of the state’s current population travels to and from a K–12 public or private school each weekday, nine months a year, so it matters how and when they travel. And school design can shape the types of educational programs the school can offer, and the opportunities for shared uses with the community or other government entities. In other words, location, land use, and community activities can all be greatly influenced by school siting and design.

### Integration Key to Growth

#### Racial segregation decks urban growth – best studies

Li, Shanghai University of Finance and Economics Professor ,13

[Huiping , Harrison Campbell University of North Carolina Department of Geography, and Steven Fernandez Oak Ridge National Laboratory Senior Researcher, 3-1-2013, “Residential Segregation, Spatial Mismatch and Economic Growth across US Metropolitan Areas” http://www.mariselabgomez.com/wp-content/uploads/2013/08/Urban-Stud-2013-Li-0042098013477697.pdf, Accessed: 7-1-2017, BP]

From 1980 to 2005, the economic growth of MAs declined. Metropolitan areas became more racially integrated, made virtually no progress with respect to skill-based integration and exhibited greater city–suburb income disparities. The results demonstrate that higher initial racial and skill segregation are associated with slower subsequent economic growth. The negative effect of the percentage of Black households without cars supports our theory connecting residential segregation and economic growth, indicating that mobility policies might be warranted. In the post-industrial economy, labour markets consist of low- and highskilled labour. Services provided by lowskilled individuals ensure the productivity of high-skilled workers. When high- and low-skilled labourers are segregated into distinct communities, the geographical distance between their residences and job locations increases for those who are disproportionately low-skilled. Constrained personal mobility from car inaccessibility or insufficient public transit impedes their accessibility to jobs. Such an imbalance in the labour market inhibits the productivity and income growth of all workers. Literature on the subject is flush with research emphasising that residential stratification is a by-product of market forces. Americans prefer living in neighbourhoods occupied primarily by households with similar incomes, cultural values, outlooks and racial/ethnic backgrounds (BaumSnow, 2007; Downs, 1994, ch. 4). It provides builders the incentive to create large sub-divisions of homes similar in size and price, thus perpetuating a residential hierarchy: high-income households cluster in high-prestige areas and middle-income in midrange-prestige areas. At the bottom are the low-prestige communities with often deteriorated housing in the central cities and inner suburbs. In order to exclude lowincome people and sustain residential homogeneity, the middle and upper class establish independent jurisdictions through local zoning, building codes and other regulations. Extensive research has documented the disadvantaged position that poor minorities suffer in the segregated urban system. Yet, affluent residents, voting with their feet, actually produce a negative externality that impedes the income growth of metropolitan areas. Residential segregation is thus detrimental to the welfare of all the people, both the poor and non-poor, in central cities and suburbs. Although skill segregation does not have a negative impact on suburban economic growth, racial segregation has a statistically significant negative effect. The effect has grown stronger over time in spite of declining rates of segregation. This contradicts theories positing positive externalities associated with separate communities for wealthy residents. Coincident with economic transformations taking place since the 1980s, the destructive impact of residential segregation has increased significantly in the ensuing 25 years. Its detrimental impact was not restricted to those of theinner-city. It impacted the economic welfare of all metropolitan residents. Policies designed to combat spatial mismatch typically focus on a combination of three strategies: increasing mobility, creating affordable housing in job-rich suburbs and/ or shifting the location of job growth within the metropolitan area. While our model results do not speak to all these policy options directly, they do provide support for mobility-enhancing policy initiatives, especially those that promote car ownership among non-Whites. We suspect the lack of statistical significance of public transit use reflects both the omission of several large north-eastern MAs and the generally poor condition and configuration of insufficient public transit services in metropolitan areas. A fruitful line of research would examine areas with good public transit to explore the causal relationship between the availability of public transit, job search activities and minority employment. Our results suggest that better rates of income growth would result from reducing disparities within metropolitan areas. Many urban problems are, at least partly, rooted in the segregated urban system. Thus, policies cultivating a mixed living structure, breaking racial and class barriers that impede minorities and the poor from engaging in the mainstream, are supported. Examples of such policies that have met with modest success include Moving to Work (MTW) and Moving to Opportunities (MTO), programmes aimed at increasing the housing choices for the poor and providing easier access to jobs and other public services. While some have suggested that as much as 50 per cent of jobs are found through friends and relatives (Bayer et al., 2008; Holzer, 1987, 1988; Kasinitz and Rosenberg, 1996), research assessing the extent to which moving to better communities, moving closer to job-rich areas or to areas that promote social mixing actually help the assisted families benefit from community-based social networks is desperately needed. The fact that labour force participation and population growth were negatively correlated with income growth, casts doubt on the neo-classical supposition that economic growth is tied to ever-increasing factor endowments. Without skill-appropriate opportunities and mechanisms that deter residential segregation, it appears that there are limits to the ability of metropolitan areas to absorb the unemployed and underemployed. Problems of excess labour supply reflected in high unemployment rates since the 1970s compound the problems of spatial mismatch and segregation, and thus exacerbate slower rates of metropolitan growth. The Great Recession from which we still suffer disproportionately affected metropolitan areas whose economic base was tied to manufacturing and financial services or those that simply overbuilt as a result of speculation in housing markets. It has not been kind to those subject to racial and skills-based segregation who are typically older and those at the lower ends of the socioeconomic strata. The resulting decline in residential mobility suggests that little progress in deterring residential segregation by race or skill will be made in the short run. Yet, at no time in recent history have policies designed to redress these conditions been more urgent.

### Cities Solve Climate

#### Strong cities solve a laundry list of threats – key to Paris follow through – financial power is key – questionable at best

Brescia, Albany Associate Professor of Law, 17

[Ray, 6-2-2017, “Cities Step In to Try to Save the Planet” Medium, <https://medium.com/@rbrescia/cities-step-in-to-try-to-save-the-planet-d3ff011faa85>, accessed: 7-1-2017, BP]

Once President Trump announced that he was beginning the slow process of withdrawing the United States from the Paris Accords, an agreement through which all but two countries had initially agreed in 2015 to set goals for reducing greenhouse gas emissions, cities within the United States, several U.S. states, and many companies have lined up to announce that they will voluntarily abide by the agreement and strive to help the U.S. meet the environmental targets the agreement contains. With such abysmal leadership coming out of Washington on this issue, local, state, and business leaders are stepping in to help solve the world’s most pressing problem: global climate change.

On a less momentous level, New York City announced that it will stop doing business with Wells Fargo because of its recent practices, including creating fake accounts for its customers. The City of New York brings billions of dollars of business to banks, including having them hold funds, maintain pensions, and issue bonds. With many fearing the federal government will return to the type of lax oversight that helped lead to the Financial Crisis of 2008, cities can step in to use their purchasing role to try to shape bank behavior and use the power of the purse to help encourage banks to act responsibly.

These are just two examples of the ways in which cities can step in to address some of the serious threats to global well-being, even when larger, national governments seem powerless and paralyzed, or worse, hell-bent on taking action that will do long-term damage to the health of the planet and its inhabitants. In addition to these two examples, whether it is the “Sanctuary City” movement, or cities leading the way in the fight for raising the minimum wage, cities are serving as a counterweight to the forces that are threatening the prospects of global cooperation in a range of critical policy areas.

What these examples show is that cities can play pivotal roles — as regulators, as policy makers, as commercial actors, as global citizens — to help show leadership on the most pressing issues of the day: climate change, economic inequality, refugees, and financial security, to name just a few.

In a collection of essays from a range of disciplines, my co-editor and I, John Marshall, brought together thought leaders to explore some of these issues and more. That collection, entitled How Cities Will Save the World: Urban Innovation in the Face of Population Flows, Climate Change, and Economic Inequality, was published in 2016 and provides examples of cities offering leadership in the areas critical to the future of the planet and makes recommendations for innovations that cities can undertake today to make for a better tomorrow. Read the introduction to the volume here.

### Warming = Extinction

#### **Warming turns every impact and collapses global ecosystems.**

Torres 16 – affiliate scholar @ Institute for Ethics and Emerging Technologies (Phil, PhD candidate @ Rice University in tropical conservation biology, Op-ed: Climate Change Is the Most Urgent Existential Risk, <http://ieet.org/index.php/IEET/more/Torres20160807>)

Humanity faces a number of formidable challenges this century. Threats to our collective survival stem from asteroids and comets, supervolcanoes, global pandemics, climate change, biodiversity loss, nuclear weapons, biotechnology, synthetic biology, nanotechnology, and artificial superintelligence. With such threats in mind, an informal survey conducted by the Future of Humanity Institute placed the probability of human extinction this century at 19%. To put this in perspective, it means that the average American is more than a thousand times more likely to die in a human extinction event than a plane crash.\* So, given limited resources, which risks should we prioritize? Many intellectual leaders, including Elon Musk, Stephen Hawking, and Bill Gates, have suggested that artificial superintelligence constitutes one of the most significant risks to humanity. And this may be correct in the long-term. But I would argue that two other risks, namely climate change and biodiveristy loss, should take priority right now over every other known threat. Why? Because these ongoing catastrophes in slow-motion will frame our existential predicament on Earth not just for the rest of this century, but for literally thousands of years to come. As such, they have the capacity to raise or lower the probability of other risks scenarios unfolding. Multiplying Threats Ask yourself the following: are wars more or less likely in a world marked by extreme weather events, megadroughts, food supply disruptions, and sea-level rise? Are terrorist attacks more or less likely in a world beset by the collapse of global ecosystems, agricultural failures, economic uncertainty, and political instability? Both government officials and scientists agree that the answer is “more likely.” For example, the current Director of the CIA, John Brennan, recently identified “the impact of climate change” as one of the “deeper causes of this rising instability” in countries like Syria, Iraq, Yemen, Libya, and Ukraine. Similarly, the former Secretary of Defense, Chuck Hagel, has described climate change as a “threat multiplier” with “the potential to exacerbate many of the challenges we are dealing with today — from infectious disease to terrorism.” The Department of Defense has also affirmed a connection. In a 2015 report, it states, “Global climate change will aggravate problems such as poverty, social tensions, environmental degradation, ineffectual leadership and weak political institutions that threaten stability in a number of countries.” Scientific studies have further shown a connection between the environmental crisis and violent conflicts. For example, a 2015 paper in the Proceedings of the National Academy of Sciences argues that climate change was a causal factor behind the record-breaking 2007-2010 drought in Syria. This drought led to a mass migration of farmers into urban centers, which fueled the 2011 Syrian civil war. Some observers, including myself, have suggested that this struggle could be the beginning of World War III, given the complex tangle of international involvement and overlapping interests. The study’s conclusion is also significant because the Syrian civil war was the Petri dish in which the Islamic State consolidated its forces, later emerging as the largest and most powerful terrorist organization in human history. A Perfect Storm The point is that climate change and biodiversity loss could very easily push societies to the brink of collapse. This will exacerbate existing geopolitical tensions and introduce entirely new power struggles between state and nonstate actors. At the same time, advanced technologies will very likely become increasingly powerful and accessible. As I’ve written elsewhere, the malicious agents of the future will have bulldozers rather than shovels to dig mass graves for their enemies. The result is a perfect storm of more conflicts in the world along with unprecedentedly dangerous weapons. If the conversation were to end here, we’d have ample reason for placing climate change and biodiversity loss at the top of our priority lists. But there are other reasons they ought to be considered urgent threats. I would argue that they could make humanity more vulnerable to a catastrophe involving superintelligence and even asteroids. The basic reasoning is the same for both cases. Consider superintelligence first. Programming a superintelligence whose values align with ours is a formidable task even in stable circumstances. As Nick Bostrom argues in his 2014 book, we should recognize the “default outcome” of superintelligence to be “doom.” Now imagine trying to solve these problems amidst a rising tide of interstate wars, civil unrest, terrorist attacks, and other tragedies? The societal stress caused by climate change and biodiversity loss will almost certainly compromise important conditions for creating friendly AI, such as sufficient funding, academic programs to train new scientists, conferences on AI, peer-reviewed journal publications, and communication/collaboration between experts of different fields, such as computer science and ethics. It could even make an “AI arms race” more likely, thereby raising the probability of a malevolent superintelligence being created either on purpose or by mistake. Similarly, imagine that astronomers discover a behemoth asteroid barreling toward Earth. Will designing, building, and launching a spacecraft to divert the assassin past our planet be easier or more difficult in a world preoccupied with other survival issues? In a relatively peaceful world, one could imagine an asteroid actually bringing humanity together by directing our attention toward a common threat. But if the “conflict multipliers” of climate change and biodiversity loss have already catapulted civilization into chaos and turmoil, I strongly suspect that humanity will become more, rather than less, susceptible to dangers of this sort. Context Risks We can describe the dual threats of climate change and biodiversity loss as “context risks.” Neither is likely to directly cause the extinction of our species. But both will define the context in which civilization confronts all the other threats before us. In this way, they could indirectly contribute to the overall danger of annihilation — and this worrisome effect could be significant. For example, according to the Intergovernmental Panel on Climate Change, the effects of climate change will be “severe,” “pervasive,” and “irreversible.” Or, as a 2016 study published in Nature and authored by over twenty scientists puts it, the consequences of climate change “will extend longer than the entire history of human civilization thus far.” Furthermore, a recent article in Science Advances confirms that humanity has already escorted the biosphere into the sixth mass extinction event in life’s 3.8 billion year history on Earth. Yet another study suggests that we could be approaching a sudden, irreversible, catastrophic collapse of the global ecosystem. If this were to occur, it could result in “widespread social unrest, economic instability and loss of human life.” Given the potential for environmental degradation to elevate the likelihood of nuclear wars, nuclear terrorism, engineered pandemics, a superintelligence takeover, and perhaps even an impact winter, it ought to take precedence over all other risk concerns — at least in the near-term. Let’s make sure we get our priorities straight.

#### Warming causes extinction--no adaptation

Keith Dear et al. 10, Duke research professor, Global Health and Environmental Health, 5-25-2010, “Climate change: Heat, health, and longer horizons,” PNAS, 107.21, http://www.pnas.org/content/107/21/9483.full#corresp-1

Within the more usual time horizon, spanning only decades of climate change, there has been discussion about the possibilities of physiological acclimatization in response to future increased exposures to extreme heat (6). Further, that discussion has often been predicated on the likely future increases in climatic and weather variability that are anticipated to accompany climate change. Sherwood and Huber (1), however, focus particularly on the prospect and consequence of substantial changes in mean temperature conditions over several centuries along with accompanying changes in the distribution of maximum temperatures. Even if variability changes little, a higher mean temperature implies more frequent exceeding of physiologically tolerable thermal limits. For mean temperature increases of 4–6 °C or more, it is implausible that human biology, as currently constituted, could adapt physiologically. It is instructive, therefore, that the authors (1) remind us of the time frame of biological evolutionary processes. As they point out, the fossil record shows that the evolutionary changes evoked by the slow fluctuating processes of global cooling over the past 65 million years have typically yielded increases in warm-blooded mammalian body size, thereby reducing heat dissipation to the external environment. Thus, we human mammals cannot expect to undergo any useful heritable biological adaptation during the evolutionary nanosecond of just the next several centuries. The genus Homo has a particularly high rate of biological evolution, in part because of behavioral drive (7), and this is well-illustrated by the emergence and spread of the lactase allele within the last 10,000 years in response to the novel inclusion of dairy foods in the human diet (8). Indeed, the rate of genetic evolution in humans has been extraordinarily rapid over this time (9). Admittedly, we are in unknown territory here, given that the unprecedented size of today's human population has grown from millions to billions within the historical, not the geological, past. A larger gene pool allows more rapid response to environmental changes, as does an increase in interbreeding between regional genetic strains. Furthermore, “a population that suddenly increases in size has the potential for rapid adaptive change” (9). Even so, biological evolutionary adaptation to a warmer climate would seem likely to require scores or even hundreds of generations, not just several hundred of years. Also, the authors (1) note that a much hotter world would not only be less tolerable and less livable but would be a world wherein economic productivity would fall, both because of the disrupted production processes in nature (agriculture, forests, and fisheries) on which we depend and the impaired work capacity under overheated conditions (10). There has been negligible recognition of this latter category of impact in the climate-change science literature. Indeed, major international bodies such as the World Bank and the United Nations Development Program have yet to adequately acknowledge this basic consequence of climate change and impaired work capacity, and they do not include it in their projections and plans for social and economic development.

### A2: Adaptation

#### 1. Impossible physiologically—heat stress overwhelms biology we would need more than centuries to adapt-that’s Dear.

#### 2. Adaptation is impossible absent committed mitigation efforts in the short-run

Joseph Romm 16, MIT physics PhD, Climate Change: What Everyone Needs to Know, Oxford University Press, p. 140-145

Most environmental problems that people, communities, and governments have experience dealing with are reversible. A polluted lake or river can be cleaned up and then used for swimming and fishing. A city with polluted air can put in place clean air standards and turn its brown haze into blue skies. However, climate change is different from most environmental problems. The scientific literature has made it increasingly clear that key impacts are irreversible on a time scale of centuries and possibly millennia. This means that climate change creates risks that are unparalleled in human history. It also means that if we follow the traditional way of dealing with an environmental problem, that is, wait until the consequences are obvious and unmistakable to everybody, it will be “too late" to undo those consequences for a long, long time. Climate inaction inherently raises issues of equity because it will harm billions of people who have contributed little or nothing to the problem. However, what makes the issue unique in the annals of history is that the large-scale harm is irreparable on any timescale that matters (and that we could avoid the worst of the irreparable harms at a surprisingly low net cost, as discussed in Chapter Four). Because irreversibility is such a unique and consequential fact about climate change, the world's leading climate scientists (and governments) took extra measures to emphasize the issue in the most recent international assessment of climate science by the U.N. Intergovernmental Panel on Climate Change—the November 2014 full, final "synthesis" report in its Fifth Assessment all of the scientific and economic literature. In the IPCC's final "synthesis" report of its Fourth Assessment, issued in 2007, irreversibility was only mentioned two times and there was minimal discussion in the Summary for Policymakers. Seven years later, the "Summary for Policymakers" of the IPCC's synthesis report mentions "irreversible" 14 times and has extended discussions of exactly what it means and why it matters. The full report has an even more detailed discussion. What do the world's leading scientists mean by "irreversible impacts"? In the latest IPCC report, they explain that Warming will continue beyond 2100 under all RCP scenarios except RCP2.6 [where emissions are cut sharply]. Surface temperatures will remain approximately constant at elevated levels for many centuries after a complete cessation of net anthropogenic CO2 emissions. A large fraction of anthropogenic climate change resulting from CO2 emissions is irreversible on a multi-century to millennial time scale, except in the case of a large net removal of CO2 from the atmosphere over a sustained period… It is virtually certain that global mean sea-level rise will continue for many centuries beyond 2100, with the amount of rise dependent on future emissions. In other words, impacts will be much worse than described in this report after 2100 in every case but the one where we sharply cut carbon dioxide starting now (to stabilize at below 2°C total warming). In addition, whatever temperature the planet ultimately hits thanks to human-caused warming, that is roughly as high as temperatures will stay for hundreds of years after we bring total net human-caused carbon pollution emissions to zero. The "case of a large net removal of CO2 from the atmosphere over a sustained period" means a time far beyond when humanity has merely eliminated total net human-caused emissions—from deforestation and burning fossil fuels (and from whatever amplifying carbon-cycle feedbacks we have caused, such as defrosting permafrost). To start reversing the irreversible, we have to go far below zero net emissions to actually sucking vast quantities of diffuse CO2 out of the air and putting it someplace that is also permanent, which, according to a 2015 National Academy of Sciences report (discussed in Chapter Six), we currently do not know how to do on a large scale. One can envision such a day when we might be able to go far below zero—if we sharply reduce net carbon pollution to zero by 2100, as we must to stabilize near 2°C. However, it is much more difficult to imagine when it would happen if emissions are anywhere near current levels by 2100, and we have started one or more major amplifying carbon-cycle feedbacks that make the job of getting to even zero net emissions doubly difficult. If we do not get on the 2°C path, then some of the most serious climate changes caused by global warming could last a thousand years or more. The IPCC explained in 2014, "Stabilisation of global average surface temperature does not imply stabilisation for all aspects of the climate system." That is to say, as we warm above 2°C, then even at a point many hundreds of years from now when temperatures start to drop, some changes in the climate—sea-level rise being the most obvious example—will likely keep going and going. The IPCC reports are primarily reviews of the scientific literature, so the new focus on the irreversible nature of climate change is no surprise. In a 2009 study titled "Irreversible Climate Change Because of Carbon Dioxide Emissions," researchers led by NOAA scientists concluded that "the climate change that is taking place because of increases in carbon dioxide concentration is largely irreversible for 1,000 years after emissions stop." It is significant to note that the NOAA-led study warned that it was not just sea-level rise that would be irreversible: Among illustrative irreversible impacts that should be expected if atmospheric carbon dioxide concentrations increase from current levels near 385 parts per million by volume (ppmv) to a peak of 450-600 ppmv over the coming century are irreversible dry-season rainfall reductions in several regions comparable to those of the "dust bowl" era and inexorable sea level rise. Recent studies strongly support that finding for both sea-level rise and Dust-Bowlification of some of the world's most productive agricultural lands, as we have seen. This 2014 Synthesis report may be the first time the world's leading scientists and governments explain why the irreversibility of impacts makes inaction so uniquely problematic. Here is the key finding (emphasis in original): Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread, and irreversible impacts globally (high confidence). Mitigation involves some level of co-benefits and of risks due to adverse side-effects, but these risks do not involve the same possibility of severe, widespread, and irreversible impacts as risks from climate change, increasing the benefits from near-term mitigation efforts. Why is this conclusion so salient? The IPCC is acknowledging that mitigation efforts taken to reduce greenhouse gas emissions have risks in addition to their cobenefits—"possible adverse side effects of large-scale deployment of low-carbon technology options and economic costs," as the full report puts it. However, the risks involved in reducing emissions are both quantitatively and qualitatively different than the risks deriving from inaction because they are not likely to be anywhere near as "severe, widespread, and irreversible." The full 2014 "Synthesis" report expands on this point, noting that "Climate change risks may persist for millennia and can involve very high risk of severe impacts and the presence of significant irreversibilities combined with limited adaptive capacity." In sharp contrast, "the stringency of climate policies can be adjusted much more quickly in response to observed consequences and costs and create lower risks of irreversible consequences." Put another way, if some aspect of the emissions reduction strategy turns out to start having unexpected, significant negative consequences, humanity can quickly adjust to minimize costs and risks. However, inaction—failing to embrace strong mitigation—will lead to expected climate impacts that are not merely very long lasting and irreversible, but potentially beyond adaptation. For instance, sea-level rise would become so great, so rapid, and so unstoppable that we simply have to abandon the vast majority of coastal cities.

### A2: Cost Benefit Analysis

#### Climate specifically demands reflexive governance that trumps cost-benefit analysis because of uncertainty

NRC 11 National Research Council; Division on Earth and Life Studies; Board on Atmospheric Sciences and Climate; Committee on America's Climate Choices <https://www.nap.edu/read/12781/chapter/6> "4 A Framework for Making America's Climate Choices." National Research Council. 2011. America's Climate Choices. Washington, DC: The National Academies Press. doi: 10.17226/12781.

Historically, humans have responded to changing environments by a process of muddling through; that is, by taking an ad hoc approach to decision making as choices arise.2 In the modern era, techniques and approaches have been developed that allow decision makers to think through complex issues systematically. One prominent approach is the precautionary principle,3 which emphasizes avoidance of potentially serious or irreversible environmental harm, even when scientific uncertainties may be substantial. At the other extreme is what might be called “staying the course,” or not taking any action until the need for action is fully established and the consequences of any action are fully understood. Another common approach is cost-benefit analysis and other related instruments that attempt to weigh the potential outcomes of taking (or not taking) action using a common metric, usually dollars discounted to present values. All of these approaches present serious drawbacks in the context of climate change. In muddling through, for instance, decisions are generally driven by immediate events and the lessons learned from one’s most recent experiences. Such an approach makes it difficult to thoughtfully consider long-term consequences of climate-related decisions. For instance, with regard to the prospect of irreversible or “tipping point” impacts, it will be too late to change course if one waits until such impacts have begun to unfold. Analyses based on the precautionary principle or staying the course both reflect a substantial aversion to risk. In the case of the precautionary principle, the goal is to minimize risks of future adverse consequences of climate change with little regard for present costs. In the case of staying the course, the goal is to minimize the risks of incurring costs from responding to climate change with little regard for the risks of climate change. These approaches do not provide a way to decide among competing goals (e.g., minimizing risks of climate change impacts versus minimizing risks to economic growth) or to deal systematically with uncertainty.4 Cost-benefit analysis has been applied in many evaluations of climate change policy5 and can provide some useful insights in some contexts. But using cost-benefit analyses as a primary basis for making climate choices is problematic for a number of reasons. Many of the costs of climate change impacts are difficult or impossible to quantify.6 The sheer diversity and extent of potential costs and benefits of climate change make it very difficult to aggregate costs. Estimates can vary widely, depending on normative judgments about risk aversion and about how to account for equity concerns across generations, social groups, and regions of the world.7 Estimating the costs of actions to address climate change, while seemingly a more tractable task, is also problematic—for instance, because the costs of emission reductions over the coming decades depend critically on the pace of technological change.8 An iterative risk management approach9 for making climate change-related decisions overcomes many of these limitations. This approach can draw upon multiple forms of input—including analyses used under precautionary principle and cost-benefit frame-works—but it is not limited to single criterion (such as risk avoidance or economic efficiency) for making choices. Iterative risk management is a system for assessing risks, identifying options that are robust across a range of possible futures, and assessing and revising those choices as new information emerges. In cases where uncertainties are substantial or risks cannot be reliably quantified, one can pursue multiple, comple- mentary actions—sometimes called a “portfolio approach” or “hedging strategy.” And ideally, this approach includes mechanisms for integrating scientific and technical analysis with broad-based deliberations among the stakeholders most affected by any given decision (see Box 4.2 on analytic deliberation processes). NRC, Informing Effective Decisions emphasizes some key features of an iterative risk management process: It is not a single set of judgments at some point in time, but rather a process of ongoing assessment, action, reassessment, and response—which in the case of many climate-related decisions may persist for decades or longer. Eliminating all potential risks is impossible, as even the best possible decision will entail some residual risk. Determining which risks are acceptable or unacceptable is an integral part of the process of risk management. Different stakeholders will inevitably hold different views. For addressing a problem as complex as climate change, risk management should be implemented through a process of “adaptive governance” that involves assuring adequate coordination among the institutions and actors involved in responding to climate change, sharing information with decision makers across different levels and sectors, ensuring that decisions are regularly reviewed and adjusted in light of new information, and designing policies that can adapt but that are also durable over time. These concepts are illustrated in Figure 4.1 and discussed further in Chapter 5. Similar principles have been recommended and illustrated by other high-level advisory groups worldwide, including, for instance, the IPCC, the United Nations Development Programme, the World Bank, the Australian Greenhouse Office, and the UK Climate Impacts Programme.10 Closer to home, a number of NRC and other reports have pointed to the planning efforts being carried out by New York City as a good example of a climate change response strategy that embodies many key elements of iterative risk management.11

### A2: Inevitable

#### Climate change isn’t inevitable-Paris is on the right track, scaling up renewables key.

Matthew Wright 17, 3-4-2017, "New UMD Model Analysis Shows Paris Climate Agreement Is ‘Beacon of Hope’ for Limiting Climate Warming & Its Damage," UMD Right Now :: University of Maryland, https://www.umdrightnow.umd.edu/news/new-umd-model-analysis-shows-paris-climate-agreement-%E2%80%98beacon-hope%E2%80%99-limiting-climate-warming-its

In December 2015, the world’s nations negotiated the Paris Climate Agreement, which seeks to limit global warming to a maximum of 2 degrees Celsius above pre-industrial temperatures. Using a University of Maryland developed climate model, UMD scientists have conducted a new, empirical analysis that indicates there is a good chance that the world will be able to limit climate warming to 2 degrees Celsius, or less, if countries achieve the greenhouse gas reductions pledged during the Paris meeting. The authors describe their new findings and previously published model in a just published book: Paris Climate Agreement: Beacon of Hope. “We’ve developed an empirical model of global climate that we use to forecast future temperature out to the year 2100,” said Timothy Canty, a research professor in atmospheric and oceanic science at UMD and a co-author of the book. “This is a model that ingests massive amounts of observational data.” Climate models that forecast global warming use of one of four numbered scenarios to describe greenhouse gases in the future atmosphere. Researchers refer to these projections as representative concentration pathway (RCP) scenarios, each of which accounts for the influence of greenhouse gases and other pollutants on climate out to year 2100. RCP 4.5, one of the more optimistic pathways, assumes that human emissions of greenhouse gases will level off soon and then decline after a few decades. “The most important result from our modeling efforts is that the RCP 4.5 scenario is the two degree global warming pathway,” said Austin Hope, a graduate student in atmospheric and oceanic science at UMD and a co-author of the book. “If the world keeps emissions to RCP 4.5, then we will likely stay beneath 1.5 degrees of global warming and almost certainly beneath two degrees of global warming,” To achieve emissions reductions, the Paris Agreement requires each participating country to commit to a pledge, called an intended nationally determined contribution (INDC). Most INDCs only extend to the year 2030, however. “Our research shows that if the Paris Climate Agreement is met, it will put us on the RCP 4.5 pathway, but this can only happen if two important things occur,” said Walter Tribett, a research scientist in atmospheric and oceanic science at UMD and a co-author of the book. “One, all conditional and unconditional INDCs must be met. Two, the mitigation of greenhouse gases needed to meet the Paris goal must be propagated out to 2060.” Each INDC is different, based on the status and needs of each country. But most recognize the importance of non-emitting, renewable sources of energy. “To achieve RCP 4.5, half of the world’s global energy must come from renewable sources by year 2060,” said Brian Bennett, a research scientist in atmospheric and oceanic science at UMD and a co-author of the book.

#### Can limit to 2 degrees now-limiting fossil fuels key.

Eco-Business 17, 2-1-2017, "We can still keep global warming below 2℃ – but the hard work is about to start," http://www.eco-business.com/opinion/we-can-still-keep-global-warming-below-2c-but-the-hard-work-is-about-to-start/

Last year we found that the growth in global fossil fuel emissions have stalled over the past three years. But does this mean we are on track to keep global warming below 2℃, as agreed under the 2015 Paris Agreement? In our study, published in the journal Nature Climate Change today, we looked at how global and national energy sectors are progressing towards global climate targets. We found that we can still keep global warming below 2℃ largely thanks to increasing use of clean energy, a global decline in coal use, improvements in energy efficiency, and a consequent stalling of emissions from fossil fuels over the past three years. Nations need to accelerate deployment of existing technologies to lock in and build on the gains of the last three years. More challenging, is the needed investment to develop new technologies and behaviours necessary to get to net-zero global emissions by mid-century. World moving away from fossil fuels We looked at several key measures, including carbon emissions from fossil fuels, the carbon intensity of the energy system (how much carbon is produced for each unit of energy) and the amount of carbon emitted to produce one dollar of wealth. The world share of energy from fossil fuels is starting to decline. There has been no growth in coal consumption and strong growth in energy from wind, biomass, solar and hydro power. The emerging trend is therefore towards lower carbon emissions from energy production. Energy efficiency has also improved globally in recent years, reversing the trends of the 2000s. These improvements are reducing the amount of carbon emissions to produce new wealth. From all these changes, global fossil fuel emissions have not grown over the past three years. Remarkably, this has occurred while the global economy has continued to grow. As the global economy grows, it is using less energy to produce each unit of wealth as economies become more efficient and shift towards services. These promising results show that, globally, we are broadly in the right starting position to keep warming below 2℃. But modelling suggests that stringent climate policy will only slightly accelerate this historical trend of improvements in energy intensity. And to keep warming below 2℃ will require deep and sustained reductions in the carbon intensity of how energy is produced.

### A2: Matt Ridley

#### Ridley = Idiot

Romm 14 - Ph.D. in physics from M.I.T. and researched his thesis on physical oceanography at the Scripps Institution of Oceanography, Senior Fellow at American Progress

(Joe, “Matt Ridley Returns With Error-Riddled Articles, As Wall Street Journal Discredits Itself”, 9/10/14, https://thinkprogress.org/matt-ridley-returns-with-error-riddled-articles-as-wall-street-journal-discredits-itself-c7ca0368a1e5#.dhvxdu88r)

Matt Ridley, perhaps the most debunked and anti-scientific Journal columnist in recent memory, is back from his hiatus. Turns out, when you look closely, Ridley’s self-proclaimed pause as a Wall Street Journal columnist was about as real as the supposed “pause” in global warming. Back in July 2013, Ridley announced a permanent hiatus from his error-riddled “Mind & Matter” Wall Street Journal column. That “farewell” column was thoroughly eviscerated by astronomer Phil Plait, who shows that Ridley’s arguments on climate science are “wrong” and “untenable.” But non-columnist Ridley is back with two more risible WSJ columns in the last week — they don’t make hiatuses like they used to — arguing for the umpteenth time that global warming is nothing to worry about. The first column on September 4, “Whatever Happened to Global Warming?” was thoroughly debunked by Columbia’s Jeffrey Sachs and Climate Science Watch among others. Five days later, the WSJ ran “Matt Ridley Replies to His Climate-Change Critics.” This is one of the most nonsensical climate pieces ever to appear in the Wall Street Journal. Half the piece is Ridley’s usual confusion and disinformation. But the other half of the piece he spends trying to argue that Sachs didn’t actually write the piece in HuffPost with his name on it. Bizarre. In case you were among the 0.00001% of the population that were wondering, yes Sachs wrote the piece. On top of that, the Wall Street Journal adds an editorial note up front to lend its nano-credibility to the pico-credibility of Ridley: Yes, “the enforcers of climate-change orthodoxy.” I guess this is what Ridley and the WSJ call the world’s leading climate scientists and pretty much every serious scientific and government body that understands science. A little history is in order to see who exactly disagrees with Ridley and the Wall Street Journal. In December 2012, the Journal published a Ridley piece, “Cooling Down the Fears of Climate Change,” (falsely) asserting that observations suggest global warming will be so low as to “be beneficial.” As I noted at the time, that piece was so riddled with basic math and science errors it raised the question of how the Journal can possibly maintain its reputation as a credible source of news and financial analysis. Ridley and the Journal apparently don’t know the difference between water vapor and clouds. They don’t understand the basic concept of climate sensitivity. And they can’t do simple math. How bad was that piece? Even the climatologist cited by Ridley said he “is just plain wrong about future warming.” But it is standard practice for Ridley not to actually read the scientific literature he cites, as I show. How anti-scientific was the piece? Many of the country’s leading climate experts dismantled it in an excellent piece by Media Matters, “WSJ’s Climate ‘Dynamite’ Is A Dud.” Here’s just one: [A]s John Abraham, an IPCC reviewer and the director of the Climate Science Rapid Response Team, put it to Media Matters: the column “has such elementary errors in it that [it] casts doubt on the author’s understanding of any aspects of climate change.” I can understand why Ridley and the WSJ bristle at the “orthodoxy” of basic science and math — it is inconvenient for their argument that global warming is nothing to worry about and might actually be beneficial. As an aside, for those who didn’t know Ridley, the WSJ noted in the 2012 piece that his “family leases land for coal mining in northern England, on a project that will cease in five years,” a point that is strangely absent from his recent columns. Go figure. As to Ridley’s current attempt to remove the batteries from the world’s smoke detectors, it simply defies logic: The climate-research establishment has finally admitted openly what skeptic scientists have been saying for nearly a decade: Global warming has stopped since shortly before this century began. Except that isn’t what the climate-research establishment actually believes or says. As we’ve pointed out many times, more than 90 percent of human-caused warming was always expected to go into the ocean, and it continues to do so at an alarming pace. And of course we learned in 2012 that Greenland’s ice melt increased five-fold since the mid-1990s. Then last month scientists reported that Greenland and West Antarctica’s ice sheet more than doubled their ice sheet losses in the last five years. A previous study had found “sea level rising 60% faster than projected.” But hey, the Wall Street Journal and Matt Ridley say “The climate-research establishment has finally admitted” that global warming “stopped” in the late 1990s. How can anybody take these people seriously? Much as we might have wished for it, global warming hasn’t stopped and many of its most worrisome manifestations have accelerated. Ridley’s entire argument boils down to the supposed hiatus in surface temperatures — where a tiny fraction of warming actually goes — since the late 1990s. Yet somehow, despite this supposed hiatus, 2010 was the hottest year on record and the decade of the 2010s was the hottest on record. As the study I cited at the top made clear, there’s no “pause” in warming, even for surface air temperatures. At this point, the remaining question is, why have surface temperatures slowed their growth, when ocean temperatures and Arctic sea ice and glaciers and the great ice sheets — which are where 95 percent of global warming ends up — have seen accelerated warming? Ridley pins his entire “we don’t have to worry about global warming” argument on just one of many recent papers attempting to explain the apparent slowdown in surface air temperatures: The warming in the last three decades of the 20th century, to quote the news release that accompanied their paper, “was roughly half due to global warming and half to the natural Atlantic Ocean cycle.” In other words, even the modest warming in the 1980s and 1990s — which never achieved the 0.3 degrees Celsius per decade necessary to satisfy the feedback-enhanced models that predict about three degrees of warming by the end of the century — had been exaggerated by natural causes. The man-made warming of the past 20 years has been so feeble that a shifting current in one ocean was enough to wipe it out altogether. Let’s set aside for the umpteenth time that man-made warming of the past 20 years hasn’t been wiped out — indeed it has accelerated in many worrisome areas. While it’s true that the press release for this paper puts half the attribution of recent warming to a natural cycle, that actually comes from a previous paper, which was received for review back in 2012. Ridley presumably knows this because he left it out: “Rapid warming in the last two and a half decades of the 20th century, they proposed in an earlier study, was roughly half due to global warming and half to the natural Atlantic Ocean cycle….” Since then, however, the world’s leading scientists have explained that all of the warming since 1950 is due to human causes. In September 2013, the United Nations Intergovernmental Panel On Climate Change (IPCC) — hundreds of the world’s top scientists and climate experts — released the first part of its Fifth Assessment Report, a summary report of the scientific literature. That summary was signed off on line-by-line by the world’s major governments. The IPCC concluded, “The best estimate of the human-induced contribution to warming is similar to the observed warming over this period” from 1951 to 2010. In other words, the best estimate is that humans are responsible for all of the warming we have experienced since 1950 –- based on a review of observations and analysis published in the scientific literature. Ridley wants you to believe that global warming has stopped, which it hasn’t. And he wants you to believe that the human contribution to recent warming is small so you’ll believe future warming will also be small. But that is also false. Amusingly, Ridley ends his latest response to the “orthodoxy” this way: Soon after my article was published, another peer-reviewed paper appeared in the Journal Nature Climate Change, about as mainstream a climate science publication as you can find. It is entitled: “Climate model simulations of the observed early-2000s hiatus of global warming. Yes, Ridley is excited that the title of a very recent article used the phrase “early-2000s hiatus of global warming.” But of course that study was on surface air temperatures. And if Ridley had bothered to read it, which he apparently didn’t, he would know that it debunked his entire argument that the climate models are wrong and that the planet has stopped heating up. That study “vindicates climate models” as Phys.org put it, and it showed that “climate models can recreate the slowdown in global warming since 1998, as long as they correctly factor in crucial variables such as the state of the El Niño system.” Doh! As the study’s news release says of the last decade, “Almost all of the heat trapped by additional greenhouse gases during this period has been shown to be going into the deeper layers of the world’s oceans.” This new study that Ridley and the Wall Street Journal embrace reconfirms that the latest climate models are indeed accurate (once the El Niño Southern Oscillation is taken into account). That means if we continue on our path of general inaction on climate change (the one they favor), we face 9°F warming for the U.S., faster sea level rise, more extreme weather, and permafrost collapse.” I will end with one of the country’s leading climatologists, Michael Mann, who made the following point to me about the WSJ piece: What’s particularly sad is that at the same time the Wall Street Journal editorial board seems intent on leading its readers off a cliff, more and more of the legitimate business community is recognizing and speaking out on the very real threat posed by climate change and on the urgent need to fight it head on to avert an economic calamity (see the recent “Risky Business report by Michael Bloomberg, Tom Steyer, and Henry Paulson). The Journal’s disinformation on and denial of climate change is a betrayal of their readership, who rely on accurate and honest assessments of risk to make sensible investment choices.

### A2: No Peer Reviewed Journal

#### Journals are a bad standard because they require model certainty that is impossible-that’s Stern.

Miquel Angel Rodriguez Arias 14, Institut de Ciències del Mar, 11-12-2014, “Are you aware of any peer-reviewed paper that explicitly classifies current global climate change as an existential risk (risk of human extinction)?” Research Gate, https://www.researchgate.net/post/Are\_you\_aware\_of\_any\_peer-reviewed\_paper\_that\_explicitly\_classifies\_current\_global\_climate\_change\_as\_an\_existential\_risk\_risk\_of\_human\_extinction

No, because is a question very hard to answer from the point of view of research. In order to answer this question you need two ingredients: a model of future climate (we have this already) and a model of human extinction linked to environmental change (that we lack; we have a model of human extinction in terms of nuclear warfare, astronomical body impact, or pandemics, all of them spiced with a lot of Sci-Fi stuff).

### A2: Past Warming Events

#### Human warming is the fastest in history AND past warming caused mass extinctions.

Howard Lee 14, Geolgiical Socity of London fellow, 6-30-2014, “What does past climate change tell us about global warming?” Skepitcal Science, https://skepticalscience.com/climate-change-little-ice-age-medieval-warm-period.htm

Greenhouse gasses, principally CO2, have controlled most ancient climate changes. This time around humans are the cause, mainly by our CO2 emissions.

Climate Myth... Climate's changed before Climate is always changing. We have had ice ages and warmer periods when alligators were found in Spitzbergen. Ice ages have occurred in a hundred thousand year cycle for the last 700 thousand years, and there have been previous periods that appear to have been warmer than the present despite CO2 levels being lower than they are now. More recently, we have had the medieval warm period and the little ice age. (Richard Lindzen) Greenhouse gasses – mainly CO2, but also methane – were involved in most of the climate changes in Earth’s past. When they were reduced, the global climate became colder. When they were increased, the global climate became warmer. When CO2 levels jumped rapidly, the global warming that resulted was highly disruptive and sometimes caused mass extinctions. Humans today are emitting prodigious quantities of CO2, at a rate faster than even the most destructive climate changes in earth's past. Abrupt vs slow change. Life flourished in the Eocene, the Cretaceous and other times of high CO2 in the atmosphere because the greenhouse gasses were in balance with the carbon in the oceans and the weathering of rocks. Life, ocean chemistry, and atmospheric gasses had millions of years to adjust to those levels. But there have been several times in Earth’s past when Earth's temperature jumped abruptly, in much the same way as they are doing today. Those times were caused by large and rapid greenhouse gas emissions, just like humans are causing today. Those abrupt global warming events were almost always highly destructive for life, causing mass extinctions such as at the end of the Permian, Triassic, or even mid-Cambrian periods. The symptoms from those events (a big, rapid jump in global temperatures, rising sea levels, and ocean acidification) are all happening today with human-caused climate change. So yes, the climate has changed before humans, and in most cases scientists know why. In all cases we see the same association between CO2 levels and global temperatures. And past examples of rapid carbon emissions (just like today) were generally highly destructive to life on Earth.

#### Past warming events were balanced by sun activity, rock weathering and volcanic activity—none of which are true now.

John Cook 10, Research Assistant Professor at the Center for Climate Change Communication at George Mason University, 1-6-2010, “Do high levels of CO2 in the past contradict the warming effect of CO2?”, Skeptical Science, https://www.skepticalscience.com/co2-higher-in-past-intermediate.htm

Over the Earth's history, there are times where atmospheric CO2 is higher than current levels. Intriguingly, the planet experienced widespread regions of glaciation during some of those periods. Does this contradict the warming effect of CO2? No, for one simple reason. CO2 is not the only driver of climate. To understand past climate, we need to include other forcings that drive climate. To do this, one study pieced together 490 proxy records to reconstruct CO2 levels over the last 540 million years (Royer 2006). This period is known as the Phanerozoic eon. Atmospheric CO2 levels have reached spectacular values in the deep past, possibly topping over 5000 ppm in the late Ordovician around 440 million years ago. However, solar activity also falls as you go further back. In the early Phanerozoic, solar output was about 4% less than current levels. The combined net effect from CO2 and solar variations are shown in Figure 2. Periods of geographically widespread ice are indicated by shaded areas. Periods of low CO2 coincide with periods of geographically widespread ice (with one notable exception, discussed below). This leads to the concept of the CO2-ice threshold - the CO2 level required to initiate a glaciation. When the sun is less active, the CO2-ice threshold is much higher. For example, while the CO2-ice threshold for present-day Earth is estimated to be 500 ppm, the equivalent threshold during the Late Ordovician (450 million years ago) is 3000 ppm. However, until recently, CO2 levels during the late Ordovician were thought to be much greater than 3000 ppm which was problematic as the Earth experienced glacial conditions at this time. The CO2 data covering the late Ordovician is sparse with one data point in the CO2 proxy record close to this period - it has a value of 5600 ppm. Given that solar output was around 4% lower than current levels, CO2 would need to fall to 3000 ppm to permit glacial conditions. Could CO2 levels have fallen this far? Given the low temporal resolution of the CO2 record, the data was not conclusive. Research examining strontium isotopes in the sediment record shed more light on this question (Young 2009). Rock weathering removes CO2 from the atmosphere. The process also produces a particular isotope of strontium, washed down to the oceans via rivers. The ratio of strontium isotopes in sediment layers can be used to construct a proxy record of continental weathering activity. The strontium record shows that around the middle Ordovician, weatherability increased leading to an increased consumption of CO2. However, this was balanced by increased volcanic outgassing adding CO2 to the atmosphere. Around 446 million years ago, volcanic activity dropped while rock weathering remained high. This caused CO2 levels to fall below 3000 ppm, initiating cooling. It turns out falling CO2 levels was the cause of late Ordovician glaciation. So we see that comparisons of present day climate to periods 500 million years ago need to take into account that the sun was less active than now. What about times closer to home? The last time CO2 was similar to current levels was around 3 million years ago, during the Pliocene. Back then, CO2 levels remained at around 365 to 410 ppm for thousands of years. Arctic temperatures were 11 to 16°C warmer (Csank 2011). Global temperatures over this period is estimated to be 3 to 4°C warmer than pre-industrial temperatures. Sea levels were around 25 metres higher than current sea level (Dwyer 2008). If climate scientists were claiming CO2 was the only driver of climate, then high CO2 during glacial periods would be problematic. But any climate scientist will tell you CO2 is not the only driver of climate. Climatologist Dana Royer says it best: "the geologic record contains a treasure trove of 'alternative Earths' that allow scientists to study how the various components of the Earth system respond to a range of climatic forcings." Past periods of higher CO2 do not contradict the notion that CO2 warms global temperatures. On the contrary, they confirm the close coupling between CO2 and climate.

### A2: PETM

#### Current C02 release is much faster

Chris Mooney 16, Washington Post environment and energy reporter, 3-21-2016, “What we're doing to the Earth has no parallel in 66 million years,” Washington Post, lexis

If you dig deep enough into the Earth's climate change archives, you hear about the Palaeocene-Eocene Thermal Maximum, or PETM. And then you get scared. This is a time period, about 56 million years ago, when something mysterious happened - there are many ideas as to what - that suddenly caused concentrations of carbon dioxide in the atmosphere to spike, far higher than they are right now. The planet proceeded to warm rapidly, at least in geologic terms, and major die-offs of some marine organisms followed due to strong acidification of the oceans. The cause of the PETM has been widely debated. Some think it was an explosion of carbon from thawing Arctic permafrost. Some think there was a huge release of subsea methane that somehow made its way to the atmosphere - and that the series of events might have been kickstarted by major volcanic eruptions. In any case, the result was a hothouse world from pole to pole, some 5 degrees Celsius warmer overall. But now, new research suggests, even the drama of the PETM falls short of our current period, in at least one key respect: We're putting carbon into the atmosphere at an even faster rate than happened back then. Such is the result of a new study in Nature Geoscience, led by Richard Zeebe of the University of Hawaii at Manoa, and colleagues from the University of Bristol in the UK and the University of California-Riverside. "If you look over the entire Cenozoic, the last 66 million years, the only event that we know of at the moment, that has a massive carbon release, and happens over a relatively short period of time, is the PETM," says Zeebe. "We actually have to go back to relatively old periods, because in the more recent past, we don't see anything comparable to what humans are currently doing." That's why this time period is so crucial to study - as a possible window on our own. There's no doubt that a lot of carbon - about as much as contained the fossil fuel reserves that humans have either already burned, or could still burn, combined - made its way into the atmosphere during the PETM. The result was a major warming event that lasted over 100,000 years. But precisely how rapidly the emissions occurred is another matter. "If anthropogenic emissions rates have no analogue in Earth's recent history, then unforeseeable future responses of the climate system are possible," the authors write. To examine what happened in the PETM, the researchers used a deep ocean core of sediment from off the coast of New Jersey. The goal was to determine the ratios between different isotopes, or slightly different elemental forms, of carbon and oxygen, in the sediments during the PETM. The relationship between the two lets researchers determine how atmospheric carbon dioxide levels, as reflected in the ratio of carbon 12 to carbon 13, in turn influenced temperatures (which can be inferred based on oxygen isotopes in the ocean). "In terms of these two systems, the first shows us when the carbon went into the system, and the second tells us when the climate responded," says Zeebe. It turns out that there is a lag time between massive pulses of carbon in the atmosphere and subsequent warming, because the oceans have a large thermal inertia. Therefore, a large lag would indicate a greater carbon release, whereas the lack of one actually means that carbon dioxide came out more slowly. The geologic evidence from the new core did not show a lag, the new study reports. That means, the authors estimate, that while a gigantic volume of carbon entered the atmosphere during the PETM - between 2,000 and 4,500 billion tons - it played out over some 4,000 years. So only about 1 billion tons of carbon were emitted per year. In contrast, humans are now emitting about 10 billion tons annually - changing the planet much more rapidly. "The anthropogenic release outpaces carbon release during the most extreme global warming event of the past 66 million years, by at least an order of magnitude," writes Peter Stassen, an Earth and environmental scientist at KU Leuven, in Belgium, in an accompanying commentary on the new study. The analogy between the PETM and the present, then, is less than perfect - and our own era may be worse in key ways. "The two main conclusions is that ocean acidification will be more severe, ecosystems may be hit harder because of the rate" of carbon release, says Zeebe. And not only have we only begun to see the changes that will result from current warming, but there may be other changes that lack any ancient parallel, because of the current rate of change. "Given that the current rate of carbon release is unprecedented throughout the Cenozoic, we have effectively entered an era of a no-analogue state, which represents a fundamental challenge to constraining future climate projections," the study concludes.

### A2: Warming Slowed Down

#### Means nothing about long term risks.

Jeffery DelViscio 15, New York Times science desk senior editor, 2-26-2015, “Scientists now know why global warming has slowed down and it’s not good news for us,” QZ, https://qz.com/351797/scientists-now-know-why-global-warming-has-slowed-down-and-its-not-good-news-for-us/

It’s been called the “hiatus,” “pause,” or “slowdown” and has been a favored meme of climate skeptics for years. Despite the continued increase of greenhouse gas emissions from us, rise of global surface temperatures has been easing since 1998. Two new studies published this week examine the origins of the“pause,” and, surprisingly, suggest that it may persist for years even in our notably warming world. The first study, published on Feb. 26 in the journal Science, looked into likely causes. “It appears as though internal variability has offset warming over the last 15 or so years,” Byron A. Steinman, lead author of the paper and assistant professor at the University of Minnesota Duluth, told Quartz. That internal variability is found in the natural cycles of temperature change that occur over years or even decades in the oceans, like El Niño and La Niña. There are others, like the “Atlantic multidecadal oscillation” and the “Pacific decadal oscillation,” which Steinman said are leading culprits for the warming slowdown. The paper, which was co-authored by Michael E. Mann and Sonya K. Miller of Pennsylvania State University, found an oceanic tug-of-war between the two systems. Sometimes the ocean cycles worked together to suck heat or burp it skyward—sometimes their push-pull led to a draw. The second study, published on Feb. 23 in the journal Nature Climate Change, took up the question of how long our warming break might last. Chris D. Roberts and colleagues at the Met Office Hadley Center in Britain looked at the pause’s possible lifespan. Using a suite of climate models, they estimated that there is good chance, up to 25%, of it continuing until the end of the decade. More troubling are the odds that the end of the hiatus, whenever it does happen, will be followed by a five-year period of accelerated warming. This could mean that global surface temperatures rise at twice the normal rate of 0.36°F per decade. They put the chances of that warm burst at up to 60%. The Science study, which looked at how a warming pause is created, took over 150 models and let them age from 1850 to 2012. This gave the researchers a tally of the random natural ripples inside the climate system (those Atlantic and Pacific temperature variations) and ones outside the system called “forcings” (atmosphere-cooling volcanic eruptions and changes in the sun’s strength over time). They then took the observed ground and ocean surface temperatures for the past 130 years and subtracted the volcanoes and the sun. That gave them a measure of the power of ocean cycles to create the warming pause. The Nature Climate Change study looked at an “archive of 15,000 years of simulated climate” to see what a nature-made hiatus typically looks like. When they looked at a subset of models that matched well to temperature trends in the Pacific Ocean, they found that a natural 5-year-long hiatus could occur up to 30% of the time. There was about a 10% chance of a 10-year-long warming pause. And at 20 years, the chances were about 1%. Roberts told Quartz that this all suggests our current warming pause is unique, but, despite the low probability, it is also “very possible” that the pause could continue a few more years. And that wouldn’t be inconsistent with what we know about the effects of the heat-trapping ocean oscillations at work in the Science study. The idea that the oceans are storing the heat that we should be feeling isn’t new. Our ability to measure that drowned heat has gotten better of the past 15 years, thanks to an ever-expanding, semi-autonomous armada of diving buoys. Through that army, scientists have been honing in on the mystery of the hiatus by searching for the specific ways (and locations where) heat is entering the oceans. It turns out the Pacific Ocean is playing a big role where winds are helping churn the waters and suck in heat. But sinking heat is just one side of a seesaw. Michael E. Mann, a co-author on the Science paper, told Quartz in an email,“the Pacific Ocean has been in a natural ‘cooling’ mode, which has slowed the warming of the globe, but we expect that to reverse in the near future.” Some even say that 2014, the hottest year on record, already marked the end of the hiatus. But Roberts of the Met Office advised caution before calling it officially off. “I would argue that we need a run of several unusually warm years to be able to definitively identify the end,” he said. All of the researchers who spoke to Quartz about the two studies agreed that the warming pause was just that. “Eventually we expect temperatures to ‘catch up,’ but it may take longer than five years for that to happen,” Roberts told Quartz.

## Solvency

### Plan – 1AC

#### The United States federal judiciary should establish a right to education based in the Due Process Clause of the 14th amendment.

### 1AC

#### The plan establishes a defendable right to education—that checks bad state policies and results in equitable education resources.

Robinson, University of Richmond School of Law, Professor, 16

[Kimberly Jenkins, November 10th, 2016, Harvard Law Review, “Fisher’s Cautionary Tale and the Urgent Need for Equal Access to an Excellent Education,” http://harvardlawreview.org/wp-content/uploads/2016/11/185-240\_Robinson\_Online.pdf, pp. 230-238, accessed 6/28/17, AW]

To be most effective, a comprehensive federal agenda requires the assistance of all three branches of government. The executive branch enjoys the fewest obstacles to reform because it could use its existing authority to accomplish incremental shifts to education federalism through modest reforms that employ its existing authority and resources.295 Nevertheless, given the full scope of the shift to education federalism that I recommend, reforms instituted without any significant involvement of Congress or the Court would lack the comprehensive nature that ensuring equal access to an excellent education for all schoolchildren will ultimately demand. Legislation consistent with this agenda would send an even more powerful message that the agenda represents the will of the people and thus may encourage greater state and local buy-in.296 However, the eight-year delay in reenacting the Elementary and Secondary Education Act of 1965, which eventually led to the reduction of the federal role in education in the Every Student Succeeds Act,297 and the great difficulties that Congress is experiencing in passing legislation298 suggest that legislative reform consistent with my proposal is unlikely in the near term.

Fortunately, the Court possesses the authority to unleash a powerful tool that could help to reduce the opportunity and achievement gaps that lead universities and colleges to rely on affirmative action in admissions. It could overturn Rodriguez, which held that the Constitution does not protect education as a fundamental right.299

For over forty years, Rodriguez has served as a roadblock to access to federal courts for those who hope to address the entrenched disparities in funding and resources that relegate many disadvantaged and minority students to inferior educational opportunities in the United States.300 Because the Court held that education was not a fundamental right, Rodriguez applied rational basis review to the funding gaps between districts within Texas.301 The Court determined that Texas easily met this standard because its funding approach advanced local control of education, the Court lacked the expertise to second-guess the Texas system, and a ruling for the plaintiffs would greatly upset the balance of federalism.302 The Court nonetheless noted the need for reform of school funding and challenged the states to undertake this reform.303 Although many states have implemented funding reform since Rodriguez and state litigation has resulted in some important victories, these state efforts have fallen far short of the reforms required to provide all children equal access to an excellent education.304 In light of the continuing disparities in educational opportunity, numerous scholars, myself included, have argued that Rodriguez was wrongly decided and should be overturned to provide a consistent and powerful federal remedy to address these disparities.305

However, disagreement exists over the scope of the right that the Court should recognize. The Court left the existence of a fundamental right to some minimum education an open question in Rodriguez306 and subsequently acknowledged that the question remains open.307 If Rodriguez is overturned, some scholars envision the Court addressing only extreme forms of educational inequality by providing a federal right to a minimally adequate education.308 Leading education scholar Professor Derek Black, on the other hand, has argued that such an education today would require that students receive the state-defined minimum of education and that this definition does not have to equal “a minimalist education.”309

Given the likelihood that the Court will insist that affirmative action eventually end, the Court should take some responsibility for addressing the conditions that lead institutions to rely on affirmative action by overturning the decision that insulated opportunity gaps from federal accountability. The Court could choose from a variety of constitutional provisions to recognize a right to education.310 For in- stance, the Court could hold that the Fourteenth Amendment’s requirement that states not deny equal protection of the laws311 serves as a prohibition of the inequitable state disparities in educational opportunity or guarantees students an education that enables them to effectively employ their First Amendment rights and to be competent voters.312 Recognizing and enforcing a federal right to education would provide greater authority and consistent impact than the state education clauses that vary widely in their protection — or lack thereof — of the right to education.313 The federal courts have been and will remain an important and powerful avenue for enforcing education rights for all students throughout the United States in ways that do not make the content of a right dependent on the happenstance of geography or state law.314 A federal constitutional right also would enable the federal courts to address the substantial interstate disparities in funding that currently account for seventy-eight percent of per-pupil spending gaps.315 This tremendous interstate disparity, which has reached a “historic high” for spending differences,316 reveals the failure of state courts to close spending gaps on their own.317

If the Court chooses to overturn Rodriguez in a manner that would help to close opportunity gaps, it should incorporate four essential principles into a constitutional right to education. First, the Court must embrace a robust fundamental right to education that moves beyond guaranteeing a rudimentary floor of educational opportunity. A minimal right would not make a meaningful impact on opportunity or achievement gaps. Instead, the Court should consider recognizing a right to education that requires states to provide an education-based justification for the quality of education provided and any disparities in educational opportunity. Such a standard would enable states to offer disparate opportunities to students with disabilities, Englishlanguage learners, and low-income children, but would force states to end the superior opportunities that are provided to wealthier children absent an educational justification for such disparities. Defining a fundamental right to education in this way would help to level the playing field within public schools and insist that states design education systems based on research and students’ needs rather than power, politics, and privilege.

Second, the Court should include safeguards that reduce the likelihood that states level down their educational opportunities318 or seek to avoid the Court’s requirements.319 One safeguard could be an instruction to states that guaranteeing a federal right to education should avoid reducing the quality and nature of existing educational opportunities and instead should seek ways to expand the delivery of a highquality education to those who are currently denied it. The Court also can reduce the likelihood of decreasing the quality of educational opportunities within a state by providing clear requirements on the nature of the education right. In this regard, the Court can learn from decades of school finance litigation that has worked to give meaning to the right to education embodied in state constitutions,320 while recog- nizing that this litigation has had significant shortcomings and has not ultimately resulted in equal access to an excellent education for all children.321

Third, the Court must acknowledge that a constitutional right to education would shift education federalism in ways that would increase federal influence over education and reduce some aspects of state control over education. The Court must wrestle with its own prior pronouncements heralding the importance of local control of education.322 Such a shift in an area of traditional state control must be justified with an explanation for why this shift is both appropriate and warranted.323

When the Court provides this explanation, it should remind the states that Rodriguez urged state reform of school finance systems in light of the persistent and heavy reliance on property taxes and the disparities in educational opportunity.324 The limited nature and impact of subsequent reforms remains apparent in light of the Equity and Excellence Commission’s finding in 2013 that “students, families and communities are burdened by the broken system of education funding in America.”325 The Commission further noted that over forty years of reforms “have not addressed the fundamental sources of inequities and so have not generated the educational gains desired.”326 Scholars also have recognized the limited success of decades of funding litigation to remedy longstanding inequitable disparities in educational opportunity.327 School funding data and research also confirm a host of shortcomings in state funding systems despite the Court’s invitation to reform funding in ways that increase equal educational opportunities.328

In addition to the shortcomings noted above, most states have not designed their funding systems to accomplish their education goals.329 Instead, politics oftentimes drives the distribution of funding as state politicians assess how much funding is available for a given school year and then bargain over how that amount should be divided among the students in the state.330 When the Court acknowledges that its decision will result in a shift in education federalism, it also should acknowledge that the laboratory of the states has failed to develop the reforms needed to ensure an equitable and excellent education for every child.

Fourth, the Court must acknowledge that recognizing a constitutional right to education would only begin the process of closing opportunity and achievement gaps. The reform of funding systems and the redistribution of educational opportunity will take a significant amount of time. The Court will need to encourage lower courts to retain jurisdiction over cases enforcing this right, just as state courts typically retain jurisdiction over cases enforcing a state right to education.331

In this regard, the Court must avoid the errors of its desegregation cases, which initially insisted on effective desegregation in the late 1960s and early 1970s,332 but then eventually emphasized the return to local control of schools rather than the effectiveness of desegregation orders. For example, in Milliken v. Bradley, 333 the Court overturned an interdistrict desegregation plan for the metropolitan Detroit area in part because the plan’s inclusion of districts surrounding Detroit would cause a reduction in local control.334 The Court took this action in spite of the Sixth Circuit’s finding that crossing district boundaries was particularly appropriate given the state’s discrimination that maintained racial segregation across school district boundaries and that failing to include the surrounding districts would “nullify” Brown v. Board of Education. 335 As I have explored in prior work, the Court’s desegregation decisions in Board of Education of Oklahoma City Public Schools v. Dowell, 336 Freeman v. Pitts, 337 and Missouri v. Jenkins338 also reified local control of the schools by focusing on releasing districts from court supervision rather than on effective and lasting school desegregation.339 Scholars have documented how these cases signaled that the Court had determined that desegregation had gone on long enough and it was time for school boards to regain control even if desegregation was never ultimately accomplished.340

If a federal right to education is going to serve as a mechanism to close educational opportunity gaps and to reduce the need for selective institutions to rely on consideration of an applicant’s race to achieve diversity’s benefits, the Court must learn from how its desegregation decisions undeniably contributed to the racial isolation that pervades so many school districts today.341 The Court’s impatience with the slow nature of desegregation reveals a shallow understanding of the depth of the social ill that the Court declared unconstitutional in Brown and an unwillingness to insist upon ongoing federal court investment in the effective dismantling of segregation. Overturning Rodriguez will require the Court to confront longstanding and deeply entrenched inequalities within public education. The federal courts will be called upon to oversee reforms that topple the settled expectations of more privileged sectors of society, just as the Court confronted the expectations of racism and white privilege that supported racial segregation. Thus, the reforms required by the Court cannot give a wink and a nod to those who benefit from the status quo while simultaneously claiming to demand reform.

The Court must eschew any approval of unwarranted delay, as occurred in Brown II’s command to desegregate with “all deliberate speed,”342 or any invitation to incomplete or ineffective results, as the Court sanctioned in Dowell, Freeman, and Jenkins. 343 Instead, the Court must insist that states implement the reforms that will ensure equal access to an excellent education. It must make clear that states will not be released from court oversight until they have done so. Consistent Supreme Court insistence on an excellent and equitable education for all children will provide lower federal courts the support that they will need both to confront state legislatures that resist changing the status quo and to prevent evasive actions similar to those invited by the Court’s ambiguous pronouncements in Brown II. 344

In sum, a federal right to education that embraces these principles provides the most promising path toward closing opportunity and achievement gaps such that selective postsecondary institutions may not be required to consider race to achieve diversity’s benefits.345 Unless the Court overturns Rodriguez, the Court will remain complicit with the deeply entrenched educational opportunity gaps and should not blame postsecondary institutions that must build diverse institutions despite those gaps.

#### The plan is a key backstop for equal rights BUT still maintains flexibility at the state level.

Wilkins, Brigham Young University—J. Reuben Clark Law School Doctor of Law and Fillmore Spencer Associate, 5

(Brooke, Fall 3-2-2005, Brigham Young University Education and Law Journal, “Should Public Education be a Federal Fundamental Right?,” Volume: 2005, Number 2, p. , DL)

V. CONCLUSION: IS THERE A SUFFICIENT CONSTITUTIONAL AND PRACTICAL BASIS TO ESTABLISH A FEDERAL FUNDAMENTAL RIGHT TO

PUBLIC EDUCATION?

Experience teaches us that formal education is good for individuals and society. The existence of formal education is the way things ought to be-is the natural law. But in order for education to be provided on a broad, society-wide scale, positive law must be created.203 The federal judiciary has determined that the federal constitution does not create the positive law that protects educational rights. 204 However, current Supreme Court jurisprudence indicates a change in the winds. State judiciaries, analyzing constitutions with specific educational guarantees have come out largely in favor of a fundamental right to education, though not unanimously so.205

Often lost in all the debate is the question of what government structure is best suited to make decisions regarding the funding, provision and superintendence of education. On one level, all agree regarding the importance of education. But is the federal government best suited to deal with educational policy issues? Are the state governments? What is the role of the judiciary in creating and enforcing the positive law aspects of educational policy?

Using the analytical approach of Lawrence,206 it is possible to argue for a federal fundamental right to education. Education is critical to each individual. The nature of our economy is now such that a citizen can hardly exist without an education. In the past, this was not so. Now, without an education, a citizen is both economically and politically vulnerable. The trend across the state governments is to protect the right to education.207 And education is preservative of other rights. This reasoning, rejected in Rodriguez,208 gains strength after Lawrence. 209 After all, it is rather absurd for our Constitution to ignore a child's right to education while protecting an adult's right to private sexual behavior. These arguments are only strengthened by the historical importance of education.

Though there has never been an outright positive right to education, there are several federal actions that indicate its existence. Congress has a created a right to education for those with disabilities.210 The Supreme Court has consistently held for the parents' right to direct the education of their children. And even Rodriguez did not absolutely leave out the possibility of a right to education. 211

Yet if public education is considered a federal fundamental right it could embroil the federal judiciary in administrative educational issues. A fundamental right should invoke strict scrutiny. 212 Strict scrutiny means that any governmental regulation must be narrowly tailored to accomplish a compelling interest. Few regulations survive such analysis. So any educational policy that anyone would care to litigate would most likely be struck down by the court. The State could not accurately predict how to create educational policy. The difficulties and costs associated with litigation could harm educational processes. Courts would have to depend upon mounds of sociology, rather than legal or constitutional principles, in order to make decisions. The judiciary could be forced to expound the minutest details of educational policy.

Missouri v. fenkins213 is an example of what can happen when the judiciary takes on educational policy issues. The federal district court was attempting to enforce desegregation laws. By the time the issue reached the U.S. Supreme Court, the federal district court judge was ordering salary increases, ordering funding of educational programs, approving facility improvements and otherwise using judicial decrees to effect an increased attractiveness of the district. The course of the litigation took over eighteen years. A federal district court became mired in minute educational procedures, and the resulting cost of litigation. 214 However, what was the district court to do when the political branches of the state government were not desegregating the schools? The tension is difficult.

The traditional repository for educational policy-making power is with the states. Such a federalist approach has the advantages of local control and of allowing for experimentation. The complex issues affecting educational processes and policies are not easily resolved. Finding that public education is a federal fundamental right would require the federal government to carry the responsibility to fund education. 215 Centralized control from the federal government may not be the best manner for controlling public education.

Perhaps the best approach, that respects federalism issues and the competencies of the judiciary, while placing appropriate emphasis on the importance of education is for the federal judiciary to state explicitly the un-held holding of Rodriguez-that there is a right to some basic level of education, and that the states must determine and enforce this level. 216 Such a finding would be in accord with natural law principles, that a right to education does exist, 217 while avoiding embroiling the federal judiciary in day to day educational procedural matters or incurring additional federal funds. 218

### Courts Key

#### Courts will provide the best solution and implementation

Rebell, Professor of Law and Educational Practice, Teachers College, Columbia University, 2006

[Michael A., Executive Director, Campaign for Educational Equity, and Lecturer in Law, Columbia Law School, served as co-counsel for plaintiffs in *Campaign for Fiscal Equity v. State (CFE* ***1),*** 655 N.E.2d 661 (N.Y. 1995), *Campaign for Fiscal Equity v. State (CFE If),* 801 N.E.2d 326 (N.Y. 2003), and *Campaign for Fiscal Equity v. State (CFE Il1),* 861 N.E.2d 50 (N.Y. 2006)., 2006, *85 N.C. L. Rev. 146,* Poverty, “Meaningful” Education Opportunity, and the necessary role of the courts, http://heinonline.org/HOL/Page?handle=hein.journals/nclr85&div=45&g\_sent=1&collection=journals, p. 1540, accessed 7/1/2017, RV]

Although a full consideration of precisely which functions can best be undertaken by the courts, by legislatures, and by executive agencies will require substantially more dialogue and consideration than can be dealt with in this Article, a few preliminary illustrative points about the courts' comparative institutional strengths are apparent. **First, declaring and insisting on the vindication of constitutional rights is the courts' prime constitutional responsibility. The courts' role in articulating constitutional principles and affirming the right of all children to an adequate and meaningful educational opportunity is of paramount importance. The dynamic advance of values of equal educational opportunity that has been at the core of political and legal activity for the past fifty years would not have occurred without the Supreme Court's landmark decision in Brown, nor would education finance reform or the insistence that poor and minority children be provided the resources needed for a meaningful educational opportunity have occurred without the intervention of the state courts. Full realization of these values also will not come about without the continued active involvement of the courts.**

Second, precisely because state legislatures and executive agencies overseeing school districts have at times failed to ensure the effective use of education funds, and the targeting of resources to the students with greatest needs, courts need to become more-not less- active at the remedy stage of equal opportunity and adequacy litigations. Virtually all economists and fiscal policy analysts agree that money matters in education-if the money is spent well. 98 The public has expressed a willingness to pay higher taxes to support education reform-if the money is used well.299 Ensuring accountability and the effective use of funds is a function for which the courts are particularly well suited. State courts have, in fact, proved to be highly adept at promoting and reviewing cost studies that provide proper parameters for adequate funding.3"°

This does not mean that courts should undertake cost studies or devise the econometric methodologies that should be used in such studies. These functions obviously are better undertaken by the other branches. Rather, judicial review has become important in the costing-out process, by (a) inducing legislatures to utilize transparent, professional methodologies for determining education funding levels in place of the secret back-room political deals that have dominated education finance decisionmaking in the past, and (b) providing a neutral forum for reviewing the validity of legislative or executive actions when allegations of manipulation or misuse of cost study data arise.301 Courts also can have an important role in encouraging states and school districts to develop and adopt promising new methodologies for linking cost studies with analyses of best practices through "quality education models" and other such mechanisms.3°2

### Courts Key – Anti-Colorblindness

#### The anticlassification standard provides an obstacle to any educational reform, removing it is an a priority

Darden, Michigan State University Associate Professor of Law, 2012

[Tiffani N., February 2012 , University of Pennsylvania Journal of Constitutional Law, “Defining Quality Education as a Government Interest: The U.S. Supreme Court's Refusal to Play Nice with the Executive Branch, Congress, State Supreme Courts, and the Community Voice,” Volume: 14, Issue 3, [http://heinonline.org/HOL/Page?handle=hein.journals/upjcl14&div=22&id=&page=&collection=journals#](http://heinonline.org/HOL/Page?handle=hein.journals/upjcl14&div=22&id=&page=&collection=journals), accessed 7/1/17, page 717-718, JYH]

In its effort to eradicate any consideration of race in educational policies, the Court is undermining federal and local efforts for educational quality. Judicial deference to educational policymakers, even when the policy is imperfect, is the best hope for achieving educational quality.

Brown v. Board of Education fought for quality public education. Choosing the appropriate remedy fell into the hands of federal courts due to pubic resistance when Brown outlawed a pervasive social norm. The Court made clear, however, that their remedial authority entailed restraints not applicable to state actors. Moreover, the Court also recognized that the state's primacy over public education matters rendered the federal court's involvement temporary. The current Court's approach to interpreting the Fourteenth Amendment directly challenges the work of civil rights groups aspiring for an enforceable and defined quality norm. On the state level, legislation and policy incorporate the race and socioeconomic status of students in developing reform for quality education. These proxies, no matter how draconian and simplistic, account for the myriad factors recognized by social science experts as affecting a child's academic performance, yet we are incapable of considering these characteristics under the Supreme Court's Fourteenth Amendment analysis. The Supreme Court, when applying its equal protection doctrine, needs to reset its priorities. Although federal courts reject quality education as a government interest sufficient to satisfy heightened scrutiny, education claims have always centered around this goal. The historical background to Brown reflects a community concerned about the educational opportunities provided to their children. Children enter school with the desire to learn and a naive trust in the system to provide them a quality education. Many parents enroll their children in public school with the same degree of blind trust in the system. Public education provides a foundational staging ground to help children attain their most far-fetched dreams. The primary responsibility for ensuring such promising results rests in the hands of state legislatures and local school officials. The decision to implement education reforms, when sanctioned through state constitutional education clauses and federal legislation, must not be prevented through applying the Court's anticlassification standard for the sake of an aspirational colorblind society.

### Court Key – Signal

#### Federal courts need to rule—otherwise it deters other agents from acting

Ciolino, Tulane University J.D in Law, 16

[Max, 5-13-2016, University of Pennsylvania Journal of Law and Social Change “THE RIGHT TO AN EDUCATION AND THE PLIGHT OF SCHOOL FACILITIES: A LEGISLATIVE PROPOSAL “http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1189&context=jlasc, accessed 6-28-2017, pg. 116-117 BP]

The shortcomings of the Equal Protection Clause have caused scholars and advocates to seek other footholds in the Constitution to fight for the recognition of a right to an education. The Substantive Due Process Clause appears to have the most compelling arguments for such recognition at this time. Essentially, each individual state has some version of a Compulsory Education Clause.54 This means that each state requires all children below a certain age to attend schooling of some form. The argument is that when the states require the institutionalization of children, they have invoked certain affirmative duties that, if not properly performed, give rise to a Substantive Due Process claim by the people who have been deprived of their rights.55 Although this argument has led to the successful recognition of rights in some institutional settings, it has yet to be addressed by the Supreme Court in regards to a fundamental right to an education.56

The argument for a right to an education under the Substantive Due Process Clause is intuitively compelling. In light of many of the most egregious examples of public school facility neglect,57 we appear to be in a situation where the state has the right to deprive all students of their free will to choose whether or not to attend school, but in return has no federally-backed obligation whatsoever to ensure that the schools these children are obligated to attend are safe, clean, and positive environments.58 Whereas many cases have been decided that have required a certain level of quality for prisons and mental institutions, it seems patently unfair that our youngest residents do not experience similar protections in their most formative years.

Furthermore, any claims that school choice, homeschooling, or private schooling excuse the states from providing a certain level of facilities care are contextually unreasonable. The students in the most unsound school buildings often come from the most disadvantaged backgrounds, and thereby would be less able to exercise their rights of choice than their more advantaged counterparts who probably already have access to safe school buildings in the first place.60 Despite the hypothetical ability for students to opt out of public schools while still complying with compulsory education laws, the reality is that students are being forced to attend dangerous school buildings under threat of penalty.61

### Courts Key – Politics

#### Courts key to equalizing education—other agents fail due to insufficient political incentive to follow through.

**Chemerinsky, Alson & Bird Prof. of Law, Duke Law School, 2004**

[Erwin, 2004, 36 Loyola University of Chicago Law Journal 111-135, “The Deconstitutionalization of Education,” <http://scholarship.law.duke.edu/faculty_scholarship/1389/>, p.111- Accessed 6.28.17 CT @ GDI]

Brown offered the promise that the federal courts would recognize a fundamental right to education and use the Constitution to ensure equal educational opportunity for all children in the United States.3 In my opinion, the simple reality is that **without judicial action** equal educational opportunity will never exist. There is no powerful political constituency for equalizing educational opportunities for children who are poor or are part of racial minority groups.‘ For decades, no President has addressed the problem of school segregation.5 Nor is it possible to think of many state or local politicians who have made an issue of separate and unequal schools. Any systematic attempt to deal with education would be highly unpopular; transferring money and students from wealthy areas to poorer areas is sure to engender enormous opposition. Those with the most inﬂuence in the political system can opt out of city public schools, by living in suburbs or sending their children to private schools.6 The result is that if the courts do not equalize educational opportunity, no one will. Yet, the reality is that for over thirty years, with the exception of largely disastrous and unsuccessful court-ordered busing, the Supreme Court, and the lower federal courts, have done nothing to advance desegregation of schools or to equalize expenditures for educati0n.7

### A2: Rodriguez Not Enough

#### Fact have changed—courts applying equal protection would solve education gaps

**Black, Howard University School of Law Associate Professor and director of Education Rights Center, 2010**

[Derek W., 10.13.11, Boston University Law Review Vol. 90, “The Congressional Failure to Enforce Equal Protection Through the Elementary and Secondary Education Act,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1943557>, p.361 Accessed 6.30.17 CT @ GDI]

The full explanation and analysis of these changes and their effect on equal protection is the entire subject of a recent article.292 Thus, for the purpose of this Article, it suffices only to make a few basic points. First, all states have constitutional clauses that obligate the state to provide education to its citizens.293 Second, since Rodriguez, over half of the state supreme courts have interpreted those clauses to require either equity between schools and/or a certain qualitative level of education.294 Third, in implementing these constitutional clauses and state supreme court decisions, state legislatures have enacted extensive statutory and regulatory regimes that provide substance and entitlement to education far beyond what was in place at the time of Rodriguez. 295 Fourth, these decisions and statutory changes have shifted responsibility for education from local education agencies to the state.296 These major developments, along with some other minor ones, have undermined all the legal and factual predicates upon which the Supreme Court decided Rodriguez. Moreover, developments in the Supreme Court’s equal protection and due process precedent suggest its analysis would be different were it to address educational inequities again.297

In short, the underlying educational right at issue in Rodriguez is entirely distinct from the evolved constitutional right that now exists under state law. Thus, Rodriguez’s deferential scrutiny of education, which was equivalent to scrutiny that the Court might exact regarding gratuitous state services such as transportation, is simply no longer appropriate.298 Now that states have extended affirmative constitutional rights to education for their citizens, **securing these rights for some, but not others, is not an option**. Federal equal protection attaches to these state constitutional rights and requires the federal courts to scrutinize seriously inequalities that may arise in education. Moreover, **because the underlying right in such a claim would be different than in Rodriguez, a court would not be asked to overturn Rodriguez, but rather simply apply basic equal protection principles in light of these new circumstances**.299

## T Answers

### We meet

#### Courts can do regulations

Orbach University of Arizona College of Law professor, 13 ( Barak Orbach, 2013, Foundation press, “What is regulation?”, <https://poseidon01.ssrn.com/delivery.php?ID=800100124064065088088081004065096081036046034042033020101002101072121068106093110095110003010016007048098010021091024022121015118055068037012103083114114095106110019079055064075065082073110124066088066067093065094097068108023123086004070065118070031&EXT=pdf>, accessed 7/2/17, MJ)

Lawyers frequently use the word “regulation” in reference to rules of administrative agencies. This habit tracks the executive branch’s terminology.14 For example, Executive Order 12,866, which requires federal agencies to engage in cost-benefit analysis when “deciding whether and how to regulate,” defines “regulation” as “an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.”15 This meaning of the word mirrors another common perception of the term “regulation,” but surely does not capture the entire spectrum of regulatory instruments. Much of our regulatory landscape does not originate in administrative agencies.1

Another common perception of “regulation,” or at least a popular reference to regulation, equates the concept with laws that serve interest groups. 17 Economist George Stigler popularized this view, arguing that “regulation is acquired by the industry and is designed and operated primarily for its benefit.”18 Richard Posner offered a more refined version of this perception: “[R]egulation [is] a product allocated in accordance with basic principles of supply and demand . . . [and] we can expect a product to be supplied to those who value it the most.”19 But, of course, not all regulations serve industries.20 Even when the regulator is captured by industries, it is far from clear that lack of regulation would be better for the public.

So what does regulation mean? We return to the starting point—the intuitive understanding of the word “regulation”: government intervention in the private domain or a legal rule that implements such intervention. The implementing rule is a binding legal norm created by a state organ that intends to shape the conduct of individuals and firms. 22 The state organ, the regulator, may be any legislative, executive, administrative, or judicial body that has the legal power to create a binding legal norm. This general definition is broader than “restrictions,” “rules promulgated by administrative agencies,” “laws that serve interest groups,” and related common perceptions of the word “regulation.”

#### Court rulings are binding rules on schools.

Kaestle, Brown University, Professor of Education, History, and Public Policy, 2k

[Carl F., studies the history of American education and its relationship to education policy today. His current research traces the federal role in education from the 1940’s to the present, Center on Education Policy, “The Future Federal Role Elementary & Secondary Education,” file:///Users/anthonywinchell/Downloads/CEP\_Report\_FutureFedRole\_020101.pdf, p. 26, accessed 7/2/17, AW]

Redistributive (or reallocative) legislation, an important category in the Lowi scheme, is not required of the government. The U. S. Constitution does not specify how progressive the tax structure must be, and the Rodriguez case declared that the Fourteenth Amendment does not require equalization of school district financial resources.49 Thus, at the federal level, redistributive policy is another important and often controversial purpose within the discretionary category. Hot controversy of a different sort has long been generated by my third category, issues that are “mandatory.” Carried largely by the courts and involving only a small portion of legislative actions taken by the Congress, these interventions are nonetheless the most coercive and controversial elements of the federal role in education. These issues include civil rights matters like protection from racial discrimination, First Amendment matters concerning the separation of church and state and the free exercise of religion, and other constitutional issues, including students’ rights and the educational rights of language minorities. Because these issues and the rulings about them arise from the U. S. Constitution, they are inherently federal and, in a sense, mandatory. Of course, the enforcement of constitutional decisions in education varies tremendously from one period to the next; but the government is not at liberty simply to ignore an issue once raised properly and forcefully through the courts. The executive and legislative branches may delay prodigiously, as in the wellknown history of the Brown decision, and the lax enforcement of the Bible and Prayer decisions of the early 1960’s.50 But the nonjudicial branches of the government have to face these issues, to resolve their positions, and, ultimately, either enforce or challenge the decisions. Just as the issues are pressed in a mandatory way on the government, when the enforcement mechanisms finally get in motion, the solutions are applied coercively on the country’s schools and families. Unlike grant-in-aid programs, constitutionally related educational issues are not optional. Some Supreme Court decisions, to be sure, are permissive, as when they declare that a certain practice is not unconstitutional, and is thus available to states or localities who wish to adopt it. Such is the case with decisions like Everson (1947) that allowed states to provide busing of children to religious private schools, but did not coerce any state to do so. But when practice is declared unconstitutional, the federal government disallows it as a matter of law. The enforcement may be very uneven or dilatory, but compliance is not voluntary

#### Federal courts impose regulations on elementary and secondary education

Kaestle, Brown University, Professor of Education, History, and Public Policy, 2k

[Carl F., studies the history of American education and its relationship to education policy today. His current research traces the federal role in education from the 1940’s to the present, Center on Education Policy, “The Future Federal Role Elementary & Secondary Education,” file:///Users/anthonywinchell/Downloads/CEP\_Report\_FutureFedRole\_020101.pdf, p. 13, accessed 7/2/17, AW]

Hundreds of essays have been written about it, thousands of hours of Congressional testimony devoted to it, dozens of campaigns focused on it; yet the origins of federal aid to elementary and secondary education are murky, its present status controversial, and its future uncertain. In an attempt to sort out the complicated history of the issue, this essay focuses on the purposes that have been asserted for federal aid in education, and the politics that have surrounded those purposes. The federal role in elementary and secondary education of course extends far beyond legislation that provides financial aid to schools. Federal courts and agencies regulate education in many ways; and the President, the Secretary of Education and others use their “bully pulpit” to convene discussions, to frame issues, and to set agendas. Many agencies outside of the Department of Education carry on educational programs, not only providing money but disseminating innovations and evaluating programs. This paper, however, focuses on the major bills for federal aid to schools, a prominent topic of debate and a matter of great concern to states and to localities. It is not a chronological narrative but rather an examination of purposes and politics.

### Counter interp

#### Regulations are just the furtherance of a legitimate state interest

Wilkins, Doctor of Law, 05

[Brooke, 2005, BYU Education and Law Journal, “SHOULD PUBLIC EDUCATION BE A FEDERAL FUNDAMENTAL RIGHT?,” file:///Users/anthonywinchell/Downloads/2005BYUEducLJ261.pdf, p. 270, accessed 7/2/17, AW]

Rational basis scrutiny, on the other hand, only requires that the regulation be in furtherance of a legitimate, as opposed to compelling, state interest, and that the means used are rationally related to the end sought. 51 These two requirements are relatively easy for the government to satisfy. Generally, if a regulation of a right is subject to rational basis scrutiny, in all likelihood the regulation will survive. The person challenging the governmental action carries the burden of disproving the rationality of the action. 52

## States CP Answers

### Fed Key – Generic

#### An affirmation of positive rights for education is key to overcome state failures

Imoukhuede, Nova Southeastern University Professor of Law, 2011

[Areto A., April 2011, University of Florida Journal of Law and Public Policy, “The Fifth Freedom: The Constitutional Duty to Provide Public Education”, Volume: 22, Issue 1, page 87 -89, http://heinonline.org/HOL/Page?handle=hein.journals/ufpp22&div=5&id=&page=&collection=journals#, accessed 7/1/17, JYH]

Furthermore, minimal adequacy is grounded in the same negative rights-based standards of liberty that led to the states' current failure to fully enforce the duties the state owes to its children. The state owes duties that go beyond preparing its citizens to properly fulfill their obligations as citizens.

However, neither rational basis review nor strict judicial scrutiny of existing laws regarding public education fully addresses the scope of the government's duty to provide a public education. A new positive rights based jurisprudence is necessary for appropriately addressing the distinct issues regarding state, including duties such as the duty to provide a public education.

The current doctrine that there is no right to public education flows from the profound confusion regarding fundamental rights as duties. Negative rights or liberties are primarily protections from government infringement on individual activities and prohibitions on government actions that discriminate against a protected classes. Examples include the fundamental right to travel and the right to procreation, neither of which are explicit in the text of the Constitution.267 However, both of these are interpreted to bar the government from taking action that infringes on either of the liberties but do not require the government to actually take any action.26 8 The current levels of equal protection scrutiny-rational basis test, intermediate and strict scrutiny-are wellsuited for protecting negative rights or liberties, but are not as useful in 269 enforcing positive rights or duties.

A lawsuit to declare a law void and unenforceable is essentially different from a lawsuit seeking to require the government to act and provide a service. 27 0 It is not that courts are capable of only addressing the former, as evidenced by the already existing models for such suits in areas of Social Security, Medicare, and other "entitlement litigation." 271 Rather, the problem is that the Court's current rights analysis effectively conflates liberties and duties so that the same negative rights-styled analysis applies to all constitutional rights.272 What this translates to, in the context of education, is a situation where the Court is comfortable announcing the significance of education, but uncomfortable declaring it a fundamental right.273

Viewed from the perspective of rights as liberties, the concern with declaring a fundamental right to education is that education would be strictly scrutinized, thus causing the undesired result of preventing the enactment of laws regarding education.274 This would not be a concern if the Court embraced a constitutional analysis that specifically applied to positive rights and duties. The details of such an analysis are beyond the scope of this Article, but in the context of education, the primary function of a positive fundamental rights analysis would be to scrutinize a government's failure to provide high-quality education. Unlike the current negative rights analysis, the emphasis would not be on whether to void existing laws or bar government action, but on whether to mandate that action be taken.275

The doctrine of stare decisis does not make judicial recognition of a fundamental right to public education impossible. Explicit recognition that positive fundamental rights or duties require a new, different type of constitutional analysis would allow the Court the freedom to go beyond its currently narrow rights jurisprudence, which would have an impact in areas that go beyond the education context.

#### Only the courts can implement lasting reform that eliminates inequality

Robinson, University of Richmond School of Law, Professor, 2013

[Kimberly Jenkins, May 2, 2013, Wake Forest L Rev 287, p.320-322, Accessed 7/1/2017, RV]

Several key findings highlight existing inequities in school finance systems. The report notes that states have the most control over two factors—funding distribution and effort.223 In particular, funding distribution provides the greatest insight into whether states attempt to address the additional educational needs of low-income students.224 On this measure, “[o]nly 17 states have progressive funding systems, providing greater funding to high-poverty districts than to low-poverty districts,” which represents an increase from the fourteen states that were progressive in the 2010 report.225 Sixteen states have regressive systems that give less money to high-poverty districts, and fifteen states provide the same level of funding to high- and low-poverty districts.226 This reveals that only slightly more than one-third of the school finance systems are sending additional revenue to address the well-documented greater needs of low-income students.227 The report also notes that between 2007 and 2009, thirty-four states increased their effort, but that states varied widely in the effort made to fairly fund schools.228 The report further highlights the importance of both sufficient and progressive funding systems as an indispensable foundation for raising student achievement and closing the achievement gaps.229

Ultimately, this research reveals that, although important reforms have undoubtedly occurred and have improved educational opportunities for many children, these reforms have not been consistently sufficient and comprehensive enough to end longstanding, inequitable disparities in educational opportunity throughout the nation. Numerous scholars have noted the insufficiency of these reforms.230 For instance, after surveying the research on the impact of school finance litigation, education law scholar Derek Black concluded that “[t]he most accurate general characterization of adequacy and equity litigation . . . is that it has produced a net benefit, but significant and troublesome inequalities still persist.” 231 Similarly, education law and policy scholar Benjamin Michael Superfine has characterized the impact of school finance litigation as “somewhat limited” due to the longstanding challenges facing education litigation generally, including vague legal standards, empirical questions about central issues, and political hostility to reform.232 Further, he notes that equalization oftentimes did not require increased educational spending and that test scores ultimately have not improved even when spending was increased.233 Indeed, the resistance of most school finance systems to comprehensive reform prompted leading education law scholar James Ryan to comment recently that even when state school finance litigation has succeeded, the results have been “modest” and “not a single suit has done much to alter the basic structure of school finance schemes.” 234 Therefore, important reforms of state school finance systems have occurred that have addressed some of the disparities in educational opportunity, but these reforms have not ended the funding inequities that result in substandard schools for many disadvantaged schoolchildren.235

Even though the Court in Rodriguez called for reform of the nation’s school finance systems to advance equal educational opportunity,236 the local control of education that was supposed to encourage experimentation simply has failed to foster comprehensive and effective state efforts that eliminate inequitable disparities in educational opportunity. Although some contend that such experimentation and reform suggests the Court in Rodriguez correctly left this issue to the states,237 the steadfast persistence in disparities in educational opportunity that harm disadvantaged students indicates the Court’s trust in states to end these disparities may have been misplaced. Therefore, closing the federal courthouse door to school finance litigation has left disadvantaged schoolchildren without a means to obtain comprehensive and lasting reform of school finance systems that continue to tolerate significant and inequitable disparities in educational opportunity. Given the limited impact of state school finance litigation and reform, Rodriguez remains essential to understanding how education federalism has served as one of the hindrances to the nation’s efforts to achieve equal educational opportunity.

### Fed Key – Agenda Setting

#### Federal leadership is critical --- mobilizes the public by signaling the importance of educational equality and ensures effective agenda setting

**Robinson, Richmond law professor, 2015**

(Kimberly, “Disrupting Education Federalism,” 92 Wash. U. L. Rev. 959, lexis)

A. Prioritizing a National Goal of Ensuring Equal Access to an Excellent Education The federal government must identify a national goal of ensuring that all children are provided equal access to an excellent education. Some national leaders already have noted the importance of this goal. n158 [\*986] However, some key points are missing from this rhetoric that must be emphasized to support the type of comprehensive reforms envisioned in this Article. For instance, the nation's top education leaders, including the President, the Secretary of Education, and members of Congress, would need to initiate a national conversation on why the United States should no longer tolerate longstanding disparities in educational opportunity and why federal action is needed to address them. n159 Federal and national education leaders also must make the case that the entire nation would benefit from ending inequitable disparities in education because research reveals that reforms to help those who are disadvantaged typically do not succeed unless they benefit more privileged Americans. n160 Therefore, the federal government must convince the more affluent segments of American society that a more equitable distribution of educational opportunity would inure to their benefit. This could be accomplished in part by publicizing existing research that quantifies the myriad of high costs that the United States pays for offering many schoolchildren a substandard education and that acknowledges that even many advantaged children are not competing effectively with their international peers. n161 Initiating such a conversation also requires the federal government to prioritize equal access to an excellent education among its national policymaking agenda. One way that federal leaders are beginning to identify concrete ways to close the opportunity gap is through President Obama's call to Congress, elected leaders, and business executives to make high-quality preschool education available for all children. n162 This call to close one element of the opportunity gap builds upon robust research that reveals that investing in preschool education yields substantial educational, societal, and financial [\*987] benefits for the United States. n163 Although closing the prekindergarten gap represents an important component of closing the opportunity gap, it remains only one small element of this gap in the United States. A broad call and initiative for closing the full spectrum of the opportunity gap from early childhood education through high school is essential and overdue. Establishing equal access to an excellent education as a national priority would require federal leadership to explain that a reexamination of the nation's approach to education federalism is warranted. Leaders would explain how education federalism has served as a barrier to past reforms n164 and the reasons that restructuring education federalism must occur if the United States is ever going to ensure equal access to an excellent education. n165 This discussion should highlight federal willingness to shoulder greater responsibility for leading the national effort to achieve this goal while emphasizing that effective comprehensive reform must involve a shoulder-to-shoulder partnership among the federal, state, and local governments. Fortunately, the federal government has proven its ability to herald the importance of new educational goals and appropaches in the national interest. n166 Research and history confirm that agenda setting serves as one of the strengths of the federal government in education policymaking. n167 For instance, President Johnson successfully convinced Congress to advance equal educational opportunity for low-income schoolchildren through the Elementary and Secondary Education Act, n168 which includes Title I, and the Economic Opportunity Act, n169 which includes programs like Head Start and Upward Bound. n170 President Bush championed NCLB and its insistence on proficiency for all children in math and reading, [\*988] public reporting of testing data disaggregated by subgroups, and a range of accountability interventions for failing schools. n171 Therefore, a federal call to implement a comprehensive plan to ensure equal access to an excellent education should build upon the lessons learned from these and other federal reforms.

### Fed Key – Redistribution

#### Only the fed can redistribute resources necessary to solve inequality

**Robinson, Richmond law professor, 2015**

(Kimberly, “Disrupting Education Federalism,” 92 Wash. U. L. Rev. 959, lexis)

. Distributing Financial Assistance Focused on Closing Opportunity and Achievement Gaps The federal government will need to provide financial assistance to states to support a national effort to ensure equal access to an excellent education due to the substantial cost of closing opportunity and achievement gaps. n225 This financial support for education would leverage the federal government's superior ability to redistribute resources among the states. n226 This superior ability stems in part from the federal government's capacity to spread the costs of redistribution across a wider national constituency than state governments. In addition, business interests and the wealthy possess a greater ability to thwart redistribution at the state level than at the federal level because they can threaten to leave a state. n227 Past experience reveals that federal resources can be an effective means for influencing state and local education policy. n228 The federal financial contribution should include both incentives and assistance to address opportunity and achievement gaps. Financial incentives will draw attention to this critical issue and motivate states that have resisted reform, just as incentives motivated reform through RTTT. n229 Financial assistance also will expand the potential reform options beyond what states could implement with their own state resources and will supply political cover for politicians who support reform. n230 The federal investment in efforts to ensure equal access to an excellent education could include funding mechanisms such as competitive grants and formula grants. Federal financial support for closing opportunity and achievement gaps will be essential for expanding state capacity to achieve this goal. A recent [\*999] move in this direction can be found in President Obama's proposal to invest $ 75 billion in federal funds over ten years to ensure that all four-year-olds receive a high-quality prekindergarten education. n231 In addition, President Obama previously created incentives for states to invest in early childhood education through the RTTT Early Learning Challenge by offering states the chance to compete for $ 500 million in discretionary grants if they expanded early childhood education to young children of low-income families. n232 Such efforts represent an important first step toward closing the substantial opportunity and achievement gaps. However, a comprehensive effort to ensure equal access to an excellent education would need to invest federal resources across the full spectrum of opportunity and achievement gaps in elementary and secondary education. Federal support for a national effort to ensure equal access to an excellent education would not require federal funding for all of the necessary state and local reforms. Instead, the federal government should generously increase its contribution to education costs while continuing to share these costs with the state governments. The level of generosity of federal funding should be based upon the disparate capacities of states to close opportunity and achievement gaps. n233 Generous federal financial assistance would fund a larger percentage of the costs of reforms than had occurred with past education reforms. n234 These past reforms typically failed to deliver the substantial funds that were initially anticipated when the laws were enacted. n235 For example, one of many criticisms of NCLB was that the federal government covered very little of the implementation costs. n236 Since increasing federal funding for ensuring equal access to an excellent education would simultaneously increase federal responsibility for achieving this goal, my theory would create a closer and more effective marriage between federal demands and federal responsibility as discussed below further in Part II.F. n237 [\*1000] Additionally, a blend of federal and state funding will encourage greater efficiency than full federal funding. n238 Shared funding should encourage both the federal and state governments to contain costs. If the federal government paid the full bill for any necessary reforms, the states might inflate the alleged costs of such reforms. Shared financial responsibility helps avoid such perverse incentives.

### Fed Key – Enforcement

#### Enforcement is critical --- sufficient federal capacity and expertise are key

**Frankenberg, Harvard education professor, 2015**

(Erica, "ESEA and the Civil Rights Act: An Interbranch Approach to Furthering Desegregation”, 12-17, RSF: Vol 1, No 3, proquest)

Today, students of color are almost a majority in the nation's schools, and students attend schools stratified by race and poverty (for example, Orfield and Frankenberg 2014). What are the implications of these patterns of school segregation for our understanding of the federal role in both contributing to and remedying these trends? First, to the extent possible, civil rights legislation must be crafted to minimize variation in interpretation and implementation. The final text of the Civil Rights Act was altered in subtle ways to gain passage that likely limited its impact. In particular, clarifying that Title IV authority did extend to racial imbalance and removing the phrase “other means authorized by law” from Title VI, which allowed the executive branch to avoid implementing fund deferral and termination, could have meant the laws had longer, more far-reaching effect. Second, the federal government has an important role not only in enacting policies to promote integration, but also in effectively enforcing them. As seen, the enforcement of the Civil Rights Act and ESEA were limited: staff capacity, incomplete evidence, and lack of expertise as desegregation cases grew more complex. Under the Nixon administration, the unwillingness to terminate funds greatly reduced the effectiveness of enforcement, putting the onus back on the judicial system. Thus, future efforts—especially if not embraced by local districts—require sufficient federal capacity and expertise as well as sustained political will to enforce legislation. Third, if the judicial system, particularly the Supreme Court, had clarified earlier ambiguous aspects of law pertaining to desegregation while an administration committed to enforcement efforts was still in office, it might have changed the scope of HEW enforcement efforts. A federal agenda would be boosted if courts found de facto segregation to be a compelling interest to justify integration policies (as four justices did in the 2007 Parents Involved decision).

### States Fail – Empirics

#### CP has been happening for decades with no success—fiat doesn’t change any of the reasons why states fail.

Ogletree, Harvard Law School professor, and Robinson, University of Richmond School of Law professor, 17

[Charles and Kimberly, Spring 2017, “RODRIGUEZ RECONSIDERED: Is There a Federal Constitutional Right to Education?” <http://educationnext.org/files/ednext_xvii_2_forum.pdf>, accessed 6-29-2017, pg. 71-75 BP]

Rodriguez will one day be considered as erroneous as the court’s approval of the “separate but equal” doctrine in Plessy v. Ferguson, for three reasons. First, just as the states refused to make good on the “equal” part of “separate but equal” after Plessy, for more than 40 years states have failed to provide equal access to the funding needed to achieve excellent schools for all children, largely because of a lack of federal accountability for equitable school funding. The Rodriguez court acknowledged the need for state tax reform related to school funding and for “innovative thinking as to public education, its methods, and its funding.” However, the court was unwilling to order states to engage in this reform. Instead, the court explained that any solutions to these challenges must be determined by state lawmakers and those who elect them. Although some states have undertaken school funding reform since Rodriguez, too many do not provide the funding systems that excellent and equitable schools demand. Evidence abounds regarding the harmful nature of funding disparities. For example, the U.S. Department of Education’s Equity and Excellence Commission found in its 2013 report that “students, families and communities are burdened by the broken system of education funding in America.” State funding systems are not closely linked to desired educational outcomes: despite the fact that all states have adopted educational standards, the commission found that only a few states have developed funding systems that enable schools to teach all students the content of state standards. Although scholars do not agree on what constitutes an appropriate minimum funding level, studies that attempt to determine such sums find that many states fund schools below those levels. Nor do states provide effective oversight of funding to ensure that it is used efficiently to meet student needs. Equality eluded generations of African Americans in part because of Plessy. Similarly, many schoolchildren today attend schools that lack sufficient and equitable funding in part because of Rodriguez, which foreclosed the federal judicial accountability that could require states to remedy their inequitable funding disparities.

#### Empirical evidence disproves state solvency.

**Robinson, Richmond law professor, 2015**

(Kimberly, “Disrupting Education Federalism,” 92 Wash. U. L. Rev. 959, lexis)

Although education federalism undoubtedly reaps some of the benefits that it is designed to accomplish, the current approach does not consistently yield the benefits that it is supposed to secure. For instance, education federalism has been praised for its ability to allow the state and local governments to serve as "laboratories" of reform. However, research reveals that in the area of school finance reform, most reforms have been fairly limited in scope and that the reliance on property taxes to fund schools remains the prevailing approach to local school funding. 26 This approach has continued despite the Supreme Court's 1973 call for school finance reform in Rodriguez: "The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity."27 Even when plaintiffs have prevailed in litigation that sought to reform school finance systems, most states typically have maintained the same fundamental and unequal structure for school finance. Additionally, in a substantial [end page 209] majority of the states, funding inequities between wealthy and poor districts and schools persist.28 In 2012, only fifteen states provided more funding to districts with high concentrations of poverty than those with low concentrations of poverty, despite consistent research that low-income students require more resources for a successful education than do their more affluent peers. The 2013 Equity and Excellence Commission report notes that substantial reform is needed because, apart from a few exceptions, states fail to link their school finance systems to the costs that they would need to invest to educate all children in compliance with state standards.29 Given decades of reforms that have not made consistent and substantial inroads on these challenges, the states are not serving as effective laboratories for school finance reform.

### States Fail – Capacity

#### States fail due to political capacity that fiat doesn’t resolve.

Ciolino, Tulane University, Juris Doctorate Degree, 16

[Max, 2016, University of Pennsylvania Journal of Law and Social Change, “The Right to an Education and the Plight of School Facilities: A Legislative Proposal,” file:///Users/anthonywinchell/Downloads/19UPaJLSocChange107.pdf, pp. 121-122, accessed 6/30/17, AW]

As more states develop mechanisms with which to ensure that they are upholding their constitutional requirement to provide a free public education to all students, it is tempting to believe that we, as a collection of states, are moving towards a resolution of our centuries-old educational deficit. Unfortunately, this is not so. The fundamental thesis of this article is that the states do not possess the ability to provide fully functional, safe, and adequate facilities for public education within their borders by utilizing their resources alone. As important as these equity and adequacy battles are for assuring that underserved students within a state are provided with a remedy in their quest for justice, a judicial order can only go so far when a state is on the verge of a fiscal crisis in its own right. Abbot v. Burke, the twenty-one part litigation series in New Jersey, best demonstrates the limitations of a judicial remedy. 93

Although the Abbott cases involved twenty-one rulings over the course of twenty-six years, it is important to note that the five-part Robinson v. Cahill94 litigation series preceded the Abbott cases. Altogether, the Abbott court returned four separate declarations that the State of New Jersey's education financing system was unconstitutional, either due to its programmatic design or due to the state's failure to fund its own program. 95 In Abbott XX, the state finally received approval from the Supreme Court of New Jersey, stating that the financing mechanism satisfied the state's constitutional duty to provide a thorough and efficient system of education. 96 Although this sounds like a long-sought victory, New Jersey simply failed to fund its new formula, resulting in the Abbott XXI order, which directed the state to fully fund the program in order to comply with its constitutional mandate. 97

The State of New Jersey had decades of court orders compelling it to design a funding program to adequately support student learning in the Abbott Districts, and it still could not find a politically and economically feasible solution. Perhaps more troubling, however, is how many of New Jersey's underserved students were not even counted among the Abbott Districts in the first place. Altogether, when the Abbott litigation began, there were 205 school districts within New Jersey that were unable to provide the types of educational inputs that would be required under the Abbott reading of the "thorough and efficient" clause of the New Jersey constitution. 98 Despite the pervasive need for additional resources throughout New Jersey, the state's Supreme Court provided a remedy for only the twenty-one underfunded urban districts. 99 This left the majority of the underserved suburban and rural districts to attempt to resolve their resource needs in the absence of a state mandate, or take to the courts for their own rights in other litigation. 100 This means New Jersey was incapable of properly tending to its highest need students, let alone all students. This shortcoming alone illustrates how significant the problem of underfunding schools in some states can be, and how incapable many states are of handling these matters without assistance.

### A2: States Court Solves

#### State courts fail-top down change is key.

Darden, Michigan State University Associate Professor of Law, 2012

[Tiffani N., February 2012 , University of Pennsylvania Journal of Constitutional Law, “Defining Quality Education as a Government Interest: The U.S. Supreme Court's Refusal to Play Nice with the Executive Branch, Congress, State Supreme Courts, and the Community Voice,” Volume: 14, Issue 3, [http://heinonline.org/HOL/Page?handle=hein.journals/upjcl14&div=22&id=&page=&collection=journals#](http://heinonline.org/HOL/Page?handle=hein.journals/upjcl14&div=22&id=&page=&collection=journals), accessed 7/1/17, page 690-691, JYH]

Since public education is undoubtedly regarded as a local matter under state control, federal courts should incorporate the definition of quality education, defined by the respective states as a government interest justifying the use of protected classifications. As opposed to the anticlassification doctrines applied by the Supreme Court, the state constitutional interpretations act more along the lines of the antisubordination definitions argued for in interpreting the Fourteenth Amendment's equal protection clause. Whereas Brown "combined education with discrimination on the basis of race," the course of education adequacy reform through state courts addressed race as a component to fulfilling the state's constitutional obligation.'4 ' The goal for "high-minimum quality education for all" does "not rest on a norm of equal treatment."'" And while some state courts have refused the job of defining this minimal education standard, one may find a definition through either state supreme court rulings or state legislative mandates.

Even though the phraseology used in state constitutional education clauses reads slightly differently, "[a]lmost every state constitution requires its government to institute and sustain a system of public schools."'4 For the instances where state courts choose not to become involved in the debate over quality education, they rely on separation of powers principles; thus, state legislatures must define educational standards and the amount of funding needed to attain these goals.'4' Adequacy claims impose an affirmative duty on state legislatures to create public education systems that offer minimal provisions to every child enrolled in public schools.147

Since Brown, education governance has experienced phenomenal changes. Whereas local districts once held great autonomy, education reforms continue to layer oversight and implementation functions between federal and state government actors. Everyone involved, except the Supreme Court, recognizes the need to take comprehensive stock of the systemic challenges facing public education. State constitutional provisions align more with the direction of contemporary education reform than the Supreme Court's categorical treatment of protected classifications used to determine the constitutionality of education reforms.

Through state courts, constitutional education clauses have been interpreted to adopt an antisubordination quality standard as opposed to an anticlassification colorblind ideology. The academic outcomes resulting from finance litigation are not yet clear; however, these cases do permit a space for legislatures and advocates to recreate state educational systems.14 For example, in Kentucky, the financial inputs on the budgetary side were easily measured, but the governance and accountability were not aptly implemented. "' After the Abbott litigation in New Jersey, school districts directly affected by the court's pronouncement experienced minimal gains in test scores; however, New Jersey still fairs poorly as compared to other states working to close the achievement gap. 1o

More politically motivated opposition also plagues the implementation of judicial standards imposed under state constitutional education clauses. In Ohio, even though the state supreme court has repeatedly found its public education system unconstitutional, the legislature refuses to act upon the pronouncements.'5 ' The most infamous state finance litigation, in New York, appeared successful, but extended debates between state and local officials regarding who should fund the reforms have delayed program implementation. 152 The aftermath of these cases demonstrates that a quality education focus under the law completes only one part to the reform puzzle. In Part III, I elaborate further on this idea in a discussion of race conscious state decisions referred to as the fourth wave of finance litigation. 1

#### Local resistance to state court decisions blocks implementation

Robinson, 7– Assistant Professor of Law, Emory School of Law; J.D., Harvard Law School (Kimberly, “The Case for a Collaborative Enforcement Model for a Federal Right to Education”, University of California, Davis Law Review [Vol. 40:1653, <https://lawreview.law.ucdavis.edu/issues/40/5/articles/DavisVol40No5_Robinson.pdf>

Second, even when plaintiffs prevail, court victories do not guarantee improved opportunities for disadvantaged students. As school finance expert Michael Rebell acknowledges, “[A]lthough funding disparities among school districts have been reduced dramatically in some states where courts have invalidated state educational funding systems, elsewhere such court decrees actually have resulted in educational setbacks.”109 For example, a California Supreme Court decision favoring the plaintiffs, when coupled with a voter initiative, resulted in equalization of district spending at a low spending level.110 Other states, such as Alabama and New Jersey, experienced fierce opposition to reform following a court determination that the education finance system was inadequate and that opposition has undermined and even halted effective reform in those states.111 Thus, as Rebell acknowledges, “Too often, judicial intervention in cases in which plaintiffs had won dramatic legal victories did not result in effective, lasting solutions to deep-rooted education controversies.”112

## Other CP Answers

### Congress Fails

#### Congress cannot enforce education reform- especially with vaguer policies

Barone is director of federal policy in the Washington office of Democrats for Education Reform and DeBray is University of Georgia associate professor of education, 12(Charles Barone & Elizabeth DeBray, 5-2-12, Education Week, “The Role of Congress in Education Policy”, <http://www.edweek.org/ew/articles/2012/05/02/30barone.h31.html?tkn=VQWFBp0g3U7xdh7uovJ9ONpODEOvv0hsTbyb&cmp=clp-edweek>, accessed 7/1/17, MJ)

While Title I has shown that Congress is able to promote more equal educational opportunities for all, it’s still unclear whether Congress has the capacity to ensure that all of its education policies are implemented as intended. Given that it is setting policy for tens of millions of schoolchildren, Congress must rely on fairly blunt legislative instruments. With laws that follow clear, bright lines—like funding formulas or investments in pilot programs—Congress is generally able to achieve its aims. But on vaguer policies or those that require micromonitoring of districts and schools, it tends to fall short.

Congress is deliberately hamstrung by the separation of powers under the U.S. Constitution. For example, in the late 1990s, Congress passed a law requiring schools of education to report the passing rates of their graduates on teacher-licensing exams.

The Clinton administration gave in to political pressure, defied congressional intent, and set the regulation in such a way that education schools could game their numbers. More than 90 percent of the schools now report a misleading 100 percent passing rate.

#### The legislator is not representing minorities and therefore will let reforms be circumvented

Millhiser, Center for American Progress senior fellow, 05 ( Ian Millhiser, nov. 2005, Duke University School of Law, “What Happens to a Dream Deferred?: Cleansing the Taint of San Antonio Independent School District v. Rodriguez”, <http://www.jstor.org/stable/pdf/40040465.pdf?refreqid=excelsior%3A0190939a4707c470a5672ee493f4c7f4>, accessed 7/1/17, MJ)

A legislator who is "not primarily interested in reelection will not achieve reelection as often as [one] who [is so] interested."32 As a result, the primary goal of an elected legislator is most often reelection, lest that legislator risk becoming the victim of electoral Darwinism. This reality is neither surprising nor inappropriate, as electoral accountability is one of the principal advantages of a democracy,33 but this advantage does not come without a price. In a society with limited resources, each voter wants the biggest piece of the pie, and so the American democracy rewards those legislators who can deliver the greatest benefits to their constituents, often at expense of voters in other districts.34 Because of this motivation on the part of legislators, the minority of the electorate who reside in poorer districts with less-educated residents are often the victims of an electoral process that encourages elected officials to favor their own district above all others.

To make matters worse, many of the voters in these districts are constructively disenfranchised by their inadequate education. According to the United States Census Bureau, college graduates are nearly one and one-half times as likely to vote as high school graduates and more than twice as likely to vote as Americans with eight or fewer years of education.35 Furthermore, even if less- educated Americans do cast ballots, they often lack the basic reading skills and civic knowledge necessary to understand just what it is they are voting for.36 So it should come as no surprise that the political branches have proved just as inadequate in providing a baseline education to both rich and poor Americans as they were in combating Jim Crow segregation.

#### Congress mishandles equitable education policy— title one funds are completely misallocated

Black, University of South Carolina School of Law, 11 (Derek W. Black, 10/13/11, Boston University Law Review, “The Congressional Failure to Enforce Equal Protection Through the Elementary and Secondary Education Act”, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1943557>, accessed 7/1/17, MJ)

As the above discussion implies, not only does Congress overly dilute Title I funds, it distributes them in various irrational ways that undermine the ability of Title I to remedy inequities. Goodwin Liu finds that, rather than directing resources to the neediest students and remedying inequality, the current funding formulas serve political ends and administrative convenience.186 In the absence of a duty to enforce equal protection, Congress might be free to pursue political ends, but given the continuing prevalence of inequitable educational opportunities, Congress has no such luxury. Moreover, as the following demonstrates, not only is Congress shirking its Fourteenth Amendment duty, it is directly funding inequality and oftentimes increasing it. Congress distributes Title I funds through no less than four different funding formulas and grants.187 Two of the current formulas are simply remnants of prior versions of Title I.188 Rather than revising the old formulas, Congress added new formulas in 1994.189 The failure to coordinate and evaluate these different formulas creates irrational fund distributions and also the potential for the formulas to work at cross-purposes. The first flaw in the formulas is that they all include statutory minimums that provide a base level of funding to all states, regardless of their need, poverty, or other relevant factors.190 As a result, states with small populations, such as South Dakota or Rhode Island, receive a disproportionately large amount of money that bears no relation to the number of poor students they serve.191 In fact, because they have so few poor students, their Title I funding per student exceeds the amount that two thirds of the other states receive.192 The windfall for students in these states serves no rational purpose. Instead, it is likely more directly related to gaining or keeping the support of Senators in those states for Title I in general

## Court DA Answers

### Legitimacy Low

#### Courts legitimacy low now—Confirmation of Gorsuch started slippery slope towards loss of legitimacy—future actions key

**Feingold, 16-year member of the US Senate judiciary committee, 2016**

[Russ, 3.20.17, The Guardian, “If Gorsuch is confirmed, the legitimacy of the US supreme court won't recover,” <https://www.theguardian.com/commentisfree/2017/mar/20/judge-gorsuch-confirmation-legitimacy-us-supreme-court>, Accessed 7.2.17 CT @ GDI]

On Monday, when Judge Gorsuch’s confirmation hearing is scheduled to begin, the Republicans will attempt to complete their cynical political takeover of the US supreme court, launched last year when they failed to confirm or to even give a hearing to Judge Merrick Garland.

Never before has Senate leadership so openly and intentionally played political games with our highest court. Already, the legitimacy of the supreme court has taken a severe blow because of it. But, if Gorsuch is confirmed, it would lock in a dangerous precedent from which the legitimacy of our highest court might never recover.

Republican senators abandoned their constitutional responsibilities and blocked Judge Garland’s nomination last year, for 293 days, leaving the court without a deciding vote on critical issues. They offered no legal justification for their actions, fully admitting that their sole intention was to orchestrate a coup of the supreme court by betting that a Republican would win the White House.

Some even pledged to keep the seat vacant for four more years in the event that a Democrat won the White House. The severity of this action and what it will mean for the court if Gorsuch is confirmed cannot be understated.

Confirming Gorsuch would endorse and normalize unconstitutional political games. It would encourage both parties to use and expand this strategy in the future, at the expense of our highest court and its critical role in our judicial system.

This time it was the last year of a president’s term, next it will be the year before midterm elections. It won’t be long before it extends to the whole two-year presidential campaign, amounting to three years of any presidential term where a supreme court seat cannot be filled.

And it is not just the supreme court that will be affected, as the strategy will be used to block appointments to lower courts. This is a **slippery slope** that ends with **decimating the legitimacy** of an entire branch of government, and the resulting checks and balances on which our democracy depends.

I have always considered the supreme court our country’s safety valve. When everything else fails, the court is there to protect the constitution and protect our civil rights. But today, the most important safety valve is the US Senate, specifically those senators with the conviction to fight for the legitimacy of the supreme court.

Judge Gorsuch might be qualified. He might be a fine judge. But the vacancy on the supreme court does not belong to him.

When President Trump took office, he had three options for filling the vacancy. He could have renominated Judge Garland, rectifying the wrong committed by the Republican party last year. He could have worked with both parties to nominate a consensus candidate, at least recognizing the need to reaffirm the legitimacy of the court by not validating the Republicans’ coup. Or he could do what he did – nominate a partisan judge, completely validating the Republicans’ coup and locking it in as a precedent.

Preventing this precedent and its resulting slippery slope now falls to the Senate. Democratic and independent senators, and any Republicans who still care about the legitimacy of the supreme court, must filibuster Gorsuch’s nomination.

They must demand that Judge Garland be renominated, or at a minimum, that a consensus candidate be selected with input from both parties – a nominee that will restore confidence in our nomination process, our judicial branch and our system of checks and balances.

Merely delaying Gorsuch’s hearing until after an investigation into Russia’s involvement is completed is not enough. His nomination represents a completely separate threat to our country from Trump’s troubling ties to Russia. The Republicans’ judicial coup spat in the face of our constitution, and a nomination that locks that in as a precedent cannot be accepted under any circumstances.

It is not hypocritical to try to right this wrong. It would be unconstitutional not to. The Senate, specifically Senate Democrats and independents, and any Republicans who care about our constitution, must do everything in their power to block Gorsuch’s nomination and demand the legitimacy of our supreme court be restored through the nomination of a consensus candidate.

#### Courts politicized now—debate of Gorsuch—sets future precedent

**Cadei, Newsweek politics reporter, 2017**

[Emily, 4.7.17, Newsweek, “GOING 'NUCLEAR' ON GORSUCH PROMISES MORE POLITICIZED COURTS,” <http://www.newsweek.com/filibuster-gorsuch-judicial-branch-580578>, Accessed 7.2.17 CT @ GDI]

It was a sign of the seriousness of the occasion that senators sat at their desks on Thursday while voting to take a hatchet to one of their chamber’s most revered rules: Normally, when it’s time to vote, they hurry onto the Senate floor and give a thumbs up or thumbs down before rushing back out. And it was a sign of just how politicized the process of confirming judges has become as senators somberly moved to dismantle the filibuster for Supreme Court justices on Thursday, while partisans were furiously zipping out press releases attacking politically vulnerable senators, seeking to score points over the showdown that led Republicans to go “nuclear.”

“Sherrod Brown playing political games,” read one subject line for a press release from the National Republican Senatorial Committee (NRSC), whose task is to get Republicans elected to the chamber. Brown, a Democrat from Ohio, is up for re-election in 2018. “Tester’s Latest Disregard of Voters,” read the subject line of another NRSC email, lambasting Montana Democrat Jon Tester, also up for re-election, for joining in the Democrats’ vote to filibuster President Donald Trump’s Supreme Court nominee. “When Tester had to pick a side, he chose his radical colleagues over Montanans—and voters will remember that,” NRSC Communications Director Katie Martin warned in the statement.

Senate Democrats’ attempt to filibuster Trump nominee Neil Gorsuch on Thursday was a dramatic step, but not entirely unprecedented, as Republicans claim. In trying to block the nomination by denying Gorsuch the 60 Senate votes needed to avoid a filibuster, Democrats were attempting to pull off something not done since 1968. They, however, blame Republicans for the poisonous politics of the nomination, arguing that the majority is trying to jam through Gorsuch, who they claim is too extreme, and too supportive of corporate interests.

But Democrats’ real animus stems from Republicans’ refusal to even consider the initial nominee for the post, Merrick Garland, who President Obama had tapped more than a year ago to take the seat left open by the death of Justice Antonin Scalia. Republicans insisted at the time that it was too close to the election (it was eight months away), which really was unprecedented. Republicans, in turn, defend themselves by arguing that it was Democrats who started the chamber down this road in 2013, when they voted to bar the use of the filibuster for other federal judicial appointments. And they insist Democrats were the ones who first introduced politics into the Supreme Court confirmation process all the way back in 1987, when they blocked the nomination of Robert Bork. Senate Majority Leader Mitch McConnell dedicated six paragraphs to lamenting Democrats’ unfair treatment of Bork—30 years ago—in his remarks on the Senate floor on Thursday morning, shortly before he pressed forward with the vote to alter long-standing Senate rules. And on and on the finger-pointing goes.

The upshot is that the same hyper-partisanship that has tied up most legislating in Congress is also derailing the process for confirming judges across the federal courts. “It’s not like...but for Bork, the Senate would all be sitting around singing 'Kumbaya,’” says Russell Wheeler, a visiting fellow in governance at the Brookings Institution think tank. “This is the same government that has a hard time passing spending bills.” And that disintegration of comity and consensus—long-cherished Senate traditions—has implications not just for Capitol Hill, but for the judicial branch as well.

The biggest is that by erasing the 60-vote threshold that the Supreme Court and other federal judges need to meet to be confirmed, the Senate is freeing the president to nominate more polarizing figures. “Presidents in the past always took into consideration” that they could be filibustered, says Wheeler. That “led them to pick somewhat more moderate nominees than they would otherwise,” because they knew they had to win at least a few votes from the opposing party. Now, a simple majority vote by whichever party is in power guarantees a spot on the bench. “I think you’ll see more and more ideologically driven [nominees] on both sides,” Republican Senator John McCain predicted earlier this week. He added: “We will regret, at some time, what we’re doing.” Still, McCain joined all 51 of his Republican colleagues in voting to overturn the filibuster on Thursday.

### Legitimacy Resilient

#### Capital is bulletproof

Gibson, Department of Political Science at Washington University in St. Louis, 2012

[James L., 7/15/12, “Public Reverence for the United States Supreme Court: Is the Court Invincible?,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107587> ,accessed 7/1/17, page 37-38, JYH]

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London 1 and Citizens United v. Federal Election Commission 2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital. The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions. At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore 3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans. 4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”; 5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy. Political scientists have been studying the legitimacy of the Supreme Court for decades now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells: ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bulletproof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.

#### Individual decisions won’t collapse court legitimacy

**Gibson et al, Washington University in St. Louis, 2013**

[James L. Gibson-Washington University in St. Louis, Gregory A. Caldeira-The Ohio State University, Lester Kenyatta Spence-Washington University in St. Louis, 4/14/13, American Journal of Political Science, “Measuring Attitudes toward the United States Supreme Court,” https://pages.wustl.edu/files/pages/imce/jlgibson/ajps2003.pdf, Page: 364, Volume: 47, Issue: 2, Accessed: 7/2/17, MWM]

The overwhelming weight of the evidence we present in this paper is that the legitimacy of the U.S. Supreme Court is not much dependent upon the Court making decisions that are pleasing to the American people. The Court’s legitimacy seems not to be grounded in policy agreement with its decisions, nor is it connected to the ideological and partisan cross-currents that so wrack contemporary American politics. Whether desirable or undesirable, it seems that the current Supreme Court has a sufficiently deep reservoir of goodwill that allows it to rise above the contemporary divisions in the American polity. These empirical conclusions have enormous theoretical importance. It seems that the Court as currently configured is unlikely to consistently disappoint either the left or the right. As we have documented above, the current Supreme Court makes fairly conservative policy, but it clearly does not make uniformly conservative policy. Thus, even the Rehnquist and Roberts Courts have made many decisions that should be pleasing to liberals, even if conservatives should be slightly more pleased with the Court. Perhaps a court closely divided on ideology cannot produce the consistent decisional fuel needed to ignite a threat to the institution’s legitimacy. Some worry that an ideologically divided Court undermines the institution’s legitimacy (e.g. Liptak 2011). Perhaps the truth is exactly the opposite: an ideologically divided Court is able to please both liberals and conservatives with its decisions, and therefore decisional displeasure does not build to the point of challenging the institution’s legitimacy. This then takes us to the Court’s so-called countermajoritarian dilemma, a problem in which many legal scholars are currently interested. At least a portion of this rekindled interest has been stimulated by the Court’s decision in Citizens United. Pildes (2010) declares that “Citizens United is the most countermajoritarian decision invalidating national legislation on an issue of high public salience in the last quarter century” (157). The countermajoritarian nature of the decision is reflected in evidence that the American people, by a fairly substantial majority, disagree with the substance of the Court’s ruling. Let us assume that people do not question the legitimacy of decisions made by courts when they agree with those decisions. Legitimacy only comes into play when there is an objection precondition. So we will assume that the 27 % of the American people (according to an interest group poll conducted in February 2010, cited by Pildes) who agree with the Court’s decision cede legitimacy to the institution. Nearly two-thirds (64 %) of the American people oppose the ruling. But let us assume that about half of this two-thirds extends legitimacy to the Supreme Court and is therefore willing to accept decisions with which they disagree. If we add this 32 % to the 27 % supporting the decision, then a fairly sizeable 59 % is unlikely to be willing to support schemes to attack the Court or to try to overrule its decision. Thus, the constituency for curbing the Court on most -35- decisions is the fairly small minority who oppose the decision and who do not extend legitimacy to the Court. These calculations explain why a coalition for attacking the Court is difficult to assemble, and, in conjunction with the evidence that the Court today is issuing both liberal and conservative opinions, may provide a clue as to why the Court’s legitimacy is currently so stable. The Supreme Court is a majoritarian institution, not in the sense that it is typically in substantive policy agreement with its constituents, the American people, but rather in the sense that it is dependent upon a majority granting legitimacy to the institution. And, as Clark (2009; 2011) has so ably shown, the Court seems aware of this requirement and acts to protect its core legitimacy. Thus, the Supreme Court need not make decisions pleasing to the majority all or even most of the time, and in that sense it is not a majoritarian institution (unlike, for instance, a legislature). But because the Court currently attracts legitimacy from the majority, its ability to rule against the people’s preferences, even up to one-half or so of the time, is secure. Thus, this “new math” of institutional legitimacy goes some considerable distance toward accounting for the efficacy and the seeming invincibility of the current Supreme Court.

#### Capital resilient

Bentley, Partner at Bentely, Briggs, & Lynch Law Firm, 07

[Curt; November, 1, 2007; BRIGHAM YOUNG UNIVERSITY LAW REVIEW, “Constrained by the Liberal Tradition: Why the Supreme Court Has Not Found Positive Rights in the American Constitution,” http://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=1&sid=3d35d15b-6eaf-4e6b-a2ac-46813580dd99%40sessionmgr4006, pp. 1721-1722, accessed 7/2/17, AW]

Diffuse support theorists cite public opinion polls, which show that support for the Court has remained remarkably high and stable - especially in comparison with other political institutions - even during periods when the Court handed down controversial decisions, in support of their hypothesis. For example, diffuse support theorists often cite the Court's divisive decision in Bush v. Gore to show that diffuse support allows a court to weather a controversial storm of public opinion. Many assumed that the Court's participation in a controversial political decision would reduce its reservoir of diffuse support. Justice Stevens himself expressed the fear in his dissenting opinion: The endorsement ... by the majority of this court can only lend credence to the most cynical appraisal of the work of judges throughout the land. It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to that confidence that will be inflicted by today's decision... . Although we may never know with complete certainty the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law. However, in actuality, studies in the aftermath of Bush v. Gore have shown that the decision did not significantly affect public confidence in the Supreme Court. Gibson, Caldeira, and Spence undertook a public opinion study in the aftermath of the decision and concluded that the Supreme Court decision in Bush v. Gore did not have a debilitating impact on the legitimacy of the US Supreme Court. Perhaps because the Court enjoyed such a deep reservoir of good will, most Americans were predisposed to view the Court's involvement as appropriate and therefore dissatisfaction with the outcome did not poison attitudes toward the institution.

#### Even if the plan is unpopular- legitimacy is resilient

Gibson and Caldeira, Washington University Department of Political Science Professor of Government and Ohio State University Professor of Law, 2009

[James L. and Gregory A., James L. Gibson is a Professor of African and African American Studies; and Director, Program on Citizenship and Democratic Values, Weidenbaum Center on the Economy, Government, and Public Policy, Washington University. Gregory A. Caldeira is Distinguished University Professor and Dreher Chair in Political Communications and Policy Thinking, Jan 2009, Midwest Political Science Association, “Confirmation Politics and the Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination”, https://www.jstor.org/stable/25193872?seq=1#page\_scan\_tab\_contents, p.140, Accessed 7/2/2017, RV]

A recently developed theory—the theory of positivity bias—may provide a useful framework for analyzing mass opinion formation. This theory was created in part to account for the U.S. Supreme Court’s unexpected success at protecting its institutional legitimacy even while awarding the presidency to George Bush in a bold and highly controversial 5–4 decision (Bush v. Gore). According to Gibson, Caldeira, and Spence (2003a), when ordinary citizens become motivated to pay attention to the U.S. Supreme Court—when their attitudes come out of hibernation—they approach the context with preexisting beliefs about law and politics. Some have in the past developed strong loyalty to judicial institutions, a loyalty that makes them particularly receptive to the legitimizing judicial symbols that envelope any event or controversy attracting the attention of the mass media. These citizens may initially pay attention to the court out of dissatisfaction and displeasure. But, because they are susceptible to (predisposed to) the influence of strong legitimizing legal symbols, they tend to wind up accepting the argument that courts are different from other political institutions and that “politics” plays a limited role in the judicial process. Suspicions about partisan and ideological influences on legal processes are dispelled, owing to the frame created by standing commitments to the Court. In this bias we see the powerful influence of institutional legitimacy: To the extent that an institution has built a loyal constituency, it possesses a “reservoir of goodwill” that allows it to “get away with” unpopular decisions. This is precisely what Gibson, Caldeira, and Spence (2003a) argue happened in the fabled Bush v. Gore.

### Courts can handle education

#### Empircis.

Rebell, Professor of Law and Educational Practice, Teachers College, Columbia University, 2006

[Michael A., Executive Director, Campaign for Educational Equity, and Lecturer in Law, Columbia Law School, served as co-counsel for plaintiffs in *Campaign for Fiscal Equity v. State (CFE* ***1),*** 655 N.E.2d 661 (N.Y. 1995), *Campaign for Fiscal Equity v. State (CFE If),* 801 N.E.2d 326 (N.Y. 2003), and *Campaign for Fiscal Equity v. State (CFE Il1),* 861 N.E.2d 50 (N.Y. 2006)., 2006, *85 N.C. L. Rev. 146,* Poverty, “Meaningful” Education Opportunity, and the necessary role of the courts, http://heinonline.org/HOL/Page?handle=hein.journals/nclr85&div=45&g\_sent=1&collection=journals, p.1532-1533, accessed 7/1/2017, RV]

In regard to remedies, our studies concluded that judicial remedial involvement in school district affairs was both less intrusive and more competent than is generally assumed, largely because school districts and a variety of experts generally participated in the formulation of reform decrees, with the courts serving as catalysts and mediators. OCR proved effective in administering remedial agreements that call for immediate, statistically measurable implementation, but in regard to the major New York City faculty desegregation agreement that called for phased-in implementation over a number of years, the agency's "staying power" and its ability to respond flexibly to changed circumstances was markedly less effective than that of the courts.27 1

### Judicial Review Link Turn

#### Exercising judicial review is key to court legitimacy, independence, and the rule of law.

Shestack 98 (Jerome, former American Bar Association President, The Risks to Judicial Independence, ABA Journal, June, google books)

Our Founders created an indepen-dent judiciary as part of our constitutional system of checks and balances for good reason. Power, they knew, tends to expand. It is the very nature of the executive branch to extend its authority. And legislatures invariably seek to enlarge power in the name of the majority. With brilliant insight, the framers of the Constitution saw the judiciary as a check on the powers of the executive and legislative branches. Though the judiciary is the weakest branch of government, its authority comes from its independence and its power of judicial review. Put succinctly, an independent judiciary is the measure of an effective separation of powers in our democracy. It stands as the ultimate protector of our constitutional rights and liberties against the power of the executive or the will of the legislature. It is the foundation that underlies a rule of law.

### Winners Win

#### Controversial decisions build court legitimacy

**Weinberg, UT civil jurisprudence professor, 1994**

(Louise, 65 U. Colo. L. Rev. 887, Lexis)

c. The "Institutional Capital" Concern and the Pusillanimous Court Some writers trace concerns of the kind we have been discussing to one overriding concern, the need to preserve the prestige and authority of the Supreme Court. It is thought that the Court must  [\*907]  husband these priceless assets for the historic occasions when they must be deployed. Though we associate these views today with the "neutral principles" theorists of another day, n73 about whose teachings we have become skeptical, n74 these are not trivial concerns. Insofar as the rule of law depends on courts, and especially on the Supreme Court, it depends too on our reverence for the Court and our continuing consent to be governed by its decisions. There are those in every generation who oppose judicial review and do not comprehend it as an organic feature of the Constitution. But I think most Americans do share such reverence and consent. It is, perhaps, a civic religion. n75 It might be that this shared faith is essential to the survival of the republic under the Constitution. n76 Perhaps when President Nixon obeyed Judge Sirica's order even though it made inevitable his resignation from his presidency, it was in part this faith that informed his understanding of the importance to the country of his obedience. I doubt very much that the prudential principles of judicial restraint which an earlier generation of writers urged upon us are what keep this faith alive, as they imagined. To the contrary, I think Americans are stirred to believe in the courts because the courts have the courage to act and do act, not because they deny action. Recall the Supreme Court's effort to protect the rights of individuals in the wake of the Civil War, days of martial law and bills of attainder. n77 Recall how the Radical Republicans in Congress tried to  [\*908]  bring articles of impeachment against President Andrew Johnson, failed, and reacted by cutting back to seven the number of Justices of the Supreme Court, and thus -- killing two birds with one stone -- carving back as a practical matter the President's power of nomination. In this atmosphere of crisis and confrontation, the question became whether the Court would stick to its guns in opposing the forcible "Reconstruction" of the South. The significant test probably was the famous case of Ex parte McCardle. n78 McCardle first came to the Court as an appeal from a denial of habeas corpus. McCardle was a Mississippi newspaper editor, held in military custody for writing bad things about Reconstruction. By challenging the authority of his military custodians to deprive him of a civil trial by jury, he challenged the validity of the new Reconstruction Acts. n79 The Attorney General argued for an expedited appeal in McCardle's case, advising -- perhaps on the instructions of President Andrew Johnson -- that in his opinion the Reconstruction Acts were unconstitutional, and that he had so instructed the military commanders. n80 The Court did grant expedited review in McCardle's case, and heard four days of oral argument, making unusual allowances of time in appreciation of the importance of the case. Interestingly, the Johnson administration itself now backed off, as it had in Mississippi v. Johnson. n81 Now the Government argued that the Court should not decide McCardle's case because it presented a political question. Congress placed no bets on the government's position. Rather, Congress famously changed the Supreme Court's jurisdictional statutes, n82 over President Johnson's veto, in order to deny the Court the possibility of using McCardle's case to pronounce on the validity of Reconstruction. The issue in McCardle's case now became the one for which we remember it: whether Congress had power to strip the  [\*909]  Court of its statutory jurisdiction over a pending, argued case awaiting decision. At this crucial juncture the Court simply took an early adjournment -- early by a few days -- without decision. Thus, the Court put McCardle off for a year. n83 This seemingly discreet retirement probably was as inglorious n84 as its numerous critics would have us understand. The Court in this way avoided decision until after the elections of April 14-16, 1868. Charles Fairman takes the position that, if there ever was a historical moment for invalidation of the first Reconstruction Acts, this was it -- and the Court let it slip by. In Fairman's view, a decision on the merits in the following year would have been without practical consequences, coming "too late to interfere with the Congressional program." n85 In the event, the Court avoided the merits in the following year as well, sustaining the power of Congress to strip it of the particular head of jurisdiction. n86 This, in effect, was a decision to leave Reconstruction in place. But it was the earlier adjournment without decision, as Professor Fairman suggests, that was perceived by contemporary observers as the decision to leave Reconstruction in place. Thus, in a famous letter, McCardle's counsel, Jeremiah Black, wrote of this quiet adjournment that the Court had "knuckled under," adding: "The Court stood still to be ravished and did not even hallo while the thing was being done." n87 This sort of strategic withdrawal, far from preserving the Court's institutional capital, seems to me to squander it. Some will always be found to praise the Court for its prudence when it backs away from the judicial duty to decide even a sensitive issue; but others will recognize the circumspect retreat for what it is: pusillanimity. Professor  [\*910]  Choper, a proponent of judicial discretion to refuse to decide, seems to share this recognition himself, when he gives us, in no tone of admiration, the sorry record of confrontations in which the Court has backed down. n88 In Baker v. Carr, a central concern of Justice Frankfurter's dissent was that requiring reapportionment of the legislature of Tennessee could compromise the Court's authority. Effective relief might prove impossible, and the Court's mandate would be flouted. n89 But the Court seems to have come unbruised out of its intervention in state legislative malapportionment, and Congress authorized judicial enforcement for the brunt of the job in the Voting Rights Act of 1965. Indeed, in 1992, in United States Department of Commerce v. Montana, n90 the Supreme Court held unanimously, in an opinion written by Justice Stevens, that when Congress reapportions seats to a state after a fresh census, the validity of that reapportionment is not a political question confided to Congress, but is judicially examinable under Article I, Section 2. The Court relied, in part, on Baker v. Carr. n91 It is time to recognize that the Court's "legitimacy" never was a real issue. The Supreme Court, and the judicial power of the United States, are established by the Constitution of the United States. In deciding cases under federal law, courts usurp nothing. Rather, they conform to their oaths of office and the Supremacy Clause. It is time to understand that it is the Supreme Court itself that legitimizes and delegitimizes. That is what we pay it to do.

#### Empirically true

Young, University of Texas, School of Law, Assistant Professor, 99

[Earnest A., 1999; The Supreme Court Review, “State Sovereign Immunity and the Future Federalism,” http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2538&context=faculty\_scholarship, pp. 59-60, accessed 7/2/17, AW]

"Political capital," of course, is a pretty vague concept. It might be that the Court's ability to enforce federalism limits is more like muscles than money: it atrophies unless it is exercised regularly. n264 The National League of Cities story arguably illustrates this phenomenon, in that the Court's failure to apply the doctrine to check federal power in a series of subsequent cases may have helped lead to the outright rejection of the doctrine in Garcia. n265 The important point, however, is that the Justices who matter most on these issues tend to think in terms of limited capital and worry about judicial actions that may draw down the reserves. n266 Political capital [\*60] is thus likely to function as an internal constraint on the Court's willingness repeatedly to confront Congress.

#### **Ruling against political branches builds capital**

Shane, University of Iowa Professor of Law, 1988

[Peter M., June 1988, Chicago-Kent Law Review, “Rights, Remedies and Restraint,” Volume: 64, Issue 2,http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=2731&context=cklawreview ,accessed 7/1/17, page 546, JYH]

This argument, I believe, may be wrong empirically and is dangerous philosophically. On the empirical side, Peter Schuck has correctly observed, in a thoughtful recent article on the Supreme Court's review of partisan gerrymandering, that the Supreme Court's "capital" seems only to have gone up because of its willingness to intervene, on grounds however questionable, in a wide range of state and federal legislative decisions concerning the structure of political processes: By almost any standard, especially a pragmatic political one, the Court has been extraordinarily successful as a governing institution in the public mind. It has managed to turn even the most parlous undertakings to good institutional account and to earn a high return on its precious endowment of moral capital. 6° It may thus be that, contra Posner, the Court enhances its political power by deciding at least some doubtful cases against "the politicians and the bureaucrats." 6 1

### No BioD Impact

#### No impact to the environment

**Brook, Adelaide professor, 2013**

(Barry, “Worrying about global tipping points distracts from real planetary threats”, 3-4, <http://bravenewclimate.com/2013/03/04/ecological-tipping-points/>)

We argue that at the global-scale, ecological “tipping points” and threshold-like “planetary boundaries” are improbable. Instead, shifts in the Earth’s biosphere follow a gradual, smooth pattern. This means that it might be impossible to define scientifically specific, critical levels of biodiversity loss or land-use change. This has important consequences for both science and policy. Humans are causing changes in ecosystems across Earth to such a degree that there is now broad agreement that we live in an epoch of our own making: the Anthropocene. But the question of just how these changes will play out — and especially whether we might be approaching a planetary tipping point with abrupt, global-scale consequences — has remained unsettled. A tipping point occurs when an ecosystem attribute, such as species abundance or carbon sequestration, responds abruptly and possibly irreversibly to a human pressure, such as land-use or climate change. Many local- and regional-level ecosystems, such as lakes,forests and grasslands, behave this way. Recently however, there have been several efforts to define ecological tipping points at the global scale. At a local scale, there are definitely warning signs that an ecosystem is about to “tip”. For the terrestrial biosphere, tipping points might be expected if ecosystems across Earth respond in similar ways to human pressures and these pressures are uniform, or if there are strong connections between continents that allow for rapid diffusion of impacts across the planet. These criteria are, however, unlikely to be met in the real world. First, ecosystems on different continents are not strongly connected. Organisms are limited in their movement by oceans and mountain ranges, as well as by climatic factors, and while ecosystem change in one region can affect the global circulation of, for example, greenhouse gases, this signal is likely to be weak in comparison with inputs from fossil fuel combustion and deforestation. Second, the responses of ecosystems to human pressures like climate change or land-use change depend on local circumstances and will therefore differ between locations. From a planetary perspective, this diversity in ecosystem responses creates an essentially gradual pattern of change, without any identifiable tipping points. This puts into question attempts to define critical levels of land-use change or biodiversity loss scientifically. Why does this matter? Well, one concern we have is that an undue focus on planetary tipping points may distract from the vast ecological transformations that have already occurred. After all, as much as four-fifths of the biosphere is today characterised by ecosystems that locally, over the span of centuries and millennia, have undergone human-driven regime shifts of one or more kinds. Recognising this reality and seeking appropriate conservation efforts at local and regional levels might be a more fruitful way forward for ecology and global change science. Corey Bradshaw (see also notes published here on ConservationBytes.com) Let’s not get too distracted by the title of the this article – Does the terrestrial biosphere have planetary tipping points? – or the potential for a false controversy. It’s important to be clear that the planet is indeed ill, and it’s largely due to us. Species are going extinct faster than they would have otherwise. The planet’s climate system is being severely disrupted; so is the carbon cycle. Ecosystem services are on the decline. But – and it’s a big “but” – we have to be wary of claiming the end of the world as we know it, or people will shut down and continue blindly with their growth and consumption obsession. We as scientists also have to be extremely careful not to pull concepts and numbers out of thin air without empirical support. Specifically, I’m referring to the latest “craze” in environmental science writing – the idea of “planetary tipping points” and the related “planetary boundaries”. It’s really the stuff of Hollywood disaster blockbusters – the world suddenly shifts into a new “state” where some major aspect of how the world functions does an immediate about-face. Don’t get me wrong: there are plenty of localised examples of such tipping points, often characterised by something we call “hysteresis”. Brook defines hysterisis as: a situation where the current state of an ecosystem is dependent not only on its environment but also on its history, with the return path to the original state being very different from the original development that led to the altered state. Also, at some range of the driver, there can exist two or more alternative states and “tipping point” as: the critical point at which strong nonlinearities appear in the relationship between ecosystem attributes and drivers; once a tipping point threshold is crossed, the change to a new state is typically rapid and might be irreversible or exhibit hysteresis. Some of these examples include state shifts that have happened (or mostly likely will) to the cryosphere, ocean thermohaline circulation, atmospheric circulation, and marine ecosystems, and there are many other fine-scale examples of ecological systems shifting to new (apparently) stable states. However, claiming that we are approaching a major planetary boundary for our ecosystems (including human society), where we witness such transitions simultaneously across the globe, is simply not upheld by evidence. Regional tipping points are unlikely to translate into planet-wide state shifts. The main reason is that our ecosystems aren’t that connected at global scales.

#### No impact to bio-diversity loss - their ev is bad science

**Hance, Mongabay senior writer, 2013**

(Jeremy, “Warnings of global ecological tipping points may be overstated”, 3-5, <http://news.mongabay.com/2013/0305-hance-tipping-points.html#r2IbUBDMyux2eU7i.99>)

There's little evidence that the Earth is nearing a global ecological tipping point, according to a new Trends in Ecology and Evolution paper that is bound to be controversial. The authors argue that despite numerous warnings that the Earth is headed toward an ecological tipping point due to environmental stressors, such as habitat loss or climate change, it's unlikely this will occur anytime soon—at least not on land. The paper comes with a number of caveats, including that a global tipping point could occur in marine ecosystems due to ocean acidification from burning fossil fuels. In addition, regional tipping points, such as the Arctic ice melt or the Amazon rainforest drying out, are still of great concern. "When others have said that a planetary critical transition is possible/likely, they've done so without any underlying model (or past/present examples, apart from catastrophic drivers like asteroid strikes)," lead author Barry Brook and Director of Climate Science at the University of Adelaide told mongabay.com. "It’s just speculation and we’ve argued [...] that this conjecture is not logically grounded. No one has found the opposite of what we suggested—they’ve just proposed it." According to Brook and his team, a truly global tipping point must include an impact large enough to spread across the entire world, hitting various continents, in addition to causing some uniform response. "These criteria, however, are very unlikely to be met in the real world," says Brook. The idea of such a tipping point comes from ecological research, which has shown that some ecosystems will flip to a new state after becoming heavily degraded. But Brook and his team say that tipping points in individual ecosystems should not be conflated with impacts across the Earth as a whole. Even climate change, which some scientists might consider the ultimate tipping point, does not fit the bill, according to the paper. Impacts from climate change, while global, will not be uniform and hence not a "tipping point" as such. "Local and regional ecosystems vary considerably in their responses to climate change, and their regime shifts are therefore likely to vary considerably across the terrestrial biosphere," the authors write. Barry adds that, "from a planetary perspective, this diversity in ecosystem responses creates an essentially gradual pattern of change, without any identifiable tipping points." The paper further argues that biodiversity loss on land may not have the large-scale impacts that some ecologists argue, since invasive species could potentially take the role of vanishing ones. "So we can lose the unique evolutionary history (bad, from an intrinsic viewpoint) but not necessarily the role they impart in terms of ecosystem stability or provision of services," explains Brook. The controversial argument goes against many scientists' view that decreased biodiversity will ultimately lessen ecological services, such as pollination, water purification, and carbon sequestration.

#### Cascade scenarios aren't possible

**Zeller, Huffington Post senior writer, 2013**

(Tom, “Tipping Points: Can Humanity Break The Planet”, 3-2, <http://www.huffingtonpost.com/tom-zeller-jr/global-tipping-points_b_2793154.html>)

As for Planet Earth, a paper published Thursday in the journal Trends in Ecology and Evolution suggests that while human society does a very thorough job of modifying and, often enough, permanently and abruptly changing the dynamics of local and regional ecosystems, the collective impact of all this on a planetary scale is too often overstated. Dire warnings that our localized impacts could trigger global-scale "tipping points," after which the spinning cogs and gears that underpin our entire terrestrial biosphere are thrown abruptly and permanently out of whack, have no scientific basis, the authors argue. Global-scale changes, such that they are, come about smoothly and slowly, they say. "This is good news because it says that we might avoid the doom-and-gloom scenario of abrupt, irreversible change," Professor Barry Brook, lead author of the paper and director of Climate Science at the University of Adelaide in Australia, said in a statement accompanying the study's release. "A focus on planetary tipping points may both distract from the vast ecological transformations that have already occurred, and lead to unjustified fatalism about the catastrophic effects of tipping points." "An emphasis on a point of no return is not particularly helpful for bringing about the conservation action we need," Brook added. "We must continue to seek to reduce our impacts on the global ecology without undue attention on trying to avoid arbitrary thresholds." This, of course, flies directly in the face of a growing body of research over the last several years -- much of it suggesting that there are very real planetary boundaries beyond which the entire terra machina starts to break down. This was the core of an extensive exploration published in the journal Nature in 2009. In an email message, James E. Hansen, who heads the NASA Goddard Institute for Space Studies and is an adjunct professor at Columbia University's Earth Institute, said that tipping points may unfold more smoothly than people generally understand, but that they represent points of no return nonetheless. He also suggested that dismissing the notion of global tipping points out of hand was a mistake. "Tipping points are real, albeit misunderstood by some people," he said. Last June, in another paper published in Nature, a team of "biologists, ecologists, complex-systems theoreticians, geologists and paleontologists, from the United States, Canada, South America and Europe," according the University of California, Berkeley, which spearheaded the study, argued that "population growth, widespread destruction of natural ecosystems, and climate change may be driving Earth toward an irreversible change in the biosphere, a planet-wide tipping point that would have destructive consequences absent adequate preparation and mitigation." The authors of Thursday's study suggest this is nonsense. To prove their point, the team of Australian, American and British scientists looked at the impacts of four fundamental ecosystem influencers: Climate change; land-use changes (turning forest to agricultural land, for example, or native grasslands to pasture); the fragmentation of various habitats; and overall reductions in the richness and diversity of species. There is little doubt that humans have a hand in all of these, and there is also little doubt they contribute to fundamental and quite often permanent changes in the way local and regional ecosystems work. As a very simple example, think of the fast-growing and aggressive plant kudzu -- artificially introduced to the U.S. by way of Japan in the late 19th century and now, well, everywhere. Amid a fertile stand of trees and scrub and their dependent wildlife, kudzu can easily take over, strangling the local native vegetation, stripping resident critters of their accustomed food sources, and, at some juncture, causing the interdependent system that had grown up in that spot to collapse, with little practical ability to bounce back. Sure, a new system is in place, but the "regime" has been changed. The authors of Thursday's study, however, suggest that the local impacts of any stressor -- be it kudzu, or even rising temperatures due to human-driven global warming -- are vastly different in disparate parts of the globe. This heterogeneity of responses suggests that, on the whole, the planetary system would remain pretty stable -- or at the very least, global-scale changes will tend to be very gradual, rather than abrupt and catastrophic.