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#### Plan: The United States federal judiciary should require the provision of transportation infrastructure investment for individuals totally deprived of transportation by holding that San Antonio Independent School District v. Rodriguez creates a total deprivation to transportation cause of action under the federal equal protection clause irrespective of discriminatory intent.

#### Advantage 1 is Discrimination:

#### Lack of adequate transportation infrastructure discriminates against the poor—they can’t get a job because they can’t afford a car:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

[\*219] The dilemma facing the poor in New Orleans during Hurricane Katrina symbolizes the larger transportation problem facing the poor in the U.S. They often bear the brunt of the nation's transportation problems. During the 1950s, the first major decade of interstate highway construction in the U.S., over 350,000 homes were raised, and new highways were often placed in poor communities. n42 Today, even though most individuals live near road networks, ninety percent of former welfare recipients do not have access to a car. n43 Less than half of all jobs in the U.S. are accessible by public transportation. n44 Poorer individuals like welfare recipients, most of whom cannot or can only barely afford a car, are shut out from half of all jobs in the country. n45 Compounding the problem, most cities do not provide public transportation during the second and third shift jobs that tend to be available to the poor. n46 Unable to afford a car and without any method of commuting to work, many welfare recipients are unable to find jobs. n47

#### Poverty is the equivalent to a thermonuclear war between Russia and the US – this systemic impact is bigger and more probable than any war

James Gilligan, 2000 Department of Psychiatry at Harvard Medical School, 2000 edition, Violence: Reflections on Our Deadliest Epidemic, p. 195-196

The 14 to 18 million deaths a year caused by structural violence compare with about 100,000 deaths per year from armed conflict. Comparing this frequency of deaths from structural violence to the frequency of those caused by major military and political violence, such as World War II (an estimated 49 million military and civilian deaths, including those caused by genocide--or about eight million per year, 1935-1945), the Indonesian massacre of 1965-1966 (perhaps 575,000 deaths), the Vietnam war (possibly two million, 1954-1973), and even a hypothetical nuclear exchange between the U.S. and the U.S.S.R (232 million), it was clear that even war cannot begin to compare with structural violence, which continues year after year. In other word, every fifteen years, on the average, as many people die because of relative poverty as would be killed in a nuclear war that caused 232 million deaths; and every single year, two to three times as many people die from poverty throughout the world as were killed by the Nazi genocide of the Jews over a six-year period. This is, in effect, the equivalent of an ongoing, unending, in fact accelerating, thermonuclear war, or genocide, perpetrated on the weak and poor every year of every decade, throughout the world.

#### And, minorities are adversely affected when transportation options are not available to them:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

The poor in the U.S. are left in a quandary. They cannot afford a car, and the state may curtail their ability to use other transportation modes, sometimes intentionally. n65 Even if their rights to use other modes are not curtailed, a strong probability exists that they do not think they [\*223] have safe facilities nearby to bicycle or walk. n66 Nor do they likely have reasonable access to public transportation if they live anywhere outside of a large city. n67 Compounding the problem is the fact that many public transportation users are minorities. "Nationally, public transportation users are disproportionately minorities with low to moderate incomes." n68 Minorities are hit hardest in cities, where "[A]frican Americans and Latinos together comprise 54 percent of public transportation users . . . [nationally] just 7 percent of white households do not own a car, compared with 24 percent of African American households, 17 percent of Latino households, and 13 percent of Asian American households." n69 Minority populations are hit harder when public transportation is not available. n70 Sidewalks and other engineering solutions create a safe environment for alternative transportation. In many cases, if safe facilities existed, it would be possible to travel by non-motorized transportation: According to the 1995 Nationwide Personal Transportation Survey, 25% of all trips are made within a mile of the home, 40% of all trips are within two miles of the home, and 50% of the working population commutes five miles or less to work - all distances easily traveled by bike. Yet more than 82% of trips five miles or less are made by personal motor vehicle. n71

#### REJECT RACISM AT EVERY TURN:

BARDNT 1991 (JOESEPH, MINISTER, DISMANTLING RACISM)

To study racism is to study walls. We have looked at barriers and fences, restraints and limitations, ghettos and prisons. The prison of racism confines us all, people of color and white people alike. It shackles the victimizer as well as the victim. The walls forcibly keep people of color and white people separate from each other; in our separate prisons we are all prevented from achieving the human potential that God intends for us. The limitations imposed on people of color by poverty, subservience, and powerlessness are cruel, inhuman, and unjust; the effects of uncontrolled power, privilege, and greed, which are the marks of our white prison, will inevitably destroy us as well. But we have also seen that the walls of racism can be dismantled. We are not condemned to an inexorable fate, but are offered the vision and the possibility of freedom. Brick by brick, stone by stone, the prison of individual, institutional, and cultural racism can be destroyed. You and I are urgently called to join the efforts of those who know it is time to tear down once and for all, the walls of racism.

#### The plan requires a massive change in transportation infrastructure to protect the rights of the poor and minorities:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

Could a state justify state action that limits non-motor vehicle use under a total deprivation challenge? This remains an open question, and by no means an easy one. A reviewing court could apply intermediate scrutiny to intrastate travel litigation n351 or strict [\*265] scrutiny to interstate travel cases. n352 As in Lutz, a court might easily find that restrictions on automobiles are a significant state interest. n353 However, in the context of poverty and lack of mobility, a court could also easily find that deprivation of transportation access can not be justified by policy arguments -- particularly when public transportation, bicycling, and walking accommodation exist as feasible solutions. In the end, courts will have to decide whether the transportation rights involved are significant enough to be considered "penalties" that warrant interference with legislative policy decisions. It will probably remain true that a rich man will drive in a limousine, while a poor man will have to walk. Nevertheless, the total deprivation doctrine of the Equal Protection Clause offers a legitimate pathway towards protecting the rights of poor individuals to walk, bicycle, and use public transportation. The Supreme Court's repeated protection of poorer individuals' travel rights indicates that total deprivation claims have a significant likelihood of success. n354 Non-automobile users finally have the vehicle they need to achieve a balanced transportation system. n355 This Comment has endeavored to show that some forms of transportation do not have to be more equal than others. While the Monarch decision and its progeny suggest the non-existence of a constitutional right to use a particular travel mode, Supreme Court case law [\*266] remains sympathetic to a person with no travel options. n356 Neither the Supreme Court, nor the lower courts, has considered a case where an individual, either by choice or because of poverty, literally has no way of reaching a destination absent a motor vehicle. Considering the general state of the transportation infrastructure in the United States, particularly in rural areas, it is certainly possible to imagine such a scenario. n357 If such a case ever does wind its way through the courts, ample Supreme Court and lower court case law exists to maintain that an individual does have a right to reach a destination, at least through an inexpensive and reasonable means like bicycling or walking. In sum, the constitutional right to travel, combined with the total deprivation doctrine under the Equal Protection Clause, can help reverse America's addiction to the automobile.

#### Advantage 2: Discriminatory Intent

#### The plan creates a precedent for causes of action of total deprivation under the Fourteenth Amendment:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

This Comment will explore the laws that affect an individual's ability to choose a particular travel mode. It will review the implications of legal rules that hinder the use of nonmotorized transportation modes. The Comment is divided into four parts. Part I places the legal discussion in context by describing the current problems with the transportation system, and by providing an overview of the evolution of the American transportation system from its beginnings to its present state. Part II reviews cases involving constitutional rights to interstate travel and intrastate travel. n25 Legal developments in the right to travel between states, and within one state, will provide insight into rights that might be attached to travel by a particular mode. Part III addresses the countervailing trends in the development of legal rights from the [\*217] perspective of transportation modes. While American courts have been quite unwilling to create a constitutional right to drive an automobile, the Supreme Court seems protective of a "freedom of movement" doctrine that protects an individual's right to travel as a pedestrian. n26 Part IV addresses the legal implications of the current transportation situation in the U.S. The Comment concludes by arguing that a denial of access to the transportation system creates a cause of action under the federal equal protection doctrine of "total deprivation" laid out in San Antonio Independent School District v. Rodriquez. n27

#### This precedent will undermine the Fourteenth Amendment doctrine of racially discriminatory intent:

Michelle Wilde **Anderson, 2010** (Assistant Professor of Law @ UC Berkeley Law School, “MAPPED OUT OF LOCAL DEMOCRACY,” Stanford Law Review, April 2010, Lexis/Nexis, rwg)

When politics fail, municipal underbounding seems ripe for a litigation solution that reflects the problem's history of racial segregation and racially ordered provision of municipal services and voting rights. Residents of many unincorporated urban areas see their status as the result of past and present racial discrimination in annexation, and their stark demographics (suburban neighborhood of color outside city lines, suburban white neighborhoods inside) give commonsense credence to their perspective. Yet addressing any problem of spatial inequality--be it racial segregation, disparities in neighborhood [\*960] services, or discriminatory annexation, to name a few--through a civil rights lawsuit faces formidable, well-known doctrinal barriers. Such cases must surmount, among other obstacles, the constitutional requirement of proving racially discriminatory intent and the increasingly extensive statistical proof required to establish a disparate impact claim under statutory protections like the Fair Housing Act. n102 In the context of municipal underbounding, those familiar challenges of proof are followed by an additional barrier: federal courts are reluctant, or perhaps even unwilling, to move a local border. Only a narrow band of factual scenarios can be redressed with existing antidiscrimination protections, and even in those cases, local autonomy to establish and move local borders has come to serve not only as a license to behave in any way consistent with state law, but also as a quasi-affirmative defense to claims that racial discrimination was a motivating force behind service or annexation decisions. This Part discusses this particular barrier to using civil rights laws as a strategy to address municipal underbounding.

#### Scenario 1 is the Death Penalty

#### Challenging the doctrine of discriminatory intent allows successful challenges to the death penalty:

Lucy **Adams, 2005** (Bachelor of Laws, University of Melbourne, Summer 2005, “Death By Discretion: Who Decides Who Lives and Dies in the United States of America?” Lexis/Nexis, rwg)

The decision in McCleskey has been described as "a badge of shame upon America's system of justice ... [and] a manifestation of indifference on the part of the Court to secure justice for racial minorities." [n74](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n74) The majority opinion stated that for McCleskey to prevail under the Equal Protection Clause he needed to present "exceptionally clear proof" [n75](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n75) that "decisionmakers in his case acted with discriminatory purpose." [n76](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n76) The Court held that he had offered "no evidence specific to his own case" [n77](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n77) in support of the inference that racial considerations played a part in his sentence; and a fifty-one percent disparity between the capital prosecutions for crimes involving white victims and those involving black was apparently not "stark" enough to be accepted as proof of discriminatory intent. [n78](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n78) Analogues have been drawn between this burden of proof and the insurmountable one established in Swain v. Alabama in 1965. [n79](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n79) Swain has since been recognized as an indictment on the United States criminal justice system, and some may hope that the same fate awaits McCleskey. [n80](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n80) In the interim, however, obsequiousness to the discretion of the prosecutor, and a phobia of disrupting "the heart of the State's criminal justice system" [n81](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n81) shape the burden of proof required to establish discriminatory intent in the prosecutor's decision to seek the death penalty. This burden has subsequently been invoked by lower courts in a way that undermines the ability of defendants to challenge their capital prosecution under the  [\*395]  "ordinary equal protection standards" requiring a showing that it "had a discriminatory effect and that it was motivated by a discriminatory purpose." [n82](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342982478941&returnToKey=20_T15176132283&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.780000.5734116802" \l "n82) It has served to deprive defendants of any means of judicial redress in the face of the race-based selective prosecution that it is all too obvious.

#### Death penalty results in the execution of the innocent:

Jessica **Pham, 2012** (“U.S. Must Abolish the Death Penalty Before Criticizing Others on Human Rights Record,” Accessed 7/26/2012 at <http://policymic.com/articles/8577/u-s-must-abolish-the-death-penalty-before-criticizing-others-on-human-rights-record>, rwg)

So far this year, we have seen many headlines featuring the U.S. urging leaders of other nations to democratize and ensure its citizens basic civil and human rights. In Myanmar, the administration has been responding to the country's political transformation and is supportive of Aung San Suu Kyi’s new role in the government. In China, it has been weighing a delicate balance between maintaining good political relations while urging human rights consideration in the case of Chinese dissident Chen Guangcheng. And in Syria, it has continued to support the opposition group that is fighting against tyranny.¶ However, for all of its efforts in fighting injustices abroad, the U.S. has its own serious form of injustice at home – the death penalty. As an Atlantic article points out, the U.S.’s support of the death penalty puts it into the same category as the world’s worst dictatorships and autocracies, such as North Korea, Iran, and Syria; and the world’s failed or failing states, such as Somalia, Afghanistan, and Sudan.¶ The death penalty may be one of the greatest violations of civil and human rights, particularly when there has been a large number of cases where innocent people – often having been proven innocent too little too late – are the victims of state-sponsored execution. According to Amnesty International, “The death penalty, both in the U.S. and around the world, is discriminatory and is used disproportionately against the poor, minorities and members of racial, ethnic and religious communities. Since humans are fallible, the risk of executing the innocent can never be eliminated.”

#### Moral obligation to protect innocent life—this outweighs nuclear war:

David Oki **Ahearn, &** Peter R. **Gathje, 2005** (Doing Right and Being Good, pg. 255)

Not every moral issue undermines or threatens life in the same way. Abortion is the direct taking of human life (in my view) right now; **nuclear, biological, or chemical war may happen** and must be prevented, **but is not happening now**. That makes it a threat to life at this stage. Generally, the more direct and immediate is the life-taking, the **more direct and immediate is our moral obligation to address it.** In war, a distinction is drawn between the **taking of innocent life** and combatant life. Unless one is a pacifist, it is assumed that combatants will die in war and that this is morally permissible (though tragic) if the war is just. A consistent life ethic may lead one to pacifism, for me, it leads to a very strict application of just war theory and the desire for a culture and an international order that cherishes peace and life rather than reveling in death. But under no legitimate Christian approach to war is genocide or other **intentional taking of noncombatant life morally permissible.**

#### Decisions against the death penalty bolster US human rights credibility:

Neal Rosendorf, 3/26/2009 (“NEW MEXICO’S DEATH PENALTY REPEAL AS US SOFT POWER ASSET,” [http://uscpublicdiplomacy.org/index.php/newswire/cpdblog\_detail/new\_mexicos\_death \_penalty\_repeal\_as\_us\_soft\_power\_asset/](http://uscpublicdiplomacy.org/index.php/newswire/cpdblog_detail/new_mexicos_death%20_penalty_repeal_as_us_soft_power_asset/)

On March 18, 2009, New Mexico Governor Bill Richardson signed legislation overturning the state’s longstanding death penalty. The “Land of Enchantment”, as the state calls itself, joined fourteen other US states that ban capital punishment and became only the second to do so since the end of a four-year national execution hiatus in 1976. At the signing ceremony, the Governor spoke about his rationale for backing the legislation; focusing on issues like the skewed application of the death penalty toward the poor and minorities, the potential abuse of prosecutorial powers, and the possibility of executing an innocent person. Near the end of his remarks Richardson, a former US ambassador to the United Nations, added briefly, “From an international human rights perspective, there is no reason the United States should be behind the rest of the world on this issue. Many of the countries that continue to support and use the death penalty are also the most repressive nations in the world. That's not something to be proud of.” Although Richardson spent far more time in his comments noting domestic as opposed to international factors affecting his thinking, his decision is arguably more significant in terms of shoring up American soft power abroad than in terms of influencing the debate at home. New Mexico executed just one criminal between 1960 and 2009. Richardson’s action is unlikely to sway New Mexico’s colossal neighbor Texas, America’s death penalty capital, where three-quarters of residents support executions for murderers (link, see table 5.2). Nation-wide, Americans are split down the middle over whether capital punishment is preferable to life imprisonment without parole. It’s likely to be quite some time before there is a national critical mass in favor of abolishing executions, although New Mexico does add incremental support.

#### The death penalty undermines human rights cooperation with the US on a host of issues:

Jurist, legal news from University of Pittsburgh School of Law, 10

(The Jurist, a Web-based legal news and real-time legal research service powered by a mostly-volunteer team of over 30 part-time law student reporters, editors and Web developers led by law professor Bernard Hibbitts at the University of Pittsburgh School of Law, March 3, 2010, “US death penalty stance increasingly at odds with international community” <http://jurist.law.pitt.edu/hotline/2010/03/us-death-penalty-stance-increasingly-at.php>, lkh)

Richard Dieter [Executive Director, Death Penalty Information Center]: "The United States is often rightly seen as a world leader in human rights. But we have become increasingly isolated from the international community in one respect - our persistent use of the death penalty. The worldwide trend is clearly away from capital punishment. The United Nations, a recent World Congress in Geneva, and our allies in the European Union are all calling for an end to the death penalty. The US is not only among a dwindling minority of countries with an active death penalty, we are one of only a tiny handful of nations that actually carries out executions on a regular basis. Only in the Middle East and in some Asian countries are the number of executions comparable to those in the US every year. These are the same countries that the US frequently admonishes to improve their human rights record. The US should not amend its law simply because other countries have done so. But our use of the death penalty is so far outside the stream of human rights that it is approaching the position of South Africa before apartheid was ended. The US was in the forefront of that movement, applying pressure and international sanctions until world opinion prevailed. The need for international cooperation is even more apparent than it was twenty years ago. We cannot and do not want to "go it alone" in areas of trade, resisting terrorism, or improving the environment, but we may become the last country standing with the death penalty. The use of the death penalty is already declining in the US, reflecting the growing recognition that it is both too fallible and corruptible a system to meet the standards of justice in the twenty-first century. Death sentences, executions, the size of death row, and even the number of states with the death penalty have all dropped in the past few years. What we hold onto is a politically driven myth. Clearly, the death penalty in the US is not needed - the vast majority of murders, including many of the most heinous, are not punished with the death penalty. Police chiefs, leading criminologists, and the general public do not believe the death penalty serves as a deterrent to crime. It is kept in place because it is politically hard to get rid of, not because it serves any criminological purpose. It is time for a national dialogue on the death penalty, one that is open to what the rest of the world has to say."

#### Human Right Credibility solves extinction

**Copelan, ’99**, NYT Law Professor

[Rhonda, “The Indivisible Framework of International Human Rights: A Source of Social Justice in the U.S,” New York University Law Review, p. 71-2]

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

#### Human rights prevent global slavery and war.

William W. **Burke-White**, Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University The Harvard Environmental Law Review Spring, **2004** LN

The second effect of institutionalized protections of human rights is to set a minimum floor of treatment for all citizens within the domestic polity. Even in a non-democracy, minimum human rights protections ensure that  [\*266]  rights are accorded to individuals not directly represented by the government. By ensuring a minimum treatment of the unrepresented, human rights protections prevent the government from externalizing the costs of aggressive behavior on the unrepresented. In human rights respecting states, for example, unrepresented individuals cannot be forced at gunpoint to fight or be bound into slavery to generate low-cost economic resources for war, and thus restrain the state from engaging in aggressive action. On the other hand, in a state where power is narrowly concentrated in the hands of a political elite that systematically represses its own people, the state will be more able to bear the domestic costs of war. By violating the human rights of its own citizens, a state can force individuals to fight or support the military apparatus in its war-making activities. Similarly, by denying basic human rights, a state may be better able to bear the political costs of war. Even if such a state had fair elections, denial of freedom of thought and expression might well insulate the government from the electoral costs of an aggressive foreign policy.

#### Scenario 2 is environmental justice:

#### The discriminatory intent doctrine of the Fourteenth Amendment devastates the success of environmental justice movements in the United States:

Michael B. **Gerrard, 2001** (partner in the New York office of Arnold & Porter, Albany Law Review, 65 Alb. L. Rev. 357, “REFLECTIONS ON ENVIRONMENTAL JUSTICE,” Lexis/Nexis, rwg)

The basic idea underlying environmental justice is that minority and low income individuals and communities should not be disproportionately exposed to environmental hazards and should be able to participate meaningfully in the decisions that affect their exposure to those hazards. Environmental justice first became a major issue in 1987 with the publication of a report called Toxic Wastes and Race in the United States, n3 published by the [\*358] Commission of Racial Justice of the United Church of Christ, concluding that the racial characteristics of a community were the most important single indicator of proximity to hazardous waste sites. A lot of methodological issues have been raised about that study, but it had a tremendous impact. The first fundamental legal basis for environmental justice law is the Equal Protection Clause of the United States Constitution. However, plaintiffs seeking to use the Equal Protection Clause to bring complaints on environmental justice grounds have uniformly failed because the courts require a showing of discriminatory intent before allowing an equal protection claim, and no one has ever been able to prove discriminatory intent in the environmental justice context of a litigation.

#### Environmental justice is crucial to access to water and human survival:

Melissa **Vargas, 2009** (May 2009, Master of Arts in English, Literature

Boise State University, CONFRONTING ENVIRONMENTAL AND SOCIAL CRISES:

OCTAVIA E. BUTLER’S CRITIQUE OF THE SPIRITUAL ROOTS OF

ENVIRONMENTAL INJUSTICE IN HER PARABLE NOVELS, http://scholarworks.boisestate.edu/cgi/viewcontent.cgi?article=1017&context=td)

Like environmental justice critics, Lauren sees the connections between environmental disasters and social crises, and her own text, her journal, allows her to represent her world in a way that interprets reality and bestows meaning upon the events she witnesses. As Lauren begins to describe the world around her in her journal, it quickly becomes clear that global warming and severe climate change have led to American society’s deterioration. The severity of the environmental disaster is evident in Lauren’s journal entry about a rainstorm, the first in six years. She writes that water has become precious and expensive because of the drought and describes her family’s efforts to catch and store as much of the rainwater as possible. She writes, “the barrels and things we put out are full or filling. Good, clean, free water from the sky. If only it came more often” (Sower 48). Indeed, water has become so scarce that the majority of the community’s money is used to buy food and water, and they can no longer afford to spend money on luxuries like gasoline, which Lauren’s family never uses, and electricity, which Lauren’s family uses sparingly. At one point Lauren writes, “Dad says water now costs several times as much as gasoline” (Sower 18). The focus on water scarcity in Parable of the Sower is not without cause. Concerns about water, one of the absolute necessities for human survival, are frequently raised in environmental justice criticism. For example, environmental justice activist Devon Peña discusses the importance of water, calling it “one of the most pivotal ecological struggles of contemporary times [because] [u]nder the capitalist system we have a very complex set of struggles that are emerging around the commodification and privatization of water” (22). The very idea that those in power can control and profit from water is troubling because it means that they could potentially withhold water from those who can’t afford it, and it becomes far more troubling in Parable of the Sower when the commercialization of the water supply determines who will live and who will die.

#### Scenario 3 is Patriarchy:

#### The discriminatory intent doctrine of the Fourteenth Amendment devastates efforts at promoting equality between the sexes:

Christopher D. **Totten, 2003** (Visiting lecturer, West Virginia University College of Law, Berkeley Journal of International Law, 21 Berkeley J. Int'l L. 27, “Constitutional Precommitments to Gender Affirmative Action in the European Union, Germany, Canada and the United States: A Comparative Approach,” L/N, rwg)

The predicate for gender affirmative action conflicts with the American practice of accounting only for direct, intentional discrimination under equal protection analysis. n180 Gender affirmative action aims at countering laws with a discriminatory intent and those with a discriminatory effect; consequently, in a constitutional environment like that of the United States, which recognizes only discriminatory intent, gender affirmative action measures have less potential for effecting change in society. The difficulty of proving discriminatory motive in the design of a law results in courts striking down fewer laws as unconstitutional; in turn, legislative bodies employ gender affirmative action less frequently. The United States lacks jurisprudence reflecting the need to effect the systematic amelioration of a disadvantaged group. n181 Since gender affirmative [\*58] action reflects this goal, one cannot characterize the United States' constitutional environment as conducive to measures designed to improve the condition of women in society.

#### Failure to solve gender discrimination guarantees extinction:

Clark 4 Mary E., PhD and professor of biological studies @ Berkeley, "RHETORIC, PATRIARCHY & WAR: EXPLAINING THE DANGERS OF "LEADERSHIP" IN MASS CULTURE", <http://goliath.ecnext.com/coms2/gi_0199-4005307/Rhetoric-patriarchy-war-explaining-the.html>

I begin by questioning the notion that patriarchy is a "natural" or "inevitable" form of human society. By "patriarchy" I do not mean a community or society where males hold political positions as spokespersons for the whole and often are adjudicators of local disputes. This "male function" is common in tribal and indigenous societies. But men's power over others is severely limited and generally held only at the pleasure of the entire group, especially the elder women. (4) Patriarchies, rather, are those much larger societies where not only is there gender dominance; they also are highly class-structured, with a small, powerful elite controlling the rest of society, A short history of these entities is necessary to understand today's dilemma. Rigidly controlled patriarchies have evolved and disintegrated at many times and in many places in the past few millennia of human existence-which, being the era of written history, is the condition of humankind most familiar to us. But, as I have argued elsewhere (5) this was an unknown political condition throughout earlier human existence, when small, egalitarian, highly dialogic communities prevailed. Even today, small remnants of such societies still exist in comers of the planet that escaped the socially destructive impact of Western colonization. Modern Western "democracies" are, in fact, patriarchal in structure, evolving out of the old, male-dominated aristocracies of late-Medieval Europe. Those historic class/caste hierarchies were legitimized by embedded religious dogma and inherited royal authority. Together, church and monarch held a monopoly of physical and economic power, creating politically stable, albeit unjust, societies. During the gradual development of the religious Reformation, coupled with the Enlightenment's concept of the "individual citizen," emerging egalitarian ideas threatened to destabilize the social coherence of patriarchal regimes. At the same time, principalities and dukedoms were fusing into kingdoms; kingdoms, in turn, were joining together as giant nation states. The United Kingdom was formed of England, Wales and Scotland-each a fusion of local earlier dukedoms. City States of Italy fused rather later. Bismarck created the "Second Reich" out of diverse German-speaking princedoms in the 1870s. And, adding to this growth in the sheer size of patriarchies there was a doubling of populations every couple of generations. Nation-states emerged as "mass cultures," with literally millions of persons under the control of a single, powerful government. The centralized physical power possessed by most of these several industrializing European nations matched or exceeded that of ancient Rome. To achieve coherence of such societies demanded a new legitimating force to create a broad base of support among giant, diverse populations. The erosion of the belief that classes were a god-given, "natural" state of affairs was hastened by the introduction of low-cost printing and rapidly growing levels of literacy (both necessary to underpin the new Industrial Age). These politically equalizing forces unleashed a host of social discontents that had to be controlled. The old religious threats of damnation or excommunication were fast losing their force, and new legal systems circumscribed the absolute powers of monarchs to control social behavior. This very cacaphony of voices threatened the stability of the new giant states. The "solution," of course, was to take control of the public dialogue, to define the legitimate "topics of conversation." This is the primary role of political "leadership" in today's mass societies, and that leadership uses two major tools to wield its influence: rhetoric and the mass media. I suggest, then, that the high potential for internal instability in giant patriarchal states is a primary factor in setting the stage for today's global insecurity and the extreme militaristic rhetoric that exists both within and between nations. Before continuing this discussion of patriarchy's dangers, I would note that, although in modern Western patriarchies the domination of women by men is less evident as women have gained increasing political and economic status, women with such status tend to assume the "shoulder pads" and "language" of men when it comes to political and economic institutions. Women like Indira Gandhi, Prime Minister of India, Golda Melt, Israeli Prime Minister; Jeane J. Kirkpatrick, Reagan's Ambassador to the United Nations; Madeleine Albright, Clinton's Secretary of State; Margaret Thatcher, Britain's Prime Minister; and Condoleezza Rice, George W. Bush's Security Advisor, come readily to mind. (Thatcher cites the following terms the media applied to her: Iron Lady, Battling Maggie, and Attila the Hen. (6)) The glass ceiling in the corporate world has proved harder to crack, however, so fewer well-known examples exist there of powerful females. (Katherine Graham, who became publisher of the Washington Post after the death of her husband, was one of the few powerful women who to her credit, did not adopt the patriarchal mode.) Hence, I regard the Western nations' politico-economic world view as very much in accordance with that of historical patriarchies, with perhaps one or two Scandinavian exceptions. I thus conclude that the language of international politics today is "gendered" by the political insecurity experienced by leaders of earlier patriarchies, and that the presence of women in such governments has little effect on the framework of public dialogue. (I recall hearing Geraldine Ferraro, when running for Vice-President in 1984, assure an interviewer that she would not hesitate to push the "nuclear button" if necessary.) Hence, it is not our X and Y chromosomes that are at issue here; it is the gendered world view that underpins our institutions and frames our behaviors. As long as those in power "think" in this patriarchal box, we will live in a globally-armed camp, where war-leading even to the annihilation of our species-is a constant, real possibility.

#### Advantage 3 is the Right to Travel:

#### Use of the Equal Protection Clause is crucial to protect the right of the poor to travel:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

[\*257] Before the rise of modern roadway engineering and the automobile, alternative travel modes were popular. Individuals from all socio-economic backgrounds were able to move throughout the country. n303 Bicycling, walking, and public transportation were all viable modes of transportation. n304 Since the Great Depression, however, the United States has become increasingly reliant on the automobile for transportation. Today, in many areas of the country, it is practically impossible to reach a destination with any form of transportation other than an automobile. n305 Perhaps the **most promising legal doctrine** to **protect the travel rights of poor individuals** is the Equal Protection Clause of the Fourteenth Amendment. n306 In Plyler v. Doe, the Supreme Court reaffirmed the principle that the Equal Protection Clause requires that all persons in similar circumstances should be treated alike. n307 The Plyler Court noted that, "[i]n applying the Equal Protection Clause to most forms of state action, [the Court] seek[s] only the assurance that the classification at issue bears some fair relationship to a legitimate state purpose." n308 However, the Plyler Court went on to remark: But we would not be faithful to our obligations under the Fourteenth Amendment if we applied so deferential a standard to every classification. The Equal Protection Clause was intended as a restriction on state legislative action inconsistent with elemental constitutional premises. Thus we have treated as presumptively invidious those classifications that disadvantage a "suspect class," or that impinge upon the exercise of a "fundamental right." With respect  [\*258]  to such classifications, it is appropriate to enforce the mandate of equal protection by requiring the State to demonstrate that its classification has been precisely tailored to serve a compelling governmental interest. In addition, we have recognized that certain forms of legislative classification, while not facially invidious, nonetheless give rise to recurring constitutional difficulties; in these limited circumstances we have sought the assurance that the classification reflects a reasoned judgment consistent with the ideal of equal protection by inquiring whether it may fairly be viewed as furthering a substantial interest of the State. [n309](http://www.lexisnexis.com.ezproxy.samford.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1342987805162&returnToKey=20_T15176333790&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.891788.2301006516" \l "n309)

#### Other democracies will model the plan:

LUÍS ROBERTO **BARROSO, 2012** (Professor of Constitutional Law, Rio de Janeiro State University, Spring, 2012, Boston College International and Comparative Law Review, 35 B.C. Int'l & Comp. L. Rev. 331, L/N, “HERE, THERE, AND EVERYWHERE: HUMAN DIGNITY IN CONTEMPORARY LAW AND IN THE TRANSNATIONAL DISCOURSE,” rwg)

In recent years, constitutional and supreme courts all over the world have begun engaging in a growing constitutional dialogue n88 involving **mutual citation** and academic interchange n89 in public forums like the Venice Commission. n90 Two factors contribute to the deepening of this dialogue. First, countries that are newcomers to the rule of law often draw upon the experience of more seasoned democracies. In the past several decades, waves of democratization have spread across the world, including Europe in the 1970s (Greece, Portugal, and Spain), Latin America in the 1980s (Brazil, Chile, and Argentina), and Eastern and Central Europe in the 1990s. n91 The U.S. Supreme Court, the German Constitutional Court, and other similar national courts serve as significant role models for these new democracies. n92 Even though the flow of ideas is primarily one directional, it is, as with any other exchange, a two-way street.

#### Freedom to travel is key to the preservation of democracy:

Stetler, 1966 Director of Investigation and Mitigation at the New York Capital Defender Office, 66

(Roy, 4-1966, http://www.unz.org/Pub/LeftRight-1966q2-00058, “The Freedom to Travel”, TVB)

The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law of the Fifth Amendment. So much is conceded by the Solicitor General. In Anglo-¶ Saxon law that right was emerging at least as early¶ as the Magna Carta. Chafee, Three Human Rights in the Constitution (1956), 171-181, 187 et. seq.,¶ shows how deeply engrained in our history this freedom of movement is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was part of our heritage travel¶ abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, wears, or reads. Freedom of movement is¶ basic in our scheme of values.¶ wrote Chafee, 'has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases.'¶ Id.,at 197. ¶ 'Freedom of movement also has large social values. As Chafee put it,¶ Foreign correspondents and lecturers on public affairs need first-hand information. Scientists and scholars gain greatly from consultations with colleagues in other countries. Students equip themselves for more fruitful careers in the United States by instruction in foreign universities. Then there are reasons close to the core of personal life -- marriage, reuniting families, spending hours with old friends. Finally, travel abroad enables American citizens to understand that people like themselves live in Europe and helps them to be well-informed on public issues.¶ The Supreme Court has spoken eloquently and clearly on the value of freedom to travel. It has regarded it as a precious liberty, already enshrined in the glorious tradition dating from the Magna Carta. The right to travel has been viewed as basic to the preservation of democracy.

#### Democracy promotion key to preventing inevitable extinction

**Diamond**, senior research fellow at Hoover Institution, **95**

(Larry, *Promoting Democracy in the 1990s: Actors and Instruments, Issues and Imperatives,* A Report to the Carnegie Commission on Preventing Deadly Conflict, December 1995, p. 6)

This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty, and openness.

#### Establishing the right to travel for the Palestinians facilitates a Palestinian state:

Daoud **Kuttab, 4/5/2012** (Palestinian journalist, “Bringing Together the Palestinian Divide,”

<http://www.huffingtonpost.com/daoud-kuttab/bringing-together-palestinian_b_1404751.html>)

Israel has used one excuse after another to deny the Palestinians the right to travel from one Palestinian area to another.¶ The two-state solution, which has received international support and even Israeli public approval, includes a provision that says the Palestinian territory must be contiguous. While a fast rail or a tunnel connecting Gaza and the West Bank might take some time, it is still possible to allow Palestinians to travel back and forth.¶ The ugly Israeli wall is now in place and the Israelis can install whatever security measures they wish to ensure that the safe-passage road keeps Israel safe, but to deny millions of Palestinians the right to travel to and from Gaza clearly amounts to collective punishment.¶ Shalabi's agreement to end her hunger strike and live in Gaza for three years has highlighted the absurdity of the cruel Israel policy of separating Palestinians for no reason. International peace envoys as well as Palestinian negotiators must give the issue of a free passage way between Gaza and the West Bank top priority in any talks. By removing barriers from Palestine two geographical areas will the future of a Palestinian state -- as a viable contiguous state -- to be on the right track. As such the struggle of Hana Shalabi would become of even higher importance.

#### Only lasting solution to Middle East conflict is a Palestinian state:

AVIGDOR **LIEBERMAN**, 6/23/20**10** (staff writer, “My blueprint for a resolution,” Accessed 7/27/2012 at <http://www.jpost.com/Opinion/Op-EdContributors/Article.aspx?id=179333>, rwg)

The current demands from some in the international community are to create a homogeneous pure Palestinian state and a binational state in Israel. This becomes the one-and-a-half to half state solution. For lasting peace and security we need to create true political division between Arabs and Jews, with each enjoying self-determination. Therefore, for a lasting and fair solution, there needs to be an exchange of populated territories to create two largely homogeneous states, one Jewish Israeli and the other Arab Palestinian. Of course, this is not to preclude that minorities will remain in either state where they will receive full civil rights. There will be no so-called Palestinian right of return. Just as the Jewish refugees from Arab lands found a solution in Israel, so too Palestinian refugees will only be incorporated into a Palestinian state. This state needs to be demilitarized and Israel will need to retain a presence on its borders to ensure no smuggling of arms. In my opinion, these need to be our red lines.

#### A successful Middle East peace process solves a nuclear war.

Aluf Benn, 2009 (Nuclear diplomacy in the Middle East. August 6, 2009. Online. Internet. Accessed April 26, 2010 at http://www.haaretz.com/hasen/spages/1104190.html.

After the Gulf War, Iraq's secret nuclear program was discovered and dismantled by UN inspectors. Since 1993, the knowledge that the Iranians too were striving for nuclear weapons has been at the top of Israel's strategic agenda. It led to the consolidation of the "Rabin doctrine," which was later also supported by Ehud Barak (now defense minister), and holds that it is important to complete the "peace circle" in the region before Iran attains its goal. The basic assumption was that if Israel is at peace with its neighbors, the Iranians' motivation to launch a nuclear war of annihilation will decrease. Another assumption was that it would be easier to achieve peace before the Iranian bomb leads to general radicalization in the region.

## 2ac: T-Theory Answers

### AT: Test Case FIAT (Have to have a test case)

#### We Meet: The Supreme Court can always find an excuse to decide a case:

Tracy **Bach,** 3/11/20**09** (CLI BACKGROUND PAPER NO. 6, “The Recognition of Intergenerational Ecological Rights and Duties in U.S. Law,”

<http://www.vermontlaw.edu/Documents/CLI%20Policy> %20Paper/BP\_06%20-%20%28Bach%29.pdf)

While Article III does not explicitly set out any specific standing requirements, the Supreme Court has formulated the doctrine over time and established requirements that a plaintiff must show in order to bring a case. Some commentators have described this evolution as always in flux, even asserting that courts "can always find an excuse for giving standing” if they want to get to the merits of the case.8 Many argue that the Court has restricted standing—particularly in environmental cases—to too narrow a set of individuals.9

1. We Meet: Lots of environmental justice lawsuits exist—the Court could just use one of these to make the decision:

Luke W. Cole, 1993 (Staff attorney, California Rural Legal Assistance Foundation, Fordham Urban Law Journal

Volume 21, Issue 3 1993 Article 5, “Environmental Justice Litigation: Another Stone in David’s Sling,” http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1398&context=ulj)

Many lawsuits have been brought as part of the environmental justice movement since Linda Bullard's historic case, and community groups and attorneys in the movement have learned a great deal in the past fifteen years. In this Article, I hope to synthesize some of the lessons we as movement lawyers have learned in order to offer a practitioner's perspective on environmental justice cases.

My ambition in setting out these lessons is to allow community groups and attorneys entering the struggle to learn from our mistakes,

emulate our successes, and avoid re-inventing the wheel.

#### Counter-interpretation: FIAT allows us to assume a test case exists.

#### Prefer the counter-interpretation: Their interpretation would require Congress AFF’s to prove a bill exists in a committee before it could be FIAT’ed.

#### They risk locking out Supreme Court AFF’s—denying education about a third of the federal government and how it operates.

#### Solvency advocate checks abuse: our Baldwin evidence specifically says we should use the total deprivation standard on transportation infrastructure—we aren’t inventing something out of thin air.

#### Good is good enough: Reasonability should be your standard on theory.

### AT: T—Investment

#### 1) We meet: the plan mandates investment in transportation infrastructure—that’s our Baldwin evidence in the 1ac.

#### 2) Counter-interpretation: Infrastructure investment encompasses spending on projects.

Peter **Orszag, 2009** (Dir., Congressional Budget Office), INFRASTRUCTURE: REBUILDING, REPAIRING AND RESTRUCTURING, 2009, 2-3.

Under any definition, "infrastructure investment" **encompasses spending** on a variety of projects. Transportation networks and various utilities promote other economic activities: An adequate road, for example, facilitates the transport of goods from one place to another and thereby promotes economic activity; utilities that provide such services as electricity, telecommunications, and waste disposal are also essential to modem economies. (Appendix A describes spending on research and development and on education. Those categories form the basis for supporting intellectual and human capital, respectively, and can provide benefits that are similar to those generated by infrastructure spending.)

#### 3) We meet the counter-interpretation: Supreme Court can force the legislature to provide funding:

**NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS,** 12/7/20**08** (“EDUCATION IS A CIVIL RIGHT,” <http://www.nabse.org/civilright/ecrlegalrationale91808.pdf>, rwg)

At the time of Rodriguez, the Court may have been correct to treat education as being no different than any other public benefit that a state provides. But since then, state courts, and legislatures, have established that education is far different. In all fifty states, education is a constitutional right.[38] That right is further¶ defined, specified and regulated by extensive statutory schemes in every state.[39] Most important, over half¶ of the state supreme courts have ruled that the constitutional right to education gives plaintiffs a cause of¶ action to force the state to provide appropriate resources and/or tax structures.[40] Thus, education is not on¶ the level of a bus voucher, housing, health care, food stamps, police protection, or any other state benefit.

#### 4) No different than the Congress: Court decisions have the power and permanency of law:

**This Nation.com, 2008** (“Supreme Court Decision Making,” <http://www.thisnation.com/textbook/judiciary-decision.html>, Accessed 7/25/2012, rwg)

Interpretation as law A prominent attorney who had argued hundreds of cases before the Supreme Court once remarked that the Supreme Court is not final because it's right, it is right because it is final. The Court's position as the court of last appeal and as the highest court in the land means that **its decisions are binding** and largely unchangeable. Once the Court has ruled, its decisions have all the effect and permanency of law.

#### 5) Previous decisions prove—the plan can bring massive amounts of funding to public transportation:

Richard **Marcantonio and** Marc **Brenman, 2012** (Managing Attorney for Public Advocates Inc., “Lessons from the History of Transportation Justice,” <http://equity.lsnc.net/lessons-from-the-history-of-transportation-justice/>, Accessed 7/25/2012, rwg)

The Metropolitan Transportation Authority (MTA), L.A.’s transit operator, ran both bus and light rail service. In 1994, when MTA raised bus fares again, the Bus Riders Union followed the money and discovered that their fare increase was slated to build a new rail line to the suburbs. They filed a landmark lawsuit under Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination by recipients of federal funding. They negotiated a consent decree, and then carefully monitored MTA’s compliance with its terms. The outcome was over **$1 billion in bus service improvements** spanning a 10-year period. The Bus Riders Union forced MTA to add hundreds of thousands of hours of service, to keep fares affordable and to reduce overcrowding. A new vision of equity was at the heart of their campaign. They saw that bus service was a critical gate to opportunity for low-income communities of color. And they also paid close attention to the links to public health and the environment. In fact, a direct outcome of the settlement is that MTA now runs the largest fleet of clean fuel buses in the nation. The Road Ahead The organized bus riders in Los Angeles changed the discourse about transportation in L.A. Unfortunately, a 2001 ruling of the U.S. Supreme Court made it impossible to bring this type of lawsuit under Title VI without proof of intentional discrimination.

#### 6) Their interpretation limits out all courts aff’s—this is bad

#### A) Undermines education—the Supreme Court is at the heart of transportation decisions in the US—all the way back to Plessy v. Ferguson and segregated rail cars.

#### B) Arbtirary and self-serving—just because they don’t want to debate court AFF’s doesn’t make them not topical

#### C) Undermines AFF flex—few AFF’s have a decent answer to the states counterplan—don’t punish us because we found one.

#### 7) We link to all topic specific disads: we spend a ton of money on transportation infrastructure—we have to provide access to all minorities totally deprived of transportation infrastructure—requiring huge investments in both urban and rural areas.

#### 8) Good is good enough—you should be reasonable on T.

### AT: Effects T—Court Mandates Then Congress Does

#### We meet: we take one action—the Court forces the Congress to provide funding.

#### Counter-interpretation: increase imposes an obligation to make greater:

HEFC 4 (Higher Education Funding Council, <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/1> 67/167we98.htm# n43)

9.1 The Draft Bill creates an obligation on the principal regulator to do all that it "reasonably can to meet the compliance objective in relation to the charity".[ 45] The Draft Bill defines the compliance objective as "to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity".[ 46] 9.2 Although the word "increase" is used in relation to the functions of a number of statutory bodies,[47] such examples demonstrate that "increase" is used in relation to considerations to be taken into account in the exercise of a function, rather than an objective in itself. 9.3 HEFCE is concerned that an obligation on principal regulators to "increase" compliance per se is unworkable, in so far as it does not adequately define the limits or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

#### 3) No different than Congress: Court decisions have the power and permanency of law:

**This Nation.com, 2008** (“Supreme Court Decision Making,” <http://www.thisnation.com/textbook/judiciary-decision.html>, Accessed 7/25/2012, rwg)

Interpretation as law A prominent attorney who had argued hundreds of cases before the Supreme Court once remarked that the Supreme Court is not final because it's right, it is right because it is final. The Court's position as the court of last appeal and as the highest court in the land means that **its decisions are binding** and largely unchangeable. Once the Court has ruled, its decisions have all the effect and permanency of law.

#### 4) Plan is a mandate—Executive and Legislative have to bow to the judiciary:

Steve **Kellmeyer**, The Illinois Leader, 20**05** [The coming paradigm shift from the judiciary to the corporation, July 7, <http://www.illinoisleader.com/opinion/opinionview.asp?c=27040>, rwg]

The executive and legislative branches bow to the authority of the judicial branch. They do not exercise authority on their own, except as the judicial branch gives them leave. Since the federal judiciary is a creation of the legislative branch, we now have a Frankenstein government, a government in which the creator has lost control of his creation. Since the judiciary is **the only real source of power in America**, the indirect election of judges through a republican system should be a source of comfort to all concerned. True, the term is for life, not four or six years, the government is by nine people, not thousands, and there remains not even a semblance of the idea that the judges represent the interests of any of the electorate but the forms are observed. We have maintained the idea of the republic - sort of.

#### 5) They limit out all AFF’s: all AFF’s require multiple steps—they create a bill, put it through a committee, Congress passes it, and then Obama signs it.

#### 6) Their interp limits out all Courts AFF’s

A) Bad for education: we learn more about the Courts and their unique role in transportation

B) Not real world: Court decides important transportation cases like Plessy v. Ferguson and the freedom riders cases

C) Undermines needed AFF flex: Few AFF’s have a good answer to the states counterplan

#### 7) We spike out of zero topic specific da’s: we claim to cause massive amounts of transportation infrastructure.

#### 8) Good is good enough: Reasonability should be the standard on T.

### AT: Over-spec

#### Counter-interpretation: AFF gets any agent of the USFG: The federal government refers to any entity of the federal government—

The Chicago Manual of Style 16th edition text © 2010 (http://www.chicagomanualofstyle.org/CMS\_FAQ/CapitalizationTitles/CapitalizationTitles32.html)

Q. When I refer to the government of the United States in text, should it be US Federal Government or US federal government? A. The government of the United States is not a single official entity. Nor is it when it is referred to as the federal government or the US government or the US federal government. It’s just a government, which, like those in all countries, has some official bodies that act and operate in the name of government: the Congress, the Senate, the Department of State, etc.

#### Prefer the counter-interpretation:

1. Real world: No real world plan wouldn’t specify their agent.
2. Makes the AFF a fixed target: prevents shadiness on politics links and counterplan competition
3. Preserves topic specific education: we learn about transportation infrastructure in the context of real world actors

#### No abuse: we act through an agent of the USFG.

#### They have plenty of ground: we claim to massively expand transportation infrastructure in the US.

#### Not a violation: We violate no words in the resolution by specifiying the judiciary.

#### This is just normal means anyway—We specify an equalization of transportation infrastructure based on the Equal Protection Clause—no proof Congress would ever do this.

#### Reasonability: good is good enough.

### AT: Ground Specification is Extra-Topical

#### Counter-interpretation: The AFF is required to specify the grounds for their decision.

#### Most real world: No Supreme Court decision would ever not explain the rationale for their decision:

**Wiki Answers, 2012** (Accessed 7/25/2012, “Written Opinions,”

<http://wiki.answers.com/Q/What_types_of_written_opinions_may_the_US_Supreme_Court_issue>, rwg)

The Court's Opinion (usually also the majority opinion) is synonymous with the Court's decision. The "Opinion of the Court" gives the verdict and explains the reasoning behind the decision reached. The privilege of writing the official opinion falls to the most senior justice in the majority group, or to the Chief Justice if he voted with the majority; this person may choose to write the opinion, or may assign the task to another member of the majority. If the justices who voted against the majority wish to issue a unified opinion, they simply decide amongst themselves who will write it.

#### We have a solvency advocate: Our Baldwin evidence specifies the total deprivation standard of the Equal Protection Clause as the rationale for the plan.

#### Disads and counterplans check abuse: they can run disads off the reason for decision or counterplan out of grounds to solve advantages.

#### Reject argument not team—if you find it illegitimate for us to specify our grounds, then we can just defend the provision of transportation infrastructure on an equal basis.

#### Reasonability: Good is good enough on T and theory.

## Case Extensions

### Inherency Extensions

#### Courts don’t protect an individual’s right to use a motor vehicle:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

[\*216] The dominance of the automobile as a policy choice of federal and state governments is undeniable. n22 And yet, remarkably, **American courts do not protect an individual's right to use a motor vehicle**. n23 Courts have guarded the right to move freely, but they have not protected a person's ability to choose a method of transport. n24

## Poverty Advantage Extensions

### Poverty High Now

#### Poverty is high and increasing in the US right now:

**Associated Press, 7/22/2012** (“Poverty in United States Soars to Levels Not Seen Since Since 1960s,”

<http://latino.foxnews.com/latino/news/2012/07/22/poverty-in-united-states-soars-to-levels-not-since-since-160s/>, Accessed 7/27/2012, rwg)

Poverty is making a comeback in the United States. ¶ The ranks of America's poor are on track to climb to levels unseen in nearly half a century, erasing gains from the war on poverty in the 1960s amid a weak economy and fraying government safety net.¶ Census figures for 2011 will be released this fall in the critical weeks ahead of the November elections.¶ The Associated Press surveyed more than a dozen economists, think tanks and academics, both nonpartisan and those with known liberal or conservative leanings, and found a broad consensus: The official poverty rate will rise from 15.1 percent in 2010, climbing as high as 15.7 percent. Several predicted a more modest gain, but even a 0.1 percentage point increase would put poverty at the highest since 1965.¶ Poverty is spreading at record levels across many groups, from underemployed workers and suburban families to the poorest poor.

### Lack of Transportation Infrastructure = Poverty

#### Lack of transportation infrastructure prevents the poor from getting jobs:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

The poor person, especially in today's transportation environment, is left in a quandary. In Monarch, the Ninth Circuit justified its rejection of a right to select a travel mode by stating that if a person cannot afford another mode, n296 "[the] poor man may have to walk." n297 But public transportation frequently does not serve areas where new jobs are created, and today's transportation infrastructure makes it difficult or unsafe to walk (or bicycle) on much of the transportation system. n298 In interstate travel and freedom of movement jurisprudence, the Supreme Court seems most concerned with removing restrictions on personal liberty. n299 In intrastate travel jurisprudence, the Supreme Court has not yet spoken definitively on the issue, and the circuit courts are split. n300 But most circuit courts, even in the cryptic Lutz decision, seem to recognize that transportation access for basic services is protected under the Constitution. n301 In future right to travel cases, judges will have to reconcile a poor person's theoretical liberty to move within and across states with the fact that many living in poverty have no access to basic services and jobs because they are unable to afford a car. n302

#### Because many poor can’t afford to use motor vehicles, they are left without a means to reach their destination:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

[\*214] Without an automobile, many individuals in the U.S. are left without a means to reach their destination because they cannot drive. n7 Many others cannot afford to use a motor vehicle. In the year 2000, the average annual cost to use a motor vehicle was $ 7363. n8 The poorest fifth of American families pay forty-two percent of their income for the purchase, operation, and maintenance of automobiles. n9 A famous cartoon illustrates the problem well -- a driver of a motor vehicle turns to his passenger and says, "I hate driving . . . But I need a car to get to work." n10 Later that day, the driver sits at work in a cubicle. He turns to a co-worker and says, "I hate my job, but I gotta make car payments." n11

### Joblessness is the Root Cause of Poverty

#### Joblessness is the root cause of poverty—we solve:

**Associated Press, 7/22/2012** (“Poverty in United States Soars to Levels Not Seen Since Since 1960s,”

<http://latino.foxnews.com/latino/news/2012/07/22/poverty-in-united-states-soars-to-levels-not-since-since-160s/>, Accessed 7/27/2012, rwg)

Poverty is closely tied to joblessness. While the unemployment rate improved from 9.6 percent in 2010 to 8.9 percent in 2011, the employment-population ratio remained largely unchanged, meaning many discouraged workers simply stopped looking for work. Food stamp rolls, another indicator of poverty, also grew.

## Racism Advantage Extensions

### Current Transportation Infrastructure = Racism

#### Equalizing public investment in transportation is crucial to avoid discrimination based on race & poverty:

Richard **Marcantonio and** Marc **Brenman, 2012** (Managing Attorney for Public Advocates Inc., “Lessons from the History of Transportation Justice,” <http://equity.lsnc.net/lessons-from-the-history-of-transportation-justice/>, Accessed 7/25/2012, rwg)

But the Bus Riders Union and their able attorneys became an inspiration for the rest of the nation, demonstrating that although advances in transportation justice have frequently been offset by new obstacles over the course of history, we have reason to hope. It is clear now that the very same policies that isolated low-wealth people and people of color from opportunity also created an environment marked by sprawl and a heavy dependence on the automobile. This car dependence works heavily against African-Americans, as we saw in the aftermath of Hurricane Katrina in 2005, because African-Americans own cars at the lowest rate of any demographic group in the United States. Today, fighting for just transportation policies is actually an opportunity to bring our regions closer to a vision of sustainability that can be shared across the divides of class, race and geography. That vision rests on the benefits of public investment being shared fairly by all our communities.

#### Over-emphasis on highways has led to discrimination in the transporation sector:

Thomas W. **Sanchez, 2007** (Director and Associate Professor Urban Affairs and Planning Program @Virginia Tech, “TRANSPORTATION EQUITY AND ENVIRONMENTAL JUSTICE: LESSONS FROM HURRICANE KATRINA,” Accessed 7/25/2012 at <http://www.ejconference.net/images/Sanchez_Brenman.pdf>)

Americans have become increasingly mobile and more reliant on automobiles to meet¶ their travel needs, due largely to transportation policies adopted after World War II that¶ emphasized highway development over public transportation. According to Census 2000 data,¶ less than 5 percent of trips to work in urban areas were made by public transit; however, this¶ varies significantly by race and location.2 Minorities, however, are less likely to own cars than¶ whites and are more often dependent on public transportation. The “transit-dependent” must¶ often rely on public transportation not only to travel to work but also to get to school, obtain¶ medical care, attend religious services, and shop for basic necessities such as groceries. The¶ transit-dependent are often people with low incomes, and thus, in addition to facing more¶ difficulties getting around, they face economic inequities as a result of transportation policies¶ oriented toward travel by car.

#### Inadequate access to transportation is as important a civil rights issue as segregated housing and education:

Richard **Marcantonio and** Marc **Brenman, 2012** (Managing Attorney for Public Advocates Inc., “Lessons from the History of Transportation Justice,” <http://equity.lsnc.net/lessons-from-the-history-of-transportation-justice/>, Accessed 7/25/2012, rwg)

In modern society, travel is integral to both freedom and opportunity. Inequality in regard to mobility is no less important a social injustice than are segregated housing and unequal education. The history of transportation in the U.S., in fact, is deeply intertwined with the history of struggles for equality and civil rights. While that history is one of persistent inequities that have injured low-income communities of color, it is equally one of persistent struggles by those communities for justice.

#### Katrina proves the racism of the status quo—many African Americans couldn’t escape the hurricane because of the lack of transportation infrastructure:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

One need look no further than New Orleans after Hurricane Katrina to understand the importance of access to transportation. On August 29, 2005, Hurricane Katrina decimated New Orleans. n36 Much of the city was built below sea level, and the hurricane destroyed nearby levees and flooded the city. n37 Leading up to and after the hurricane, public officials tried unsuccessfully to organize a massive evacuation effort, in part by encouraging residents to flee the city. n38 But many people, mostly African American, n39 were simply too poor to leave New Orleans by car. n40 They needed a bus or another form of transportation to escape. n41

#### Even if the poor could theoretically walk, roads are unsafe:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

In many cases, units of government do not need to pass regulations that explicitly restrict alternative forms of travel. The design of the facility will be enough to deter usage by non-motorized [\*221] transportation such that it becomes practically impossible to travel other than by motor vehicle. Even if a road remains legally open to bicyclists and pedestrians, it may be very unsafe if it is not designed for them. n54 Further compounding the problem, roads that fit civil engineering guidelines n55 are often perceived as unsafe by alternative transportation users. n56

#### Roads aren’t safe for pedestrians and bicyclists:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

Available safety data strongly suggests that many roads are not safe for non-motorized forms of transportation. n61 Roughly 5000 pedestrians and bicyclists are killed on the public roadways each year, n62 but only 1.9% of available federal safety funds are spent on bicycle and pedestrian safety annually. n63 By contrast, bicyclists and pedestrians account for over 13% of all fatalities that occur on roadways. n64

### Current Transportation Infrastructure Doesn’t Solve For Jobs

#### Job access limited by public transport

O’Neil, writer for timesfreepress.com, 7/12

(Carey, 7-12-12, “Chattanooga poor in connecting jobs, workers via public transport”, <http://timesfreepress.com/news/2012/jul/12/chattanooga-transit-troubles-jobs-workers/>, ks)

The connection between job locations and public transit in Tennessee's metropolitan areas ranked among the worst of the nation's 100 largest metro areas.¶ Percent of jobs accessible by public transit:¶ Memphis - 63.8 percent, rank 65¶ Chattanooga - 50.7 percent, rank 91¶ Nashville - 49.4 percent, rank 92¶ Knoxville - 44.3 percent, rank 98¶ Percent of workforce that can use public transit:¶ Memphis - 20.4 percent, rank 70¶ Knoxville - 17.5 percent, rank 80¶ Chattanooga - 16 percent, rank 83¶ Nashville - 15.6 percent, rank 84¶ As Qwintral Branham searches for work, his biggest problem isn't his qualifications or the constricted job market, but finding a job on the bus line.¶ Branham relies on public transportation for everything. He said Chattanooga's system serves him well, but he hasn't been able to find a job he can get to.¶ "It really does help. I can go look for a job without using gas," he said. "But it's got to be a job on the bus route."¶ Only half the jobs in the Chattanooga metro area are accessible by public transit, according to a study released Wednesday by the Brookings Institution, which does metropolitan research. That makes the Scenic City one of the worst in the country for that category, ranking 91 out of the nation's 100 largest metro areas.¶ That leaves job seekers like Branham struggling to find work and some companies struggling to find employees.¶ The South as a region performs particularly poorly when connecting laborers to jobs compared to the rest of the country, falling several percentage points behind the national average.¶ In Chattanooga, there is no public transit service to major employers such as Volkswagen and Amazon.¶ "The problem is these places have sprawled out so far, the amount of job sprawl and household sprawl is significant," said Adie Tomer, a senior research associate with the Brookings Institution who authored the report. "What you're left with is a city that has a transit system and suburbs that do not."¶ Places such as Red Bank, Lookout Mountain, Soddy-Daisy and East Ridge no longer supply any funding to CARTA, which is almost entirely dependent on funding from the city of Chattanooga. That leaves the service with limited capability to serve the sprawling Chattanooga metro area, focusing instead on the core city.¶ "We have a very large urbanized area and we receive significantly below average funding at the local level," said Tom Dugan, CARTA's executive director. "If you don't receive funding from the small cities, you don't provide services to the small cities."¶ Dugan said CARTA received only about half of the public funding provided for the bus system in Knoxville.¶ Among major regions of the country, the Brookings study found the percent of jobs accessible via public transit to be the lowest in the South.¶ Southern cities tend to spread out more than older cities in the Northeast and grew up with the automobile, allowing businesses and homes to be built far away from one another.¶ "When you spread these things out, it gets harder and harder to get around by bus," Dugan said.¶ Faced with sprawl and a lack of funding, CARTA has focused on serving populations which need the bus the most -- lower income individuals without their own transportation.¶ Tomer said close coordination between city planners and transport officials is key to improving transit situations like Chattanooga's.¶ "The key is, these elements are not diverse from one another," he said. "Even if we plan them in separate ways, the results are totally intertwined."

#### Public transport doesn’t connect people and jobs

Singleton, writer for citizensvoice.com, 7-11

(David, 7-11-12, “Study: Public transit does poor job of linking employers, workers”, <http://citizensvoice.com/news/study-public-transit-does-poor-job-of-linking-employers-workers-1.1341700>, ks)

The County of Lackawanna Transit System occasionally gets calls from companies scouting potential sites in the Scranton area, wondering whether COLTS provides or would be willing to provide bus service to one particular location or another.¶ "We do our best to work with them, and we have had several instances like that where we have adjusted a route to accommodate them," executive director Robert Fiume said.¶ Then there are the companies that wait until they've selected a site to inquire whether their employees will have access to public transit.¶ "Sometimes, it could be an afterthought, definitely," Fiume said.¶ A report being released today by the Brookings Institution Metropolitan Policy Program - "Where the Jobs Are: Employer Access to Labor by Transit" - shows transit systems in the nation's 100 largest metropolitan areas do a poor job of connecting employers with workers. Locally, public transit in the Scranton/Wilkes-Barre area ranked in the top third in terms of coverage but fell below average in linking jobs to the area labor pool.¶ Across the 100 metro areas, the Brookings study found just over 75 percent of all jobs are in neighborhoods with transit service, meaning they are within three-quarters of a mile of a transit stop. However, the typical job served by transit can be reached by only 27 percent of metropolitan workers even given what Brookings described as a generous 90 minutes of travel time.¶ "While metropolitan unemployment rates remain stubbornly high, vacancies do exist across most industries," Adie Tomer, a Brookings senior research associate, said in releasing the report. "Expanding access to larger pools of qualified labor will help fill those positions and improve economic performance."¶ In the local metro area, Brookings analyzed COLTS, the Luzerne County Transportation System and Hazleton Public Transit. Among the findings:¶ n 77.8 percent of all jobs in Scranton/Wilkes-Barre are in neighborhoods with transit service, which ranks 30th among the 100 metro areas. The coverage in the cities is 100 percent; in the suburbs only, it is 73.5 percent.¶ n The area ranked 57th in accessibility, with the typical job reachable by only 22.4 percent of the workforce within 90 minutes via public transit. Accessibility dropped to 21.4 percent in suburban areas.¶ The report recommended that both public and private sector leaders begin to shift policy in a direction that enhances accessibility.¶ Job locations should be considered in transit investment decisions, suburban labor access should be enhanced by using policy levers and governance reforms, and investments need to be made in data systems to improve decision-making, the report said.¶ Fiume said job locations, particularly major employers, were one of the things that COLTS' consultants considered in helping the agency devise the new route structure that it implemented earlier this month. It was the first major overhaul of the routes in more than 15 years.¶ "They were looking at changes in demographics, where the businesses are now, where the employers are now," Fiume said. "I know that was factored in when we made the changes."

## Death Penalty Advantage Extensions

### Eliminating Discriminatory Intent Key to Challenge the Death Penalty

#### The plan undermines the doctrine of discriminatory intent—this is crucial to mount an effect challenge against the death penalty:

RAY SEBASTIAN **PANTLE, 2007** (J.D. Capital University Law School, Capital University Law Review, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Spring 2007, 35 Cap. U.L. Rev. 811; Lexis/Nexis, rwg)

The requirement that each capital defendant must prove that purposeful discrimination affected his particular case has stripped the Fourteenth Amendment of its power to eradicate our society's racial disparities. If they wish to breathe life into the Equal Protection Clause once again, courts must allow defendants to rely on statistics alone as proof of purposeful discrimination in capital cases. Some studies fail to take into account nonracial factors that could explain aberrant results, n158 and judges should not automatically accept the conclusions reached in these faulty studies. However, a calculated study like the one relied on in McCleskey--one that accounts for factors other than race, which could possibly explain any disparity n159 --should be respected for the reality that it communicates: although statistics cannot conclusively prove that racism influenced a particular defendant's case, statistics do prove that there is a high likelihood that at least one actor in a defendant's case was motivated by racial animus. Once a defendant has made a strong statistical showing that this high likelihood exists, the judicial system should enjoin a state from following through with that defendant's execution. Some may view this remedy as too extreme. However, it is the most logical solution to the equal protection problem for two important legal and social reasons. First, the Supreme Court has on multiple occasions accepted statistics alone in proving equal protection violations. n160 Therefore, from a legal perspective, allowing numerical data on capital cases to stand alone as evidence of purposeful discrimination is consistent with extant law. Second, eradicating the death penalty will not negatively affect society, because the state will remain equipped with an equally effective, alternative option: life imprisonment without the possibility of parole. [\*832] A. Allowing Statistics Alone to Prove Purposeful Discrimination is Compatible with Existing Law One who argues that the Supreme Court should overrule, extend, retract, or otherwise alter existing law must remain mindful of stare decisis, which mandates that each decision by the Court must remain consistent with existing case law. n161 Even though stare decisis may prevent the Court from adopting an otherwise sound legal argument, the Court experiences no such limitation when deciding whether to accept statistics as evidence of purposeful discrimination. Although the Supreme Court has held that statistics cannot prove purposeful discrimination when challenging a capital sentence, n162 the Court in other contexts has recognized that convincing statistical data, standing alone, can make a successful case. n163 In Yick Wo v. Hopkins, the city of San Francisco denied two hundred Chinese individuals permits to operate laundries, but it granted eighty similarly situated, non-Chinese individuals such permits. n164 The Court, because of the "stark" statistical showing, n165 agreed that racial animus motivated the state actors' decisions. n166 Similarly, in Gomillion v. Lightfoot, a redistricting act transformed a square-shaped city into an irregular twenty-eight sided figure, which eliminated all but four or five of the 400 black voters from the district and preserved every white resident. n167 Here, too, the Court, noting the extreme pattern that could not be explained on nonracial grounds, agreed with the plaintiffs that, if the allegations could be proven, the redistricting act should be invalidated. n168

#### Undermining the doctrine of discriminatory intent undermines the constitutional foundation for the death penalty:

RAY SEBASTIAN **PANTLE, 2007** (J.D. Capital University Law School, Capital University Law Review, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Spring 2007, 35 Cap. U.L. Rev. 811; Lexis/Nexis, rwg)

In 2006, fifty-three individuals were executed in the United States. n247 Eleven of those executed were black defendants convicted of killing white victims, but only three cases involved a white defendant convicted of killing a black victim. n248 Furthermore, as of April 11, 2007, 41.7% of inmates on death row are black. n249 Despite continuous claims that death penalty skeptics are in the minority, almost half of society acknowledges the reality of racial discrimination in the application of death sentencing. n250¶ Hundreds of books, articles, law reviews, editorials, and studies have explored the controversial subject of capital punishment in the United States, with each medium tackling various legal, moral, philosophical, and personal perspectives. n251 Despite this expansive list spanning several decades, current death row statistics indicate that the issues raised in McCleskey are far from being resolved. n252 In fact, changing legal jurisprudence as well as altering public opinion about its use continues to thrust death penalty discussion to the forefront of society's consciousness and to stimulate new debate.¶ Several years ago, the Supreme Court overturned its decision in Penry v. Lynaugh n253 by declaring that the Eighth Amendment prohibits the execution of the mentally retarded. n254 More recently, the Court in Roper v. Simmons n255 banned the death sentencing of individuals who were minors at [\*843] the time that they committed the offense. n256 Clearly, the Court is willing to receive challenges to the use of the death penalty with an open mind and to interpret the Constitution boldly, in ways that dramatically alter precedent. To continue down the path of race-neutral justice first envisioned by those who passed the Civil Rights Act of 1866, the current Supreme Court must remain equally eager to reconsider the interpretation of the Fourteenth Amendment's Equal Protection Clause as it was applied in McCleskey.¶ In his dissent in McCleskey, Justice Brennan pointed out, "[W]e refuse to convict if the chance of error is simply less likely than not. Surely, we should not be willing to take a person's life if the chance that his death sentence was irrationally imposed is more likely than not." n257 A capital defendant armed with a carefully calculated statistical study does prove that it is more likely than not that racial animus motivated one or more actors in his case. In fact, this probability rises beyond the level of "more probable than not" when one considers the numerous examples of overt racism exhibited by white prosecutors, jurors, and judges in our criminal justice system, as well as the phenomenon of collective, unconscious racism that influences whites' decisions. With a combination of statistics, evidence of racist attitudes and statements about black defendants, and the presence of unconscious racism, one cannot deny that there is a high likelihood that race plays a factor in who lives and who dies. If this "high likelihood" continues to loom like a dark cloud over our justice system, the promise first articulated by those who passed the Civil Rights Act of 1866, that "inhabitants of every race and color . . . shall be subject to like punishment, pains and penalties, and no other," n258 will never be fulfilled.¶ The Supreme Court must take a small step forward and expand existing law by allowing a criminal defendant confronted with death to use statistics alone to prove purposeful discrimination. In many instances, justice requires a revolutionary change in society, such as the mass integration that occurred after Brown v. Board of Education. n259 However, this issue demands far less. Because of the alternative of life without the possibility of parole for criminal defendants who have proved discrimination in their death sentencing, society's utilitarian purposes behind punishment can be achieved just as effectively.¶ [\*844] The revolution will not occur in society's parks, schools, or restaurants. Rather, the revolution will take place in the message communicated by those who vow to uphold the Constitution to those who are subject to its laws. This change will relay to society that those who interpret the Constitution are serious in their affirmation to abide by both the text and the spirit of the Fourteenth Amendment. This will instruct all who are attune to the racial dynamics in this country that judges wish to guarantee that every individual is judged by his deeds, whether they be meritorious or despicable, and not by the color of his skin.

#### Discriminatory intent doctrine undermines efforts to strike down the death penalty:

Corinne E. **Anderson, 1999** (“A Current Perspective: The Erosion of Affirmative Action in University Admissions,” Akron Law Review, 32 Akron L. Rev. 181, Lexis/Nexis, rwg)

Id. at 373-74; see Weeden, supra note 15, at 286 ("Similarly situated is defined not by the nature of the classification but the reasonable nexus of the classification scheme to the purpose of the law."). Thus, a critical element in Equal Protection analysis is a finding that a government actor intended to discriminate by treating a particular group differently. See McCleskey v. Kemp, 481 U.S. 279 (1987) (rejecting a statistical study as insufficient proof of racial discrimination in a capital sentencing scheme). Our analysis begins with the basic principle that a defendant who alleges an equal protection violation has the burden of proving "the existence of purposeful discrimination." A corollary to this principle is that a criminal defendant must prove that the purposeful discrimination "had a discriminatory effect" on him. Thus, to prevail under the Equal Protection Clause, McCleskey must prove that the decisionmakers in his case acted with discriminatory purpose.

#### Supreme Court not interpreting the Equal Protection Clause in a way to strike down the death penalty:

RAY SEBASTIAN **PANTLE, 2007** (J.D., Capital University Law School, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Capital University Law Review, Spring 2007, Lexis/Nexis, rwg)

Justice Brennan wrote these words in his dissent in McCleskey v. Kemp, where the Supreme Court required the defendant, who had been sentenced to death and who claimed to be a victim of discrimination, to prove that purposeful racial animus motivated a state actor in his particular case. n2 While there is evidence that overt and unconscious racism permeate American society, an unavailability of tangible evidence of such in particular capital cases makes it almost impossible for one to meet this standard in proving the existence of overt racism. The framers of the Fourteenth Amendment to the Constitution specifically included the Equal Protection Clause to deal with racial discrimination in our criminal justice system. n3 Yet, the Supreme Court has failed to interpret the Equal Protection Clause in a way that will ameliorate racial discrimination in capital sentencing. Instead, courts have repeatedly upheld the constitutionality of sending a disproportionate number of minorities to their deaths.

#### Statistics prove the death penalty is racist:

RAY SEBASTIAN **PANTLE, 2007** (J.D., Capital University Law School, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Capital University Law Review, Spring 2007, Lexis/Nexis, rwg)

Despite measures taken to minimize prosecutorial discretion in the implementation of the death penalty, studies of eight states between 1976 and 1980 show that disparities in capital sentencing based on both the race of the defendant and on the race of the victim continued. n37 In 1991, blacks comprised only 11% of the total population in the United States. n38 However, in 1999, 43% of the men on death row in thirty-nine of the fifty states were black. n39 The most recent studies show that even though blacks [\*817] comprise only 12.8% of the total population, n40 41.7% of individuals on death row are black. n41

#### Death penalty is used overwhelmingly against minorities:

RAY SEBASTIAN **PANTLE, 2007** (J.D., Capital University Law School, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Capital University Law Review, Spring 2007, Lexis/Nexis, rwg)

The most convincing evidence that defendants receive different treatment based on their race arises from studies that take into consideration the facts of each particular case. In the 1990s, researchers conducting a study of capital sentencing in Philadelphia manipulated multiple variables to take into account the race of the defendant, the aggravating circumstances of the crime, and the defendant's record. n46 The results illustrate that blacks were substantially more likely to receive capital sentences than whites, and that if race were considered an "aggravating factor," it would rank third highest. n47 Of the 124 prisoners in Philadelphia on death row as of October 1998, only fifteen were white. n48

#### Discrimintory intent standard places almost an impossible burden to solve racism:

RAY SEBASTIAN **PANTLE, 2007** (J.D., Capital University Law School, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Capital University Law Review, Spring 2007, Lexis/Nexis, rwg)

The Supreme Court's current requirement that an individual prove that purposeful discrimination affected his particular case provides a straightforward approach when dealing with the equal protection claims of minorities sentenced to death. However, this approach dilutes our legal system's ability to attack anything but the most overt racial animosity. For a capital defendant to succeed on an equal protection claim, he has to prove that the actors in his particular case intended to execute him because of his race. n71 This standard places an almost impossible burden on an individual victimized by racism. n72

#### Discriminatory intent standard undermines efforts to effectively challenge the death penalty:

RAY SEBASTIAN **PANTLE, 2007** (J.D., Capital University Law School, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Capital University Law Review, Spring 2007, Lexis/Nexis, rwg)

A capital defendant attempting to prove that purposeful discrimination affected his particular case will experience difficulty for several reasons. First, both statistical studies and detailed descriptions of capital trials produce overwhelming evidence that racial bias does not exist in a vacuum, affecting only one part in the assembly line of our criminal justice system. n73 Rather, every actor through the process exhibits overt racism: the prosecutor, who retains unbridled discretion in deciding who to expose [\*821] to government-sanctioned execution; the twelve jurors, who collectively decide an individual's sentence; and the judge, who decides what evidence to allow in a trial. n74 Racism manifested by multiple actors prevents an individual from locating the source of racial animus and from conducting a narrow investigation into the motive of one particular state actor.¶ Second, a capital defendant often lacks the assistance of a competent attorney to demonstrate that racial animus exists. This problem occurs due to ineffective assistance of counsel during the trial portion of a capital case, n75 as well as to the total lack of legal representation during the majority of the appeals process. n76 Therefore, even if a death row inmate has uncovered the necessary proof of a discriminatory purpose, he will not have the tools necessary to succeed on an equal protection claim.¶ Finally, the greatest problem with requiring a showing of purposeful discrimination in each particular case stems from the standard's failure to account for the pervasive, unconscious racism present in the beliefs and attitudes of many individuals in our society. n77 Even though this institutional racism is equally brutal in the eyes of its victims, third parties cannot locate it through investigation, because the individual motivated by unconscious racism is not aware of his or her racist attitude. n78

#### Undermining discriminatory intent is necessary for successful challenges to the death penalty:

Steven **Graines, 2000** (J.D., George Washington University, “The Rehnquist Court, Legal Process Theory, and McCleskey v. Kemp,” American Journal of Criminal Law, Fall 2000, 28 Am. J. Crim. L. 1, Lexis/Nexis, rwg)

A death row petitioner has a great deal of difficulty in obtaining evidence of discriminatory intent because of 28 U.S.C. 2254, Rule 6(a), n91 as narrowly interpreted by Bracy v. Gramley. n92 Bracy expressed a reluctance to permit discovery if a habeas petitioner's factual showing is "too speculative." n93 Evidence of discriminatory intent in a death penalty [\*17] case, especially when such intent is unconscious, will likely be regarded as speculative and therefore will not satisfy the Bracy standard. n94 Without discovery, meeting the McCleskey standard of "exceptionally clear proof" of an abuse of discretion is virtually impossible. n95¶ Individual habeas petitioners are encumbered in their collective ability to file a class action for three reasons. First, potential habeas petitioners must comply with the exhaustive requirement of 28 U.S.C. 2254(b)(1)(A). n96 They must also comply with the finality of determination doctrine of 28 U.S.C. 2244. n97 Finally, a potential class of habeas petitioners is further restricted by the special habeas corpus procedures for capital cases. n98 The result of these statutory requirements is a severe constriction on the number of death row prisoners who may file habeas petitions at any given point.¶ These procedural and statutory restrictions deter the formation of class actions by death row petitioners. Consequently, potentially powerful statistics, like the Baldus study, that could lead to a finding of purposeful discrimination, are easily distinguished from the individual case. n99 Moreover, the anecdotal power accompanying and animating the statistics lies dormant. However, if twenty stories of "irregularities" are presented, they can be much more easily treated as evidence of purposeful discrimination than as anomalous or distinguishable. Moreover, when historical anecdotes, like the Scottsboro cases, n100 are discussed, the twenty stories can be treated as consistent with a historical continuity of racism in the death penalty. Without specific, yet unobtainable evidence, n101 and without general evidence, n102 an individual [\*18] habeas petitioner cannot successfully challenge his capital sentence by means of the Equal Protection Clause.

### Death Penalty Advantage—Death Penalty Hurts Human Rights Credibility

#### Death penalty bad- hurts our global human rights reputation

Love, executive director of [Witness to Innocence](http://www.witnesstoinnocence.org/), 12

(David A, executive director of [Witness to Innocence](http://www.witnesstoinnocence.org/), a national organisation of exonerated former death row prisoners and their families in the US, a contributor to the [Huffington Post](http://www.huffingtonpost.com/david-a-love) and the NBC News site, [theGrio](http://www.thegrio.com/), 5/21/12, “How America's death penalty murders innocents” <http://www.guardian.co.uk/commentisfree/cifamerica/2012/may/21/america-death-penalty-murders-innocents>, lkh)

¶ In 2012, the American death penalty has reached a crossroads. Public support for executions has decreased over the years, with capital punishment critics citing its high cost, failure to deter crime, and the fact that the practice places the nation out of step with international human rights norms. Last year, the US ranked fifth in the world in executions, a member of a select club of nations that includes China, Saudi Arabia, Iraq and Iran. Further, in the US states that have repealed the death penalty in recent years – including New Mexico, New Jersey, Illinois and, most recently, Connecticut – the killing of the innocent has been cited as a pivotal factor in favor of abolition.¶ ¶ Meanwhile, thanks to an EU embargo on lethal injection drugs to the US, states that practice capital punishment are faced with a shortage of poison to execute prisoners. Some have resorted to purchasing unapproved drug supplies on the black market, or using different chemicals altogether. For example, Ohio has abandoned its three-drug protocol for executions in favor of a single drug called pentobarbital, a barbiturate used to euthanize animals. And Missouri has decided to execute prisoners using propofol, a surgical anesthetic implicated in Michael Jackson's death.¶ ¶ Apparently desperate and lacking in options to kill, these states would be better-served by joining the civilized world and devoting their efforts to end the death penalty, rather than find new methods to satisfy their bloodlust – which, as the new evidence makes abundantly clear, cannot but cause them to execute innocent citizens. According to the Death Penalty Information Center, 140 men and women have been released from death row since 1973 due to innocence. That death row inmates are exonerated much more often than other categories of prisoner – even when a person's life is at stake – should shatter anyone's faith in the presumed infallibility of the court system.¶ ¶ It is now transparent to the public that, at best, the application of the death penalty is rife with human error and incompetence. At worst, we know there is prosecutorial misconduct: that the courts shelter and nurture officials who are rewarded for gaming the system by career advancement, rather than determining true guilt or innocence and ensuring that justice is done

#### Death penalty undermines our human rights credibility:

**The Signal**, 9/26/20**11** (<http://www.gsusignal.com/opinions/from-the-editorial-board-1.2639345#.UBGHrZGx33A>, Accessed 7/26/2012; rwg)

Putting people to death for their crimes puts the United states in the same category as countries like China, North korea and Iran. Further, it puts yet another stain on our reputation abroad by hurting our human rights credibility when dealing with other countries.

### Death Penalty Extensions—AT: Deters Crime

#### No proof that the death penalty deters crime:

**National Journal**, 4/18/20**12** (“Does the Death Penalty Deter Crime? Studies are Inconclusive” Accessed 7/26/2012 at <http://www.nationaljournal.com/politics/does-the-death-penalty-deter-crime-studies-are-inconclusive-20120418>, rwg)

We still don’t know enough about whether the death penalty works to deter crime, and policymakers should ignore research that claims to say whether it does, the National Academy of Sciences said on Wednesday. A panel of experts appointed by the independent, nonprofit academy reviewed more than 30 years of research done since the 1976 Supreme Court decision that reinstated the death penalty as constitutional. “The studies have reached widely varying, even contradictory, conclusions. Some studies conclude that executions save large numbers of lives; others conclude that executions actually increase homicides; and still others conclude that executions have no effect on homicide rate,” according to the academy panel, chaired by Daniel Nagin, an expert in criminology and statistics at Carnegie Mellon University. The National Academy of Sciences advises the federal government and other groups, often trying to provide the “last word” on important issues. “The committee concludes that research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates,” it added. “Consequently, claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgments about capital punishment.”

#### Overwhelming consensus agrees—death penalty doesn’t deter crime:

MICHAEL L. **RADELET &** TRACI L. **LACOCK, 2009** (Professor and Chair, Department of Sociology,

University of Colorado-Boulder & second-year student in the Ph.D. program, Department of Sociology, University of Colorado-Boulder, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, Accessed 7/26/2012 at <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>)

The question of whether the death penalty is a more effective deterrent¶ than long-term imprisonment has been debated for decades or longer by¶ scholars, policy makers, and the general public. In this Article we report¶ results from a survey of the world’s leading criminologists that asked their¶ expert opinions on whether the empirical research supports the contention¶ that the death penalty is a superior deterrent. The findings demonstrate an¶ overwhelming consensus among these criminologists that the empirical¶ research conducted on the deterrence question strongly supports the¶ conclusion that the death penalty does not add deterrent effects to those¶ already achieved by long imprisonment.

#### Empirical research shows no deterrent effect from the death penalty:

MICHAEL L. **RADELET &** TRACI L. **LACOCK, 2009** (Professor and Chair, Department of Sociology,

University of Colorado-Boulder & second-year student in the Ph.D. program, Department of Sociology, University of Colorado-Boulder, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, Accessed 7/26/2012 at <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>)

No doubt part of this declining support for the deterrence hypothesis is¶ a consequence of empirical research by criminologists. Led by the¶ pioneering work of Thorsten Sellin,18 scores of researchers have examined¶ the possibility that the death penalty has a greater deterrent effect on¶ homicide rates than does long-term imprisonment.19 While some¶ econometric studies in the 1970s claimed to find deterrent effects,20 these¶ studies were exhaustively criticized and largely discredited.21 A panel set¶ up by the National Academy of Sciences and chaired by Nobel Laureate¶ Lawrence R. Klein to examine the studies—primarily those published by¶ economist Isaac Ehrlich—concluded that “the available studies provide no¶ useful evidence on the deterrent effect of capital punishment” and “research¶ on the deterrent effects of capital sanctions is not likely to provide results¶ that will or should have much influence on policy makers.”22 In retrospect,¶ that finding seemed to settle the scholarly debate, at least for the next¶ twenty-five years.

#### Most comprehensive studies prove: death penalty doesn’t deter—

MICHAEL L. **RADELET &** TRACI L. **LACOCK, 2009** (Professor and Chair, Department of Sociology,

University of Colorado-Boulder & second-year student in the Ph.D. program, Department of Sociology, University of Colorado-Boulder, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, Accessed 7/26/2012 at <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>)

A second reexamination of the Mocan-Gittings study was conducted¶ by Jeffrey Fagan.36 Fagan’s work is the most comprehensive review of the¶ theoretical and methodological shortcomings of deterrence studies¶ published after 2000. He first improved Mocan’s measure of deterrence,¶ which is the number of executions in a given state divided by the number of¶ death sentences imposed six years earlier.37 Because of the impossibility of¶ computing this measure if the denominator is zero, Mocan and Gittings¶ coded years with no death sentences as .99.38 Fagan reanalyzed the data¶ using .01 (which is closer to zero) in the denominator rather than .99. That¶ simple improvement made all the deterrent effects found by Mocan and¶ Gittings disappear.39

#### Widespread consensus that the death penalty doesn’t deter crime:

MICHAEL L. **RADELET &** TRACI L. **LACOCK, 2009** (Professor and Chair, Department of Sociology,

University of Colorado-Boulder & second-year student in the Ph.D. program, Department of Sociology, University of Colorado-Boulder, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, Accessed 7/26/2012 at <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>)

The apparent lack of consensus among the studies discussed above¶ complicates an important social policy issue, namely how to reduce¶ criminal violence. However, Michael Radelet’s and Ronald Akers’s 1996¶ survey of leading criminologists reveals that there is a consensus among¶ scholars that the death penalty has little, if any, impact on criminal violence.¶ In 1996, Radelet and Akers obtained completed questionnaires from sixtyseven¶ of seventy-one former presidents of the three leading professional¶ criminology associations in the United States: American Society of¶ Criminology, Academy of Criminal Justice Sciences, and the Law and¶ Society Association. They concluded that “there is a wide consensus¶ among America’s top criminologists that scholarly research has¶ demonstrated that the death penalty does, and can do, little to reduce rates¶ of criminal violence.”68

#### Mocan-Gittings study is flawed:

MICHAEL L. **RADELET &** TRACI L. **LACOCK, 2009** (Professor and Chair, Department of Sociology,

University of Colorado-Boulder & second-year student in the Ph.D. program, Department of Sociology, University of Colorado-Boulder, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, Accessed 7/26/2012 at <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>)

At least two prominent criminologists have found serious flaws in the¶ Mocan-Gittings work. Richard Berk noted that the execution figures by¶ state by year for the 1977 to 1997 period were highly skewed.30 Berk¶ specifically noted that most states—accounting for 859 of the 1,000¶ observations31—had zero executions in a given year, and only a few states¶ had more than a handful in a few years (n=11), with most of these being¶ from Texas.32 He used a straightforward procedure to assess the¶ implications of this skewed measure: using Mocan and Gittings’s original¶ data set, he removed the Texas data and ran the model exactly as the¶ original authors did, albeit only for the other forty-nine states.33 The¶ deterrent effect of executions disappeared.34 Berk concluded that “it would¶ University. See R. Kaj Gittings Home Page, http://www.people.cornell.edu/pages/rkg8/ (last¶ visited Mar. 15, 2009).

#### Death penalty bad- no proven deterrent effect and other sentences work now

Johnson, USA today reporter, 12

(Kevin, 4/18/2012 “Panel fails to establish deterrent effect of death penalty” <http://www.usatoday.com/news/nation/story/2012-04-17/death-penalty-homicide-deterrent/54394986/1>, lkh)

WASHINGTON – In the more than three decades since the national moratorium on the death penalty was lifted, there is no reliable research to determine whether capital punishment has served as a deterrent to homicide, according to a review by the National Research Council.¶ John Barbaro from Daytona Beach, Fla., holds a sign as he joined protesters demonstrating against the death penalty in front of the Florida state prison near Starke, Fla., where David Alan Gore was put to death April 12.¶ The review, partially funded by the Justice Department's National Institute of Justice, found that one of the major shortcomings in all previous studies has included "incomplete or implausible" measures of how potential murderers perceive the risk of execution as a possible consequence of their actions. Another flaw, according to the review, is that previous research never considered the impact of lesser punishments, such as life in prison without the possibility of parole.¶ "Fundamental flaws in the research we reviewed make it of no use in answering the question of whether the death penalty affects homicide rates," said Carnegie Mellon University professor Daniel Nagin, who chaired the council's study committee.¶ Nagin said Wednesday that the panel reviewed the work of "dozens" of researchers since a 1976 Supreme Court decision ended a four-year national moratorium on executions.¶ "We recognize that this conclusion may be controversial to some," Nagin said, "but no one is well served by unsupportable claims about the effect of the death penalty, regardless of whether the claim is that the death penalty deters homicides, has no effect on homicide rates or actually increases homicides."¶ The council's review comes exactly a week after the Connecticut Legislature voted to abolish capital punishment for future crimes following a lengthy debate that cited a lack of evidence about deterrence among the reasons for its repeal in favor of life in prison without parole.¶ "For decades, we have not had a workable death penalty," Democratic Gov. Dannel Malloy said following the vote. "Going forward, we will have a system that allows us to put these people away for life, in living conditions none of us would want to experience. Let's throw away the key and have them spend the rest of their natural lives in jail."¶ Malloy has pledged to sign the legislation, which will leave 33 states with the death penalty.¶ Richard Dieter, executive director of the Death Penalty Information Center which closely tracks capital punishment in the U.S., said deterrence has always been "hard to measure," partly because of the time it often takes for states to carry out executions.¶ In Connecticut, for example, there are 11 people on death row, but only one person has been executed in the past 52 years.¶ As a result, Dieter said the issue of deterrence has faded from the public discussion about capital punishment. It has been overtaken, he said, by such considerations as whether the death penalty remains an appropriate punishment for particularly heinous acts.¶ "If the death penalty is going to be justified, it has to rest on other grounds," Dieter said.¶ Isaac Ehrlich, the University of Buffalo's Department of Economics chairman, stands by his research that supports capital punishment as a deterrent to homicide.¶ "This is not the first time people have raised questions (about the research)," Ehrlich said, rejecting the council's claim that prior research did not account for murderers' considerations of the possible risks.¶ "A lot of murder is calculated and people do take into account what might happen to them as a result," he said.¶

#### The death penalty does not serve as a deterrent for potential criminals

Amnesty International 12 (Amnesty International Online, The Death Penalty and Deterrence, May 2012, <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/the-death-penalty-and-deterrence>, jmb)

In April 2012, The National Research Council concluded that studies claiming that the death penalty affects murder rates were "fundamentally flawed" because they did not consider the effects of noncapital punishments and used "incomplete or implausible models." A 2009 survey of criminologists revealed that over 88% believed the death penalty was NOT a deterrent to murder. The murder rate in non-Death Penalty states has remained consistently lower than the rate in States with the Death Penalty.¶ The threat of execution at some future date is unlikely to enter the minds of those acting under the influence of drugs and/or alcohol, those who are in the grip of fear or rage, those who are panicking while committing another crime (such as a robbery), or those who suffer from mental illness or mental retardation and do not fully understand the gravity of their crime.

#### Studies and empirics prove the death toll does not create a deterrent effect

DPIC 09 (The Death Penalty Information Center, Deterrence, <http://www.deathpenalty.org/article.php?id=82>, jmb)

A July 2009 study titled "DO EXECUTIONS LOWER HOMICIDE RATES?: THE VIEWS OF LEADING CRIMINOLOGISTS" by Michael L. Radelet and Traci L. LaCock, demonstrates an overwhelming consensus among criminologists that the empirical research conducted on the deterrence question strongly supports the conclusion that the death penalty does not add deterrent effects to those already achieved by long imprisonment.¶ A study of the deterrence value of the death penalty focused on whether the death penalty deterred the murder of police officers. The researchers surveyed a thirteen year period of police homicides. The study concluded " we find no consistent evidence that capital punishment influenced police killings during the 1976-1989 period. . . . [P]olice do not appear to have been afforded an added measure of protection against homicide by capital punishment." (W. Bailey and R. Peterson, Murder, Capital Punishment, and Deterrence: A Review of the Evidence and an Examination of Police Killings, 50 Journal of Social Issues 53, 71 1994)¶ Deterrence & Murder of Police Officers - According to statistics from the latest FBI Uniform Crime Report, regions of the country that use the death penalty the least are the safest for police officers. Police are most in danger in the south, which accounts for 80% of all executions (90% in 2000). From 1989-1998, 292 law enforcement officers were feloniously killed in the south, 125 in the west, 121 in the midwest, and 80 in the northeast, the region with the fewest execution - less than 1%. The three leading states where law enforcement officers were feloniously killed in 1998 were California, the state with the highest death row population (7); Texas, the state with the most executions since 1976 (5); and Florida, the state that is third highest in executions and in death row population (5). (FBI, Uniform Crime Reports, Law Enforcement Officers Killed and Assaulted, 1998) States Without the Death Penalty Have Had Consistently Lower Murder Rates. Scientific studies have consistently failed to demonstrate that executions deter people from committing crime anymore than long prison sentences. Moreover, states without the death penalty have much lower murder rates. The South accounts for 80% of US executions and has the highest regional murder rate. ¶ Deterrence¶ ¶ The death penalty fails to deter crime.¶ A survey of experts from the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Law and Society Association showed that the overwhelming majority did not believe that the death penalty is a proven deterrent to homicide. Over 80% believe the existing research fails to support a deterrence justification for the death penalty. Similarly, over 75% of those polled do not believe that increasing the number of executions, or decreasing the time spent on death row before execution, would produce a general deterrent effect. (M. Radelet and R. Akers, Deterrence and the Death Penalty: The Views of the Experts, 1995)¶ Research reported in Homicide Studies, Vol. 1, No.2, May 1997, indicates that executions may actually increase the number of murders, rather than deter murders. Prof. Ernie Thomson at Arizona State University reported a brutalizing effect from an execution in Arizona, consistent with the results of a similar study in Oklahoma. ¶ Deaths of Children in the US: New Report - Apparently, the US's use of the death penalty is not improving its standing in the world community when it comes to the deaths of children. In a February 7, 1997 Report from the Centers for Disease Control and Prevention (CDC) (part of U.S Dept. of Health and Human Services), from 1950-1993 child homicide rates in the U. S. tripled. CDC compared the U.S. with 25 other industrialized countries and found that "the United States has the highest rates of childhood homicide, suicide, and firearm-related death among industrialized countries." Almost all of these other industrialized countries have stopped using the death penalty¶ The report found that:¶ The overall firearm-related death rate among U.S. children less than 15 years of age was 12 times higher than among children in the other 25 countries combined.¶ The firearm-related homicide rate in the U.S. was nearly 16 times higher than in all of the other countries combined.¶ The firearm-related suicide rate was nearly 11 times higher.¶ The report noted that previous studies have shown an association between rates of violent childhood death and low funding for social programs, economic stress related to participation of women in the labor force, divorce, ethnic-linguistic heterogeneity, and social acceptability of violence. (Rates of Homicide, Suicide, and Firearm-Related Death Among Children - 26 Industrialized Countries, 46 Morbidity and Mortality Weekly Report 101 (Feb 7, 1997))¶ In comparing the rate of death by handguns in eight industrialized countries, the United States stands out with a rate of death by handguns that is much higher than the rate of other countries. The United States is also the only country of the eight to retain use of the death penalty. In most foreign countries, gun control laws are more restrictive and gun owners are assigned more responsibility. (Washington Post, 4/4/98)

### Death Penalty Extensions--Racist

#### Death penalty is racist:

Jessica **Pham, 2012** (“U.S. Must Abolish the Death Penalty Before Criticizing Others on Human Rights Record,” Accessed 7/26/2012 at <http://policymic.com/articles/8577/u-s-must-abolish-the-death-penalty-before-criticizing-others-on-human-rights-record>, rwg)

Since 1976, 1,264 Americans have been executed, according to The Guardian. Texas has executed the most number of people – 474. The next state with the largest number of executions is Virginia at 109, followed by Oklahoma at 96. Other states are within ranges from 0-15, 20-30, or 40-70 executions. What these numbers do not reveal to us, however, is how deeply flawed and racist the death penalty system is. A large number of cases remain incomplete, carrying clouds of doubt, at the time the accused are sent to the death chambers, and a larger proportion of the American black population find themselves on death row.

#### The death penalty is an unfair and disproportionate punishment

DPIC and Michigan State University 12 (MSU Comm Labs, information retrieved from the Death Penalty Information Center, A just society requires the death penalty for the taking of a life: Disagree, <http://deathpenaltycurriculum.org/node/12>, 2012, jmb)

Retribution is another word for revenge. Although our first instinct may be to inflict immediate pain on someone who wrongs us, the standards of a mature society demand a more measured response.¶ The emotional impulse for revenge is not a sufficient justification for invoking a system of capital punishment, with all its accompanying problems and risks. Our laws and criminal justice system should lead us to higher principles that demonstrate a complete respect for life, even the life of a murderer. Encouraging our basest motives of revenge, which ends in another killing, extends the chain of violence. Allowing executions sanctions killing as a form of 'pay-back.'¶ Many victims' families denounce the use of the death penalty. Using an execution to try to right the wrong of their loss is an affront to them and only causes more pain. For example, Bud Welch's daughter, Julie, was killed in the Oklahoma City bombing in 1995. Although his first reaction was to wish that those who committed this terrible crime be killed, he ultimately realized that such killing "is simply vengeance; and it was vengeance that killed Julie.... Vengeance is a strong and natural emotion. But it has no place in our justice system."¶ The notion of an eye for an eye, or a life for a life, is a simplistic one which our society has never endorsed. We do not allow torturing the torturer, or raping the rapist. Taking the life of a murderer is a similarly disproportionate punishment, especially in light of the fact that the U.S. executes only a small percentage of those convicted of murder, and these defendants are typically not the worst offenders but merely the ones with the fewest resources to defend themselves.

### Death Penalty: Kills the Innocent

#### Innocence Project proves—there have been many innocent people killed by the death penalty:

Jessica **Pham, 2012** (“U.S. Must Abolish the Death Penalty Before Criticizing Others on Human Rights Record,” Accessed 7/26/2012 at <http://policymic.com/articles/8577/u-s-must-abolish-the-death-penalty-before-criticizing-others-on-human-rights-record>, rwg)

Davis’ case is not the only one in American history that – despite the existence of “a shadow of a doubt” during the trials – has sentenced innocent people to life in prison or death row. The Innocence Project has a compiled a dizzying list of those convicted of crimes, were incarcerated for a range of years, and were then fortunately exonerated. Some exonerations included those on death row.

#### Death penalty guarantees the killing of innocent life:

**The Signal**, 9/26/20**11** (<http://www.gsusignal.com/opinions/from-the-editorial-board-1.2639345#.UBGHrZGx33A>, Accessed 7/26/2012; rwg)

Although murder cases require that juries be certain in their verdict "beyond a reasonable doubt" to convict, innocent men and women have been and will always be falsely convicted. That's why years down the road our descendants will likely look back at the death penalty with the same disdain as we do in regards to the Inquisition, medieval torture and pre-Civil War slavery.

#### Wrongful death penalty results in death of innocent people- empirics prove

Love, executive director of [Witness to Innocence](http://www.witnesstoinnocence.org/), 12

(David A, executive director of [Witness to Innocence](http://www.witnesstoinnocence.org/), a national organisation of exonerated former death row prisoners and their families in the US, a contributor to the [Huffington Post](http://www.huffingtonpost.com/david-a-love) and the NBC News site, [theGrio](http://www.thegrio.com/), 5/21/12, “How America's death penalty murders innocents” <http://www.guardian.co.uk/commentisfree/cifamerica/2012/may/21/america-death-penalty-murders-innocents>, lkh)

The evidence is in: the US criminal justice system produces wrongful convictions on an industrial scale – with fatal results¶ The US criminal justice system is a broken machine that wrongfully convicts innocent people, sentencing thousands of people to prison or to death for the crimes of others, as a new study reveals. The University of Michigan law school and Northwestern University have compiled a new National Registry of Exonerations – a database of over 2,000 prisoners exonerated between 1989 and the present day, when DNA evidence has been widely used to clear the names of innocent people convicted of rape and murder. Of these, 885 have profiles developed for the registry's website, exonerationregistry.org.¶ The details are shocking. Death row inmates were exonerated nine times more frequently than others convicted of murder. One-fourth of those exonerated of murder had received a death sentence, while half of those who had been wrongfully convicted of rape or murder faced death or a life behind bars. Ten of the inmates went to their grave before their names were cleared.¶ The leading causes of wrongful convictions include perjury, flawed eyewitness identification and prosecutorial misconduct. For those who have placed unequivocal faith in the US criminal justice system and believe that all condemned prisoners are guilty of the crime of which they were convicted, the data must make for a rude awakening.¶ "The most important thing we know about false convictions is that they happen and on a regular basis … Most false convictions never see the light of the day," said University of Michigan law professors Samuel Gross and Michael Shaffer, who wrote the study.¶ "Nobody had an inkling of the serious problem of false confessions until we had this data," said Rob Warden, executive director of the Center on Wrongful Convictions at Northwestern University. ¶ The unveiling of the exoneration registry comes days after a groundbreaking study from Columbia law school Professor James Liebman and 12 students. Published in the Columbia Human Rights Law Review, the study describes how Texas executed an innocent man named Carlos DeLuna in 1989. DeLuna was put to death for the 1983 murder of Wanda Lopez, a young woman, at a gas station. Carlos Hernandez, who bragged about committing the murder and bore a striking resemblance to DeLuna, was named at trial by DeLuna's defence team as the actual perpetrator of the crime. But DeLuna's false conviction is merely the tip of the iceberg, as the database suggests.¶ Recently also, Charlie Baird, a Texas judge, was prepared to issue an order posthumously exonerating Cameron Todd Willingham, who was executed in 2004 for the 1991 arson-related deaths of his three young daughters. Based upon "overwhelming, credible and reliable evidence", Baird concluded Willingham had been wrongfully convicted; this in addition to a jailhouse witness who recanted his testimony, and scientists who challenged the evidence at trial that the fire that destroyed the Willingham home was caused by arson. Baird was blocked by a state appeals court from issuing the order before he left the bench to pursue private practice.¶ And again in Texas, lawyers for Kerry Max Cook, a former death row prisoner who was wrongfully convicted of a 1977 murder in East Texas, claim that the district attorney in the case withheld in his possession the murder weapon and biological evidence in the case.

### Death Penalty Extensions—AT: Deters Terrorists

#### Turn: death penalty for terrorists will only incite more terrorism:

Daphne **Eviatar**, 11/25/20**09** (staff writer, “Can the Death Penalty for Terrorists Fuel Violence?” Accessed 7/26/2012 at <http://washingtonindependent.com/68913/can-the-death-penalty-for-terrorists-fuel-violence>, rwg)

When Attorney General Eric Holder announced earlier this month that the suspected plotters of the Sept. 11 terrorist attacks would be tried in civilian court, he also promised to seek the death penalty for all of them. But the heated debate that followed over the supposed dangers of trying “the worst of the worst” in a New York federal court has largely eclipsed the question of whether the death penalty is actually the best punishment for convicted terrorists. [Law1]Some of the men have not only proudly claimed responsibility for the attacks, but also said that they want to be executed and martyred. Setting aside any moral concerns about the ultimate punishment, it’s not clear in this case whether the death penalty would act as a deterrence or an incitement to other potential terrorists. When it comes to jihadists who willingly risk or relinquish their own lives for their cause, is the death penalty really such a good idea? “It is in the strategic interests of the United States to deny these most heinous Al Qaeda terrorists what they want most: martyrdom,” wrote Ken Gude, associate director of the International Rights and Responsibility Program at the Center for American Progress, in a report released earlier this month. “Al Qaeda will exploit an execution by the U.S. government as a significant propaganda victory, no matter how fair and legitimate the trial,” he added in an article in The Guardian.

#### And we’re losing the war on terrorism now:

Zvi **Magen**, 3/30/20**11** (research fellow at Tel Aviv University’s Institute for National Security Studies, “Evaluating the fight against terrorism,” Accessed 7/26/2012 at

<http://en.rian.ru/valdai_op/20110330/163288707.html>, rwg)

Terrorism has become a scourge for the international community today and is a central issue on its agenda. The fight has proved ineffective despite all the intergovernmental and national efforts. Terrorist acts continue worldwide, even in Russia. Conventional measures against terrorism have made only a limited impact, hardly making a dent.

#### Execution of terrorists would encourage more terrorists:

Daphne **Eviatar**, 11/25/20**09** (staff writer, “Can the Death Penalty for Terrorists Fuel Violence?” Accessed 7/26/2012 at <http://washingtonindependent.com/68913/can-the-death-penalty-for-terrorists-fuel-violence>, rwg)

Other legal experts agree, but for different reasons. “I think the fact that the defendants want to be executed shouldn’t count either way,” said Michael Dorf, a law professor at Cornell University, who advocated against the death penalty for these suspects when they faced military commission trials last year. “However, I do think it is legitimate for the government to worry about the possible counter-productivity of the death penalty here. That is, if the government had concluded that executing [Khalid Shaikh Mohammed], et al were likely to substantially aid Al Qaeda in recruiting, a decision not to seek the death penalty could be based in part on that worry.” According to Dorf, executing the men not only wouldn’t deter other terrorists from committing similar crimes, but could even encourage them.

#### Terrorists want to martyr themselves—death penalty is counter-productive:

Daphne **Eviatar**, 11/25/20**09** (staff writer, “Can the Death Penalty for Terrorists Fuel Violence?” Accessed 7/26/2012 at <http://washingtonindependent.com/68913/can-the-death-penalty-for-terrorists-fuel-violence>, rwg)

Other countries have faced similar debates in the face of repeated terrorist attacks, and ultimately decided that executing terrorists was counterproductive. Although the death penalty is now outlawed in all European Union countries, when the U.K. House of Commons debated whether to repeal the death penalty in Northern Ireland in 1973, there was widespread agreement that executing terrorists, who often wanted to martyr themselves, would only lead to increased violence and terrorism.

#### Terrorists aren’t deterred by the death penalty:

Daphne **Eviatar**, 11/25/20**09** (staff writer, “Can the Death Penalty for Terrorists Fuel Violence?” Accessed 7/26/2012 at <http://washingtonindependent.com/68913/can-the-death-penalty-for-terrorists-fuel-violence>, rwg)

The question raises a classic conundrum for criminal law theorists. Punishment in the American justice system is supposed to punish the criminal in a way that seems proportionate to the crime and also deter others from committing similar acts. But if suicide bombers are blowing themselves up for the cause, how much of a deterrent is the death penalty to these sorts of terrorists? “It doesn’t make sense as a deterrent,” said Columbia Law Professor Jeffrey Fagan in an email. “Deterrence assumes a rational actor who perceives that the punishment costs exceed the benefits of the crime, and who will not act against his or her own self-interest. in this case, the punishment is no match for either the rewards of striking a significant blow at ‘The Great Satan’ or the rewards of martyrdom.”

#### Death penalty doesn’t deter terrorists:

Daphne **Eviatar**, 11/25/20**09** (staff writer, “Can the Death Penalty for Terrorists Fuel Violence?” Accessed 7/26/2012 at <http://washingtonindependent.com/68913/can-the-death-penalty-for-terrorists-fuel-violence>, rwg)

Richard Dieter, Executive Director of the Death Penalty Information Center, agrees. “Terrorists expect to die or want to die,” he said. “There’s a chance that the death penalty feeds into that.” After the federal death penalty in the U.S. was expanded in 1994 to include terrorism, Dieter notes, “the very next year Timothy McVeigh blows up the Oklahoma federal building. So I don’t think anybody believes it’s much of a deterrent. It might even be an attractor.”

#### Ideology of the terrorist prevents the death penalty from being an effective deterrent:

Zvi **Magen**, 3/30/20**11** (research fellow at Tel Aviv University’s Institute for National Security Studies, “Evaluating the fight against terrorism,” Accessed 7/26/2012 at

<http://en.rian.ru/valdai_op/20110330/163288707.html>, rwg)

In terms of deterrence, the death penalty is a less effective deterrent in anti-terror warfare than in conventional judicial activity. The first reason why is that individuals acting on an ideological basis are less likely to be deterred than those acting for self gain. The second reason is that there is a great difference between the upper echelons of terror organizations and the actual fighters. The leaders who orchestrate terror activities are safe and protected. They don’t feel vulnerable to punishment. At the same time, the fighters are primarily mentally unstable. Their motivation to sacrifice is higher than that of "normal" individuals, making them indifferent to punishment.

## Environmental Justice Advantage Extensions

### Eliminating Discriminatory Intent Key to Environmental Justice

#### Environmental discrimination cases can’t overcome the hurdle of discriminatory intent:

Meagan Elizabeth Tolentino **Garland, 2007** (Attorney, Baker & McKenzie, LLP, Albany Law Environmental Outlook Journal, 12 Alb. L. Envtl. Outlook 1, “ADDRESSING ENVIRONMENTAL JUSTICE IN CRIMINAL SENTENCING PROCESS: ARE ENVIRONMENTAL JUSTICE COMMUNITIES "VULNERABLE VICTIMS" UNDER 3A1.1(B)(1) OF THE FEDERAL SENTENCING GUIDELINES IN THE POST UNITED STATES V. BOOKER ERA?” L/N, rwg)

n96. Torres, Environmental Burdens, supra note 38, at 439, 445 ("Because a plaintiff must establish a racially **discriminatory intent** or purpose, equal protection claims can redress only the most egregious cases. Thus, such a showing is a Herculean task indeed."). See generally Twiggs, 706 F. Supp. at 884-87 (dismantling plaintiffs' statistical evidence and assertions of **environmental discrimination**); Bean, 482 F. Supp. at 678 ("The problem is that, once again, these statistics break down under closer scrutiny.").

## Gender AFF Action Extensions

### Discriminatory Intent Undermines Gender AFF Action

#### Constitutional gender affirmative action cases require the proof of discriminatory intent:

RUTH **COLKER, 1986** (Associate Professor of Law, Tulane University, “ANTI-SUBORDINATION ABOVE ALL: SEX, RACE, AND EQUAL PROTECTION,” New York University Law Review, Lexis/Nexis, rwg)

The method of proof issue first arose in cases brought under Title VII of the Civil Rights Act of 1964, n51 in which blacks challenged policies or actions phrased in race-neutral language that nonetheless had a disparate impact in excluding them from employment opportunities. n52 When [\*1019] these challenges were successful, similar attacks were made on constitutional grounds. The Supreme Court ultimately resolved the different treatment/disparate impact controversy through an analysis of the pragmatic implications of each choice. n53 Although the Court allowed proof of either different treatment or disparate impact to establish a prima facie case in a Title VII suit, it later required that cases brought directly under the Constitution be proved with evidence of different treatment. n54 In order to establish a prima facie case under the equal protection clause itself, a plaintiff must always demonstrate that a defendant acted with a raceor sex-conscious motive, regardless of the impact that the defendant's facially neutral policy may have had on blacks or women. n55

### Patriarchy Impacts

#### Patriarchy causes extinction

Nhanenge, developmental Africa worker, 07

(Jhyette, 02-xx-07, “Ecofeminism: Towards Integrating the Concerns of Women, Poor People, and Nature into Development”, http://uir.unisa.ac.za/bitstream/handle/10500/570/dissertation.pdf?sequence=1/ ns)

Technology can be used to dominate societies or to enhance them. Thus both science and technology could have developed in a different direction. But due to patriarchal values infiltrated in science the type of technology developed is meant to dominate, oppress, exploit and kill. One reason is that patriarchal societies identify masculinity with conquest. Thus any technical innovation will continue to be a tool for more effective oppression and exploitation. The highest priority seems to be given to technology that destroys life. Modern societies are dominated by masculine institutions and patriarchal ideologies. Their technologies prevailed in Auschwitz, Dresden, Hiroshima, Nagasaki, Vietnam, Iran, Iraq, Afghanistan and in many other parts of the world. Patriarchal power has brought us acid rain, global warming, military states, poverty and countless cases of suffering. We have seen men whose power has caused them to lose all sense of reality, decency and imagination, and we must fear such power. The ultimate result of unchecked patriarchy will be ecological catastrophe and nuclear holocaust. Such actions are denial of wisdom. It is working against natural harmony and destroying the basis of existence. But as long as ordinary people leave questions of technology to the "experts" we will continue the forward stampede. As long as economics focus on technology and both are the focus of politics, we can leave none of them to experts. Ordinary people are often more capable of taking a wider and more humanistic view than these experts.

#### Patriarchy destroys value to life

Nhanenge, developmental Africa worker, 07

(Jhyette, 02-xx-07, “Ecofeminism: Towards Integrating the Concerns of Women, Poor People, and Nature into Development”, http://uir.unisa.ac.za/bitstream/handle/10500/570/dissertation.pdf?sequence=1/ ns)

The two characteristics, which benefit in a racist and/or patriarchal society are white and male. Since both are received by birth, the benefits are not based on merit, ability, need, or effort. The benefits are institutionally created, maintained and sanctioned. Such systems perpetuate unjustified domination. Thus, the problem lays in institutional structures of power and privilege but also in the actual social context. Different groups have different degrees of power and privilege in different cultural contexts. Those should be recognized, but so should commonalities where they exist. However, although Ups cannot help but to receiving the institutional power and privileges it is important to add that they are accountable for perpetuating unjustified domination through their behaviours, language and thought worlds. That is why ecofeminism is about both theory and practice. It does not only try to understand and analyze, it also finds it important to take action against domination. (Warren 2000: 64-65).¶ Patriarchy is an unhealthy social system. Unhealthy social systems tend to be rigid and closed. Roles and rules are non-negotiable and determined by those at the top of the hierarchy. High value is placed on control and exaggerated concepts of rationality, even though, paradoxically, the system can only survive on irrational ideologies. Militarism and warfare are continual features of a patriarchal society because they reflect and instil patriarchal values of control and competition. The elite exercise illegitimate, inappropriate and inequitable power over the subordinate groups. The subordinate groups have therefore limited access to the type of power that is necessary to mobilize resources to achieve self-determined ends. Thus the subordinate groups have difficulties to get their basic needs met. These groups include women, children, people of colour, poor people, non-human animals and nature. Hence, patriarchalism is based on racism, sexism, class exploitation and ecological destruction. (Adams 1993: 4; Warren 2000: 205-206, 210).¶ Patriarchy is a closed circle of institutional and individual ways of thinking, speaking and behaving.¶ They are rooted in the patriarchal conceptual framework, which is a faulty belief system. Faulty 150¶ beliefs (patriarchal conceptual framework) leads to impaired thinking and language of domination (sexist and naturist), which leads to behaviours of domination (control, exploitation, violence, rape, murder) which makes life unmanageable for marginalised groups. If the circle is not broken, it becomes an unhealthy vicious circle. (Warren 2000: 207, 210-211).

#### Patriarchy will lead to the end of the world

Nhanenge, developmental Africa worker, 07

(Jhyette, 02-xx-07, “Ecofeminism: Towards Integrating the Concerns of Women, Poor People, and Nature into Development”, http://uir.unisa.ac.za/bitstream/handle/10500/570/dissertation.pdf?sequence=1/ ns)

Western patriarchal societies may have been shaped even before Plato's time. It is at least clearly depicted in Plato's "The Republic". The ruling elite have been able over time through their command of resources to control culture disproportionate to their number. This hegemony has created structures in societies, which ensured the continuation and expansion of oppression. The Western patriarchy is therefore a legacy. Its deep penetration has shaped our ideas of our selves and our relations. Its conceptual framework is deeply entwined in modern culture. Little is kept out from its destructive rational and logical network. The conceptual framework has been applied in different ways throughout Western history. In the current historical moment, the focus is on developing the rational global economy grounded in rational egoism. Thus, patriarchalism is taking a totalised form. It wants to appropriate all remaining space on the earth, and all of its living things. Only those who are rich in monetary terms can afford to get a space on earth. The rational economy will throw off any democratic or social control. It will subsume any constrain to its maximisation. Finally, it will devour the social. Patriarchy will end in death of nature and destruction of the Others. However, since the master is dependent on the Others, also he will die - unless of course he will abandon his mastery. (Plumwood 1993: 190-195).

### Women Should Be Considered in Transportation

#### Engendered transport should be prioritized in the squo

Buiten, fellow at Global Justice and Gender Equality at University College Dublin, 07

(Denise, accessed 7-23-12, “Gender, Transport, and the Feminist Agenda: Feminist Insights Towards Engendering Transport Research”, http://www.unescap.org/ttdw/Publications/TPTS\_pubs/bulletin76/chapter2.pdf, ns)

There has been increasing recognition of the importance of integrating gender into transport research, policies and strategies over the past three decades. Through the application of a gender lens, androcentric approaches in traditional transport planning have been called into question. The need for engendered transport research and policy has also been evidenced through empirical data pointing to the gendered differences in travel patterns and needs, as well as time and money spent on travel and transport. While the bulk of research in this area is still located within developed countries, increasing attention to gender and transport can be witnessed in developing countries (Venter, Mashiri and Buiten, 2006), where much work is needed to effectively engender transport research and planning towards the alleviation of poverty and oppression.¶ However, this developing area of research is characterized by the need to refine theoretical frameworks around gender and transport. It is argued in this paper that by doing this, methodologies may be improved in a way that can effectively link gender and transport research to a strong feminist agenda. It is further argued that pressure to advance empirical research and implementation, while sidestepping theoretical engagement, may politically and practically compromise strategies to effectively integrate gender into the transport sector. Instead, the need for theoretical discussion should be prioritized and integrated into action agendas capable of implementation.

#### Women not considered in transportation- leads to homogenization of classes, ethnicity

Buiten, fellow at Global Justice and Gender Equality at University College Dublin, 07

(Denise, accessed 7-23-12, “Gender, Transport, and the Feminist Agenda: Feminist Insights Towards Engendering Transport Research”, http://www.unescap.org/ttdw/Publications/TPTS\_pubs/bulletin76/chapter2.pdf, ns)

While the theoretical developments described above generally advocate a relational conception of gender, in gender and transport research, advocacy, policies and strategies there exists a strong focus on women’s transport needs in particular. This in itself is not surprising, considering that the bulk of knowledge on transport has been identified as excluding women’s interests. Therefore, a focus on women is a necessary step towards equality, addressing the significant gendered lacunae that exist in transport research and planning. Indeed, from a feminist perspective, capturing the voices and interests of women, so neglected in most disciplines, is an important practical and political step towards equality and the awareness of important gender dynamics. However, where “gender” is taken merely to connote “women”, theoretical, political and methodological problems may arise. In the first instance, there may be a tendency to homogenize women (and by implication men as well), bypassing the important intersections of class, race, ethnicity, age and others. In developing countries in particular, obscuring views into the class and race dynamics of gendered transport burdens and constraints in this way would compromise the methodologies and political agendas aimed at effecting change.

### **Solvency--Sexism**

Inclusive Transportation Policies Solve Social Exclusion; Sexism

Lucas, Senior Research Fellow in Transport, Accessibility and Social Disadvantage, 10/13/04

(Karen,7/23/12,[http://books.google.com/books?id=4GmeE8klB1YC&printsec=frontcover#v=onepage&q&f=falsehttp://books.google.com/books?id=4GmeE8klB1YC&printsec=frontcover#v=onepage&q&f=false](http://books.google.com/books?id=4GmeE8klB1YC&printsec=frontcover#v=onepage&q&f=false), “Running on empty: Transport, Social Exclusion and Environmental Justice”. bcd)

A key aim of the government’s new strategy for transport and social exclusion is to ensure that people experiencing these problems can reach opportunities such as work, education and health treatment by improving access to these opportunities. The aim is to ensure a clear and consistent process for identifying groups and area with accessibility problems, linked to an action plan for addressing these. The strategy is still in its developmental stages, but it is envisaged it will involve four key stages: 1. an accessibility audit to identify whether people can get to key activates within a reasonable time and cost, safely and reliably. 2. A resources audit to identify the existing resources and potential funding sources that are available. 3. An action plan to develop and prioritize solutions and a cross-agency strategy for delivering these. 4. Implementation and monitoring of this strategy. Local transport planners are to lead the process of accessibility planning in partnership with land-users planners and other local service providers and agencies influencing people’s accessibility. Success will depend on the ways that these bodies can engage and interact with the commercial sector and communities that are the primary focus of this policy attention.

## Right to Travel Extensions

### Judicial Decisions Modeled

#### America has tremendous influence on the legal systems of other countries:

ALBERTO **GONZALES, 2/2/2007** (Federal News Service; Lexis)

ATTY GEN. GONZALES: Good afternoon. Being an American citizen is an incredible blessing. We live in the greatest country on the face of the earth -- the most powerful, influential society in history. When I travel, I see, taste and hear America's influence on other cultures and institutions. Our nation is unrivaled as the beacon of hope, the champion of justice. We are the ally first called upon in times of crisis. One of the many reasons for America's greatness is our system of government. And what has allowed our system of government to thrive is its simple foundation in the rule of law. For many of you, law school is when you become acquainted with the concepts and principles that support our legal system and that our Founding Fathers embraced. As lawyers, you will play an important role in protecting the rule of law, and from time to time your work will be judged by the men and women who serve as judges.

#### Countries begin to model US after Supreme Court Health care decision

#### Khazan 6/28

(Olga Khazan, Washington Post, As Supreme Court upholds mandate, other countries move toward universal health coverage, <http://www.washingtonpost.com/blogs/blogpost/post/as-supreme-court-upholds-mandate-other-countries-move-toward-universal-health-coverage/2012/06/28/gJQAgZH58V_blog.html>, 6-28-2012) SQR

As the United States Supreme Court upholds the Affordable Care Act’s mandate requiring all Americans to have health insurance, the U.S. falls in line with dozens of other countries that have recently begun moving toward universal health coverage.¶ Worldwide, countries that were once considered universal-health “blind spots,” such as India and South Africa, are developing systems that provide access to medical care for nearly all of their citizens, according to Yanzhong Huang, a senior fellow at the Council on Foreign Relations, writing for the Yale Center for the Study of Globalization.

### Right to Travel is Deontological

#### The Fourteenth Amendment should trump the possible negative consequences of the right to travel:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

An offshoot of the floodgates argument is that, with large numbers of minority immigrants coming to the United States, racism and cultural conflict will increase. n42 The social cohesion concern assumes that large numbers of migrants will come who are not already migrating, which is not necessarily the case. n43 Taken literally, this argument would more generally place into question the enforcement of the antidiscrimination laws and the Equal Protection Clause of the Fourteenth Amendment because of potential threats to social cohesion, an argument rejected in the nation's decision to move forward in desegregating the Jim Crow South. n44 In any event, if, as Nathan Glazer says, "we are all multiculturalists now," n45 we should make our immigration laws consistent with that view. If not, we should say so.

### Right to Travel is Deontological

#### Providing equal access to transportation is a moral obligation and is key to value to life

LaHood, CURRENT SECRETARY OF TRANSPORTATION, 11

(Roy, 6-01-11, http://www.whitehouse.gov/blog/2011/06/01/equal-access-transportation-right-all-americans, “Equal Access to Transportation: A Right for All Americans”, TVB)

Transportation is about a lot more than just getting around. Our roadways, runways, and railways connect people with all of the things that make life worth living: family, education, job opportunities, and recreation. That’s why we here at DOT--and the entire Obama Administration--are laser-focused on improving access to transportation for all Americans.¶ Last week, I joined the White House monthly disability call with the Special Assistant to President Obama on Disability Policy, Kareem Dale, to discuss with hundreds of stakeholders everything we’re doing at DOT to improve transportation access for people with disabilities. In the twenty years since the passage of the Americans with Disabilities Act, there’s no doubt we’ve made significant strides forward. But we won’t rest until everyone has equal access to all forms of transportation.¶ In the last year, DOT announced the first federal rule to specifically provide ADA protections to people with disabilities who travel on boats and ships. And we’re finalizing a regulation to improve accessibility at rail stations so that people with disabilities can get on the same rail cars that everyone else uses.¶ We’re also committed to improving the flying experience for people with disabilities. We’ve proposed new rules that would:¶ Require airports to provide lifts for boarding and disembarking passengers;¶ Make it easier for people to fly with service animals; and¶ Improve access to airline websites, check-in kiosks, in-flight entertainment centers, audio-visual displays, medical oxygen, and airplane bathrooms. ¶ And as we prepare to mark the 25th anniversary of the Air Carrier Access Act this year, we’re stepping up enforcement efforts to make sure airlines respect the rights of air travelers with disabilities. In the last year, our Aviation Enforcement Office assessed civil penalties ranging from $125,000 to $2 million against a number of U.S. carriers. ¶ Access to transportation is one of the most fundamental of American rights. I’m proud of the progress we’ve made, but remain committed to achieving even more so that all Americans have the same opportunities for living, learning, and earning.

#### Right to travel is a fundamental right:

Thomas W. **Sanchez, 2007** (Director and Associate Professor Urban Affairs and Planning Program @Virginia Tech, “TRANSPORTATION EQUITY AND ENVIRONMENTAL JUSTICE: LESSONS FROM HURRICANE KATRINA,” Accessed 7/25/2012 at <http://www.ejconference.net/images/Sanchez_Brenman.pdf>)

Transportation plays a vital role in our society. In fact, the Supreme Court recognized that the¶ right to travel is one of the fundamental rights guaranteed by the Fourteenth Amendment to the¶ U.S. Constitution.1 Given the important role of transportation, it is quite understandable that¶ transportation policy can be contentious. Too often, however, fights over what specific projects¶ will be funded and in which states or congressional districts, and scant attention is paid to the¶ larger social and economic effects that transportation policies have.

### Right to Travel Key to Human Rights

#### Massive human rights violations occur from denial of the right to travel:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

Moreover, closed borders create a foundation for overzealous and publicly condemned enforcement measures, such as the United States' refusal to accept Jewish refugees fleeing the Holocaust during World War II in the name of border enforcement and compliance with immigration laws. n29 The suppression of the rights of noncitizens also can lead to harsh policies directed toward certain groups of U.S. citizens, as demonstrated by the internment of persons of Japanese ancestry, citizens and noncitizens alike, during World War II, n30 and by the holding of U.S. citizens without criminal charges or access to an attorney after the horrible events of September 11, 2001. n31

### Right to Travel Solves Racism

#### The freedom to travel reduces racial discrimination:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

Finally, freeing up migration through an open borders policy would recognize that the enforcement of closed borders cannot stifle the strong, perhaps irresistible, economic, social, and political pressures that fuel international [\*201] migration. Consequently, border controls cannot end unlawful migration. As with the United States' failed prohibition of the alcohol trade in the early twentieth century, enforcement of the immigration laws to halt undocumented immigration has proven virtually impossible. To make matters worse, border enforcement shares many of Prohibition's negative side effects: promoting criminal activity, leading to abusive law enforcement practices, contributing to a caseload crisis in the courts, and undermining the legitimacy and moral force of the law. n36 Elimination of border controls would offer other policy benefits as well, such as reducing racial discrimination and minimizing international tensions growing out of disputes over border enforcement. n37

### Right to Travel Solves Terrorism

#### Right to travel bolsters ability to solve terrorism:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

In sum, liberal admission would generally seem to further U.S. foreign policy interests. n409 The potential foreign policy benefits are not limited to U.S.-Mexican relations. Open borders could relieve tensions between the United States and other nations as well. Importantly, multilateralism will be essential to fighting terrorism in the future. n410

#### Free right to travel consistent with solving terrorism:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

Open borders are entirely consistent with efforts to prevent terrorism. More liberal migration would allow for full attention to be paid to the true dangers to public safety and national security. U.S. immigration authorities could focus on terrorists, dangerous criminals, and drugs and other contraband, rather than trying to keep most noncitizens out of the country. Enforcement efforts could move beyond the morass of exclusion grounds, per country caps, ceilings on immigrant visas, and the many complexities of the Immigration and Nationality Act (INA) n49 that have made its enforcement unwieldy. n50

### Right to Travel is Modeled

#### Right to travel sends a signal the world over of tolerance from the US:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

[\*218] Open borders would send an expressivist message that people from other nations, including people of color from the developing world, have equal dignity with all people. n131 Rather than classified as undesirable and dehumanized "aliens" subject to exclusion and brutal border enforcement, n132 citizens of all other nations would be welcomed as persons worthy of membership in U.S. society. Such important messages would do much to minimize the nativism and racism that often has infected public discourse over immigration, and shaped the treatment of immigrants and certain groups of citizens in the United States.

### Right to Travel Key to World Economy

#### Bolstering the right to travel would bolster the world economy:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

The economic arguments in favor of more open immigration policies resemble the arguments that are employed by international trade advocates. The proliferation of trade agreements, including regional arrangements such as the European Union and NAFTA, and global ones such as the World Trade Organization, shows the current popularity of free trade based on the belief that nations in the aggregate benefit economically by reducing barriers to the free flow of capital, goods, and services. n241 Relying on such economic arguments, Howard Chang has argued that liberalizing immigration policies likely would increase national and global economic welfare because of more efficient use of the untapped source of relatively low-wage labor in countries across the world. n242 One influential econometric study found that "although highly speculative, the calculations reported here clearly suggest large potential worldwide efficiency gains from moving toward a worldwide labour market free of immigration controls." n243

#### Freedom of travel bolsters the economy:

Kevin R. **Johnson, 2003** (Associate Dean for Academic Affairs, University of California at Davis, UCLA Law Review, October 2003, “LAW AND THE BORDER: Open Borders?” L/N, rwg)

Moreover, the nation stands to reap economic benefits from free labor migration in a globalizing world economy. As a matter of economic theory, international trade with Mexico and much of the world, which the United States has eagerly embraced, differs little from labor migration. A utilitarian argument would allow for labor migration and add the benefits of a low-wage labor force to the national economy.

### Providing Transportation Infrastructure is Deontological

#### Road building is one of the greatest public responsibilities of society:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

The major modes of transportation include private motor vehicles on highways (consisting of interstates and other roads), public transit (including buses and trains), bicycling, and walking. n13 The ability to travel using these transportation modes is one of the basic building [\*215] blocks of society. n14 Roads, bridges, and other forms of transportation infrastructure are necessary for people to function in a modern community. n15 Visits to a bank, school, or anywhere else utilize a form of transportation. A community without transportation infrastructure becomes a community of inefficiency and chaos. n16 Thomas Harris McDonald, the father of the American interstate road system, n17 once noted, "next to the education of the child, road building is the greatest public responsibility." n18

### Right to Travel Key to Liberty

#### Freedom of movement is key to individual liberty:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

Unlike the lower court cases that find no protected interest in choosing a transportation mode, n275 Supreme Court cases that invoke the freedom of movement nearly always involve personal liberty. n276 Federal appellate courts, when not looking explicitly at a particular transportation mode, have also recognized a freedom of movement. n277 The Court has defined freedom of movement as the right to free movement inside a nation's frontiers, and it seems to include the right to remain in a public place on foot. n278 The Supreme Court has never explicitly recognized freedom of movement as an explicit fundamental right, n279 and federal appellate courts are currently split over whether or not such a right exists. n280

#### People have the constitutional right to travel from state to state

Brilmayer 93 (Lea, Professor in law at Yale, "Interstate Pre-emption: The Right to Travel, The Right to Life, and the Right to Die" (1993). Faculty Scholarship Series. Paper 2524. http://digitalcommons.law.yale.edu/fss\_papers/2524

07-23-12)

Having mentioned due process, the Commerce Clause, and full¶ faith and credit, the natural question is what to make of the right to¶ travel. Intuitively, this seems to be the constitutional protection that¶ tracks most closely the defendant's claim to escape home-state law by¶ leaving the state.38 The obvious problem with relying directly on the¶ right to travel in the abortion context, however, is that the state is not¶ denying anyone the right to leave its borders; nor is it even creating a¶ disincentive to leave. It is merely saying that, when one is absent from¶ the state, one must nonetheless obey state law.¶ In a sense, then, the right-to-travel argument is parasitic upon the¶ claim that the home state cannot regulate extraterritorially. The right to-¶ travel argument works only so long as it rests on a state's underlying¶ inability to regulate the resident's activities in other states. Surely,¶ if the home state is not entitled to apply its law extraterritorially, then¶ it may not condition leaving the state upon agreeing to obey state law¶ while absent. On the other hand, if the state were entitled to regulate¶ extraterritorially, then the right to travel would not seem to impose an¶ additional bar.39 To put it another way, the "right to travel" by itself¶ does not specify which law apply once one gets to the other state.¶ To decide this issue, we must consult the constitutional limits on extraterritorial¶ application of local law - and here, again, the most directly¶ relevant provisions are due process, full faith and credit, and the Commerce Clause

## Solvency

### Solvency: Legal Precedents Snowball

#### LEGAL PRECEDENTS SNOWBALL:

**Tsai,** Assistant Prof. of Law @ University of Oregon School of Law, 20**05** (Robert, Iowa Law Review, March 2005; 90 Iowa L. Rev. 1095; Lexis)

It is always risky to attempt predictions based on a reading of signs. The history of law, like human history generally, is a set of contingencies. Unforeseen events can cause a disruption; **a series of small interpretive choices** and popular reactions can add up to a quiet legal revolution. More important, law's appearance can be deceiving. Still, legal symbols do reveal [\*1160] gestalts - the particular interaction between law's manifestations and the beliefs they express.

#### Courts will follow precedent—they feel an overwhelming obligation to do so:

Fallon, prof. of Constitutional Law @ Harvard, Harvard Law Review, April 2005, 118 Harv. L. Rev. 1787; Lexis

Throughout constitutional history, Supreme Court Justices have assumed with **near unanimity** that they are legally authorized and sometimes **bound to follow precedents**, sometimes **even when** prior cases were themselves erroneous at the time of their decision. n149 Indeed, I know of no Justice in the history of the Supreme Court who has persistently questioned [\*1822] **precedent-based decisionmaking**. n150 Even leading constitutional originalists - those who maintain that courts otherwise ought to decide cases in accordance with the original understanding n151 - have accepted **the authority of judicial precedent**, including past decisions that could not themselves be justified under originalist principles. n152

### Solvency: Supreme Court Decisions are Modeled

#### Domestic litigation in the US is modeled by other nations:

**Van Schaack,** Assistant Prof. of Law @ Santa Clara University School of Law, Vanderbilt Law Review, November, 20**04**, (Beth, 57 Vand. L. Rev. 2305; Lexis)

Nonetheless, domestic civil litigation in the U.S. plays a part where criminal prosecutions are not feasible or forthcoming and where perpetrators are subject to personal jurisdiction here. By exposing the whereabouts of abusers, civil suits can spur or shame the U.S. government into invoking administrative n133 and/or criminal remedies against identified perpetrators. n134 For example, information gathered in connection with civil lawsuits has assisted the Bureau of Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service) in pursuing actions against abusers for visa fraud. n135 Likewise, the commencement of civil litigation in the U.S. **can trigger similar judicial responses in the home countries of defendants.** n136

### Solvency: Court Should Define Right to Travel as Fundamental Under Total Deprivation Doctrine

#### Supreme Court should define the right to travel as fundamental under the total deprivation doctrine:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

States do not explicitly discriminate between motor vehicle and non-motor vehicle users, and generally do not enact laws that preclude citizens from driving motor vehicles that are [\*261] outside the scope of valid exercises of the police power. n329 Any citizen can drive a car if they can afford it -- regardless of whether they happen to be a new resident or a visitor of a state. In order to find the right to travel "penalized," a court would have to hold that the high cost of owning an automobile is a penalty per se, and possibly that the right to intrastate travel exists. Given the large catalogue of jurisprudence that does not protect an individual's right to use particular travel modes, courts seem unlikely to protect non-motor vehicle users under the fundamental rights rubric by itself. Nevertheless, defining the right to travel as fundamental might help define the contours of a suspect class of poor people for the purposes of challenging the lack of transportation options under equal protection. Under the Supreme Court's equal protection doctrine of total deprivation, n330 poor individuals could make the claim that they cannot afford a motor vehicle and are thus totally deprived of transportation mobility. If a "total deprivation" argument were combined with a right to travel claim, the Supreme Court would be faced with an argument that is very similar to its prior cases. n331 The grouping of poor people as a suspect class provides the discrimination required to bring the claim that state action penalizes the fundamental right to travel. And if a court recognizes a right to intrastate travel, non-motor vehicle users would have a cause of action even if they were not engaging in acts traditionally protected under interstate travel jurisprudence. n332 If the right to intrastate travel exists, non-motor vehicle users operating completely within a state could also receive constitutional protection. [\*262] The total deprivation doctrine reached fruition in San Antonio Independent School District v. Rodriguez, where poor citizens in Texas challenged the state's school funding system. n333 The Supreme Court rejected the claim, and held that no federal fundamental right to education exists. n334 However, the Court also stated, "[t]he individuals, or groups of individuals, who constituted the class discriminated against in our prior cases shared two distinguishing characteristics: because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." n335 Crucial to the Court's factual analysis was the fact that the people impacted did not show they were indigent or beneath "any designated poverty level." n336 San Antonio also reasoned that no constitutional violation occurs when the state creates an adequate substitute for the desired benefit. n337 This language opened the door for future Equal Protection Clause suspect classification claims based on total deprivation due to poverty. Under the total deprivation doctrine, even if the state classification is rationally related to a state interest, the court must find that the state action satisfies strict scrutiny. n338 To date, however, this author is not aware of any case that has invoked the total deprivation doctrine in the context of the right to travel. [\*263] The total deprivation standard laid out in San Antonio is extremely hard to meet. The Court's general rule for equal protection claims holds that "[i]f a legislative classification or distinction neither burdens a fundamental right nor targets a suspect class, we will uphold [it] so long as it bears a rational relation to some legitimate end." n339 The lack of wealth, in and of itself, does not create a suspect classification for the purposes of the Equal Protection Clause. n340 Indeed, the Supreme Court "has held repeatedly that poverty, standing alone, is not a suspect classification." n341 The key difference in the transportation context, versus a standard poverty claim involving equal protection, is that the right to travel implicates both the total deprivation doctrine (and thus a suspect classification) and the fundamental right to travel. Together, a total deprivation/right to travel argument fuses the various strands of transportation jurisprudence and demonstrates that a penalty has occurred that infringes the right to travel. Total deprivation and right to travel arguments combine notions of individual liberty in cases like Williams v. Fears n342 and freedom of movement jurisprudence n343 with the broader notions of class protection evident in many of the interstate and intrastate travel cases.

#### Increasing numbers of poor Americans are totally deprived of the right to travel:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

Abundant evidence exists to show that increasing numbers of poor Americans are totally deprived of the right to travel. n344 The primary transportation engineering manual in the United States puts the needs of motor vehicles squarely ahead of alternative forms of transportation. n345 [\*264] For decades, transportation policy focused on enabling motor vehicle use at the expense of other transportation modes. n346 Large numbers of people below the poverty line are unable to flee from natural disasters, and these individuals tend to be African American. n347 The average cost of operating a motor vehicle is now over $ 8000 per year. n348 The average individual on welfare cannot afford a car, and less than half of all jobs in the United States are accessible by public transportation. n349 These overwhelming facts appear to satisfy the total deprivation doctrine laid out in San Antonio. Many of the poor individuals that need transportation access are below the poverty line, they have no adequate replacement for the desired benefit in the form of public transportation, and they suffer from a total deprivation of significant portions of the transportation system. Seen through this lens, the total deprivation doctrine avoids the problems associated with a stand-alone fundamental rights analysis involving the right to travel, n350 and remains faithful to the Supreme Court's jurisprudence that protects the travel rights of poorer members of society.

### Solvency: Civil Rights Decisions Bolster Social Movements

#### Civil Rights decisions can become powerful symbols to social movements—Brown v. Board of Education proves:

**Yeazell,** professor of law @ UCLA, 20**04** (Stephen, Vanderbilt Law Review, November, 2004, 57 Vand. L. Rev. 1975; Lexis)

While Brown did not create this world, it **constituted a very powerful symbol of litigation as a transformative force,** and the power of that image helps explain the fact that the plaintiffs' bar regularly depicts itself as the defender of constitutional rights. Brown and its sequels made that slogan both plausible and attractive. It gave to the plaintiffs' bar, which was starting to reshape its finances and practice setting, an image that involved more than vehicular accidents: [\*1977] plaintiffs represented by this bar were, like the plaintiffs in Brown, vindicating rights suppressed by the defendants.

### Solvency: Other Branches Will Enforce Court Decisions

#### Court’s decisions are almost always enforced—administrative benefits ensure:

Lawrence **Baum**, Department of Political Science, Ohio State University, June **2003**

[“The Supreme Court in American Politics,” http://arjournals.annualreviews.org/doi/full/10.1146/annurev.polisci.6.121901.085526;jsessionid=n1HzQqZJALRe]

Once we know more about the implementation of the Court's decisions in absolute and relative terms, the most important question might well be why implementation is as successful as it is. The Court's limited concrete powers would seem to aggravate the difficulties faced by all organizational leaders, so why do judges and administrators follow the Court's lead so frequently? Within the judiciary, part of the answer undoubtedly lies in selection and socialization processes that enhance agreement about legal policy and acceptance of hierarchical authority. Even the Court's limited powers may be sufficient to rein in administrators, especially in the era of broad legal mobilization that Epp has described: Groups that undertake litigation campaigns to achieve favorable precedents can also litigate against organizations that refuse to accept those precedents. Both judges and administrators may reduce their decision costs by using the Court's legal rules as a guide. In any event, the relationship between the Court and policy makers who implement its policies may be an especially good subject for studies to probe the forces that reduce centrifugal tendencies in hierarchies.

#### Parties almost always adhere to Court rulings:

Fallon, prof. of Constitutional Law @ Harvard, Harvard Law Review, April 2005, 118 Harv. L. Rev. 1787; Lexis

(b) Authoritative Legitimacy and Its Limits. - Today, nearly all Supreme Court rulings possess a high degree of authoritative legitimacy, whether in the strong or the weak sense, at least with respect to [\*1831] the parties before the Court. n195 In plainer terms, the parties **almost always obey the Court's rulings**. No logical necessity undergirds this state of affairs. In the past, General Andrew Jackson famously defied a judicial ruling. n196 So did President Abraham Lincoln. n197

#### Other branches will enforce Supreme Court decisions:

Richard H. **Fallon**, Jr., Professor of Constitutional Law, Harvard Law School, April **2005**

[“Legitimacy and the Constitution,” http://web.lexis-nexis.com/universe/document?\_m=be00e4b6d189ddb647d9365044a5571c&\_docnum=1&wchp=dGLbVzb-zSkVb&\_md5=7105aae1669b5f945e6a9318b42fc69d]

Today, nearly all Supreme Court rulings possess a high degree of authoritative legitimacy, whether in the strong or the weak sense, at least with respect to the parties before the Court. In plainer terms, the parties **almost always obey the Court's rulings**.

#### Strike down efforts in Congress fail—can’t get enough Congressional support to strike down Court decisions:

Lawrence **Baum**, Department of Political Science, Ohio State University, June **2003**

[“The Supreme Court in American Politics,” http://arjournals.annualreviews.org/doi/full/10.1146/annurev.polisci.6.121901.085526;jsessionid=n1HzQqZJALRe]

It is also worth asking why the Court fares so well in Congress. As noted above, few of the Court's most controversial interventions in the past half century have been directly reversed. Nor has Congress enacted any of the numerous bills to remove the Court's jurisdiction over areas in which the Court has aroused congressional anger. A large part of the explanation lies in the difficulty of enacting legislation in a process with so many veto points. That difficulty is especially great in an era like the current one, which lacks a strong or stable law-making majority. In such an era, interventions are likely to have significant support in government regardless of their ideological direction, and even decisions that strike down federal laws may enjoy majority support. The line of decisions since 1995 that has limited the regulatory power of the federal government (e.g., Alden v. Maine 1999, United States v. Morrison 2000) constitutes the most significant judicial attack on federal policy since the 1930s. But since 1995, Congress has had Republican majorities except for the bare Democratic Senate majority in 20012002. In that situation, any significant action to counter the Court's policies has been exceedingly unlikely.

### Solvency: Court Creates Social Change

#### THE SUPREME COURT can produce massive social change with the Equal Protection Clause:

**Araiza,** Professor of Law @ Loyola Law School, 20**05** (William, Tulane Law Review, February 2005, 79 Tul. L. Rev. 519; Lexis)

Of course, this is not to say that controversial or radical changes in society cannot emanate from the Court under the auspices of an interpretation of the Equal Protection Clause. Cases such as Brown v. Board of Education n108 make clear that the Court can sometimes either [\*545] precipitate a social movement for equality or at least join in at an early stage, even when traditional constitutional interpretation tools yield ambivalent answers.

#### Plessy and other race based decisions prove: the stamp of approval from the Supreme Court has powerful societal consequences:

Lassiter, Assistant Professor of History, University of Michigan, Michigan Law Review, May, 2005, 103 Mich. L. Rev. 1401

Klarman largely substantiates his claim that the Plessy Court's civil rights decisions represented "plausible interpretations of conventional legal sources" and accurate reflections of white public opinion, and therefore the corollary that "these rulings were not blatant nullifications of post-Civil War constitutional amendments designed to secure racial equality" (p. 9). But this does not necessarily confirm his broader thesis about the minimal effect of the Plessy-era decisions on the path of history. Klarman's belief in judicial minimalism downplays the import of having the institution of the Supreme Court - and not just southern vigilantes or political demagogues or even Progressive-era reformers - extend the federal government's stamp of constitutional approval to a formal legal system that operated on the basis of the systematic racial subordination of African Americans. [\*1411] "Jim Crow legislation was generally more symbolic than functional," according to Klarman, because "white supremacy depended less on law than on entrenched social mores, backed by economic power and the threat and reality of violence" (p. 82). But surely it is not simply a coincidence that a relatively stable racial order marked the four decades between the turn of the twentieth century and the beginning of World War II, the same era during which the Plessy Court's validation of legal segregation and black disfranchisement remained operative. Nor is it incidental that substantial black activism and corresponding white violence marked the fluid and unsettled racial climate that existed during the decades before the Supreme Court's endorsement of segregation and disfranchisement in the late 1890s, and also during the period after the federal judiciary began to chip away at both policies beginning in the 1940s. n35 The Supreme Court's **overt willingness** to tolerate state-action subterfuges that enforced anti-black discrimination through race-neutral facades also **helped to shape the legal underpinnings of racial inequality** and provided **a segregationist road map** for southern (and northern) policymakers throughout the twentieth century. Between 1910 and 1920, the Court issued a series of rulings that invalidated forced peonage laws, grandfather clauses, separate-and-unequal luxury accommodations in railroad cars, and city ordinances mandating residential segregation. n36 These cases, which Klarman aptly characterizes as "concerned more with form than substance," were therefore "easy to circumvent" as long as legislatures continued to pay lip service to constitutional principles (p. 62). For example, beginning in the 1920s the NAACP mounted an aggressive assault on residential segregation, which emerged as a decidedly national phenomenon as a result of urbanization in the South and the First Great Migration of blacks to the North. But the federal courts upheld restrictive racial covenants under the doctrine of private property rights until the late 1940s, and they have never seriously challenged "racially motivated but facially neutral zoning" (p. 92) and other public policies that offer ample evidence of state action. n37 In the area of criminal law, the [\*1412] Supreme Court expanded the scope of due process during the interwar period to rescue black victims of grossly unjust trials, but these individual (rather than class-action) cases did almost nothing to remedy the structural racism that pervaded the southern legal system (pp. 117-35, 152-58). During the New Deal era, the justices did signal a greater willingness to consider the state action dilemma in cases involving the all-white primary in Texas and the failure of Missouri to provide a substantively equal law school for a black applicant in the Gaines litigation brought by the NAACP. n38 The civil rights group ensured that voting discrimination and substantive equality in public education would remain on the judicial agenda during and after World War II, the turning point in Klarman's story.

#### Court decisions produce massive societal ripple effects: Brown v. Board of education proves:

**Yeazell,** professor of law @ UCLA, 20**04** (Stephen, Vanderbilt Law Review, November, 2004, 57 Vand. L. Rev. 1975; Lexis)

One doubts that Robert Carter, Thurgood Marshall, Spottswood Robinson, Jack Greenberg and the rest of the legal team that argued Brown v. Board of Education n1 spent much time thinking about mass torts. Nonetheless, it is entirely appropriate that a commemoration of their achievements include not only that topic but also international human rights and health care, as well as the more expected ones of education and social welfare. Brown was part of a revolution, and revolutions often have **collateral effects** as important as their immediate consequences. The civil rights movement followed the same pattern. [\*1976] As an immediate consequence, that movement brought us school desegregation. Follow-on effects included desegregation of public facilities. These were important **milestones in U.S. society**. They achieved specific changes, but they also made possible the second civil rights revolution - the legislative actions that have, in the last four decades, transformed U.S. society. **Beyond race and civil rights, Brown created several ripples,** two of which provide the focus for this Essay. First, Brown and the civil rights litigation movement helped create a renewed belief, not just in the law, but more specifically in **litigation as a noble calling and as an avenue for social change.** That belief lies open to challenge, and it can leave students and lawyers frustrated at the distance between the aspirations that brought them to law school and the world of practice as they perceive it. But whether or not it is well-founded, this belief, with roots traceable to Brown and civil rights litigation, has endured for several generations. Thus, Brown reshaped the aspirations of lawyers in ways that are still important.

#### Social change require courts to occur

Stephen C. **Yeazell**, Professor of Law, UCLA School of Law, **2004**

[“*Brown*, The Civil Rights Movement, and the Silent Litigation Revolution,” http://ssrn.com/abstract=608002]

It is entirely possible to ask whether these professions of allegiance are durable and whether pro bono and public interest practice have proved the most effective levers of social change. Some have asked whether lawyers most effectively spend their time in such efforts. Others have asked whether such efforts, even if nominally successful, work lasting social change. Perhaps the best evidence of the widespread belief in the transformative power of litigation comes from those who deploy the strategy of social change through litigation in the service of ends opposed by Thurgood Marshall's successors. In recent years, for example, the plaintiffs attacking the affirmative programs of the University of Michigan's undergraduate and professional admissions programs were supported by conservative public interest affinity groups who described Supreme Court review in the cases as part of a "long litigation campaign," a campaign the NAACP Legal Defense and Education Fund had sought to defeat. Marshall and company created a powerful new image of the lawyer as a catalyst for social change, social change that would occur at least in part through litigation.

## Disad Answers

### Hollow Hope DA Answers

#### 1) Non-unique: Strike down of Arizona immigration law is a huge victory for civil rights:

**San Francisco Examiner, 6/28/2012** (“Immigration law ruling a victory for civil rights,” Accessed 7/25/2012 at <http://www.sfexaminer.com/opinion/editorials/2012/06/immigration-law-ruling-victory-civil-rights>)

The law was born of fear and paranoia. On Monday, the U.S. Supreme Court ruled that almost all of its provisions violate the Constitution. Police officers who pull over motorists or detain residents on suspicion of other crimes must still check to see whether they are living in the United States legally. This is the most controversial section of the law, nakedly intended to intimidate Hispanic residents. The court decided to keep this provision on the books — but Justice Anthony Kennedy stated that if the law is applied in a manner that discriminates against Hispanics, he and his colleagues would be open to hearing a new challenge. As for the rest of the law — that immigrants must report to suspicious bureaucrats, that illegal immigrants can go to jail if they dare to work for a living and that cops can grab anyone they imagine might not be here legally — the court threw it all out. That it did so on the basis that Arizona was usurping powers reserved for the federal government is immaterial. These racist, undemocratic laws are gone.

#### 2) NO LINK: Courts aren’t flypaper for social movements: movements have a realistic understanding of the power of the Court:

Idit **Kostiner**, Jurisprudence and Social Policy Program, University of California, **2003**

[“Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change”, June, http://www.blackwell-synergy.com/doi/full/10.1111/1540-5893.3702006]

Thus, a central finding in both McCann's and Silverstein's studies one crucial for supporting their model is that contrary to Scheingold's argument, activists for social change **are not caught up within a mythic perception** of rights and legal institutions. Activists interviewed in these studies instead **express a sophisticated and disillusioned understanding of the role of law.** McCann and Silverstein suggest that activists use law not out of a mythic belief in its power, but rather as an optimal strategy among "highly limited options available to them". This **view of law enables activists to use legal tactics strategically** to promote their goals without falling into a falsely conscious perception of law and without perpetuating the hegemonic nature of legal institutions. Relying on Gramsci's theory of counterhegemony (1971) and on Hunt's interpretation of this theory (1990), McCann argues that movement activists who struggle to promote social change often have no other choice but to use existing institutions, since "all struggles commence on old ground"

#### 3) TURN: The Court creates social change by balancing legal and policy considerations

Lawrence **Baum**, Department of Political Science, Ohio State University, June **2003**

[“The Supreme Court in American Politics,” http://arjournals.annualreviews.org/doi/full/10.1146/annurev.polisci.6.121901.085526;jsessionid=n1HzQqZJALRe]

Among students of judicial behavior, there is a lively debate over the justices' hierarchies of goals. The most contentious issue is whether justices act almost exclusively on their interest in making good public policy or whether they balance that interest against the goal of interpreting the law well. Most students of judicial behavior explicitly or implicitly take the first position. The work of some political scientists challenges this position, explicitly or implicitly, in part by examining the legal frameworks in which decisions are made But policy considerations certainly play a powerful part in shaping the justices' choices. Moreover, their impact is likely to be especially strong in cases involving possible interventions, cases that have high stakes for public policy. If justices balance legal and policy considerations, their **policy goals can be expected to have the greatest impact** when justices care most about the policy issues they face. In any event, adopting the premise of policy-oriented behavior helps to illuminate the issues that I consider in this section.

#### 4) Brown proves—the law bolsters civil rights movements:

**Onwuachi-Willig, 2005** Acting Professor of Law, University of California, Michigan Law Review, May, 2005, 103 Mich. L. Rev. 1507, Lexis, rwg

Equally as important as Brown's moral victory was its impact on the Civil Rights Movement and race relations in the United States. Indeed, two camps of scholars have explored and articulated the importance of the decision on effecting social change. For some, such as Professor Mark Tushnet, Brown had a direct and forceful impact on the success of the Civil Rights Movement and landmark civil rights legislation enacted during the 1960s. n116 According to these scholars, Brown gave Blacks hope that racial equality would be achieved and that the rights of Blacks would be recognized, thereby **shaping and helping to forge a more aggressive Civil Rights Movement**, a movement that would result in strong anti-discrimination statutes such as Title VII of the Civil Rights Act and the Voting Rights Act of 1965. n117

#### 5) Rosenberg is wrong: multiple reasons:

**Fallon, 2005** prof. of Constitutional Law @ Harvard, Harvard Law Review, April 2005, 118 Harv. L. Rev. 1787; Lexis, rwg

n199. See, e.g., Neal Devins, Judicial Matters, 80 Cal. L. Rev. 1027, 1030 (1992) (book review) (asserting that Rosenberg's book "deserves **harsh criticism** because ... it endorses **inconsistent measures** of effective judicial action, **focuses on the Court in isolation** rather than as part of a larger political culture, uses **presumptions hostile to the recognition of a broad judicial role**, and employs **inadequate data** and **questionable portrayals of existing research**"); Peter H. Schuck, Public Law Litigation and Social Reform, 102 Yale L.J. 1763, 1771-72 (1993) (book review) (criticizing Rosenberg's theory for being "radically indeterminate," for **neglecting** certain "**dynamic effects unleashed by many Court decisions**," and for failing "to differentiate between constitutional and statutory interpretation decisions").

#### 6) Litigation on human rights mobilizes grassroots campaigns and educates the public about human rights abuses:

**Van Schaack,** 20**04** Assistant Prof. of Law @ Santa Clara University School of Law, Vanderbilt Law Review, November, 20**04**, (Beth, 57 Vand. L. Rev. 2305; Lexis, rwg)

Litigation as a visible, public, and "newsworthy" phenomenon can serve an educative function, by teaching the general public about international norms of behavior, calling attention to injustices, persuading changes of opinion, provoking a public outcry, and mobilizing grassroots campaigns. n163 Within the U.S., press accounts of [\*2339] the extent of repression elsewhere, and even direct participation in the judicial process by individual jurors, can generate a societal empathy for human rights victims, n164 thus contributing to a domestic human rights consciousness and the development of a political constituency supportive of an ethical foreign policy. n165 Greater domestic attention to rights abuses occurring overseas will increase pressure on the U.S. government to condemn abuses and bring its influence to bear on repressive governments. n166

#### Judicial victories empower social movements:

Idit **Kostiner**, 20**03** Jurisprudence and Social Policy Program, University of California, **2003**

[“Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change”, June, http://www.blackwell-synergy.com/doi/full/10.1111/1540-5893.3702006]

Based on these findings, McCann argues that sociolegal scholars should rethink their critical view of the role of law in social change. He suggests that this critical view is based on scholars' tendency to overdetermine legal norms and to identify them too narrowly with formal legal institutions. He calls for a reconceptualization of law in more relational, context-specific terms that would alter the ways of assessing the value of law in social reform. Accordingly, he argues that judicial victories may be seen as **more empowering for social movements** than critics often recognize. Moreover, McCann maintains that the focus on winning judicial remedies is highly misleading. He suggests that **movements may benefit from the use of legal tactics regardless of actual success in courts** due to the empowering effects of participation in legal campaigns.

### Hollow Hope Answers--Brown v. Board Proves—Court Creates Social Change

#### Brown fundamentally altered race relations in the country:

**Onwuachi-Willig, 2005** Acting Professor of Law, University of California, Michigan Law Review, May, 2005, 103 Mich. L. Rev. 1507, Lexis, rwg

Regardless of which camp one falls in, the direct or indirect Brown effect camp, the undeniable truth is that Brown certainly helped to transform race relations in this country. n120 Whether it ignited racial change because of a stronger belief that Blacks' rights and interests would be acknowledged and protected or whether it effected change in a more perverse manner by creating southern resistance that [\*1533] invoked the sympathies of northern Whites and politicians, Brown **helped to change a nation**. In sum, the Brown decision was and is more than a symbol of racial equality. It was the impetus of a movement that worked to change how Americans viewed and thought about race and resulted in **important legislation** that helped to protect the civil liberties of Blacks and other minorities, even though, as Bell points out, with dwindling force today.

#### Brown fundamentally altered social attitudes toward social change:

Onwuachi-Willig, Acting Professor of Law, University of California, Michigan Law Review, May, 2005, 103 Mich. L. Rev. 1507, Lexis, rwg

As Zelma Henderson, one of the Topeka parents, proclaimed about the moral victory of Brown, "When you get right down to it, the message of the Brown decision ... is really that all human beings of all races are created equal... . We went to the Supreme Court of the United States to affirm that fact, and we won." n128 Regardless of the status of minorities today, that moral victory was significant. As Professor Dennis Hutchinson recently asserted, **"[Brown] de-legitimized Jim Crow**. It said that the **social attitude** ... . this insulting, [\*1535] demeaning, humiliating attitude that ... white people have about black people - does not have the official imprimatur of the law." n129

#### Brown fundamentally mobilized racial change in the United States:

**Onwuachi-Willig, 2005** Acting Professor of Law, University of California, Michigan Law Review, May, 2005, 103 Mich. L. Rev. 1507, Lexis, rwg

Furthermore, there was **a practical effect** to Brown that was equally significant. As I suggested earlier, had there not been Brown, would segregation have tumbled so easily in other areas, such as with busing and other public accommodations? n130 Moreover, what would have happened if Whites, in their efforts to equalize schools under Bell's "separate but equal" plan, had simply decided that their social interests in preventing race-mixing were much higher than their economic interests in funding only one school? n131 Is this not what Bell astutely points out that many poor and working-class Whites have consistently done throughout history? The fact is that Brown gave **society a goal to strive for and set the stage for a movement** that created racial change. Brown was more than a legal decision; it was "a statement about the fundamental moral basis of democracy." n132 In other words, what is important here is not whether "separate but equal" could have been achieved (which I do not believe was possible), but rather, as Ted Shaw proclaimed, whether we would have been "satisfied with that as a nation." n133 The answer for many of us is a clear, resounding "No." Our ability to interact across racial lines allows us to learn about the differences in each other's culture and history, and more importantly, about what we have in common, what are our shared experiences, and what are our shared interests. It is only through this form of integration that true racial equality can be achieved. n134 Indeed, the most recent debates regarding the Ten Percent Plan in the state of Texas reveal the ways in which integration and the discovery of once concealed, common interests can lead to the unearthing of race and class inequality.

### Hollow Hope Answers--Court Creates Social Change

#### Studies arguing that the Court can’t produce social change ignore the effects of how participation in the process itself activates leaders and bolsters movements:

Idit **Kostiner**, Jurisprudence and Social Policy Program, University of California, **2003**

[“Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change”, June, http://www.blackwell-synergy.com/doi/full/10.1111/1540-5893.3702006]

However, recent work on law and social change tempers this generalized assault on rights and provides a more complex and nuanced description of the interplay between rights, political mobilization, and social change. Following Scheingold's "politics of rights" (1974), McCann's study of the pay equity movement (1994) finds that legal norms and tactics have had a rather positive effect on the movement. To understand this positive effect of law, McCann proposes that scholars re-envision law as including more than formal legal norms or institutions. Drawing on legal consciousness literature, he suggests that law should be understood as including the meanings that movement activists who use legal tactics assign to legal norms while participating in legal processes. Thus, while actual court decisions may have minimal effect on progressive social reform, McCann's model to which he refers as the "legal mobilization model"suggests that participation in legal processes may have positive effects on social movement mobilization. Based on this model, McCann finds that the use of legal tactics by the pay equity movement has been valuable for elevating rights claims and thus for mobilizing the movement. In particular, he finds that: Movement leaders effectively used successful legal actions despite their doctrinal limitations to organize women workers in hundreds of workplaces around the nation. A massive publicity campaign focusing on court victories initially put the issue on the national agenda and alerted leaders that wage equity was "the working woman's issue of the 1980s." Lawsuits were then filed on behalf of working women as the centerpiece of a successful union and movement organizing strategy in scores of local venues around the nation Sustained legal action over time worked to render employers vulnerable to challenge, to expand the resources available to working women, to provide them a unifying claim of egalitarian rights, and to increase both their confidence and sophistication in advancing those claims.

#### Animal rights movements prove: the use of legal tactics bolsters social movements:

Idit **Kostiner**, Jurisprudence and Social Policy Program, University of California, **2003**

[“Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change”, June, http://www.blackwell-synergy.com/doi/full/10.1111/1540-5893.3702006]

Silverstein (1996) has joined McCann in reacting against the critique of rights and litigation. Her study of the animal rights movement is symbolically titled Unleashing Rights. She finds that the use of legal tactics and of rights rhetoric by the animal rights movement has been useful in many ways. For example, she suggests that litigation has been used to dramatize abuses of animals, to embarrass particular institutional actors, and to win favorable media attention. Silverstein concludes that despite their many constraints, both rights talk and litigation are powerful resources for those who seek widespread and subtle change, especially when used by strategically minded activists.

### Hollow Hope Answers--Extensions—Brown v. Board proves the law solves

#### Brown was important symbolically: created the widely accepted social goal of true racial equality:

**Onwuachi-Willig**, 20**05** Acting Professor of Law, University of California, Michigan Law Review, May, 2005, 103 Mich. L. Rev. 1507, Lexis, rwg

Moreover, such actions raise the question of whether it matters if desegregation is involuntary or, as Bell suggests, voluntary (when that "voluntariness" is not based on a true commitment to defeating racial hierarchy and institutionalized racism). As Bell's own theory suggests, wherever the interest of minorities have been acknowledged solely because of a convergence with white interests, those very same rights and interests will eventually come to be disregarded. In essence, minorities were damned if we did, and damned if we did not. But to my mind, if given the choice, it was better for us to be damned with what the vast majority of society perceives as a moral victory in Brown and with at **least the widely accepted societal goal** of striving for **true racial equality** that came out of Brown.

### Legitimacy DA Answers

#### (--) Turn: Winners win for the Courts—controversial decisions enhance the court’s legitimacy:

David **Law, 2009** (Professor of Law and Professor of Political Science, Washington University in St. Louis, Georgetown Law Journal, March 2009, 97 Geo. L.J. 723; “A Theory of Judicial Power and Judicial Review,” Lexis, rwg)

Part IV of this Article discusses a counterintuitive implication of a coordination-based account of judicial power. Conventional wisdom suggests that courts secure compliance with their decisions by drawing upon their store of legitimacy, which is undermined by decisions that are unpopular, controversial, or lack intellectual integrity. n25 Part IV argues that precisely the opposite is true: an unpopular or unpersuasive decision can, in fact, enhance a court's power in future cases, as long as it is obeyed. Widespread compliance with a decision that is controversial, unpopular, or unpersuasive serves only to strengthen the widely held expectation that others comply with judicial decisions. This expectation, in turn, is self-fulfilling: those who expect others to comply with a court's decisions will find it strategically prudent to comply themselves, and the aggregate result will, in fact, be widespread compliance. Part IV illustrates these strategic insights--and the Supreme Court's apparent grasp of them--by contrasting [\*734] Bush v. Gore n26 with Brown v. Board of Education n27 and Cooper v. Aaron. n28

#### (--) Non-unique: Series of 5-4 decisions are undermining the legitimacy of the Court:

David Paul **Kuhn, 6/29/2012** (staff writer, “The Incredible Polarization and Politicization of the Supreme Court,” <http://www.theatlantic.com/politics/archive/2012/06/the-incredible-polarization-and-politicization-of-the-supreme-court/259155/>, rwg)

The Roberts Court has decided more cases by a 5-to-4 ruling (about 21.5 percent) than any Court before it, though only by a narrow margin. The previous Court, led by William Rehnquist, decided 20.5 percent of its cases by this minimum coalition. That rate, however, represents roughly twice the share of 5-to-4 rulings in the Stone Court, during World War II. And the Stone Court had more than three times the rate of 5-to-4 decisions of any Court prior. Roberts noticed the trend early in his term. "I do think the rule of law is threatened by a steady term after term after term focus on 5-4 decisions," Roberts told The New Republic's Jeffrey Rosen in 2006. "I think the Court is ripe for a similar refocus on functioning as an institution, because if it doesn't, it's going to lose its credibility and legitimacy as an institution."

#### (--) No link: the plan is consistent with right to travel precedent:

Timothy **Baldwin, 2006** (“The Constitutional Right to Travel: Are Some Forms of Transportation More Equal Than Others?” Northwestern Journal of Law and Social Policy, Summer 2006, 1 Nw. J. L. & Soc. Pol'y 213, L/N, rwg)

States do not explicitly discriminate between motor vehicle and non-motor vehicle users, and generally do not enact laws that preclude citizens from driving motor vehicles that are [\*261] outside the scope of valid exercises of the police power. n329 Any citizen can drive a car if they can afford it -- regardless of whether they happen to be a new resident or a visitor of a state. In order to find the right to travel "penalized," a court would have to hold that the high cost of owning an automobile is a penalty per se, and possibly that the right to intrastate travel exists. Given the large catalogue of jurisprudence that does not protect an individual's right to use particular travel modes, courts seem unlikely to protect non-motor vehicle users under the fundamental rights rubric by itself. Nevertheless, defining the right to travel as fundamental might help define the contours of a suspect class of poor people for the purposes of challenging the lack of transportation options under equal protection. Under the Supreme Court's equal protection doctrine of total deprivation, n330 poor individuals could make the claim that they cannot afford a motor vehicle and are thus totally deprived of transportation mobility. If a "total deprivation" argument were combined with a right to travel claim, the Supreme Court would be faced with an argument that is very similar to its prior cases. n331 The grouping of poor people as a suspect class provides the discrimination required to bring the claim that state action penalizes the fundamental right to travel.

#### (---) NO LINK: Court legitimacy is resilient: individual decisions are largely irrelevant:

**Fallon, 2005** prof. of Constitutional Law @ Harvard, Harvard Law Review, April 2005, 118 Harv. L. Rev. 1787; Lexis, rwg

The Relationship Between Institutional Legitimacy and the Substantive Sociological Legitimacy of Judicial Decisions. - Recent scholarship supports two interesting conclusions about the relationship between the institutional legitimacy of the Supreme Court and the substantive sociological legitimacy of particular decisions. First, although the Court's institutional legitimacy varies with public responses to particular rulings, it does so less sharply than earlier, less sophisticated studies had indicated. n183 For example, recent surveys show that Bush v. Gore has had almost no impact on "diffuse support" for the Court, notwithstanding critics' predictions. n184 The Court apparently **possesses a reservoir of trust that is not easily dissipated**. n185

#### (---) NO LINK: Public doesn’t pay enough attention to constitutional interpretations to influence Court legitimacy:

**Fallon, 2005** prof. of Constitutional Law @ Harvard, Harvard Law Review, April 2005, 118 Harv. L. Rev. 1787; Lexis, rwg

Perhaps even more significant than what the recent studies establish, however, is something that poll-based measures of diffuse support cannot capture. As I have suggested already, the public's **relative lack of attentiveness** makes it impossible to gauge the substantive sociological legitimacy - in the strong sense of active endorsement - of controversial methods of constitutional interpretation. If we focus on this concern, we will remain chronically uncertain about judicial legitimacy in the sociological sense - even though other measures, including that of institutional legitimacy (or diffuse support), would often support more affirmative judgments about the Court's sociological legitimacy.

#### Impact is empirically denied: power of the president has expanded throughout history:

Robert **Dallek, 2011** (staff writer, “Power and the Presidency, From Kennedy to Obama,”

<http://www.smithsonianmag.com/history-archaeology/Power-and-the-Presidency-From-Kennedy-to-Obama.html>, Accessed 7/25/2012, rwg)

To be sure, the President’s control over foreign affairs had been growing since the Theodore Roosevelt administration (and still grows today). TR’s acquisition of the Panama Canal Zone preceded Woodrow Wilson’s decision to enter World War I, which was a prelude to Franklin Delano Roosevelt’s management of the run-up to the victorious American effort in World War II. In the 1950s, Harry S. Truman’s response to the Soviet threat included the decision to fight in Korea without a Congressional declaration of war, and Dwight Eisenhower used the Central Intelligence Agency and brinksmanship to contain Communism. Nineteenth-century presidents had had to contend with Congressional influences in foreign affairs, and particularly with the Senate Foreign Relations Committee. But by the early 1960s, the president had become the undisputed architect of U.S. foreign policy.

#### No impact: Court unnecessary to check the President:

Robert **Dallek, 2011** (staff writer, “Power and the Presidency, From Kennedy to Obama,”

<http://www.smithsonianmag.com/history-archaeology/Power-and-the-Presidency-From-Kennedy-to-Obama.html>, Accessed 7/25/2012, rwg)

Perhaps the lesson to be taken from the presidents since Kennedy is one Arthur Schlesinger suggested almost 40 years ago, writing about Nixon: “The effective means of controlling the presidency lay less in law than in politics. For the American President ruled by influence; and the withdrawal of consent, by Congress, by the press, by public opinion, could bring any President down.” Schlesinger also quoted Theodore Roosevelt, who, as the first modern practitioner of expanded presidential power, was mindful of the dangers it posed for the country’s democratic traditions: “I think it [the presidency] should be a very powerful office,” TR said, “and I think the president should be a very strong man who uses without hesitation every power that the position yields; but because of this fact I believe that he should be closely watched by the people [and] held to a strict accountability by them.”

### Legitimacy DA Answers—Extensions: Non-Unique

#### Health care ruling won’t save the legitimacy of the Court:

David Paul **Kuhn, 6/29/2012** (staff writer, “The Incredible Polarization and Politicization of the Supreme Court,” <http://www.theatlantic.com/politics/archive/2012/06/the-incredible-polarization-and-politicization-of-the-supreme-court/259155/>, rwg)

Yet concerns about the Court's apolitical credibility are hardly alleviated. At least two-thirds of the 5-4 rulings during the Roberts Court have split along ideological lines. Roberts has agreed with the three most conservative justices -- Samuel Alito, Clarence Thomas and Antonin Scalia -- in at least eight in 10 non-unanimous rulings, according to calculations by SCOTUSblog. The health-care ruling will likely temper, for now, charges that the Court has become a predictably political institution. Yet concerns about its apolitical credibility are **hardly alleviated.**

#### Court legitimacy low now:

Noah **Feldman, 6/17/2012** (staff writer, “Supreme Court’s Super Mondays Don’t Serve Justice,” Accessed 7/28/2012 at <http://www.bloomberg.com/news/2012-06-17/supreme-court-s-super-mondays-don-t-serve-justice.html>, rwg)

Today, the court has done Mr. Dooley one better: It doesn’t follow the election returns; it tries to lead them. No wonder, then, that a recent poll suggests that public confidence in the court has never been lower in the modern era, with just 44 percent of respondents approving of its performance.

#### Court legitimacy is at its lowest level ever:

David Paul **Kuhn, 6/29/2012** (staff writer, “The Incredible Polarization and Politicization of the Supreme Court,” <http://www.theatlantic.com/politics/archive/2012/06/the-incredible-polarization-and-politicization-of-the-supreme-court/259155/>, rwg)

In the Roberts Court, 5-to-4 majorities have allowed unlimited corporate and union campaign spending, upheld an individual's right to gun ownership, limited an employee's ability to file a pay discrimination, decided states cannot impose mandatory life sentences on juvenile murderers without the possibility of parole, and limited class-action suits as well as decided the constitutionality of the health-care law. This polarization has not gone unnoticed. The judiciary remains the most trusted branch of government. Sixty-three percent of Americans said in autumn 2011 that they have a "great deal" or a "fair amount" of faith in it. Yet that is the lowest share to express trust in the judicial branch since 1976, when Gallup first asked the question.

#### Supreme Court reputation is sullied now:

David Paul **Kuhn, 6/29/2012** (staff writer, “The Incredible Polarization and Politicization of the Supreme Court,” <http://www.theatlantic.com/politics/archive/2012/06/the-incredible-polarization-and-politicization-of-the-supreme-court/259155/>, rwg)

And the Supreme Court is especially sullied. Prior to Thursday's decision, about three in four Americans agreed that "personal or political views influence" current Court decisions, according to a recent New York Times/CBS News Poll. Yet the public has not seen the Court as apolitical since, at least, it became more politically ordered. In 1946, a narrow plurality, four in 10 Americans, told Gallup that they "agree" that "the Supreme Court decides many questions largely on the basis of politics."

### Legitimacy DA Answers—Extensions: Controversial Decisions Help the Court

#### Controversial decisions enhance the court’s power:

David **Law, 2009** (Professor of Law and Professor of Political Science, Washington University in St. Louis, Georgetown Law Journal, March 2009, 97 Geo. L.J. 723; “A Theory of Judicial Power and Judicial Review,” Lexis, rwg)

Indeed, the reflexive avoidance of politically divisive or controversial cases--via the political question doctrine, the acte de government doctrine, and the like n233 --might actually prove a counterproductive choice of strategy for a court keen to consolidate its power. This Article has argued that, contrary to conventional wisdom, controversial decisions have a tendency to enhance, rather than diminish, a court's power, as long as they are obeyed. n234 Accordingly, a court that already commands obedience and expects more of the same, such as the United States Supreme Court or the German Bundesverfassungsgericht, has little to fear and perhaps even something to gain from embracing controversy. By contrast, a court that lacks a similarly developed track record, such as a newly established constitutional court in an emerging democracy, faces greater risk that its decisions will be disobeyed and its reputation for obedience stillborn. Should it succeed in deciding such a case, however, it will engender expectations of future obedience that boost its power in subsequent cases. If those gains seem more than commensurate with the risks involved, adjudication becomes a prudent gamble. A truly strategic court, as opposed to a merely timid one, will recognize that its political environment is characterized not merely by risks, but also by rewards: nothing ventured, nothing gained.

### Legitimacy DA Answers—Individual Decisions Don’t Matter

#### Court’s legitimacy is resilient: Unpopular decisions don’t undermine Court legitimacy:

John C. **Yoo**, Professor of law at the University of California, **2001**, [The University of Chicago Law Review, “In defense of the court’s legitimacy,” rwg]

One way, then, to judge whether Bush v Gore has undermined the Court's institutional legitimacy in American society would be to examine public attitudes toward the Court. Studies have shown that public support for the Court and its role in society run high, even though many have little knowledge about the Court's day-to-day activities.14 While this is not the place to conduct a detailed study,15 we may perhaps draw some initial conclusions from recent Gallup polling data. Over the last decade, poll respondents have usually held more confidence in the Supreme Court than in the other two branches of government.16 In June 2000, 47 percent of those polled said that they held either a "great deal" or "quite a lot" of confidence in the Supreme Court, versus 42 percent for the presidency and 24 percent for Congress.17 Even in light of the usual caveats surrounding the use of polling data, **the resiliency** in the Court's public support has been relatively deep and wide,18 even as it has rendered a series of controversial decisions ranging from affirmative action to abortion to civil rights to religion.

#### Overruling doesn’t cost capital – overruling bad decisions boosts capital.

Linton, assoc general counsel Americans United for Life, 1993

(Paul Benjamin Linton, Associate General Counsel for Litigation, Americans United for Life, 1993, “PLANNED PARENTHOOD V. CASEY: THE FLIGHT FROM REASON IN THE SUPREME COURT” 13 St. Louis U. Pub. L. Rev. 15)

The Court describes this first circumstance as "hypothetical." [n272](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.634476.6864207117&target=results_DocumentContent&reloadEntirePage=true&rand=1248634673507&returnToKey=20_T7032555039&parent=docview" \l "n272) The distinct impression left by this passage is that decisions of the Supreme Court overruling earlier decisions on matters of constitutional interpretation are rare and thus should not be too readily emulated, lest the "legitimacy" of the Court be called into question. But this impression is wrong. On more than 200 occasions, the Court has overturned previous decisions, and in nearly three-fourths of those cases, the Court overruled because the earlier decision had wrongly interpreted the Constitution. [n273](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.634476.6864207117&target=results_DocumentContent&reloadEntirePage=true&rand=1248634673507&returnToKey=20_T7032555039&parent=docview#n273) What does this remarkable track re  [\*75]  cord of "judicial correction" mean? At the very least, that the "legitimacy" of the Court is not affected by its acknowledgement of prior error, even when that error involved an intepretation of the Constitution. Indeed, as in Brown and West Coast Hotel, the Court has often enhanced its credibility by overruling decisions that were wrong when originally decided. One more overruling decision, if otherwise appropriate, could not reasonably be expected to damage that credibility.

#### Studies prove: individual decisions have minimal impact on Supreme Court legitimacy.

Richard H. **Fallon,** 20**05** Jr., Professor of Constitutional Law, Harvard Law School, April **2005**

[“Legitimacy and the Constitution,” Lexis/Nexis, rwg]

Recent scholarship supports two interesting conclusions about the relationship between the institutional legitimacy of the Supreme Court and the substantive sociological legitimacy of particular decisions. First, although the Court's institutional legitimacy varies with public responses to particular rulings, it does so less sharply than earlier, less sophisticated studies had indicated. For example, recent surveys show that Bush v. Gore has had almost no impact on "diffuse support" for the Court, notwithstanding critics' predictions. The Court apparently possesses a reservoir of trust that is not easily dissipated.

#### Individual decisions don’t undermine legitimacy:

Lawrence **Baum**, 20**03** Department of Political Science, Ohio State University, June **2003**

[“The Supreme Court in American Politics,” <http://arjournals.annualreviews.org/doi/full/10.1146/annurev.polisci.6.121901.085526;jsessionid=n1HzQqZJALRe>, rwg]

Unpopular decisions may cost the Court a degree of public support **in the short run**, but in the long run the **Court's standing tends to hold up well**. Thus, justices have reason to think that even under relatively difficult conditions, they can engage in policy interventions that they find appropriate without fear of serious consequences

#### Even after controversial decisions, public opinion will always swing back in favor of the Court.

John C. **Yoo**, Professor of law at the University of California, **2001**, [The University of Chicago Law Review, “In defense of the court’s legitimacy,” p. 75, rwg]

A second way to approach the question of legitimacy would be to compare Bush v Gore to other historical periods in which the Court's authority has come into question. If the Court's actions today were similar in significant ways to earlier moments of challenge to judicial legitimacy, then we might predict that the changes in the immediate polling data may augur a more sustained attack on the Court. Evaluating Bush v Gore in light of earlier historical periods, however, suggests that any sustained assault on the Court's legitimacy is **unlikely to arise**.

#### Court will adapt to threats to its legitimacy:

Uhlmann, professor of government at Claremont Graduate University, October 2003 ( Michael M., “The Supreme Court Rules [www.orthodoxytoday.org/articles2/UhlmannSupremeCourt.shtm](http://www.orthodoxytoday.org/articles2/UhlmannSupremeCourt.shtm), rwg)

Thanks chiefly to the Supreme Court, the Constitution is now widely understood to derive its legitimacy not from the permanent truths on which its provisions rest, but from their more or less endless capacity (as divined by the Justices) to adapt. The Court has given us a “living Constitution,” by which the Court simultaneously justifies its interpretive plasticity and leaves its critics in the unenviable position of having to defend a “dead” Constitution.

#### Individual decisions won’t undermine Court legitimacy:

Uhlmann, professor of government at Claremont Graduate University, October 2003 ( Michael M., “The Supreme Court Rules www.orthodoxytoday.org/articles2/UhlmannSupremeCourt.shtm) The Court has acquired substantial power over our political culture. The public, which knows little about the technical details or philosophical implications of constitutional doctrine, knows that much. And so do the Justices. The remarkable thing about Roe v. Wade is not only the substance of the rule it announced, but the fact that the Court felt so little compunction about imposing a new and radical rule upon the entire nation. But for all the controversy generated by the abortion decisions, the public is generally not disposed to chasten the Court for its excesses on that or any other subject. The modern Court has tutored the public well on how it ought to think about judicial power and the Constitution. And its central teaching, as I say, is not about the permanent principles that justify representative government but about the inevitability of, indeed the duty to, change.

### Legitimacy DA Internals—Individual Decisions Affect Court Legitimacy

#### Individual decisions do affect court legitimacy—Bush v. Gore proves:

Charles **Krauthammer, 7/2/2012** (staff writer, “Roberts wrote with an eye to court’s legitimacy,” Accessed 7/25/2012 at <http://www.kansascity.com/2012/07/02/3687578/charles-krauthammer-roberts-wrote.html>)

More recently, few decisions have occasioned more bitterness and rancor than Bush v. Gore, a 5-4 decision split along ideological lines. It was seen by many (principally on the left) as a political act disguised as jurisprudence and designed to alter the course of the single most consequential political act of a democracy — the election of a president. Whatever one thinks of the substance of Bush v. Gore, it did affect the reputation of the court. Roberts seems determined that there be no recurrence with Obamacare. Hence his straining in his Obamacare ruling to avoid a similar result — a 5-4 decision split along ideological lines that might be seen as political.

### Legitimacy DA Answers: Public Will Eventually Agree With the Court’s Decision

#### Society will eventually agree with the Court’s decision:

RAY SEBASTIAN **PANTLE, 2007** (J.D. Capital University Law School, Capital University Law Review, “BLACKER THAN DEATH ROW: HOW CURRENT EQUAL PROTECTION ANALYSIS FAILS MINORITIES FACING CAPITAL PUNISHMENT,” Spring 2007, 35 Cap. U.L. Rev. 811; Lexis/Nexis, rwg)

More importantly, one must attack the very idea that courts should interpret the Constitution in a way that will reflect the subjective views of the majority. In the past, the Supreme Court has overturned or extended laws in ways that were extremely unpopular with society. n241 Brown v. Board of Education, the landmark decision ending racial segregation throughout the land, was met with hostility by many individuals. n242 At the time, society adamantly clung to the notion of separate but equal, so much so that many resorted to violence to protest integration. n243 However, nine individuals on the Supreme Court ignored this subjective, collective view, because they believed segregation to be contrary to the Fourteenth Amendment. n244 Although society did not automatically accept the Court's decision, resistance to Brown declined over time, and many later accepted the reality of integration. n245 Similarly, many individuals advocate the subjective view that society should be allowed to seek retribution through the execution of a human being. n246 However, when evaluating the Equal Protection Clause in [\*842] relation to racial discrimination in capital cases, the Supreme Court must focus on the purpose behind the constitutional provision while remaining blind to societal demands for retribution. Not every individual will immediately concede that the Court made the right decision. However, as it did with Brown, public opinion will likely shift over time in the same direction that the law has taken.

### Court Politics Answers—2ac

#### (--) Non-unique: Court will eliminate affirmative action in higher ed now:

ADAM **LIPTAK, 2/21/2012** (staff writer, “Justices Take Up Race as a Factor in College Entry,”

<http://www.nytimes.com/2012/02/22/us/justices-to-hear-case-on-affirmative-action-in-higher-education.html?pagewanted=all>, rwg)

By agreeing to hear a major case involving race-conscious admissions at the University of Texas, the court thrust affirmative action back into the public and political discourse after years in which it had mostly faded from view. Both supporters and opponents of affirmative action said they saw the announcement — and the change in the court’s makeup since 2003 — as a signal that the court’s five more conservative members might be prepared to do away with racial preferences in higher education.

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David **Law, 2009** (Professor of Law and Professor of Political Science, Washington University in St. Louis, Georgetown Law Journal, March 2009, 97 Geo. L.J. 723; “A Theory of Judicial Power and Judicial Review,” Lexis, rwg)

Part IV of this Article discusses a counterintuitive implication of a coordination-based account of judicial power. Conventional wisdom suggests that courts secure compliance with their decisions by drawing upon their store of legitimacy, which is undermined by decisions that are unpopular, controversial, or lack intellectual integrity. n25 Part IV argues that precisely the opposite is true: an unpopular or unpersuasive decision can, in fact, enhance a court's power in future cases, as long as it is obeyed. Widespread compliance with a decision that is controversial, unpopular, or unpersuasive serves only to strengthen the widely held expectation that others comply with judicial decisions. This expectation, in turn, is self-fulfilling: those who expect others to comply with a court's decisions will find it strategically prudent to comply themselves, and the aggregate result will, in fact, be widespread compliance. Part IV illustrates these strategic insights--and the Supreme Court's apparent grasp of them--by contrasting [\*734] Bush v. Gore n26 with Brown v. Board of Education n27 and Cooper v. Aaron. n28

#### (--) No link: no one pays attention to the court:

Noah **Feldman, 6/17/2012** ( professor of constitutional and international law at Harvard, “Supreme Court’s Super Mondays Don’t Serve Justice,” <http://www.bloomberg.com/news/2012-06-17/supreme-court-s-super-mondays-don-t-serve-justice.html>, Accessed 7/28/2012, rwg)

The club of Supreme Court devotees (OK, junkies) likes to think of the first Monday in October as opening day, and the last Monday in June as game seven of the [World Series](http://topics.bloomberg.com/world-series/). But many years, the series is a dud. Most of the cases are technical and unexciting, they enter the casebooks with little fanfare, and the public barely notices. This year will be the exception that proves the rule.

#### (--) Non-uniuqe: Conservatives are angry with the court now—health care decision:

ASHBY **JONES And** BRENT **KENDALL, 6/28/2012** (staff writers, “Roberts Straddles Ideological Divide,” Accessed 7/25/2012 at [http://online.wsj.com/article/SB100014240 52702303561504577494723149538572.html](http://online.wsj.com/article/SB100014240%2052702303561504577494723149538572.html), rwg)

But even though it represents a clear victory for the Obama administration, Chief Justice Roberts's opinion wasn't only a tactical move. It may also further conservative jurisprudence in the long run by setting new limits on congressional power. The ruling articulated limits on Congress's power to regulate interstate commerce, a bedrock of the modern state, and also placed new boundaries on how the federal government could use its spending power. "Roberts showed he's more than just a member of a conservative bloc. It really is the Roberts Court," said Erwin Chemerinsky, dean of the University of California, Irvine, law school. Some Republicans were livid. "Just because a couple of people on the Supreme Court declare something to be 'constitutional,' does not make it so," said Sen. Rand Paul of Kentucky.

#### (--) No internal link: Capital doesn’t tradeoff between issues – public has different opinions.

Redish and Cisar, 19**91** prof law @ Northwestern and Law clerk to US Court of Appeals, 1991

(MARTIN H. REDISH, prof law and public policy @ Northwestern; ELIZABETH J. CISAR, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, Dec 1991, “CONSTITUTIONAL PERSPECTIVES: ARTICLE: "IF ANGELS WERE TO GOVERN" \*: THE NEED FOR PRAGMATIC FORMALISM IN SEPARATION OF POWERS THEORY.” 41 Duke L.J. 449)

Choper's assumption that the judiciary's institutional capital is transferable from structural cases to individual rights cases is no more credible. Common sense should tell us that the public's reaction to con- troversial individual rights cases-for example, cases concerning abor- tion,240 school prayer,241 busing,242 or criminal defendants' rights243- will be based largely, if not exclusively, on the basis of its feelings con- cerning those particular issues. It is unreasonable to assume that the public's acceptance or rejection of these individual rights rulings would somehow be affected by anything the Court says about wholly unrelated structural issues.

#### (--) Turn: Perceived racism hurts court legitimacy—plan solves

Eskridge, 20**04** Yale Law School Prof, 2004

(William Eskridge, John A. Garver Professor of Jurisprudence at Yale Law School, May 2004, Minnesota Law Review 88 Minn L Rev 1021)

So Brown, Casey, and Lawrence are all consistent with a meta-principle of stare decisis in identity-politics cases: Once national citizenship has expanded to include a new identity group, and social norms have changed to accept the group's defining trait as at least tolerable, the Court ought to presume in favor of expanding the liberties and contracting the exclusions suffered by the once-denigrated group. The Court should do this not simply because it is just, or even simply because it contributes to the orderly evolution of our pluralist system - but the Court must do this for its own survival as a neutral arbiter of the rule of law. A Court perceived as racist, sexist, or (now) homophobic is a Court that cannot do the business the Constitution charges it with and cannot command the respect of the lower court judges under its supervision. It will be a Court beset  [\*1063]  with nasty charges, political attacks, and mutinies by lower court judges, until it accommodates the new group.

#### (--) Individual decisions don’t affect capital.

Gibson et al., 20**03** PoliSci @ Wash U in St. Louis and Ohio State, 2003

James L. Gibson, PoliSci @ Wash U in St. Louis, Gregory A. Caldeira, PoliSci @ Ohio State, Lester Kenyatta Spence, Poli Sci @ Wash U in St. Louis, Apr. 2003, “Measuring Attitudes toward the United States Supreme Court” American Journal of Political Science, Vol. 47, No. 2 (Apr., 2003), pp. 354-367

Perhaps more important is the rather limited rela- tionship between performance evaluations and loyalty to the Supreme Court. These two types of attitudes are of course not entirely unrelated, but commitments to the Supreme Court are not largely a function of whether one is pleased with how it is doing its job. Even less influential are perceptions of decisions in individual cases. When people have developed a "running tally" about an institution-a sort of historical summary of the good and bad things an institution has done-it is difficult for any given decision to have much incremental influence on that tally. Insti- tutional loyalty is valuable to the Court precisely because it is so weakly related to actions the Court takes at the moment.

#### Judicial capital is resistant – one controversial decision won’t destroy it.

Grosskopf and Mondak, Profs of Poli Sci Long Island U and U of Illinois, 1998

(Anke Grosskopf, Assistant Prof of Political Science @ Long Island University, & Jeffrey Mondak, Professor of Political Science @ U of Illinois, 1998, “Do attitudes toward specific supreme court decisions matter? The impact of Webster and Texas v Johnson on Public Confidence in the Supreme Court” Political Research Quarterly, vol. 51 no 3 633-54 September1998)

Opinion about the Supreme Court may influence opinion about the Court's decisions, but is the opposite true? Viewed from the perspective of the Court's justices, it would be preferable if public reaction to rulings did not shape subsequent levels of support for the Court. If opinion about the Court were fully determined by early political socialization and deeply rooted attachments to democratic values, then justices would be free to intervene in controversial policy questions without risk that doing so would expend political capital. Consistent with this perspective, a long tradition of scholarship argues that the Supreme Court is esteemed partly because it commands a bedrock of public support, or a reservoir of goodwill, which helps it to remain legitimate despite occasional critical reaction to unpopular rulings (Murphy and Tanenhaus 1968; Easton 1965, 1975; Caldeira 1986; Caldeira and Gibson 1992). The sources of this diffuse support are usually seen as rather stable and immune from short-term influences, implying that evaluations of specific decisions are of little or no broad importance. For instance, Caldeira and Gibson (1992) find that basic democratic values, not reactions to decisions, act as the strongest determinants of institutional support.

### Courts Politics Answers—No Spillover

#### Capital doesn’t spill over to other decisions.

Redish, Law @ Northwestern U, 1997

Martin Redish, Law @ Northwestern U, Summer 1997, “Federalist Society Symposium: Washington, D.C.: November 14 - November 16, 1996: Panel Three: Disciplining Congress: The Boundaries of Legislative Power”, 13 J. L. & Politics 585

The limited pie theory, associated with Professor Choper, [n39](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.182586.92026866696&target=results_DocumentContent&reloadEntirePage=true&rand=1248633109490&returnToKey=20_T7032509374&parent=docview" \l "n39) is that the Supreme Court has a limited pie of institutional capital, of institutional goodwill, and if it spends some of that on constitutional federalism, it will be deprived of its opportunity to use that for where it really is needed - individual rights. The reason institutional capital is really needed in individual rights is [\*604]  primarily that the states can protect themselves in the jungles of the political process, while individuals cannot. To that, my colleague Michael Perry and others have added what implicitly underlies this: that individual rights are simply more important than constitutional federalism. [n40](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.182586.92026866696&target=results_DocumentContent&reloadEntirePage=true&rand=1248633109490&returnToKey=20_T7032509374&parent=docview" \l "n40) I like to take the position that a true constitutional liberal should strongly believe in adherence to constitutional, not just political, limits on federalism, because federalism serves an important function as a buffer between the government and the individual. The whole idea, the genius of the structure set up by the Framers, was that the system of separation of powers, the system of federalism, and the system of individual rights would all interlock as different fail-safe mechanisms. If federalism and separation of powers are working properly as divisions of government power, tyranny would be prevented, and presumably the number of instances where individuals and government conflict over their rights would be reduced. The story that best illustrates how constitutional federalism can protect against tyranny is the story that I gather is true about Mussolini when he was given a copy of the National Recovery Act, which ultimately was held unconstitutional, and he looks at it and he says in Italian, "Ah, now there's a dictator." And I think that illustrates how dangerous it is in terms of the values of our constitutional system to vest full power within the federal government. The limited pie theory, as a justification, makes no sense because it assumes a kind of fungibility of institutional capital that just doesn't comport with reality. How people feel about individual rights decisions will not be determined by whether the Supreme Court has said anything about constitutional federalism. Reactions to Roe v. Wade [n41](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.182586.92026866696&target=results_DocumentContent&reloadEntirePage=true&rand=1248633109490&returnToKey=20_T7032509374&parent=docview" \l "n41) or Miranda v. Arizona [n42](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.182586.92026866696&target=results_DocumentContent&reloadEntirePage=true&rand=1248633109490&returnToKey=20_T7032509374&parent=docview" \l "n42) are based on people's concerns about those decisions. What the Supreme Court says or doesn't say about constitutional federalism will have little, if any, effect on reactions to those decisions.  [\*605]

### Courts Politics Answers—No Spillover

#### No clear connection between capital and decisionmaking.

Grosskopf and Mondak, Profs of Poli Sci Long Island U and U of Illinois, 1998

(Anke Grosskopf, Assistant Prof of Political Science @ Long Island University, & Jeffrey Mondak, Professor of Political Science @ U of Illinois, 1998, “Do attitudes toward specific supreme court decisions matter? The impact of Webster and Texas v Johnson on Public Confidence in the Supreme Court” Political Research Quarterly, vol. 51 no 3 633-54 September1998)

Some evidence supports our political capital perspective, but the empirical record remains unsatisfying. Tanenhaus and Murphy (1981) found that approval of Supreme Court rulings accounted for roughly 15 percent of the little variance in diffuse support they detected. However, due to the nine-year gap between the waves of their panel survey, the authors could not attribute change in support to any specific court rulings. Caldeira (1986) showed that aggregate confidence in the Court varies in response to judicial actions such as support for defendants' rights, but Caldeira also could not trace this effect to specific decisions. Caldeira subsequently (1987) demonstrated that public response to Supreme Court decisions affected aggregate support for Franklin Roosevelt's court-packing plan. However, because the dependent variable was not support for the Court, these results speak only indirectly to the political capital thesis. Unlike survey-based research, laboratory experiments (Mondak 1991, 1992) provide direct support for the claim that attitudes toward decisions affect assessments of the Court. Unfortunately, the generalizability of such findings is uncertain due to the use of hypothetical scenarios, specialized research contexts, and nonrepresentative (i.e., college student) samples.

#### Capital irrelevant - Consensus shows decisions based on ideology, not capital.

Cross and Nelson, 20**01** Biz Law @ UT and PoliSci @ Penn State, 2001

(Frank B. Cross, Biz Law @ UT, Blake J. Nelson, Assis prof PoliSci @ Penn State, 2001, “STRATEGIC INSTITUTIONAL EFFECTS ON SUPREME COURT DECISIONMAKING” 95 Nw. U.L. Rev. 1437)

The normative political model, sometimes called the attitudinal model, contends that judges make decisions so as to advance their political or ideological  [\*1444]  policy ends, without regard to either the demands of the normative legal model or the concerns of other institutions. [n39](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n39) It is normative in that it assumes that judges are unconstrained and have single-peaked utility functions. In this model, judges decide so as to advance their ideological policy ends, without regard for the formal requirements of law (e.g., constraining precedents and text) and without concern for the reaction of external entities. The political model may find support in legal sources beyond the legal realists and the contemporary critical legal theorists. [n40](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n40) Supreme Court Justices are commonly characterized as "liberal" or "conservative" - political terms describing the ideological import of their decisions. Significantly, this model of decisionmaking does not necessitate an extremely cynical view of judges, as the political model may reflect subconscious psychology and cognitive dissonance. [n41](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n41) With the growth of clerk populations, it is easy for "the appellate judge to determine a result based on personal notions of fairness and right, and then to leave to the staff attorney the task of constructing reasons to support that result." [n42](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n42) The political model can be descriptively accurate, even absent conscious judicial policymaking. In contrast to the normative legal model, considerable empirical data supports the claims of the political model of judicial decisionmaking. Many studies have already been described in the legal literature. [n43](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview" \l "n43) Some prominent judges have taken issue with these studies and raised some methodological challenges, [n44](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview" \l "n44) though the challenges are readily answered. [n45](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview" \l "n45) Perhaps  [\*1445]  the most persuasive evidence can be found in a meta-analysis of studies on judicial decisionmaking conducted by Dan Pinello. [n46](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n46) He identified 140 research papers that empirically analyzed judicial decisionmaking by party affiliation. A majority of these papers reported data in a manner that could be incorporated in his meta-analysis, and he found that virtually every study showed a positive association between judicial voting and judicial ideology. [n47](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n47) The studies together contained over 222,000 judicial votes, and the judges' political party explained thirty-eight percent of the variance in their voting.

### Separation of Powers Answers

#### Separation of Powers Is Completely Gone Already; Neither the Courts Nor the Legislature Stays Within Their Traditional Role

**Paul 2005,** (Ron, U.S. House of Representatives-R, 14th District of Texas, “Lessons from the Kelo Decision”, 7/4/2005, <http://www.truthnews.net/world/2006060034.htm>)

Kelo has several important lessons for all of us. We are witnessing the destruction of any last remnants of the separation of powers doctrine, a doctrine our founders considered critical to freedom. The notion that the judicial branch of government serves as a watchdog to curb legislative and executive abuses has been entirely exposed as an illusion. Judges not only fail to defend our freedoms, they actively infringe upon them by acting as de facto legislators.

#### Separation of Powers is non-unique: The Supreme Court is too Strong Now:

Rep. Ted **Poe**, Huffington Post, 20**05** [Rep. Ted Poe: Has the Supreme Court Lost its Way? July 11, <http://news.yahoo.com/s/huffpost/20050711/cm_huffpost/003993/nc:742>]

The Framers of our Constitution made clear their vision for the federal judiciary. Named in Article III behind both of the other branches, the Founders intended a court system with a narrow scope and restricted authority. As Alexander Hamilton explained in his Federalist Papers, “the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution.” He envisioned that the judicial branch would “have neither FORCE nor WILL, but merely judgment.” Mr. Hamilton was wrong. History reveals that the Supreme Court has become the most powerful branch of government and the citizenry – who ordains the Constitution – cannot hold justices accountable for their actions.

#### Separation of Powers is Non-Unique: the Judiciary has emasculated the Legislature

Steve **Kellmeyer**, The Illinois Leader, 20**05** [The coming paradigm shift from the judiciary to the corporation, July 7, <http://www.illinoisleader.com/opinion/opinionview.asp?c=27040>]

The growth of a bureaucratic culture allowed the legislature to be emasculated by the judiciary. The growth of an entertainment culture will allow the judiciary to be emasculated by the corporation. Just as the judiciary began as the weakest branch of government but has become the strongest, so corporations are actually being transformed into the government right before our eyes. Corporations will attain this power because we the people will vote them into power. The courts, having been duly appointed by the legislators, will in turn appoint to the corporations the power to govern us, the power to take everything we own, just so long as they keep us comfortable and entertained.

#### Congress Is Violating Separation of Powers Now

**Lochhead 2005** ( Carolyn, staff writer for San Francisco Chronicle, “Foes in Congress Unite in Defense of Property”, San Francisco Chronicle 7/1/2005, <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/07/01/PROPERTY.TMP>)

In a first step toward the legislation, the House voted 231-189 Thursday in favor of an amendment to an appropriations bill that would bar the departments of Transportation, Treasury, and Housing and Urban Development from providing money to cities that use eminent domain for profit-making projects. Pombo said he has no worries about criticism that Congress is again trying to interfere with the judiciary, "because we're right on this. Honestly, I'd be shocked if anybody voted against this bill." Pombo noted that two prominent liberal organizations, the NAACP, a civil rights group, and AARP, a retiree group, sided with the property owners. "It doesn't take a genius to look at this and figure out who's going to be hurt by it," Pombo said. "It's not the big developers. It's not the wealthy. They have influence. They can stop the city council from taking their property. It's the poor guy who doesn't even know who his city councilman is that's going to be hurt." Pombo, of Tracy, won his seat in Congress and now chairs the House Natural Resources Committee in part because of his long crusade to protect landowners from alleged "regulatory takings" of their property through enforcement of such laws as the Endangered Species Act. The Kelo decision raises the stakes, he said. "This isn't about taking some farmer's ranch for endangered species habitat," Pombo said. "This is about taking your house because the city thinks it has a better use. This affects every homeowner in the country." House Democratic leader Nancy Pelosi of San Francisco opposes the bill and said Republicans are trying to interfere with the judiciary again. "This is in violation of the respect for separation of ... powers in our Constitution," Pelosi said.

### Politics DA Answers

#### Zero Link: The decision won’t be announced until May or June—after the election and after their politics scenario:

**Supreme Court of the United States, 7/25/2012** (“The Court and Its Procedures,”

<http://www.supremecourt.gov/about/procedures.aspx>, Accessed 7/25/2012, rwg)

The Court maintains this schedule each Term until all cases ready for submission have been heard and decided. In **May and June** the Court sits only to **announce orders and opinions**. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

#### (--) Court action doesn’t link to politics- individual rulings don’t draw attention

Gregory Caldeira, Professor of Political Science, Ohio State University, 1986 [The American Political Science Review, Vol. 80, No. 4 (Dec., pp. 1209-1226; “Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court”; Jstor]

In previous work on support for institutions and leaders, scholars have demonstrated the crucial effects of discrete political events and circumstances on the rise and decline of public confidence. For example, Mueller (1973) persuasively argues that crises in foreign affairs result in "rallying-around-the-flag" and a subsequent increase in the popularity of the incumbent chief executive (cf. Parker, 1977). Unfortunately for the purposes of analysis, events normally associated with the Court seldom cause a splash of the dimensions of the Mayaguez incident or the Cuban missile crisis, Particular decisions sometimes do gain a fair amount of attention in the elite media of communications, but few single cases-with the exception of a bombshell such as Dred Scott-have sufficient weight to shift public attitudes one way or the other. Even if we could isolate a number of crises or landmark decisions, the polling organizations have not gathered data on support for the Court often enough to permit a precise reading on the influence of salient events.

(--) Popular respect for the Court shields it from partisan politics

Gregory Caldeira, Prof of Political Science at The Ohio State University, 1998 [Co-written by Vanessa A. Baird, James L. Gibson; “On the Legitimacy of National High Courts” The American Political Science Review, Vol. 92, No. 2 (Jun., ), pp. 343-358; Jstor]

The purpose of this research is to examine theories of diffuse support and institutional legitimacy by testing hypotheses about the interrelationships among the salience of courts, satisfaction with court outputs, and diffuse support for national high courts. Like our predecessors, we are constrained by essentially cross-sectional data; unlike them, we analyze mass attitudes toward high courts in eighteen countries. Because our sample includes many countries with newly formed high courts, our cross-sectional data support several longitudinal inferences, using the age of the judicial institution as an independent variable. We discover that the U.S. Supreme Court is not unique in the esteem in which it is held and, like other courts, it profits from a tendency of people to credit it for pleasing decisions but not to penalize it for displeasing ones. Generally, older courts more successfully link specific and diffuse support, most likely due to satisfying successive, nonoverlapping constituencies.

(--) Politicians can blame the courts to avoid blame.

Dallas Morning News 8/19/05

<http://www.dallasnews.com/sharedcontent/dws/news/texassouthwest/legislature/schoolfinance/stories/082005>dntexsession.8bd31b4a.html

That could foreshadow the court's response to a chief argument by state attorneys – that the court should butt out and leave school finance to the Legislature. A court finding against the state would put the ball back in the hands of lawmakers, who have tended to put off dealing with problems in schools, prisons and mental health facilities until state or federal judges forced them to act. "It's the classic political response to problems they don't want to deal with," said Maurice Dyson, a school finance expert and assistant law professor at Southern Methodist University. "There is no better political cover than to have a court rule that something must be done, which allows politicians to say their hands are tied."

### Politics: Decisions Announced in May

#### Normal means is announcing the plan in May or June:

**Wikipedia, 7/24/2012** ([http://en.wikipedia.org/wiki/Procedures\_of\_the\_Supreme\_Court\_of\_the\_ United\_States#Announcement\_of\_opinions](http://en.wikipedia.org/wiki/Procedures_of_the_Supreme_Court_of_the_%20United_States" \l "Announcement_of_opinions), Accessed 7/25/2012, rwg)

Throughout the term, but mostly during the last months of the term—May, June, and, if necessary, July—the Court announces its opinions. The decision of the Court is subsequently published, first as a slip opinion, and subsequently in the United States Reports. In recent years, opinions have been available on the Supreme Court's website and other legal websites on the morning they are announced.

#### Decisions never leak before they are announced:

Sam **Baker, 7/4/2012** (staff writer, “Supreme Court healthcare ruling leaks have DC buzzing: Who is the culprit?” <http://thehill.com/blogs/healthwatch/legal-challenges/236197-supreme-court-talk-has-dc-buzzing-who-is-the-leaker>, rwg)

The justices themselves were implicated in the speculation because clerks would have more to lose by talking to the press. A decision has never leaked before the court announced it publicly; the explanation for that fact is that justices have nothing to gain and clerks would be throwing away promising careers by leaking.

### Court Stripping Answers

#### Congress won’t strip the Courts—bills to limit the Court’s jurisdiction don’t pass even when Congress is angry:

Lawrence **Baum**, 20**03** Department of Political Science, Ohio State University, June **2003**

[“The Supreme Court in American Politics,” <http://arjournals.annualreviews.org/doi/full/10.1146/annurev.polisci.6.121901.085526;jsessionid=n1HzQqZJALRe>, rwg]

For Dahl, of course, the challenge stems partly from the sheer volume of intervention in the current era. Just as important, the Court's active participation in policy making has continued for a long period. Dahl suggested that significant interventions occur chiefly in transitional periods, similar to what other scholars have labeled realignments.The several decades since 1960 are too long to be labeled a transitional period. On the other hand, this is an era in which partisan control of House, Senate, and presidency has been divided most of the time. In such an era, it is difficult even to identify a law-making majority, let alone characterize the Court's interventions in relation to that majority. Congress can do more damage when it attacks the Court itself. **But Congress seldom uses its institutional powers against the Court** in significant ways. For example, the Court's size has not been changed since the 1860s. Over that period, its **jurisdiction has never been cut back as a negative response to its policies** despite a long list of bills with that purpose.

#### Supreme Court decisions are almost impossible to reverse:

**Baxter, 7/12/2005** (Tom, staff writer, Atlanta Journal-Constitution, Lexis)

"Wars come and go, and the economy goes up and down, but a Supreme Court justice serves, on average, 20 years," she said. "And once the court has made a decision, getting it reversed is **practically impossible**."

#### Justices will modify their behavior to avoid backlash from other branches:

Lawrence **Baum**, Department of Political Science, Ohio State University, June **2003**

[“The Supreme Court in American Politics,” http://arjournals.annualreviews.org/doi/full/10.1146/annurev.polisci.6.121901.085526;jsessionid=n1HzQqZJALRe]

Another possibility is that the justices ordinarily give little attention to their political environment but take protective action when their decisions have aroused negative reactions from other policy makers. Justices might reason that it is a poor strategy to depart from their most preferred positions to avoid the possibility of an unfavorable response from the other branches. But when conflicts actually occur, the justices retreat as a means to limit the damage. What might be called crisis-driven strategy is analogous to the "fire alarm" form of congressional oversight over the executive branch. Compared with routine strategy, it would lead to more interventions and more confrontations, but some periods of intervention would end abruptly as the justices responded to conflicts provoked by their decisions.

## Counterplan Answers

### State Courts Answers

#### State courts can’t solve the AFF—judicial and political hostility at the local level:

Michelle Wilde **Anderson, 2010** (Assistant Professor of Law @ UC Berkeley Law School, “MAPPED OUT OF LOCAL DEMOCRACY,” Stanford Law Review, April 2010, Lexis/Nexis, rwg)

What to do with today's lost neighborhoods? It is the late dawn of the twenty-first century, when integration is stronger and **civil rights laws are weaker**, when local government budgets are dwarfed by demands. Suing local governments or lobbying them, two of the most important strategies of twentieth-century advocacy for social justice, have been weakened by **judicial and political hostility to redistributive claims**. Yet state and local government law retains malleability and promise. Laws governing the allocation of power among local agencies exert significant influence over unincorporated urban areas in particular and spatial polarization by race and class more generally.

#### Counterplan doesn’t solve the doctrine advantage—states can’t solve for the federal equal protection clause.

#### Counterplan also doesn’t solve the modeling advantage—our evidence is specific to the Supreme Court

#### Supreme Court is necessary to solve for the states—states will interpret their constitutions the way the Supreme Court does:

Bill **Swinford, 1994** (Assistant Professor of Political Science, University of Richmond, Temple Law Review, “SHEDDING THE DOCTRINAL SECURITY BLANKET: HOW STATE SUPREME COURTS INTERPRET THEIR STATE CONSTITUTIONS IN THE SHADOW OF RODRIGUEZ,” 67 Temp. L. Rev. 981; Lexis, rwg)

State courts often interpret language in state constitutions in order to grant protection to rights and privileges that is broader than that afforded by the Supreme Court under the United States Constitution. n1 However, state courts tend to be guided (if not controlled) by United States Supreme Court interpretations of analogous language in the United States Constitution. n2 In other words, state courts have traditionally used Supreme Court precedents as "doctrinal security blankets," looking to Court precedent for legal support for decisions on state constitutional questions, even when there is no legal necessity for doing so.

#### 50 State FIAT illegit:

1. No rational actor can decide between the Supreme Court and all 50 states
2. No literature assumes all 50 state courts acting at the same time
3. Not real world—destroys real world education
4. Voter for Fairness & Education

#### States won’t depart from federal standards for equal protection—the counterplan can’t solve on its own:

Bill **Swinford, 1994** (Assistant Professor of Political Science, University of Richmond, Temple Law Review, “SHEDDING THE DOCTRINAL SECURITY BLANKET: HOW STATE SUPREME COURTS INTERPRET THEIR STATE CONSTITUTIONS IN THE SHADOW OF RODRIGUEZ,” 67 Temp. L. Rev. 981; Lexis, rwg)

The adjudication of claims under state constitutions involving equal protection of the law provides a prominent example of the growing pains faced by state courts. n7 As in other areas, state courts in the 1970s and 1980s began hearing more equal protection claims on the basis of state constitutional language alone. But the lack of independent state-level doctrine in this area, combined with the legal tradition of deference to the United States Supreme Court, made it difficult, for those state courts who desired to do so, to depart from federal standards for equal protection. n8

#### Conditionality is a voting issue

1. Counter-interpretation: dispositionality solves all their offense
2. Creates a time skew: Can’t re-give the 2ac
3. Creates a strategy skew: Can’t make our best answers to the counterplan.

### CONGRESS COUNTERPLAN AFF ANSWERS

#### (---) NO SOLVENCY: Congress doesn’t have power over the 14th Amendment—the Courts do:

**Tsai,** Assistant Prof. of Law @ University of Oregon School of Law, 20**05** (Robert, Iowa Law Review, March 2005; 90 Iowa L. Rev. 1095; Lexis)

n129. Accord Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 81 (2000) ("The ultimate interpretation and determination of the Fourteenth Amendment's substantive meaning **remains the province of the Judicial Branch**.").

#### (---) Court will check Congressional power exercised under Fourteenth Amendment:

**Araiza,** Professor of Law @ Loyola Law School, 20**05** (William, Tulane Law Review, February 2005, 79 Tul. L. Rev. 519; Lexis)

Yet congressional action is impeded by the very text that it could potentially rejuvenate. The fact that Congress's power is limited to "enforcing" the Equal Protection Clause means that that power is necessarily tied to the meaning of that provision. By itself this requirement is unremarkable: all it means is that when Congress seeks [\*524] to enforce the Equal Protection Clause, its action must have some link to the meaning of equal protection. But because the Fourteenth Amendment also includes a judicially enforceable component, questions about the acceptable range of congressional action inevitably require consideration of how the courts have understood that guarantee. In turn, if the meaning of the Amendment is thought to depend solely and completely on what the Court says the Clause means - in other words, if we adopt a juricentric model - then **lack of clarity in the Court's equal protection jurisprudence** necessarily infects, and **thus impedes,** congressional attempts to breathe new life into it.

#### (---) PERMUTE: DO BOTH—CONGRESSIONAL AND COURT LED SOCIAL CHANGE IS THE BEST OPTION:

**Araiza,** Professor of Law @ Loyola Law School, 20**05** (William, Tulane Law Review, February 2005, 79 Tul. L. Rev. 519; Lexis)

Still, it is worth considering Brown's at best partial success and wondering whether integration **would have been more successful if Congress** had more aggressively **assisted the Court**. n110 Indeed, the steps Congress did take - most notably the conditioning of federal education funds on desegregation - helped quicken the pace of change. n111 This is not to say that integration would have occurred immediately, peacefully, and comprehensively had the effort been led by Congress. The anti-Brown rhetoric of segregationists, criticizing Brown as a judicial usurpation, n112 was largely opportunistic - that is, much, if not most, of that opposition was based on the rejection of integration itself, not the fact that integration was being "illegitimately" imposed by courts.

### CONGRESS COUNTERPLAN AFF. ANSWERS—EXTENSIONS: COURT WILL CHECK ENFORCEMENT

#### Court will check Congressional power over Section 5 of the 14th Amendment:

**Araiza,** Professor of Law @ Loyola Law School, 20**05** (William, Tulane Law Review, February 2005, 79 Tul. L. Rev. 519; Lexis)

The second criticism can be countered by observing that judicially imposed limits on Congress's power have the potential to cabin Congress's power to usurp other branches' constitutional authority. The current Court has shown significant willingness to impose such limits on Congress, especially with regard to Congress's regulation of the states or usurpation of state regulatory prerogatives. See, e.g., Seminole Tribe v. Florida, 517 U.S. 44 (1999); United States v. Morrison, 529 U.S. 598 (2000); New York v. United States, 504 U.S. 144 (1992); City of Boerne v. Flores, 521 U.S. 507 (1997). As suggested later in the Article, judicially enforceable limits on Congress's Section 5 power do exist.

#### Court will strike down Congressional statutes based on Section 5 of the 14th Amendment:

Robert C. **Post** and Reva B. **Siegal**, June 8, **2003** [The Yale Law Journal, “Legislative Constitutionalism and Section Five Power: Policentric Interpretation of the Family and Medical Leave Act,” p. 112]

The Court is now striking down a variety of federal civil rights statutes as beyond Congress’s power under Section 5 of the Fourteenth Amendment. In imposing limits on federal authority to enact civil rights laws, the Court has invoked a particular understanding of separation of powers in which the Court alone can interpret the Constitution, while Congress can use its Section 5 power only to enforce the constitutional interpretations of the Court. This Article challenges this understanding, which it calls the “enforcement model” of Section 5, and contrasts it to an alternative account, in which Congress can enact Section 5 legislation based on its own interpretation of constitutional rights, even if Congress’s interpretation diverges from the Court’s. The Article names this alternative account of Section 5 power the model of “policentric constitutional interpretation.” For decades, Section 5 has served as a structural device that promotes policentric interpretation, and so fostered the democratic legitimacy of our constitutional order. The Article develops its claims about the enforcement and policentric models of Section 5 power in a case study of the Family and Medical Leave Act of 1993 (FMLA), the Section 5 statute at issue in Nevada Department of Human Resources v. Hibbs. The Article offers two critiques of the enforcement model. It demonstrates, first, that the enforcement model cannot generate criteria capable of distinguishing Section 5 legislation that enforces judicial interpretations of the Constitution from Section 5 legislation that enforces congressional interpretations of the Constitution. Without such criteria, judicial application of the model must depend instead on extrinsic considerations, like the Court’s concerns about federalism or its attitude toward new forms of antidiscrimination law. The enforcement model thus leads to unaccountable decision making, with the Court invalidating civil rights legislation on grounds that it neither names nor justifies.

#### Court will strike down Congressional antidiscrimination law:

Robert C. **Post** and Reva B. **Siegal**, June 8, **2003** [The Yale Law Journal, “Equal Protection by Law: Federal Antidiscrimination Legislation After Morrison and Kimel,” p. 110]

Last Term, the Supreme Court sent **ominous signals** about the future of federal antidiscrimination law. The Court twice ruled that Congress lacked power under Section 5 of the Fourteenth Amendment to enact laws prohibiting discrimination. In Kimel v. Florida Board of Regents, the Court concluded that Section 5 did not give Congress the power to abrogate state Eleventh Amendment immunity for suits under the Age Discrimination in Employment Act of 1967, and in United States v. Morrison, the Court held that Congress was without power under either the Commerce Clause or Section 5 to enact a provision of the Violence Against Women Act of 1994 (VAWA) creating a federal civil remedy for victims of gender-motivated violence.

#### Kimel and Morrison decisions prove: the Court will strike down Congressional Power under Section 5 of the 14th Amendment:

Robert C. **Post** and Reva B. **Siegal**, June 8, **2003** [The Yale Law Journal, “Equal Protection by Law: Federal Antidiscrimination Legislation After Morrison and Kimel,” p. 110]

However interpreted, the Court’s decisions in Kimel and Morrison impose new and substantial restrictions on Congress’s power to enact antidiscrimination laws under Section 5. This is because both decisions conceive of the legitimacy of Section 5 power as ancillary to judicial authority to enforce Section 1 of the Fourteenth Amendment. In Part IV we suggest that this framework of analysis misconceives how the constitutional meaning of the Equal Protection Clause is established. We argue that the framework is not required by either federalism or separation of powers, and that it is inconsistent with the development of equal protection jurisprudence in the decades after Brown v. Board of Education. Drawing on the history recounted in Part III, we illustrate how the Court struggled with the distinctive dilemmas of interpreting the Equal Protection Clause during the founding decades of our modern antidiscrimination tradition and responded by forging a relationship with Congress that cannot be conceptualized within a framework that would require Section 5 legislation to be narrowly tailored to judicial enforcement of Section 1.

### CONGRESS COUNTERPLAN ANSWERS: EXTENSIONS-PERMUTATION SOLVES BEST

#### Permutation solves best: melds Congressional benefits with Court advantages:

**Araiza,** Professor of Law @ Loyola Law School, 20**05** (William, Tulane Law Review, February 2005, 79 Tul. L. Rev. 519; Lexis)

Indeed, understanding Cleburne's suspect class discussion in this way - as a recognition that there may sometimes be animus against a group like the mentally retarded, but that such animus has to be detected by a court on a case-by-case basis - supports a conception of Congress's Section 5 power **in which Congress's task is to help the Court detect and counteract such animus**. Because **Congress is better than courts at determining social meaning**, can detect when politicians may be under pressure to act based on constituent fear, and **can attack problems in a more nuanced way than courts**, it is this kind of task for which Congress is exactly suited. The "no animus" limitation on Congress's Section 5 power, then, turns out to be not an unprincipled line drawn simply to prevent Section 5 from becoming an all-purpose congressional check on state government. Instead, it fits quite consistently within the overall institutional competence thrust of this Article's thesis.

#### Permutation is the best option: best preserves constitutionalism and rights:

Robert C. **Post** and Reva B. **Siegal**, June 8, **2003** [The Yale Law Journal, “Legislative Constitutionalism and Section Five Power: Policentric Interpretation of the Family and Medical Leave Act,” p. 112]

As this history demonstrates, Congress’s political responsiveness makes it the object of social movement mobilization and a unique register of the nation’s evolving constitutional understandings. The policentric model of Section 5 power holds that Congress and the Court may each consider and incorporate the other’s views, while retaining autonomy in judgment, so that the Court remains free to strike down any law that it believes threatens individual liberties or impairs structural values such as separation of powers or federalism. The policentric model thus preserves both the nation’s rich legacy of legislative constitutionalism and the judicially enforced rights on which we have come to depend.

### 2AC CP Competing Off Plan Certainty

#### Perm- do the CP--“Should” means “ought to”

Sudison, 7/18/2006 (<http://sudison.blogspot.com/2006_07_01_archive.html>)

Shall **'shall' describes something that is mandatory**. If a requirement uses 'shall', then that requirement \_will\_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong. Should **'should' is weaker.** It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better.

#### None of their evidence assumes the court—no reason to believe the court conditions rulings or consults on issues before it rules.

#### CP that compete on the certainty of the plan are bad-

#### Infinite possible conditions- kills predictability and competitive equity

#### B) Kills aff ground- no literature for the aff in the context of the CP- kills competitive equity

#### C. Hurts plan focus- trades off with specifics about the policy- kills topic education which can only happen this year

#### D. Literature doesn’t check- we can’t be prepared to find nonexistent literature on all their conditions