# 2ac

### China

#### causes China/Russia war

**Nankivell 9**

[Nathan, Senior Researcher at the Office of the Special Advisor Policy, Canadien Department of National Defence, “China's Pollution and the Threat to Domestic and Regional Stability”, Asia-Pacific Journal, 3-21, http://japanfocus.org/-Nathan-Nankivell/1799]

Moreover, protests serve as a venue for the politically disaffected who are unhappy with the current state of governance, and may be open to considering alternative forms of political rule. Environmental experts like Elizabeth Economy note that protests afford an opportunity for the environmental movement to forge linkages with democracy advocates. She notes in her book, The River Runs Black, that several environmentalists argue that change is only possible through greater democratization and notes that the environmental and democracy movements united in Eastern Europe prior to the end of the Cold War. It is conceivable that in this way, environmentally-motivated protests might help to spread democracy and undermine CCP rule. A further key challenge is trying to contain protests once they begin. The steady introduction of new media like cell phones, email, and text messaging are preventing China’s authorities from silencing and hiding unrest. Moreover, the ability to send and receive information ensures that domestic and international observers will be made aware of unrest, making it far more difficult for local authorities to employ state-sanctioned force. The security ramifications of greater social unrest cannot be overlooked. Linkages between environmental and democracy advocates potentially challenge the Party’s monolithic control of power. In the past, similar challenges by Falun Gong and the Tiananmen protestors have been met by force and detainment. In an extreme situation, such as national water shortages, social unrest could generate widespread, coordinated action and political mobilization that would serve as a midwife to anti-CCP political challenges, create divisions within the Party over how to deal with the environment, or lead to a massive show of force. Any of these outcomes would mark an erosion or alteration to the CCP’s current power dynamic. And while many would treat political change in China, especially the implosion of the Party, as a welcome development, it must be noted that any slippage of the Party’s dominance would most likely be accompanied by a period of transitional violence. Though most violence would be directed toward dissident Chinese, a ripple effect would be felt in neighboring states through immigration, impediments to trade, and an increased military presence along the Chinese border. All of these situations would alter security assumptions in the region. Other Security Concerns While unrest presents the most obvious example of a security threat related to pollution, several other key concerns are worth noting. The cost of environmental destruction could, for example, begin to reverse the blistering rate of economic growth in China that is the foundation of CCP legitimacy. Estimates maintain that 7 percent annual growth is required to preserve social stability. Yet the costs of pollution are already taxing the economy between 8 and 12 percent of GDP per year [1]. As environmental problems mount, this percentage will increase, in turn reducing annual growth. As a result, the CCP could be seriously challenged to legitimize its continued control if economic growth stagnates. Nationalists in surrounding states could use pollution as a rallying point to muster support for anti-Chinese causes. For example, attacks on China’s environmental management for its impact on surrounding states like Japan, could be used to argue against further investment in the country or be highlighted during territorial disputes in the East China Sea to agitate anti-Chinese sentiment. While nationalism does not imply conflict, it could reduce patterns of cooperation in the region and hopes for balanced and effective multilateral institutions and dialogues. Finally, China’s seemingly insatiable appetite for timber and other resources, such as fish, are fuelling illegal exports from nations like Myanmar and Indonesia. As these states continue to deplete key resources, they too will face problems in the years to come and hence the impact on third nations must be considered. Territorial Expansion or Newfound Alliances In addition to the concerns already mentioned, pollution, if linked to a specific issue like water shortage, could have important geopolitical ramifications. China’s northern plains, home to hundreds of millions, face acute water shortages. Growing demand, a decade of drought, inefficient delivery methods, and increasing water pollution have reduced per capita water holdings to critical levels. Although Beijing hopes to relieve some of the pressures via the North-South Water Diversion project, it requires tens of billions of dollars and its completion is, at best, still several years away and, at worst, impossible. Yet just to the north lies one of the most under-populated areas in Asia, the Russian Far East. While there is little agreement among scholars about whether resource shortages lead to greater cooperation or conflict, either scenario encompasses security considerations. Russian politicians already allege possible Chinese territorial designs on the region. They note Russia’s falling population in the Far East, currently estimated at some 6 to 7 million, and argue that the growing Chinese population along the border, more than 80 million, may soon take over. While these concerns smack of inflated nationalism and scare tactics, there could be some truth to them. The method by which China might annex the territory can only be speculated upon, but would **surely result in full-scale war between** two powerful, **nuclear-equipped nations**.

### 2AC AT Circumvention

#### Will comply – even if they disagree

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### Obama and DOD committed to compliance with environmental requirements now – no Link Uniqueness

Dycus 13 (Professor Stephen Dycus, “U.S. military going green,” Vermont Law Top 10: Environmental Law Watch List Top 10, 2013, http://watchlist.vermontlaw.edu/u-s-military-going-green/)

The U.S. military’s recent move to lessen its use of fossil fuels is evidence of a laudable trend that the Obama administration and the Pentagon are taking their environmental responsibility seriously. They are recognizing that a clean, healthy environment is something that we should fight to defend and not destroy in preparing for and waging war. This year, while Congress struggled unsuccessfully to pass legislation on climate change and state and federal government agencies put renewable energy on hold due to the recession, the military took significant steps in pursuing renewable energy and decreasing its energy consumption. The federal government is the largest energy consumer in the United States. Using nearly 300,000 barrels of oil each day, the Defense Department is responsible for 80 percent of the federal government’s energy usage. On October 5, 2009, President Obama signed Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance. In response, the Pentagon set an emission reduction target of 34 percent by 2020, higher than any other federal agency and higher than the 28 percent President Obama has announced as a requirement for the federal government. To achieve the emission reduction target, the military is already taking steps to increase its reliance on renewable energy and to reduce its energy consumption overall. In July, the Pentagon appointed its first director of operational energy plans programs, with a mission to “reduce the amount for energy needed in war zones, and decrease the risk to troops that transport and guard the military’s fuel.” All branches of the military have taken steps toward sustainable development and environmentally friendly practices: the Army has been testing tents that trap warm and cool air and developing diesel-electric trucks; the Marines are using solar-powered water purification systems and spray insulation for tents; the Navy has a comprehensive model for development of biofuels; and the Air Force hopes to have an entire fleet certified to fly on biofuels by 2011. The 3rd Battalion, 5th Marine Regiment’s Company I was the first to take renewable technology into the battle zone. The 150 Marines involved in the mission traveled to Afghanistan with “portable solar panels that fold up into boxes, energy conserving lights, solar tent shields that provide shade and electricity, and solar chargers for computers and communication equipment.” In the past, the large truck convoys that brought fuel to bases in Afghanistan were easy targets for enemy combatants. One Army study found that for every 24 convoys, one soldier or civilian engaged in the transport was killed. If the military is successful in providing its personnel with independently sustainable methods of energy production, the dangerous convoys will no longer be required.

### A2: PMC

#### . No link - plan applies to PMC’s - they are armed forces

Scheimer 9 (Michael – J. D. Candidate, 2009, American University, Washington College of Law, “Separating Private Military Companies From Illegal Mercenaries in International Law: Proposing an International Convention for Legitimate Military and Security Support That Reflects Customary International Law”, 24 Am. U. Int'l L. Rev. 609, lexis)

Section (d) defines mercenaries as foreign nationals. n80 It is very likely that a PMC will have employees in a conflict zone that fall under section (d) because PMCs recruit people from all over the world. n81 Furthermore, PMCs could very likely fall under section (e), which stipulates mercenaries act outside the armed forces. n82 Yet if PMCs were taking orders directly from the armed forces, perhaps because a contract required it, then they would effectively be considered members of the armed forces and not mercenaries. n83 Such [\*629] a contract would also allow a PMC to escape the last clause of the Article 47 definition, section (f), which accepts the presence of armed forces from third parties. n84 While a PMC could fall under some sections more readily than others, the cumulative requirement of Article 47 means that it would be very difficult to find an armed conflict where a PMC is truly acting as a mercenary under all sections of Article 47. It is therefore necessary to look at the definition under the U.N. Convention for additional language that may capture PMCs where Article 47 does not.

### XO CP – 2AC w/NEPA

#### Judicial interprtations key – solves extinction

Villmer ’10 (Matthew,- attorney with the law firm of Emmanuel, Sheppard & Condon 11 Fl. Coastal L. Rev. 321)

The National Environmental Policy Act (NEPA or the Act) 1 greatly improved United States environmental policy, promising judicial oversight to federal actions. However, due to years of judicial interpretation that significantly reduced NEPA's requirements, the Act lost its substantive impact. This erosion of NEPA protections risked local and regional **disaster in the nuclear era**--but now, government contravention of NEPA provisions risks even more: **complete global destruction**. This Article follows the creation, development, and eventual demise of NEPA's environmental protections. The Article tracks NEPA's application throughout the last thirty years using three case studies and particularly analyzes the United States government's intentional evasion of the Act's safeguards. This Article then culminates with a detailed proposition for rehabilitating NEPA to its former status as an environmental safeguard for not only the United States, but the earth as a whole. By amending NEPA to adequately protect the environment, humanity will ensure its future on this planet.

#### . Plan solves CMR

Nevitt 13

[Mark. He’s a badass and an American Patriot. Don’t take our word for it though, he is a Lieutenant Commander (LCDR), United States Navy. LCDR Mark P. Nevitt is an active duty Navy judge advocate. He obtained his LL.M. with distinction at the Georgetown University Law Center (GULC), his J.D. from Georgetown Law and his B.S.E. from the Wharton School at the University of Pennsylvania, where he was commissioned as a naval officer via the NROTC program. A former naval flight officer who has flown combat mission from aircraft carriers, LCDR Nevitt is currently assigned as the Region Environmental Counsel (REC) for the Mid-Atlantic Region in Norfolk, VA, DEFENDING THE ENVIRONMENT: A MISSION

FOR THE WORLD’S MILITARIES, March 12, 2013, pp. 42-53]

U.S. Environmental Laws Serve to Uphold the Longstanding Tradition of Civilian Control of the Military Ultimately, judicial enforcement through the APA and myriad citizen suit provisions within environmental statutes upholds the U.S.’s longstanding tradition of civilian control over the military. Such enforcement furthers the Constitution’s adherence to a civilian controlled military led by an elected President serving as Commander-in-Chief of the Army and Navy, and addresses the centuries-old concern about a standing Army as a potential danger and concerns regarding separation of powers. This is more important than ever, as there has been an increasing chasm between civil and military sectors with the emergence of an all-volunteer force emerging at the end of the Vietnam War and a comparative lower number of elected officials with military service. For example, James Madison, in Federalist No 51, warned that “usurpations are guarded against by a division of the government into distinct and separate departments.” The Founders desired to have all three branches of government assert some form of control over the military. Today, American environmental law is largely faithful to the Founders’ vision in not carving out a completely different set of laws for the military. This ensures constitutional control and day-to-day accountability to its citizens, reaffirming the longstanding tradition of civilian control of the military and serving as a bulwark against usurpation. This is significant. For many day-to-day matters, the U.S. military operates separately from the civilian world that it is sworn to protect. The importance of having a military accountable to, and representative of, the citizenry serves a democracy-reinforcing function that is aligned with the Founders’ concerns regarding a military. These concerns are particularly critical today in light of the sheer size of the today’s military and the continual existence of standing armed forces. A “standing Army,” no longer a Cold War novelty, is now the new normal. The Founders could not imagine the existing military-industrial complex that exists in the U.S. with its forces stationed throughout the globe. Today, the DoD is the largest single employer in the world, a hegemonic military power that is equal in size and power to the next twelve militaries of the world combined—and it is held accountable for its environmental stewardship. Contrast, too, environmental citizen suit provisions and APA civil remedies with the U.S. military’s existing criminal justice system. Only uniformed judge advocates currently serving in the military can prosecute service member charged with a crime in a military court-martial, and there is a distinct and separate criminal law system within the military governed by the Uniformed Code of Military Justice. Civilians play a limited role in this system and, while the judgments of military courts are ultimately reviewable by the U.S. Supreme Court, this is exceedingly rare and the military justice system is effectively self-contained within the uniformed military on DoD installations. The use of civil litigation pursuant to environmental laws, by contrast, ensures continual and important oversight of the military’s actions. Consider the inherent value of citizen suit and APA provisions that allow for judicial enforceability against the DoD. These judicial protections ensure a consistent nexus and thread of accountability between the larger population and the military. On a practical level, getting on a military installation without a DoD identification card can be difficult without an official purpose for the visit. Force protection and anti-terrorism measures have only increased the difficulty of obtaining installation access since September 11th. For example, prior to the attacks on 9/11, Norfolk Naval Station was largely an open base available for tours and visits by the general public. Now, general visitations on base are rare occurrences, only increasing the divide between the civilian and military sectors Indeed, DoD is often sued by people well outside the military sphere, such as environmental groups actively engaged in reviewing—and litigating—DoD’s actions. Provided that the Article III “case or controversy” requirements are met, any person or citizen group may bring a lawsuit in federal court against DoD seeking relief pursuant to a citizen suit provision embedded within the particular environmental regulation, or pursuant to the “arbitrary and capricious” standard of the APA. There is a considerable body of litigation against DoD by environmental groups well outside the military sphere that would otherwise not normally interact with the military.

#### Nuclear war

**Cohen ’00** (Eliot A.-, Prof. @ Paul H. Nitze School of Advanced International Studies & director of the Strategic Studies department @ Johns Hopkins, worked for Dod, taught at the U.S. Naval War College, Fall, National Interest, “Why the Gap Matters - gap between military and civilian world”, <http://www.24hourscholar.com/p/articles/mi_m2751/is_2000_Fall/ai_65576871/pg_4?pi=scl>)

At the same time, the military exercises control, to a remarkable degree, of force structure and weapons acquisition. To be sure, Congress adds or trims requests at the margin, and periodically the administration will cancel a large program, such as the navy's projected replacement of the A-6 bomber. But by and large, the services have successfully protected programs that reflect ways of doing business going back for decades. One cannot explain otherwise current plans for large purchases of short-range fighter aircraft for the air force, supercarriers and traditional surface warships for the navy, and heavy artillery pieces for the army. Civilian control has meant, in practice, a general oversight of acquisition and some degree of control by veto of purchases, but nothing on the scale of earlier decisions to, for example, terminate the draft, re-deploy fleets, or develop counterinsurgency forces. The result is a force that looks very much like a shrunken version of the Cold War military of fifteen years ago- -which, indeed, was the initial post-Cold War design known as the "base force." The strength of the military voice and the weakness of civilian control, together with sheer inertia, has meant that the United States has failed to reevaluate its strategy and force structure after the Cold War. Despite a plethora of "bottom-up reviews" by official and semiofficial commissions, the force structure remains that of the Cold War, upgraded a bit and reduced in size by 40 percent. So What? WHAT WILL be the long-term consequences of these trends? To some extent, they have become visible already: the growing politicization of the officer corps; a submerged but real recruitment and retention crisis; a collapse of junior officers' confidence in their own leaders; [7] the odd antipathy between military and civilian cultures even as the two, in some respects, increasingly overlap; deadlock in the conduct of active military operations; and stagnation in the development of military forces for a geopolitical era radically different from the past one. To be sure, such phenomena have their precedents in American history. But such dysfunction occurred in a different context--one in which the American military did not have the task of maintaining global peace or a predominance of power across continents, and in which the armed forces consumed barely noticeable fractions of economic resources and decisionmakers' time. Today, the stakes are infinitely larger. For the moment, the United States dominates the globe militarily, as it does economically and culturally. It is doubtful that such predominance will long go unchallenged; were that to be the case it would reflect a change in the human condition that goes beyond all human experience of international politics over the millennia. Already, some of the signs of those challenges have begun to appear: increased tension with the rising power of China, including threats of force from that country against the United States and its allies; the development of modes of warfare--from terrorism through the spread of weapons of mass destruction--designed to play on American weaknesses; the appearance of problems (peacemaking, broadly defined) that will resist conventional solutions. None of these poses a mortal threat to the Republic, or is likely to do so anytime soon. Yet cumulatively, the consequences have been unfortunate enough; the inept conclusion to the Gulf War, the Somalia fiasco, and dithering over American policy in Yugoslavia may all partially be attributed to the poor state of American civil-military relations. So too may the subtle erosion of morale in the American military and the defense reform deadlock, which has preserved, to far too great a degree, outdated structures and mentalities. For now, to be sure, the United States is wealthy and powerful enough to afford such pratfalls and inefficiencies. But the **full consequences** will not be felt for some years, and not until a major military crisis--a challenge as severe in its way as the Korean or Vietnam War--arises. Such an eventuality; difficult as it may be to imagine today, could occur in any of a **number of venues**: in a conflict with China over Taiwan, in a desperate attempt to shore up collapsing states in Central or South America, or in a renewed outbreak of violence--this time with weapons of mass destruction thrown into the mix-in Southwest Asia. THE PARADOX of increased social and institutional vulnerability on the one hand and increased military influence on narrow sectors of policymaking on the other is the essence of the contemporary civil-military problem. Its roots lie not in the machinations of power hungry generals; they have had influence thrust upon them. Nor do they lie in the fecklessness of civilian leaders determined to remake the military in the image of civil society; all militaries must, in greater or lesser degree, share some of the mores and attitudes of the broader civilization from which they have emerged. The problem reflects, rather, deeper and more enduring changes in politics, society and technology.

### PQD DA – 2AC

#### Plan returns the US to case law circa 2004 – 5 years of legal application disproves the disad

Schiffer 4 (Lois J., partner at Baach Robinson & Lewis PLLC in Washington, D.C., Assistant Attorney General for the Environment and Natural Resources Division at the U.S. Department of Justice from 1994-2001, adjunct professor of environmental law at Georgetown University Law Center, “The National Environmental Policy Act today, with an emphasis on its application across U.S. Borders,” Duke Environmental Law & Policy Forum, Vol. 14:2, 2004, <http://www.eli.org/pdf/seminars/NEPA/NEPA%20Today.pdf>)

The Bush Administration has made clear its view that NEPA should be limited to impacts within the United States. In Natural Resources Defense Council v. U.S. Department of the Navy, which challenged the Navy’s testing of low-frequency sonar on the basis that the Navy must prepare an EIS to evaluate impacts on marine mammals, the government argued that NEPA did not apply to the sonar program because most of the testing took place outside the territorial waters of the LLS.\*1 The government relied on the presumption against extraterritorial application of federal laws. In a clear and strong decision, the court rejected the claim and held that NEPA applied.45 While the Navy and the NRDC then reached a substantive settlement, congressional legislation that redefined what constitutes "harassment" under the Marine Mammal Protection Act reopened this debate. In Center for Biological Diversity v. National Science Foundation, in which the National Science Foundation's plan to undertake acoustical research in an environmentally sensitive area of the Gulf of California without NEPA compliance was challenged, the United States argued that it need not prepare an environmental review for a project within the Exclusive Economic Zone of Mexico: the court held that the area was the high seas, that NEPA applied, and thus issued a temporary restraining order.1" in Border Power Plant Working Group v. Department of Energy, the federal government argued that the Department of Energy, in permitting transmission lines in the U.S. to connect Mexican power plants to the U.S. grid, need not consider the environmental effects of the power plants.\* The court disagreed and held that NEPA requires assessment of effects in the U.S. resulting from power plants in Mexico. Since that ruling, the Department of Energy has undertaken an environmental analysis of the project and took public comments on the draft EIS through June 2004.'11"

#### Non-unique and no link uniqueness - PQD is dead – it’s never been cited and previous statutes disprove the link

Skinner 8-23 (Gwynne, Willamette University - College of Law, “Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs,”)

Lower federal courts often cite the “Political Question Doctrine” when dismissing as nonjusticiable individual rights cases arising in the context of foreign or military affairs, especially since the 1962 case of Baker v. Carr. Similarly, such courts have inappropriately begun citing “special factors” counselling hesitation in refusing to recognize constitutional claims (“Bivens claims”) in similar foreign policy contexts. However, a review of 200 years of history reveals that the Supreme Court has never applied the so-called “political question doctrine” as a true justiciability doctrine to dismiss individual rights claims, even those arising in the context of foreign or military affairs. In fact, the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs. Although the Supreme Court has invoked a “political question doctrine” in some cases, a close review of those cases demonstrates that rather than dismissing the cases as “nonjusticiable,” the Court in fact adjudicated the case by finding that either the executive or Congress acted constitutionally within their power or discretion. The recent post-9/11 Supreme Court cases of Hamdi v. Rumsfeld, Rasul v. Bush, and Bush v. Boumediene further demonstrate that the doctrine does not exist as a nonjusticiability doctrine in individual rights claims (if it exists as such at all), even in those involving foreign and military affairs. In case there remained any doubt, in 2012 case of Zivotofsky v. Clinton, the Supreme Court for all practical purposes sounded the death knell of the application of the “political question doctrine” as a justiciability doctrine with regard to individual rights claims, including those arising in a foreign policy context. Rather than continuing to erroneously dismiss such cases on political question grounds or using “special factors” as nonjusticiable, federal courts should adjudicate the claims by ruling which branch has what power under the Constitution, and whether the branch acted within its powers. This is an important function of the courts, and one vital to legal and political transparency and democracy. Indeed, this is the approach the Supreme Court has consistently taken – even if the Court has not always well-articulated this approach - and which it affirmed in Zivotofsky.

#### No Link - NEPA application is about statutory interpretation, no violation of political question doctrine

Arnold 88 (The Honorable Richard Shepard Arnold, B.A. in Latin and Greek from Yale University, J.D. from Harvard Law, Justice, U.S. Court of Appeals for the Eighth Circuit, 7 F.2d 445 27 ERC 1931, 56 USLW 2668, 18 Envtl. L. Rep. 21,092, 5-18-88)

B. Review of the Air Force EIS, Within the Limitations Set Forth by Section 110 of DAA 1984, Does Not Violate the Political Question Doctrine. 1. Overview We turn at this point to consider whether this Court, even under the limitations set forth by section 110 of DAA 1984, has the power to review the Air Force EIS for compliance with NEPA. The Air Force contends that the type of decisions involved in reviewing the MX EIS are "interwoven with political issues going to the heart of foreign policy and national defense which have been already resolved by the President." Thus, it concludes, these types of decisions represent political questions not subject to judicial review. We disagree and find that the federal courts have the power, within the parameters set forth by DAA 1984, to fully review the MX project's EIS for compliance with NEPA. 2. Discussion In reading DAA 1984, it is clear to us that Congress intended the ongoing MX project to be subject to substantial environmental review. The terms of the statute plainly state that the "Secretary of the Air Force shall prepare a full draft and final environmental impact statement in accordance with all terms, conditions and requirements of [NEPA] on the proposed deployment and peacetime operations of MX missiles in the Minuteman silos." Obviously, Congress was concerned about the potentially dangerous effects of a nuclear missile project on the civilian population during peacetime. Moreover, these environmental restrictions were undoubtedly part of an agreement or settlement that Congress entered into with the Executive Branch in exchange for the substantial appropriations involved in this project. Given this, it now seems particularly disingenuous for the Air Force and the Executive Branch to maintain that this duty is unenforceable. We simply do not accept the contention that such an explicit statutory command, made as a condition to large congressional appropriations, on an issue this vital to the health and well-being of citizens of this country, creates a mere precatory admonition, unreviewable by the courts. Moreover, precedent amply supports our view. We find the issue of justiciability in the present case to be controlled by Japan Whaling Ass'n v. American Cetacean Soc., 478 U.S. 221, 106 S.Ct. 2860, 92 L.Ed.2d 166 (1986). There, the Supreme Court found that a purely legal question of statutory interpretation, even if accompanied by significant political overtones, was justiciable and, in fact, part of the duty of a federal court to adjudicate. Given that the present case involves such purely legal questions and that it threatens less significant political repercussions than were present in Japan Whaling Ass'n, we find that it is justiciable. The facts of Japan Whaling Ass'n are as follows. Shortly after the Second World War, forty-six nations entered into an international agreement which created the International Whaling Commission (IWC). The IWC was given the power to set limits on the harvesting of various whale species. Though the member nations declared these quotas binding on themselves, the IWC had no power to impose sanctions for violations. Further, by filing an exception, a member nation could exempt itself from its obligation to abide by a given quota requirement. After various efforts to provide some sort of enforcement mechanism for this agreement, Congress passed the "Packwood Amendment" to the Magnuson Fishery Conservation and Management Act.23 This amendment required the Secretary of Commerce to monitor the whaling activities of foreign nationals and investigate any potential violations of the international agreement. Upon completion of this investigation, the Secretary of Commerce was to promptly make a decision whether to "certify" conduct by the foreign nationals which "diminished the effectiveness" of the international agreement. Under the Packwood Amendment, once the Secretary of Commerce certified such conduct, the Secretary of State had no choice but to reduce, by at least 50%, the offending nation's fishing allocation within the United States' zone. In 1981, the IWC declared that in the foreseeable future no sperm whales could be harvested in certain regions. The next year it ordered a five year moratorium on commercial whaling to begin in the 1985-86 season and continue until 1990. Japan filed timely objections and was freed from compliance with the sperm whale quotas under the terms of the international agreement for the years 1982 through 1984. As the 1984-85 whaling season approached, however, it was clear that the United States could impose sanctions under the Packwood Amendment if Japan continued to exceed the quotas. After extensive negotiations, Japan and the United States concluded an executive agreement wherein Japan agreed to certain harvest limits in excess of those set forth by the IWC and to cease commercial whaling by 1988, three years after the date specified by the IWC. In return, the United States agreed not to certify Japan under the Packwood Amendment. Following this agreement, several environmental groups brought suit in district court against the Secretary of Commerce and various organizations representing the Japanese whaling industry seeking, inter alia, a writ of mandamus compelling the Secretary of Commerce to certify Japan because its actions in violation of the quotas established by the IWC "diminished the effectiveness" of the international agreement. In response, the Japanese petitioners argued that under the political question doctrine, federal courts did not have the power to command an executive branch official to repudiate an international agreement, and thus the case was not justiciable. The Supreme Court disagreed. The Court began by stating that the political question doctrine prevents courts from reviewing controversies which involve "policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch." Id. at 230, 106 S.Ct. at 2866, 92 L.Ed.2d at 178. This was so, the Court continued, for the reason that "courts are fundamentally underequipped to formulate national policies or develop standards for matters not legal in nature." Id. at 230, 106 S.Ct. at 2866, 92 L.Ed.2d at 178. (citation omitted). Yet, the court found that in terms of the mandamus petition, its task involved construing the Packwood amendment, a purely legal question of statutory interpretation. Moreover, even though the Court admitted that the adjudication of this case would likely have significant political overtones, it declared that the issues involved were not only fully justiciable but that their resolution was part of an unshirkable duty of federal courts under the Constitution. Specifically, it declared: As Baker [v. Carr] plainly held, however, the courts have the authority to construe treaties and executive agreements, and it goes without saying that interpreting congressional legislation is a recurring and accepted task for the federal courts. It is also evident that the challenge to the Secretary's decision not to certify Japan for harvesting whales in excess of IWC quotas presents a purely legal question of statutory interpretation. The Court must first determine the nature and scope of the duty imposed upon the Secretary by the Amendments, a decision which calls for applying no more than the traditional rules of statutory construction, and then applying this analysis to the particular set of facts presented below. We are cognizant of the interplay between these Amendments and the conduct of this Nation's foreign relations, and we recognize the premier role which both the Congress and the Executive play in this field. But under the Constitution, one of the judiciary's characteristic roles is to interpret statutes, and we cannot shirk this responsibility merely because our decision may have significant political overtones. We conclude, therefore, that the present cases present a justiciable controversy, and turn to the merits of petitioners' arguments. Id. at 230, 106 S.Ct. at 2866, 92 L.Ed.2d at 178-79. (emphasis added). The holding of Japan Whaling Ass'n clearly establishes the justiciability of the present case. We find that a dispute that raises the possibility of ordering the Executive Branch to repudiate an international executive agreement requires an action far more "interwoven with political issues going the heart of foreign policy and national defense which have been already resolved by the President" than the review for environmental compliance of a weapons system. In the former case, the judicial action threatens to absolutely thwart a clear and established action by the Executive. In the later case, the court's action would not thwart the Executive Branch but would simply require it to follow congressional directives mandating that its project be completed in an environmentally safe manner. Further, as in Japan Whaling Ass'n, the issues presented to this Court are purely legal ones of statutory interpretation, the resolution of which are a part of our constitutional duty. We further note that in the recent case of No GWEN Alliance v. Aldridge, 841 F.2d 946 (9th Cir.1988), the Ninth Circuit found a very similar claim justiciable. In No GWEN, environmental groups brought suit to compel the Air Force to file Environmental Assessments (EA's) that complied with NEPA in connection with the installation of the Ground Wave Emergency Network (GWEN), a project designed to send war messages to United States strategic forces during and after a nuclear war. In response to the Air Force contention that such a claim was barred by the political question doctrine, the court specifically stated: We conclude that a lawsuit challenging development of a defense installation on the grounds that the responsible agency did not discuss environmental impacts causally related to the installation raises justiciable questions. Id. at 951. We thus hold the present controversy justiciable. IV. CONCLUSION Heretofore, we have found that Congress intended that only the missiles it had actually authorized for deployment were subject to the EIS requirements of NEPA. Second, we have held that Congress intended to define the scope of the EIS requirement in terms of the "proposed deployment and peacetime operations of the MX missiles in the Minuteman silos." Finally, we have declared review of the EIS for compliance with NEPA to be justiciable under the political question doctrine. We therefore remand to the district court the claims of Colorado and the environmental groups concerning the MX missile EIS that come within the terms of section 110 of DAA 1984. We further order the district court to review these claims with all the rigor and scrutiny normally required by NEPA. Specifically, because we find that all of Colorado's claims involve either the deployment of the missiles or their peacetime operation within the silos,24 the entirety of its case is reviewable. Similarly, we find the claim of the environmental groups regarding accidents in terms of the deployment and normal operation of the missile to be justiciable. However, because Congress has limited the scope of the required EIS to the "proposed deployment and peacetime operation of the MX missiles in the Minuteman silos," we find the claims of the environmental groups concerning alternative weapons systems, alternative basing modes, and intentional or wartime use of the missile are precluded by the clear limitations of the statute. In terms of remedies, we find that justiciability presumes the availability of declaratory relief. At this point, however, we find the consideration of more intrusive remedies premature and leave those determinations to the district court when and if it should find both that the MX missile EIS violates the provisions of NEPA and that declaratory relief is inadequate. Therefore, the decision of the district court is reversed, and this case is remanded to it for action consistent with this opinion. Each party shall bear its own costs on appeal. The mandate of this Court shall issue forthwith.

### 1NC No Econ War

#### Economic decline doesn’t cause war

Tir 10 [Jaroslav Tir - Ph.D. in Political Science, University of Illinois at Urbana-Champaign and is an Associate Professor in the Department of International Affairs at the University of Georgia, “Territorial Diversion: Diversionary Theory of War and Territorial Conflict”, The Journal of Politics, 2010, Volume 72: 413-425)]

Empirical support for the economic growth rate is much weaker. The finding that poor economic performance is associated with a higher likelihood of territorial conflict initiation is significant only in Models 3–4.14 The weak results are not altogether surprising given the findings from prior literature. In accordance with the insignificant relationships of Models 1–2 and 5–6, Ostrom and Job (1986), for example, note that the likelihood that a U.S. President will use force is uncertain, as the bad economy might create incentives both to divert the public’s attention with a foreign adventure and to focus on solving the economic problem, thus reducing the inclination to act abroad. Similarly, Fordham (1998a, 1998b), DeRouen (1995), and Gowa (1998) find no relation between a poor economy and U.S. use of force. Furthermore, Leeds and Davis (1997) conclude that the conflict-initiating behavior of 18 industrialized democracies is unrelated to economic conditions as do Pickering and Kisangani (2005) and Russett and Oneal (2001) in global studies. In contrast and more in line with my findings of a significant relationship (in Models 3–4), Hess and Orphanides (1995), for example, argue that economic recessions are linked with forceful action by an incumbent U.S. president. Furthermore, Fordham’s (2002) revision of Gowa’s (1998) analysis shows some effect of a bad economy and DeRouen and Peake (2002) report that U.S. use of force diverts the public’s attention from a poor economy. Among cross-national studies, Oneal and Russett (1997) report that slow growth increases the incidence of militarized disputes, as does Russett (1990)—but only for the United States; slow growth does not affect the behavior of other countries. Kisangani and Pickering (2007) report some significant associations, but they are sensitive to model specification, while Tir and Jasinski (2008) find a clearer link between economic underperformance and increased attacks on domestic ethnic minorities. While none of these works has focused on territorial diversions, my own inconsistent findings for economic growth fit well with the mixed results reported in the literature.15 Hypothesis 1 thus receives strong support via the unpopularity variable but only weak support via the economic growth variable. These results suggest that embattled leaders are much more likely to respond with territorial diversions to direct signs of their unpopularity (e.g., strikes, protests, riots) than to general background conditions such as economic malaise. Presumably, protesters can be distracted via territorial diversions while fixing the economy would take a more concerted and prolonged policy effort. Bad economic conditions seem to motivate only the most serious, fatal territorial confrontations. This implies that leaders may be reserving the most high-profile and risky diversions for the times when they are the most desperate, that is when their power is threatened both by signs of discontent with their rule and by more systemic problems plaguing the country (i.e., an underperforming economy).

### 1NC US Econ Resilient

#### Economy’s resilient – can survive shocks

Bloomberg 12 (“Fed’s Plosser Says U.S. Economy Proving Resilient to Shocks,” 5-9, http://www.bloomberg.com/news/2012-05-09/fed-s-plosser-says-u-s-economy-proving-resilient-to-shocks.html)

Philadelphia Federal Reserve Bank President Charles Plosser said the U.S. economy has proven “remarkably resilient” to shocks that can damage growth, including surging oil prices and natural disasters. “The economy has now grown for 11 consecutive quarters,” Plosser said today according to remarks prepared for a speech at the Philadelphia Fed. “Growth is not robust. But growth in the past year has continued despite significant risks and external and internal headwinds.” Plosser, who did not discuss his economic outlook or the future for monetary policy, cited shocks to the economy last year, including the tsunami in Japan that disrupted global supply chains, Europe’s credit crisis that has damaged the continent’s banking system and political unrest in the Middle East and North Africa. “The U.S. economy has a history of being remarkably resilient,” said Plosser, who doesn’t have a vote on policy this year. “These shocks held GDP growth to less than 1 percent in the first half of 2011, and many analysts were concerned that the economy was heading toward a double dip. Yet, the economy proved resilient and growth picked up in the second half of the year.” Plosser spoke at a conference at the Philadelphia Fed titled, “Reinventing Older Communities: Building Resilient Cities.” Urban Resilience His regional bank’s research department is working on a project to measure the resilience of different cities, to learn more about the reasons that some urban areas suffer more than others in downturns, Plosser said. He mentioned one early finding of the study: Industrial diversity increases a city’s resilience. “I do want to caution you that resilient and vibrant communities are not just about government programs or directed industrial planning by community leaders,” Plosser said. “The economic strength of our country is deeply rooted in our market- based economy and the dynamism and resilience of its citizenry.”

### \*\*\*Court Politics DA – 2AC

#### 2. Kennedy’s down for the environment – he’s the swing vote

Blumm 07

[Michael, Lewis & Clark College, Justice Kennedy and the Environment: Property, States' Rights, and the Search For Nexus, 2007, <http://works.bepress.com/michael_blumm/2/>]

Justice Anthony Kennedy, now clearly the pivot of the Roberts Court, is the Court’s crucial voice in environmental and natural resources law cases. Kennedy’s central role was never more evident than in the two most celebrated environmental and natural resources law cases of 2006: Kelo v. New London and Rapanos v. U.S., since he supplied the critical vote in both: upholding local use of the condemnation power for economic development under certain circumstances, and affirming federal regulatory authority over wetlands which have a significant nexus to navigable waters. In each case Kennedy’s sole concurrence was outcome determinative. Justice Kennedy has in fact been the needle of the Supreme Court’s environmental and natural resources law compass since his nomination to the Court in 1988. Although Kennedy wrote surprisingly few environmental and natural resources law opinions during his tenure on the Rehnquist Court, over his first eighteen years on the Court, he was in the majority an astonishing 96 percent of the time in environmental and natural resources law cases—as compared to his generic record of being in the majority slightly over 60 percent of the time. And Kennedy now appears quite prepared to assume a considerably more prominent role on the Roberts Court in the environmental and natural resources law field. This article examines Kennedy’s environmental and natural resources law record over his first eighteen years on the Supreme Court and also on of the Ninth Circuit in the thirteen years before that. The article evaluates all of the environmental law and natural resources law cases in which he wrote an opinion over those three decades, and it catalogues his voting record in all of the cases in which he participated on the Supreme Court in an appendix. One striking measure of Justice Kennedy’s influence is that, after eighteen years on the Court, he has written just one environmental dissent—and that on states’ rights grounds, which is one of his chief priorities. The article maintains that Kennedy is considerably more interested in allowing trial judges to resolve cases on the basis of context than he is in establishing broadly applicable doctrine: Kennedy is a doctrinal minimalist. By consistently demanding a demonstrated “nexus” between doctrine and facts, he has shown that he will not tolerate elevating abstract philosophy over concrete justice. For example, he is interested in granting standing to property owners alleging regulatory takings, but he is quite skeptical about the substance of their claims. Another example of his nuanced approach concerns his devotion to states’ rights—which is unassailable—yet he has been quite willing to find federal preemption when it serves deregulation purposes. On the other hand, as his opinion in Rapanos reflects, Kennedy is far from an anti-regulatory zealot. But he does seem to prefer only one level of governmental regulation. At what might be close to the mid-point in his Court career—and with his power perhaps at its zenith—Justice Kennedy is clearly not someone any litigant can ignore. By examining every judicial opinion he has written in the environmental and natural resources law field, this article hopes to give both those litigants and academics a fertile resource to till. Although Kennedy has been purposefully difficult to interpret in this field (writing very few opinions until lately), his record suggests that he may be receptive to environmental and natural resources claims if they are factually well-grounded and do not conflict with Kennedy’s overriding notions of states’ rights. The article concludes with some comparisons between Justice Kennedy and Justice Holmes.

#### 4. Ideology outweighs on controversies

Feldman 08

[Stephen, Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science, University of Wyoming, Southern California Interdisciplinary Law Journal, Fall 2008, L/N]

So, did Roberts and Alito lie during their confirmation hearings? n4 Did they duplicitously proclaim dedication to the rule of law while secretly planning to implement their political agendas? While I disagree with the justices' votes in practically every controversial case, Roberts and Alito most likely answered senators' questions sincerely, and the justices have probably applied the rule of law in good faith during their initial terms. But, one might ask, how is this possible when they repeatedly vote for the conservative judicial outcome? Most simply, law and politics are not opposites. Roberts, Alito, and the other justices do not necessarily disregard the law merely because they vote to decide cases consistent with their respective political ideologies**.** As a general matter, Supreme Court justices can decide legal disputes in accordance with law while simultaneously following their political preferences. [\*18] I elaborate this thesis by critiquing the theories of Judge Richard Posner n5 and Professor Ronald Dworkin, n6 two of the most prominent jurisprudents of this era. Embattled opponents, Posner and Dworkin have, for years, relentlessly attacked each other while developing strikingly different depictions of law and adjudication. n7 Despite their opposition, however, Posner and Dworkin together challenge a primary assumption of traditional jurisprudence - an assumption featured during Roberts's and Alito's Senate confirmation hearings. Most senators, jurists, and legal scholars assume that legal interpretation and judicial decision making can be separated from politics, that a judge or justice who decides according to political ideology skews or corrupts the judicial process. n8 Posner and Dworkin reject this traditional approach, particularly for hard cases at the level of the Supreme Court. Each in his own way asserts and explains the power of politics in adjudication: the justices self-consciously vote and thus decide cases according to their political ideologies. Posner and Dworkin agree that the justices do not, and should not, decide hard cases by applying an ostensibly clear rule of law in a mechanical fashion. The justices must be political in an open and expansive manner. n9 Supreme Court adjudication is, in other words, politics writ large. The conflicts between Posner and Dworkin stem from their distinct views of politics. Posner views politics as a pluralist battle among self-interested individuals and groups. He therefore argues that Supreme Court adjudication, manifesting politics writ large, should (and in fact does) entail a pragmatic focus on consequences. The justices should resolve cases by looking to the future and by aiming to do what is best in both the short and long term. n10 Dworkin, repudiating a pragmatic politics of self-interest, favors instead a politics of principles. Thus, according to Dworkin, the justices should resolve hard cases by applying law as integrity. They should theorize about the political-moral principles that fit the doctrinal history - including [\*19] case precedents and constitutional provisions - and that cast the history in its best moral light. n11 Consequently, although Posner and Dworkin both describe the Supreme Court as a political institution - as engaging in politics writ large - their theories otherwise clash tumultuously. Posner sees an adjudicative politics of interest and unmitigated practicality, while Dworkin sees an adjudicative politics of principles and coherent theory. Unfortunately, both Posner and Dworkin - like Roberts, Alito, and the senators who questioned them - remain stuck within the magnetic field of the traditional law-politics dichotomy. While most jurists, legal scholars, and senators are pulled to the law pole - maintaining that law mandates case results - Posner and Dworkin are pulled to the opposite pole. If politics matter to adjudication, they seem to say, then politics must become the overriding determinant of judicial outcomes. Supreme Court adjudication must be politics writ large. If their view is true, then Supreme Court nominees who declare their fidelity to the rule of law do, in fact, lie: current and future justices decide cases by hewing to their political ideologies, not to legal doctrines and precedents. But in their struggle against the forces of the law-politics dichotomy, Posner and Dworkin overcompensate. They neglect another possibility: namely, that Supreme Court adjudication is politics writ small. As Posner and Dworkin emphasize, the Court is a political institution: the justices' political ideologies always and inevitably influence their votes and decisions. But usually the justices do not self-consciously attempt to impose their politics in an expansive manner. To the contrary, the justices sincerely interpret and apply the law. Yet, because legal interpretation is never mechanical, the justices' political ideologies necessarily shape how they understand the relevant legal texts, whether in constitutional or other cases.

#### 5. Capital is compartmentalized

Redish 87 (Martin H., Professor of Law – Northwestern University, and Karen L. Drizin, Clerk – Illinois State Supreme Court, New York University Law Review, April, Lexis)

a. The fallacy of the concept of fungible institutional capital. The basis for Dean Choper's suggested judicial abstention on issues of federalism [143](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n143) is the desire "to ease the commendable and crucial task of judicial review in cases of individual consitutional liberties. It is in the latter that the Court's participation is both vitally required and highly provocative." [144](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n144) Judicial efforts in the federalism area, he asserts, "have expended large sums of institutional capital. This is prestige desperately needed elsewhere." [145](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n145) Dean Choper's fundamental assumption, then, is that Supreme Court abstention on issues of constitutional federalism would somehow increase, or at least curtail loss of, limited capital for the more vital area of individual liberty. However, even if one were to concede that judicial review is more fundamental to our constitutional scheme in the area of individual liberty than in matters of federalism, acceptance of Dean Choper's proposal would not necessarily follow. The problem is that it is neither intuitively nor empirically clear that the Court's so-called capital is transferable from one area of constitutional law to another. As one of the current authors has previously argued: It is difficult to imagine . . . that the widespread negative public reactions to Miranda v. Arizona, Engle v. Vitale, or Roe v. Wade would  [\*37]  have been affected at all by the Court's practices on issues of separation of powers and federalism. Rather, public reaction in each seems to have focused on the specific, highly charged issues of rights for criminals, prayer in public schools, and abortions. It is doubtful that the Court would have had an easier time if it had chosen to stay out of interbranch and intersystemic conflicts. [146](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n146)

#### 7. Capital resilient

Chemerinsky 99 (Erwin, Professor of Law – USC, South Texas Law Review, Fall, 40 S. Tex. L. Rev. 943, Lexis)

Interestingly, though, the Supreme Court has been immune from that cynicism. At a time when other government institutions are often held in disrepute, the Court's credibility is high. Professors John M. Scheb and Williams Lyons set out to measure and determine this. [2](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n2) They conducted a survey to answer the question: "How do the American people regard the U.S. Supreme Court?" [3](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n3) Their conclusion is important: According to the survey data, Americans render a relatively positive assessment of the U.S. Supreme Court. Not surprisingly, the Court fares considerably better in public opinion than does Congress. The respondents are almost twice as likely to rate the Court's performance as "good' or "excellent'  [\*945]  as they are to give these ratings to Congress. By the same token, they are more than twice as likely to rate Congress' performance as "poor.' [4](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n4) This survey was done in 1994, [5](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n5) before the recent events that likely further damaged Congress' public image. Strikingly, Scheb and Lyons found that the "Court is fairly well-regarded across the lines that usually divide Americans." [6](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n6) For example, there are no significant differences between how Democrats and Republicans rate the Court's performance. In short, the Court is a relatively highly regarded institution, more so certainly than Congress or the presidency. [7](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n7) This is not a new phenomena. Throughout this century, the Court has handed down controversial rulings. Yet the Court has retained its legitimacy and its rulings have not been disregarded. Judge John Gibbons remarked that the "historical record suggests that far from being the fragile popular institution that scholars like Professor Choper... and Alexander Bickel have perceived it to be, judicial review is in fact quite robust." [8](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n8) In fact, even at the times of the most intense criticism of the Supreme Court, the institution has retained its credibility. For example, opposition to the Court was probably at its height in the mid-1930s. In the midst of a depression, the Court was striking down statutes thought to be necessary for economic recovery. In an attempt to change the Court's ideology, President Franklin D. Roosevelt - fresh from a landslide reelection - proposed changing the size of the Court. This "Court packing" plan received little public support. The Senate Judiciary Committee, controlled by Democrats, rejected the proposal and strongly reaffirmed the need for an independent judiciary: Let us now set a salutary precedent that will never be violated. Let us, of the Seventy-fifth Congress,... declare that we would rather have an independent Court, a fearless Court, a Court that will dare to announce its honest opinions in what it believes to be the defense of the liberties of the people, than a Court that, out of fear or sense of obligation to the appointing power, or  [\*946]  factional passion, approves any measure we may enact. [9](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n9) This is a telling quotation and a powerful example because if anything should have undermined the Court's legitimacy, it was an unpopular Court striking down popular laws enacted by a popular administration in a time of crisis. Public opinion surveys reflect that this Committee report reflected general support for the Supreme Court, despite the unpopularity of its rulings. In 1935 and 1936, most respondents, 53% and 59% respectively, did not favor limiting the power of the Supreme Court in declaring laws unconstitutional. [10](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n10) Indeed, the Court's high regard, described by Professors Scheb and Lyons, has been remarkably constant over time. [11](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n11) Professor Roger Handberg studied public attitudes about the Supreme Court over several decades and concluded that public support for the institution has not changed significantly and that the "Court has a basic core of support which seems to endure despite severe shocks." [12](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n12) Professor John Hart Ely noted this and observed: The possibility of judicial emasculation by way of popular reaction against constitutional review by the courts has not in fact materialized in more than a century and a half of American experience. The warnings probably reached their peak during the Warren years; they were not notably heeded; yet nothing resembling destruction materialized. In fact, the Court's power continued to grow and probably never has been greater than it has been over the past two decades. [13](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n13) Why has the Court maintained its legitimacy even when issuing highly controversial rulings? Social science theories of legitimacy offer some explanation. The renowned sociologist Max Weber wrote that there are three major bases for an institution's legitimacy: tradition, rationality and affective ties. [14](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n14) That which historically has existed tends to be accepted as legitimate. Therefore, 200 years of  [\*947]  judicial review grants the Court enormous credibility. Additionally, that which is rational is likely to be regarded as legitimate. The judiciary's method of giving detailed reasons for its conclusions thus helps to provide it credibility. Finally, that which is charismatic, things to which people have strong affective ties, are accorded legitimacy. It has long been demonstrated that people feel great loyalty to the Constitution. The Court's relationship to the document and its role in interpreting it likely also enhances its legitimacy. More specifically, I suggest that the Court's robust public image is a result of its processes and its producing largely acceptable decisions over a long period of time. The Court is rightly perceived as free from direct political pressure and lobbying, bound by the convention of reaching rational decisions that are justified in opinions, and capable of protecting people from arbitrary government. Social scientists have shown that an institution receives legitimacy from following established procedures. The Court's legitimacy, in part, is based on the perception and reality that it does not decide cases based on the personal interests of the Justices or based on external lobbying and pressures. In a recent book highly critical of the Court, Edward Lazarus lambastes the current Justices, yet he never even suggests a single instance of improper influence or conflict of interest. [15](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n15) The Court's credibility is a product of the correct perception that it decides cases based on a formalized procedure: it reads briefs, hears arguments, deliberates, and writes opinions. Indeed, the very process of opinion writing, regardless of their content, is crucial because it makes the Court's decisions seem a product of reason, not simply acts of will. Although the Court's high credibility is a result of this process, I believe that this is necessary for its institutional legitimacy, but not sufficient. The Court also has produced a large body of decisions, that over a long period of time, have generally been accepted by the public. If the Court were to produce a large number of intensely unpopular rulings over a long period of time, its credibility would suffer. In the short-term, its processes ensure its continued legitimacy; in the long-term, overall acceptability of its decisions is sufficient to preserve this credibility. Recognition of the Court's robust legitimacy is important in the on-going debate over judicial review. Many, including those as  [\*948]  prominent as Felix Frankfurter, Alexander Bickel, and Jesse Choper, have proclaimed a need for judicial restraint so as to preserve the Court's fragile institutional legitimacy. [16](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n16) They argue that the Court must depend on voluntary compliance with its rulings from the other branches of government and that this will not occur unless the Court preserves its fragile legitimacy. Justice Frankfurter dissented in Baker v. Carr, the Supreme Court's landmark decision holding that challenges to malapportionment were justiciable, arguing that the Court was putting its fragile legitimacy at risk. [17](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n17) Frankfurter urged restraint, stating: "The Court's authority - possessed of neither the purse nor the sword - ultimately rests on public confidence in its moral sanction." [18](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n18) Choper, for example, concludes from this premise that the Court should not rule on federalism or separation of powers issues so as to not squander its political capital in these areas that he sees as less important than individual rights cases. Bickel argued that the Court should practice the "passive virtues" and use justiciability doctrines to avoid highly controversial matters so as to preserve its political capital. [19](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n19) Other scholars reason from the same assumption. Daniel Conkle, for example, speaks of the "fragile legitimacy that attaches to Supreme Court pronouncements of constitutional law." [20](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n20) I am convinced that these scholars are wrong and that the public image of the Court is not easily tarnished, and preserving it need not be a preoccupation of the Court or constitutional theorists. There is no evidence to support their assertion of fragile public legitimacy and almost 200 years of judicial review refute it.

#### 9. Winners win --- plan boosts capital

Little 00 (Laura, Professor of Law – Temple University, Beasley School of Law, November, 52 Hastings L.J. 47, Lexis)

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established  [\*98]  itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").

### New Minimalism U – 2AC

#### Roberts will invalidate precedent and turn ultra-conservative this term

Hubbell 10/7/13 (Webb, former Associate Attorney General of the United States, "Shutdown Or Not, SCOTUS Is Back," http://www.talkradionews.com/supreme-court/2013/10/07/shutdown-or-not-scotus-is-back.html#.UmbsO\_msiSo)

Each summer we hear lots of conversation about harmony and need for consensus in Supreme Court decisions. Chief Justice Roberts is at the forefront of this discussion, yet “his” Court still issues many landmark decisions on a partisan 5-4 basis. After working “together” for several years, I don’t see the dynamic changing. In fact, I see heads and hearts hardening and a Court more willing to overturn precedent if it suits its philosophical inclinations. Don’t be surprised if we don’t see one or two decisions that shift jurisprudence dramatically to the conservative camp. I hope I am wrong, but as they say, the judges are “at the post,” betting is closed; now it’s time to watch the race.

### McCutcheon Thumper – 2AC

#### McCutcheon will be controversial – thumps the DA

Corn-Revere, 8-13 (Robert, partner in the Washington, D.C. office of Davis Wright Tremaine where he specializes in media and First Amendment law, “Burning the house to roast the pig: Can elections be saved by banning political speech?,” http://www.scotusblog.com/2013/08/burning-the-house-to-roast-the-pig-can-elections-be-saved-by-banning-political-speech/)

Citizens United has been a lightning rod for criticism because it answered the second of those questions in the affirmative. Well, actually, the answer was in the negative, because the real question before the Supreme Court was whether the First Amendment permits the federal government to criminalize core political expression shortly before primaries or general elections when the speaker takes a corporate form.¶ Somehow, it suggests a different answer when the question is framed as whether the federal government may make political speech a felony notwithstanding the First Amendment, rather than asking whether corporations, like Soylent Green, are people. Nevertheless, the reaction to Citizens United was a predictable political Rorschach test: Supporters of restricting corporate (and union) political expenditures denounced the decision as a distortion of the First Amendment and called on various measures to rein in such an expansive reading of constitutional rights, including by amending the Constitution itself.¶ One proposed constitutional amendment would limit constitutional protections to “natural persons,” specifying that the words “people, person, or citizen as used in this Constitution do not include corporations, limited liability companies or other corporate entities established by the laws of any State, the United States, or any foreign state.” Another would empower Congress to “advance the fundamental principle of political equality for all” by regulating “the raising and spending of money and in-kind equivalents” with respect to federal and state elections. Specifically, it would authorize regulation of campaign contributions, as well as “expenditures that may be made by, in support of, or in opposition to such candidates.”¶ The reaction mirrors the vociferous (and nearly successful campaign) to limit the scope of the First Amendment following the Supreme Court’s decisions in Texas v. Johnson (1989) and United States v. Eichman (1990), which invalidated state and federal laws prohibiting desecration of the U.S. flag. Multiple bi-partisan proposals were advanced in successive congressional sessions, including this proposed amendment in the 109th Congress: “The Congress shall have power to prohibit the physical desecration of the flag of the United States.” As in the current dispute over the extent to which political contributions count as “speech,” supporters of the flag amendments echoed then-Chief Justice William Rehnquist’s dissenting sentiment in Johnson that “the public burning of the American flag by Johnson was no essential part of any exposition of ideas, and at the same time it had a tendency to incite a breach of the peace.”¶ The next Citizens United?¶ Are we about to witness a similar constitutional confrontation when the Supreme Court takes up campaign finance regulations once again in McCutcheon?¶ In McCutcheon, the Supreme Court will consider the extent to which campaign contributions may be protected as speech as one of the questions raised when it hears arguments on October 8. The principal questions are whether aggregate limits for campaign contributions imposed by federal law violate the First Amendment. Petitioners do not challenge restrictions on base contributions (e.g., the ceiling on individual contributions to a candidate, a political action committee, or a party committee), but argue that the aggregate limit on total contributions unconstitutionally restricts the number of candidates a contributor may support. Petitioners also ask the Court to reopen the distinction between direct expenditures and contributions, first articulated in Buckley, with the latter protected only secondarily as an aspect of the First Amendment right of association.¶ So, is a political contribution speech? Just as a gas-soaked American flag and a match are not speech if not used for an expressive purpose, neither is money unless it is used to promote a message, such as a contribution to a political campaign. As First Amendment scholar Geoffrey Stone has written, “[e]ven though an object may not itself be speech, if the government regulates it because it is being used to enable free speech it necessarily raises a First Amendment issue.” If that were not true, Stone reasons, “then the government could make it a crime for any person to use money to buy a book.” It is no different here. The mystery is why First Amendment associational rights – if, indeed, that is all that is involved here – would receive less rigorous constitutional protection than First Amendment rights of expression. After all, the right to association, and constitutional limits on the government’s ability to restrict it, has been critical in the evolution of the First Amendment.¶ Is money speech? Consider Holder¶ Another mystery is how the competing ideological factions on the Court appear largely to switch sides on whether a contribution may have a constitutionally cognizable expressive component depending on the nature of the regulation at issue. For example, in Holder v. Humanitarian Law Project (2010) the Court split six to three, upholding a federal prohibition against providing “material support or resources” to groups deemed by the U.S. government to be terrorist organizations. The law defines the term “material support” broadly to encompass “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities,” but also such things as “training, expert advice or assistance.” The prohibition reaches support even for peaceful activities, and the government conceded in the Ninth Circuit that it would even bar filing an amicus brief in support of a group designated as a foreign terrorist organization.¶ In Holder, the conservatives, led by the Chief Justice (but including Justice John Paul Stevens) were concerned that material support, even if limited to peaceful pursuits, could be diverted to aid terrorism because “money is fungible.” At the same time, the liberal dissenters, in an opinion by Justice Stephen Breyer, wrote that the majority’s reasoning “stretch[ed] the concept of ‘fungibility’ beyond constitutional limits” because, among other problems, “there is no natural stopping place” for the rationale. To be fair, Justice Breyer’s dissent focused on those applications of the law where “material support” took the form of speech, but the law expressly encompassed all forms of support, and the dissent highlighted the ambiguity of trying to draw a firm line between money and speech.¶ Assessments of the Roberts Court’s First Amendment record have rightfully identified Holder as a low point in its protection of freedom of expression. For example, Dean Erwin Chemerinsky described Holder as “[p]erhaps the most troubling First Amendment decision of the Roberts Court.” The central problem, as identified both by Justice Breyer and Dean Chemerinsky, was that the majority in Holder approved restrictions on speech without the slightest proof it was likely to cause harm. If such is a legitimate concern with respect to limiting support for foreign organizations – and it is – then the Court should be wary about approving broad limits on “material support” for political speech in the United States.¶ The Holder majority may well be criticized for inconsistency if some of the same Justices that approved the restrictions of the Antiterrorism and Effective Death Penalty Act of 1996 are now more skeptical of the aggregate contribution limits of the Federal Election Campaign Act and the Bipartisan Campaign Reform Act. Likewise, those who criticize the Court for decisions like Holder should check their premises before urging the Court to uphold the lower court in McCutcheon.

### Cap K 2ac

#### 1. Perm do both

#### Solves better – using capitalism to fight itself is more effective

Rothkrug 90 (Paul, Founder – Environmental Rescue Fund, Monthly Review, March, 41(10), p. 38)

No institution is or ever has been a seamless monolith. Although the inherent mechanism of American capitalism is as you describe it, oriented solely to profit without regard to social consequences, this does not preclude significant portions of that very system from joining forces with the worldwide effort for the salvation of civilization, perhaps even to the extent of furnishing the margin of success for that very effort.

#### Too late for the luke link : intervention has irreparably altered the environment. Abandoning management risks extinction.

Levy 99 (Neil, Ph.D. in Comparative Literature and Critical Theory – Monash University, and Currently Tutor, Centre for Critical Theory – Monash University, Discourses of the Environment edited by Eric Darier, p. 214-215)

If our current situation can really be accurately characterized as the extension of bio-power from the realm of population to that of all life, does that entail that the strategies we should be adopting are those of management of the non-human world, as well as that of the human? I believe that it does. But I do not believe that this necessitates, or even makes possible, the genetically engineered, artificial world which McKibben and many others who have advocated non-anthropocentric ethics have feared, the replacement of the natural world with `a space station' (McKibben 1989: 170). And not just for the reason that, after the end of nature, the artificial/natural distinction is impossible to maintain. The world McKibben fears, in which forests are replaced by trees designed by us for maximum efficiency at absorbing carbon, and new strains of genetically engineered corn flourish in the new conditions brought about by global warming, seems to me unlikely in the extreme. The systems with which we are dealing, the imbrication of a huge variety of forms of life with chemical processes, with meteorological and geographic processes, are so complex, and occur on such scale, that I can see no way in which they could be replaced by artificial systems which would fulfil the same functions. Every intervention we make in' that direction has consequences which are so far-reaching, and involve so many variables and as yet undetected connections between relatively independent systems, that they are practically unforeseeable. To replace non-human systems with mechanisms of our own devising would involve thousands of such interventions, each of which would then require follow-up interventions in order to reverse or control their unintended consequences. Even when, and if, our knowledge of the environment were to reach a stage at which we were able to predict the consequences of our interventions, it would be likely to be far easier, and, in the long run, cheaper, simply to turn the already functioning, `natural' systems to our advantage. No method of reducing the amount of carbon dioxide in our atmosphere is likely to be more effective than preserving the Amazonian rain forest. For this reason, I believe, environmentalists have nothing to fear fromsuchan apparently instrumental approach. If the `technological fix' is unlikely to be more successful than strategies of limitation of our use of resources, we are nevertheless unable simply to leave the environment as it is.There is a real and pressing need for more, and more accurate, technical and scientific information about the non-human world. For we are faced with a situation in which the processes we have **already set in train** will continue to impact upon that world, and therefore us, for centuries. It is therefore necessary, not only to stop cutting down the rain forests, but to develop real, concrete proposals for action, to reverse, or at least limit, the effects of our previous interventions. Moreover, there is another reason why our behaviour towards the non-human cannot simply be a matter of leaving it as it is, at least in so far as our goals are not only environmental but also involve social justice. For if we simply preserve what remains to us of wilderness, of the countryside and of park land, we also preserve patterns of very unequal access to their resources and their consolations (Soper 1995: 207). In fact, we risk exacerbating these inequalities. It is not us, but the poor of Brazil, who will bear the brunt of the misery which would result from a strictly enforced policy of leaving the Amazonian rain forest untouched, in the absence of alternative means of providing for their livelihood. It is the development of policies to provide such ecologically sustainable alternatives which we require, as well as the development of technical means for replacing our current green-house gas-emitting sources of energy. Such policies and proposals for concrete action must be formulated by ecologists, environmentalists, people with expertise concerning the functioning of ecosystems and the impacts which our actions have upon them. Such proposals are, therefore, very much the province of Foucault's specific intellectual**,** the one who works `within specific sectors, at the precise points where their own conditions of life or work situate them' (Foucault 1980g: 126). For who could be more fittingly described as `the strategists of life and death' than these environmentalists? After the end of the Cold War, it is in this sphere, more than any other, that man's `politics places his existence as a living being in question' (Foucault 1976: 143). For it is in facing the consequences of our intervention in the non-human world that the **fate of our species**, and of those with whom we share this planet, **will be decided**.

#### 2. Framework- the role of the ballot is to weigh the plan against a competitive policy option

#### Net benefits-

#### First- Fairness- they moot the entirety of the 1ac, makes it impossible to be affirmative

#### Second – Education- Policy education is good- it teaches future decisionmaking

#### 3. Capitalism is resilient – it’ll bounce back

Foster 9 (JD, Norman B. Ture Senior Fellow in the Economics of fiscal policy – Heritage Foundation, "Is Capitalism Dead? Maybe," 3-11, http://www.npr.org/templates/story/story.php?storyId=101694302)

Capitalism is down. It may even be out. But it's **far from dead**. Capitalism is **extremely resilient**. Why? Because here, as in every democratic-industrial country around the world, it has always had to struggle to survive against encroachments — both benign and malevolent — of the state. At the moment, capitalism is losing ground most everywhere. But when the economic crisis passes, capitalism and the freedoms it engenders will **recover again**, if only because freedom beats its lack. It is said that the trouble with socialism is socialism; the trouble with capitalism is capitalists. The socialist economic system, inherently contrary to individual liberties, tends to minimize prosperity because it inevitably allocates national resources inefficiently. On the other hand, a truly capitalist system engaged in an unfettered pursuit of prosperity is prone to occasional and often painful excesses, bubbles and downturns like the one we are now experiencing globally. When capitalism slips, governments step in with regulations and buffers to try to moderate the excesses and minimize the broader consequences of individual errors. Sometimes these policies are enduringly helpful. Severe economic downturns inflict collateral damage on families and businesses otherwise innocent of material foolishness. Not only are the sufferings of these innocents harmful to society, but they are also downright expensive. A little wise government buffering can go a long way. The trick, of course, is the wisdom part. A good example of a wise government buffer is deposit insurance at commercial banks. Without it, depositors would have withdrawn their funds en masse, leading to a rapid collapse of the banking system. It happened in years gone by. But today, deposits have flowed into the banking system in search of safety, helping banks staunch their many severe wounds. Yet for every example of helpful government intervention, there are many more that do more harm than good. Fannie Mae and Freddie Mac leap to mind. These congressional creatures helped create, then inflate the subprime market. When that balloon popped, it triggered a global economic meltdown. The current financial crisis clearly has capitalism on its back foot. Government ownership of the largest insurance company, the major banks, and Fan and Fred are awesome incursions into private markets. But, as President Obama has underscored, these incursions are only temporary. In time, these institutions — even Fan and Fred — will be broken up and sold in parts. It will leave government agents with stories to tell their grandkids, and taxpayers stuck with the losses. But the power of the state will again recede, and **another new age of** freedom and **capitalism will arrive and thrive**… until we repeat the cycle again sometime down the road.

#### 4. Case outweighs- short term nuclear war from economic collapse causes nuke war and warming and social unrest in china causes extinction- alt can’t solve in the short term

#### And Extinction outweighs

Bok 88

(Sissela, Professor of Philosophy at Brandeis, Applied Ethics and Ethical Theory, Rosenthal and Shehadi, Ed.)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such responsibility seriously – perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish. To avoid self-contradiction, the Categorical Imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, we might have to go against even the strictest moral duty precisely because of the consequences. Acknowledging such a rift would post a strong challenge to the unity and simplicity of Kant’s moral theory.

#### 5. Rejection won’t dislodge capitalism – no critical mass exists

Grossberg 92 (Lawrence, Professor of Communication Studies – UNC-Chapel Hill and Chair of the Executive Committee of the University Program in Cultural Studies, We Gotta Get Out of This Place: Popular Conservatism and Postmodern Culture, p. 388-389)

If it is capitalism that is at stake, our moral opposition to it has to be **tempered by** the **realities** of the world and the possibilities of political change. Taking a simple negative relation to it, as if the moral condemnation of the evil of capitalism were sufficient (granting that it does establish grotesque systems of inequality and oppression), is not likely to establish a viable political agenda. First, it is not at all clear what it would mean to overthrow capitalism in the current situation. Unfortunately, despite our desires, "the masses" are not waiting to be led into revolution, and it is not simply a case of their failure to recognize their own best interests, as if we did. Are we to decide-rather undemocratically, I might add-to overthrow capitalism in spite of their legitimate desires? Second, as much as capitalism is the cause of many of the major threats facing the world, at the moment it may also be one of the few forces of stability, unity and even, within limits, a certain "civility" in the world. The world system is, unfortunately, simply too precarious and the alternative options not all that promising. Finally, the appeal of an as yet unarticulated and even unimagined future, while perhaps powerful as a moral imperative, is **simply too weak** in the current context to effectively organize people, and **too vague** to provide any direction.

# 1ar

## PQD DA

### Warming D

#### Long timeframe and adaptation solves

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

#### Catastrophic warming inevitable

Gellerman 12 -- host of "Living on Earth," an award-winning environmental news program; References Bill McKibben, founder of 350.org and Schumann Distinguished Scholar at Middlebury College, author of over 10 books (Bruce, 8/2012, "Environmentalist says global climate catastrophe is inevitable without intervention," http://www.pri.org/stories/science/environment/environmentalist-says-global-climate-catastrophe-is-inevitable-without-intervention-11017.html)

The one thing he said the world has agreed on about climate change is that the temperature can rise only two degrees Celsius, or about 3.6 degrees Fahrenheit before the survival of humanity is in jeopardy. But McKibben said that number is too high. According to him, we’ve already raised the temperature by about one degree Celsius, and have melted 40 percent of the sea ice in the summer Arctic. “If we were at all sensible, we would do what we could to stop right here,” he said. And yet, he said, even that’s not enough. “Were we to hope to stay below two degrees, to have a reasonable chance of keeping the world’s temperature below two degrees, the scientists tell us that we can only emit about 565 gigatons more carbon,” he explained. In reality, we’re emitting 30 gigatons a year, and that amount’s increasing by about three percent each year because of all the coal and gas we’re burning. That only gives us 16 or 17 years, Mckibben said. But the number that really scares him is the amount of carbon that the fossil fuel companies and countries like Venezuela or Kuwait already have in their reserves. He estimates that’s about 2,800 gigatons, or five times more oil, coal and gas than various energy companies and climate scientists think is safe to burn. That means around four out of five of those barrels of oil and tons of coal, or at current market value, $20 trillion worth of oil and coal, need to be kept underground. “That’s the trouble that we’re in. We’re about to go way-way-way over the limit. And nobody, no president, no politburo, no anybody is effectively saying: time to slow down,” McKibben said. “What we’re dealing with is the out-of-control greed of a few companies. We know what the future should look like, and we know how to do it."

### A2: Heg

**Court strength secures hegemony – their author concedes**

**Knowles 9** -- Acting assistant Professor, New York University School of Law (Robert, 2009, “American Hegemony and the Foreign Affairs Constitution,” Arizona State Law Journal, 41 Ariz. St. L.J. 87, October)

International relations scholars are still struggling to define the current era. The U.S.-led interna tional order is unipolar, hegemonic, and, in some ways, imperial. In any event, this or der diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And **the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances** crafted by elite statesmen practicing realpolitik . “[W]orld power politics are shaped prim arily not by the stru cture created by interstate anarchy but by the fore ign policy developed in Washington.” 368 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. One approach would be to adapt an institutional competence model using insights from a major alternative th eory of international relations – liberalism. Liberal IR theory generally holds that internal characteristics of states – in particular, the form of go vernment – dictate st ates behavior, and that democracies do not go to war against one another. 369 Liberalists also regard economic interdependence and in ternational institutions as important for maintaining peace and stability in the world. 370 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. 371 Because domestic and foreign issues are “more convergent” among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches’ powers. 372 With respect to non-liberal states, the position of the U.S. is more “realist,” and courts should deploy a high level of deference. 373 A strength of Dean Slaughter’s binary approach is that it would tend to reduce the uncertainty in foreign affa irs adjudication. Professor Nzelibe has criticized this approach because it would put courts in the difficult position of determining which countri es are liberal democracies. 374 But even if courts are capable of making these dete rminations, they would still face the same dilemmas adjudicating controve rsies regarding non-liberal states. Where is the appropriate boundary betw een foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountabi lity values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudica tion across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressi ng problems of a particular sort of role effectiveness—which allocation of power among the branches will best achieve general governmental effectiven ess in foreign affairs. In the 21 st Century, America’s global role has changed, and the best means of achieving effectiveness in foreign a ffairs have changed as well. The international realm remains highly politic al—if not as much as in the past— but **it is American politics that matters most.** If the U.S. is truly an empire— and in some respects it is—the prob lems of imperial management will be far different from the problems of ma naging relations with one other great power or many great powers. Similarl y, the management of hegemony or unipolarity requires a di fferent set of competences. Although American predominance is recognized as a sali ent fact, there is no consensus among realists about the precise nature of the current international order. 375 The hegemonic model I offer here adopts **common insights from the three IR frameworks**—unipolar, hegemonic, and imperial—described above. First, the “hybrid” hegemonic mode l assumes that the goal of U.S. foreign affairs should be the **preservation of American hegemony**, which is more stable, more peaceful, and be tter for America’s security and prosperity, than the alternatives. If th e United States were to withdraw from its global leadership role , no other nation would be capable of taking its place. 376 The result would be **radical instab ility** and a **greater risk of major war**. 377 In addition, the United States would no longer benefit from the public goods it had form erly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable. 378 As noted above, other nations have many incentives to continue to tolerate the current order. 379 And although other nations or groups of nations—China, the European Union, and India are often mentioned—may eventually overt ake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades to come. In 2025, the U.S. economy is projected to be twice the size of China’s. 380 The U.S. accounted for half of the world’s military spending in 2007 and holds enormous advantages in defense technology that far out strip would-be competitors. 381 Predictions of American decline are not new, and th ey have thus far proved premature. 382 Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. 383 All three IR frameworks for describing predom inant states—although unipolarity less than hegemony or empire—suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably mainta in their position through the use of force, this is much more likely to ex haust the resources of the predominant state and to lead to counter-bal ancing or the loss of control. 384 **Legitimacy as a method of maintaining predominance is far more efficient**. The hegemonic model generally values courts’ **institutional competences** more than the anarchic realist model. The courts’ strengths in offering a **stable interpretation of the law**, relative **insulation from political pressure**, and **power to bestow legitimacy** are im portant for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts’ treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Gi ven the amorphous quality of foreign affairs deference, this “domestication” reduces uncertainty. The increasing boundary problems caused by the pro liferation of treaties and the infiltration of domestic law by fore ign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations—liberty, accountability, and effectivenes s—against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

### A2: Prez Powers

#### Their impact is about presidential weakness- that’s the squo

Zenko 13

[Micah, Micah Zenko Douglas Dillon Fellow at CFR, Edward Snowden and Presidential Power, 6/25/13, <http://blogs.cfr.org/zenko/2013/06/25/edward-snowden-and-presidential-power/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+mzenko+%28Micah+Zenko%3A+Politics%2C+Power%2C+and+Preventive+Action%29>]

In today’s Washington Post, former Bush administration adviser Elliot Cohen stated of Obama: “Nobody’s afraid of this guy. Nobody’s saying there are any real consequences that would come from crossing him — and that’s an awful position for the president of the United States to be in.” What is missing is what exactly Obama should do to make Vladimir Putin afraid, or what those consequences should be. Similarly, former senior Bush aide Peter Wehner wrote yesterday that “an irresolute amateur like Barack Obama was the best thing that the brutal but determined Putin could have hoped for.” Finally, in today’s Wall Street Journal Brett Stephens wrote: “However the Snowden episode turns out…what it mainly illustrates is that we are living in an age of American impotence.” As evidence for this absence of U.S. virility, Stephens cites the withdrawal from Iraq, draw-down from Afghanistan, “giving [Syria’s] civil war the widest berth,” and ongoing questions about Iran’s nuclear program, which stretch back more than a decade. Somehow, deeper U.S. military involvement in some or all of these quagmires would have scared Moscow into submission. Presidents have never been able to direct other foreign leaders to do what they want—a fact George W. Bush learned over the eleven days of quiet diplomacy that was required to secure the U.S. servicemembers and EP-3E Aries I spy plane that crash-landed on Hainan Island, China, in April 2001. It was reported at the time: “A senior U.S. official said the impasse was broken when the Bush administration agreed to insert ‘very’ before ‘sorry’,” in a letter to the Chinese Foreign Minister. Those sorts of painstaking negotiations—requiring judgment and the flexibility to provide political coverage for other leaders to make tough decisions—reflect how crisis diplomacy is actually conducted. Whether, or how, Russia and the United States resolve the dispute over Edward Snowden (if he is in fact there) will not be a result of Putin’s perception of Obama’s toughness, or America’s war-making efforts around the world.

### Rules Against Now

#### Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do national security claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a statistically significant finding of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a statistically significant likelihood that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. This finding is consistent across all the major wars as well as peacetime. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

### 1AR PQD Dead

Political question doctrine is dead

Choper 7 -- Earl Warren Prof of Public Law @ UC Berkeley (Jesse H., 2007, "The Political Question Doctrine and the Supreme Court of the United States," Introduction, p. 1-21)

The most expedient way to remove the intellectual tension between the Court's theory of judicial superiority and the political question doctrine is to eliminate one or the other. And s the Court has ushered out the doctrine - allowing its supremacy theory to flower and its confidence in its own constitutional abilities to grow. The decline of the political question doctrine - at least in its classical form - is therefore extremely troublesome, for it paves the way for this Court-centric view of the Constitution. This trend can be seen in a variety of substantive areas, from the Court's cases under Section 5 of the Fourteenth Amendment to its Commerce Clause cases to its increasing use of substantive canons of interpretation.118 This vision of judicial supremacy is troublesome for many reasons. It is at odds with the historical understanding of the judiciary's role, as Larry Kramer has persuasively explained.119 It is in tension with the Constitutions structure.120 Ant it is normatively worrisome because the different branches bring different strengths and weaknesses to the interpretive enterprise. The purpose of this chapter is to not to recount those arguments in detail. But it is important to note that a judicial monopoly on interpretation risks losing the advantages of political branch interpretation and exacerbating the disadvantages of judicial interpretation. In particular, a more balanced approach could allow greater input by the people themselves and all the benefits that brings.121 Deferring to the political branches in some cases also requires the Court to acknowledge the views of the political branches, which may cause the Court to question its own interpretation. A spectrum of deference, therefore, helps to promote a dialogue between the Court and the political branches.

### 2NC US Econ Resilient

#### Prefer our authors – their evidence is biased by economic Stockholm syndrome

Dornbrook, 10 – Reporter for the Kansas City Business Journal, \*\*Citing Brian Wesbury – Chief Economist for First Trust Advisors and Author (James, "Economist: Ongoing rebound gives reason for optimism", January 8th 2010, May 21st 2010, http://kansascity.bizjournals.com/kansascity/stories/2010/01/04/daily46.html)

People should start being more optimistic about the economy because it probably will continue rebounding in 2010, said Brian Wesbury, chief economist for First Trust Advisors LP. Wesbury was the keynote speaker at the Association for Corporate Growth Kansas City’s annual economic forecast meeting Friday morning at the Kansas City Marriott Downtown. Wesbury was also the keynote speaker for last year’s event, and many members agreed that his predictions for 2009 were accurate. Wesbury, author of “It’s Not as Bad as You Think,” told the crowd that too many people are suffering from a sort of economic Stockholm Syndrome, where they have fallen in love with pessimism. It’s because we just experienced the first real panic in the economy since 1907, Wesbury said, and it altered the psyche of people to the point where they expect bad things to constantly happen. But economic data show that the economy bottomed out in March 2009 and that recovery is under way, he said.

### McCutcheon Thumper – 1AR

#### McCutcheon case thumps the DA – the case will be highly controversial and trigger a reaction similar to Citizen’s United –that’s Corn-Revere – outweighs the aff

#### Its High Profile

Baker ’13 (Sam, Court Reporter for The Hill, “RNC urges Supreme Court to strike campaign-finance limits,” 5-7, http://thehill.com/blogs/ballot-box/fundraising/298307-rnc-urges-supreme-court-to-strike-campaign-finance-limits)

The Republican National Committee [RNC] urged the Supreme Court on Tuesday to strike down certain limits on campaign contributions, saying they're a violation of the First Amendment.¶ The RNC filed its opening brief in a case challenging limits on the total amount one person can donate in a single election cycle. The RNC says the limits are unconstitutional.¶ If the court agrees, donors who now max out at around $120,000 per year could be able to donate more than $3 million per cycle.¶ The campaign-finance suit is already one of the highest-profile cases of the Supreme Court's next term, which begins in October.

### Court Politics – 1AR – No Spillover

#### No spillover – one issue does not affect the court’s capital in another rea – Redish cites Roe v Wade – empirically deines the link

#### No spillover --- capital isn’t fungible

Redish 97 (Martin, Northwestern University School of Law, Journal of Law & Politics, Summer, 13 J. L. & Politics 585)

The limited pie theory, associated with Professor Choper, [39](http://www.lexis.com/research/retrieve?_m=6d08b91741ea689da3df00895fb5be82&docnum=38&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAW&_md5=cd3664fa999dc87e8ae5846419730a48&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#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. [40](http://www.lexis.com/research/retrieve?_m=6d08b91741ea689da3df00895fb5be82&docnum=38&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAW&_md5=cd3664fa999dc87e8ae5846419730a48&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#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 [41](http://www.lexis.com/research/retrieve?_m=6d08b91741ea689da3df00895fb5be82&docnum=38&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAW&_md5=cd3664fa999dc87e8ae5846419730a48&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n41) or Miranda v. Arizona [42](http://www.lexis.com/research/retrieve?_m=6d08b91741ea689da3df00895fb5be82&docnum=38&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAW&_md5=cd3664fa999dc87e8ae5846419730a48&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#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]