# Disad

### Generic

#### Our Bloomberg evidence establishes that Solar is incredibly unpopular because of things like Solyndra and Obama can’t support more, the plan tanks his approval rating which Silver says costs him the election.

#### Just solar options are unpopular- cost component

Lifsher, 5

- LA Times Staff Writer¶ (Marc, June 27, "Governor’s Solar Plan Is Generating Opposition," http://articles.latimes.com/2005/jun/27/business/fi-solar27-

Gov. Arnold Schwarzenegger's plan to spend billions of dollars to put electricity-producing solar panels on a million California rooftops could be running into stormy weather.¶ For the second year running, the governor is sponsoring legislation that would put photovoltaic solar systems at the head of the line for the bulk of state alternative energy funding.¶ For The Record¶ Solar power -- An article in Monday's Business section about solar power misspelled the first name of an attorney for the Utility Reform Network, Michel Florio, as Michael.¶ For Schwarzenegger and his backers in the environmental community and the solar industry, a massive push to use abundant "free power" from the sun is an easy call.¶ "Today, in California, where we are famous for the sun, we are going to put the positive benefits of that sun to good use," Schwarzenegger said in February, announcing his personal support for SB 1, the solar power bill.¶ Schwarzenegger is thinking big: He wants to increase the state's total solar output from about 101 megawatts to 3,000 megawatts by 2018. That's enough nonpolluting power to run about 2.25 million homes and eliminate the need to build six large natural gas-fired generating plants.¶ The governor isn't the only Hollywood star backing sun power. Actors Edward Norton and Ed Begley Jr., both well-known environmental activists, spoke at a recent media event in South Central Los Angeles in support of SB 1.¶ But the bill, despite such high-profile backing and a bipartisan 30-5 vote in the state Senate, is facing potential difficulties in the Assembly. Opposition from business lobbies, utilities, unions and even consumer groups is setting the stage for what could be a close vote. The first hint of how the bill will fare in the Assembly is expected to come today when it faces its first hearing in the Assembly Utilities and Commerce Committee.¶ Most of the complaints about the governor's solar program center on its estimated 10-year, $2-billion-to-$3-billion price tag. Much of that would be paid by power users in the form of surcharges imposed by the California Public Utilities Commission.¶ Proponents estimate that the annual rate hike would be about $15 per residential customer. But business groups -- usually among Schwarzenegger's staunchest supporters -- complain that increases for large power users such as big-box retailers and industrial operations would be much higher -- a key point in a state that already has the highest electricity rates in the continental United States.¶ The governor's solar plan is "so expensive that it's not cost-effective," said Joseph Lyons, an energy lobbyist for the California Manufacturers and Technology Assn.¶ "Our members need rate relief, and this goes in the other direction," Lyons said.¶ Southern California Edison Co., the state's second-largest investor-owned utility, is also skeptical, saying the governor's bill favors rooftop solar systems over what it says are more cost-effective centralized solar generating stations.¶ Even fans of solar power -- who view photovoltaic panels as a crucial part of the state's alternative energy mix -- question the wisdom of earmarking the bulk of funding for one source, to the detriment of less-glamorous energy efficiency and conservation programs.¶ "Solar is not even close to competitive," said Severin Borenstein, director of the University of California Energy Institute in Berkeley. He noted that solar power's long-run, average production cost of 25 cents to 30 cents per kilowatt hour, not including government subsidies or tax credits, is much higher than the 5 cents to 9 cents for wind power and 6 cents to 7 cents for modern, natural-gas-fired generation plants.¶ Even a leading energy consumer advocate, the Utility Reform Network, is critical of the governor's solar dream, contending it would drive up utility bills for some lower-income residential ratepayers.¶ "It singles out one technology ... it's not giving us the biggest bang for the buck," said Michael Florio, an attorney for the group.¶ Meanwhile, enthusiasm among home builders is lukewarm at best. They fear that a requirement that solar be offered as an option on most new homes beginning in 2010 would be unpopular with buyers.

#### Plan helps Succesfully Frame Obama as a liberal costs him the election

Smith 9-4

J. Robert is a contributor to American Thinker. He is a public affairs consultant with a practice in Alexandria, Virginia, “Romney Needs to Bury Obama’s Lead,” <http://www.americanthinker.com/2012/09/romney_needs_to_bury_obamas_liberalism.html>

The general estimate is that Mitt Romney's acceptance speech did what it had to do. Romney gave viewers and listeners his human side, gave a stout defense of his business career, and chided -- ever-so-gently -- President Obama for his failures. Romney employed the soft-touch about Mr. Obama's miserable term in office, we're told, lest he offend some of the president's 2008 voters and independents who are undecided this go-round.¶ The last is balderdash, mostly peddled by establishment Republicans. Establishment Republicans are hung up on the president's presumed "likeability" among voters, as if the nation were conducting an election for high school class president. ¶ The gritty fact is that Americans are made of sterner stuff. Voters may like Mr. Obama, but they are quite willing to fire him for cause. Jimmy Carter wasn't disliked by voters back in 1980; they didn't think he was up to the job. And Ronald Reagan gave voters good reasons, practical and philosophical, to vote for him and against Mr. Carter. President Reagan created a substantial mandate for change.¶ The establishment GOP (including some of its conservative elements) has decided that if Romney provides meaty contrasts with the president and indicts him as not merely a well-meaning incompetent, but a hard-edged ideologue whose errant ideology in large part drives his policy failures, then those precious independents may take umbrage.¶ Well, of course, Romney shouldn't be mean-spirited in making his case against the president. That doesn't translate to not being tough, though. And any candidate worth his salt isn't going to attack voters for choices they made in a prior election. Salesmen don't insult their customers. ¶ But there are smart ways of separating voters from their earlier choices in candidates without offending. Namely, by making the case that voters were misled. That's surely the case with Mr. Obama, who positioned himself as a centrist in 2008 -- a centrist who would fix the economy and pretty much track Bill Clinton, whom many voters still perceive as having governed from the middle. ¶ What Mr. Obama gave voters in 2008 was blarney, Chicago-style. He campaigned from the center and has governed on the left -- the programmatic left. Romney has an obligation to voters to inform them of such. He needs to educate voters that it's Mr. Obama's worldview and ideas that undergird nearly four years of a torpid economy; that foisted ObamaCare on an unwilling electorate at the price of not reviving the economy; and that has retarded conventional energy development in favor of pie-in-the-sky green energy and to meet the expectations of the primitivist elements among his leftist cohort. Among many other failures and overreaches driven by the president's leftism. ¶ If Romney takes to the campaign trail just as Mr. Fix-It -- tackling only the practicalities of Mr. Obama's policy disasters -- then the November election might prove more competitive than need be. Even if Romney wins riding the tide of a poor economy, his mandate is thinner if he hasn't made the case against Mr. Obama's liberalism (and let's salt in old-fashion Democrat cronyism). ¶ Dissecting and indicting the president's leftist policies would give a President Romney more heft in scuttling much of the left-wing structure that Mr. Obama and his minions have erected through a long forty-eight months. The aim for Romney, in fact, is to go deeper; he needs to raze the left's foundations in government as best possible. At least a President Romney needs to initiate the process of profound reform -- in others words, start the ball rolling toward an historic shift away from the liberal era that has dominated the nation since the 1930s.¶ Romney's presidential legacy -- if he gets a chance at a legacy -- needs to be marked, enduring change.¶ No one's suggesting that Romney run a one-dimensional campaign; just banging the drum on Mr. Obama's leftism wouldn't appeal to all voters and most certainly wouldn't paint the entire picture for voters. But without going after Mr. Obama's liberalism artfully, a critical element will be missing from the picture Romney is creating for voters. ¶ The common retort to the argument that Romney needs to tackle the president's leftism head-on is that conservative super-PACs and Romney surrogates can do the dirty work (if you consider it dirty work). ¶ Indeed, super-PACs and Romney surrogates can go bare-knuckles with the president and his Democrats, over ideology and a range of other things. Romney needn't brawl with the president. As stated above, he needs to be artful in dissecting the president, indicting his liberalism with a surgeon's touch. FDR was quite good at opening up his opponents with a smile and, often, humor -- light and biting. Reagan had the right touch, too, in going after liberals and Democrats. Then again, Reagan had been a Democrat at one time, so he knew well how to play the game. ¶ That leads us to the Democrats, whose convention is this week. Anyone want to wager that Mr. Obama will not continue to define Romney as a heartless plutocrat who is out of touch with working and poor Americans? Wanna bet that the Democrats use every available opportunity to contrast their "compassion" with Republican and conservative callousness? ¶ The counter here is that the Democrats are running behind; they need to play offense, as they have been doing. But the Democrats learned under FDR that a tough offense is the best defense. If Democrat candidates get out well in front of their GOP opponents, they may cruise, but otherwise, they fight hard and play to win, including going after their opponents' characters and conservatism. This approach is coded into Democrats' DNA.¶ And don't underestimate Democrats' relentlessness. The Party of Government plays politics for keeps. Mr. Obama and the left have more riding on the November election, in a sense, than Republicans do, in that where do Democrats go when not running government and wielding the power that attends? What happens to their statist advances that have cost them a bundle in political capital? ¶ Mr. Obama will hit the campaign trail pounding away at that cruel Mitt Romney, over and over again, knowing that where a lie can't prevail at first, numbing repetition might just do the trick. Democrats get the value of repetition even in the teeth of initial skepticism. ¶ Mitt Romney could lose this election if he doesn't employ a full complement of tactics and arguments against retaining Mr. Obama. Romney doesn't want to wind up the second "Little Man on the Wedding Cake" in GOP annals. ¶ Romney needs to drag President Obama onto ground favorable to his candidacy. Americans are instinctively a conservative people. Mr. Obama's liberalism is a liability, not an advantage, unless he's given the leeway to frame it as he pleases.¶ This November, Mitt Romney needs to come to bury President Obama's liberalism, not ignore it.

**Polls Good**

#### Polling consistently works and is accurate

Cohn 9-25

Nate Covers Politics for the New Republic, “Friendly Reminder: The Polls are usually Right,” <http://www.tnr.com/blog/electionate/107734/friendly-reminder-the-polls-are-usually-right>

With Romney trailing by a clear margin, a frontal assault on the accuracy of polling has begun. Some of the skepticism is understandable, but other elements are brazenly self-serving. I'll be assessing the critiques of the polls over the next few days, but any debate about the accuracy of the polls must start by remembering a central point: The polls are usually pretty good.¶ Forget about LOESS trend-lines, demographic regressions, or House Effects and just consider the surprising accuracy of a polling average that can be calculated by any sixth grader with a calculator and access to the Internet. In 2004 and 2008, the RealClearPolitics average ended with Bush leading by 1.5 points; he ended up winning by 2.4 points. In 2008, Obama led by 7.6 points; on Election Day he won by 7.2 points. Pretty good, right? ¶ The battleground state polls were also accurate. In 2004, the RCP average only missed Wisconsin, but Bush entered Election Day with just a .9 point lead and Kerry only won by .4 points, so it’s hard to characterize that as a real failure. In 2008, the RCP average only missed Indiana and North Carolina, the two closest states won by Obama. Again, the average got the basics of a close race right: McCain entered Election Day with a .4 point lead in North Carolina, he would lose by .3 points; Obama trailed by 1.4 points in Indiana, he would eventually win by just 1 point. There are examples of more substantial errors, like when the RCP average showed Kerry within one point of Bush in Florida, even though Bush would ultimately prevail by 5 points. But on average, the state averages were off by just 2.8 points in 2008 and 1.9 points in 2004—not perfect, but more than good enough for our purposes. ¶ Polls are typically less accurate in judging races further down the ballot, but they still do pretty well. They might also be less accurate during off-year elections, or when the contested races are in deep red or blue states. Of the 24 closely contested gubernatorial, senate, or presidential contests where the polls exhibited a Republican bias of 3 points or more, just three were in states carried by John McCain in 2008, and two were West Virginia and Kentucky, states where Democrats hold a large advantage in party-ID. Conversely, of the 14 gubernatorial, senate, or presidential contests where the polls tilted Democratic by 3 points or more, just four were in states carried by John Kerry, and only Rhode Island was non-competitive at the presidential level over the last decade.¶ But the polls tend to do quite well in close contests in the battleground states, where swing voters seem to split evenly between the candidates between the final polls and Election Day. If there’s one exception, it might be the competitive western states, like Nevada, Colorado, and New Mexico. In 11 competitive contests in those three states, the polls underestimated the eventual Democratic performance in every instance, including the two upset Democratic victories. Some have suggested this is due to difficulties in polling Latino voters, but I’ll shy away from explaining the error and simply observe its existence.¶ Despite recent accusations, there isn't much evidence suggesting that the polls are systemically biased toward Democrats. In fact, the clearest instance of bias in any direction came in 2010, when the polls systemically underestimated the strength of Democratic senatorial and gubernatorial candidates. Was this because of the unique circumstances of 2010 or because most close races were fought on heavily-Democratic turf, where undecided voters in a tight race are disproportionately composed of Democratic-leaners? It's hard to say. ¶ Are the polls getting less accurate? While the pro-GOP bias in 2010 and the possible cell phone issue might lead some to believe the polls are getting less accurate, that's not yet evident. The polls did tilt-GOP in 2010, but the error wasn't that much greater than prior elections. If you need an example from 2012, recall that it was just a few months ago that the public polls nailed the results of the Wisconsin recall. The RCP average found Walker leading by 6.7 points and he ultimately won by 6.8 points. ¶ Poll-doubters would do well to remember the reaction of Democratic pundits to Walker's growing lead in Wisconsin. Democrats railed against the likely voter screen—it was said to be too tight in a Democratic-leaning state where voters had supposedly been outraged by Walker's policies. A wave of internal Democratic polls were leaked and they showed a closer race. Yet on Election Day, the average of public polls was right. Something similar happened in 2004, when Democrats complained that the polls didn't show a Democratic partisan-advantage, even though they held one 2000 and just about every previous election. On Election Day, the polls were right, Kerry lost, and there were an equal number of Democrats and Republicans in the final exit poll.¶ No, the polls aren’t perfect. Polls have been wrong before and they certainly will be again. There is nothing wrong with noting that the polls are imperfect and could be wrong in this election; they might be. It might even be understandable if someone argued that there was a greater chance that the polls are wrong than usual, given declining response rates and challenges with voters relying on cell phones. But asserting that the polls are wrong, simply because the result doesn't match expectations is a recipe for disappointment. Analysts arguing that the polls are fundamentally inaccurate have rarely been vindicated by the results. If you dismiss the polls when you disagree with their findings, you'll usually end up wrong.

### Political Costs

#### Evaluating political costs and understanding tradeoffs key to prevent genocide

Lanz 8

 (David, Mediation Support Project for Swisspeace, “Conflict Management and Opportunity Cost: the International Response to the Darfur Crisis”)

There are no simple solutions for the contradictions outlined above – they represent complicated dilemmas and tricky trade-offs. It would be naïve to call for more coordination among external actors in Darfur, as the difference of their approaches is structural and refl ects their respective interests and contexts. There are, however, two lessons that we can learn. The fi rst is that resources are scarce and effective confl ict management requires priorities. It is not possible to simultaneously run a humanitarian operation, deploy peacekeepers, try the Sudanese President in an international court, negotiate a peace agreement, and foster the democratic transition of Sudan. We need to think about what is most important and concentrate our resources – money, political capital, personnel – to achieve this objective. The second lesson is that actors working in or on confl ict, whatever approach they take, must be aware that their decisions and actions have opportunity costs and that they can “do harm.” As David Kennedy writes, “the darker sides can swamp the benefi ts of humanitarian work, and well-intentioned people can fi nd themselves unwittingly entrenching the very things they have sought voice to denounce.”30 Also, those involved in the grand scheme of managing confl ict Darfur must realise that they are in essence projecting their morals and a Western political agenda and that, consequently, their good intentions may not be perceived as such, especially in the Arab world. Indeed, moving from selfcentred and self-righteous dogmatism to a pragmatic assessment of causes and consequences would be a big step, and it would certainly improve our ability to manage conflicts in Darfur and elsewhere.

#### You should evaluate our politics DA. Their dogmatic refusal to consider political process implications is grounded in the same destructive blindness the aff criticizes.

David **Chandler**, Centre for the Study of Democracy - University of Westminster, **‘3**

(British Journal of Politics and International Relations 5.3, “Rhetoric without responsibility”)

The attention to the articulation of a political mission, beyond the petty partisanship of left and right, through foreign policy activism abroad has been an important resource of authority and credibility for western political leaders. The ability to project or symbolise unifying ‘values’ has become a core leadership attribute. George W. Bush’s shaky start to the US presidency was transformed by his speech to Congress in the wake of the World Trade Centre and Pentagon attacks, in which he staked out his claim to represent and protect America’s ethical values against the terrorist ‘heirs of all the murderous ideologies of the 20th century’ (Bush 2001). Similarly, Tony Blair was at his most presidential in the wake of the attacks, arguing that values were what distinguished the two sides of the coming conflict: ‘We are democratic. They are not. We have respect for human life. They do not. We hold essentially liberal values. They do not’ (The Guardian, 27 March 1999). Peter Hain, minister of state at the UK Foreign Office, also focused on the ‘values that the terrorists attacked’ in his call for political unity around ‘tough action’ (The Guardian, 24 September 2001). By association with the cause of the victims of international conflicts, western governments can easily gain a moral authority that cannot be secured through the domestic political process. Even general election victories, the defining point of the domestic political process, no longer bring authority or legitimacy. This was clear in the contested victory of George W. Bush in the 2000 elections, which turned on the problem of the ‘hanging’ chad in Florida. However, the problem of deriving legitimacy from elections is a much broader one, with declining voter turnouts. In the British elections in 2001 Tony Blair achieved a landslide second term mandate, but there was little sense of euphoria—this was a hollow victory on a 50 per cent turnout which meant only one in four of the electorate voted for New Labour. The demise of the framework of traditional party politics, the source of western governments’ domestic malaise, is directly associated with the search for an external source of legitimacy. This process is illustrated in Michael Ignatieff’s quote from the writings of British war reporter Don McCullin: But what are my politics? I certainly take the side of the underprivileged. I could never say I was politically neutral. But whether I’m of the right or the left—I can’t say ... I feel, in my guts, at one with the victims. And I find there’s integrity in that stance (Ignatieff 1998, 22–23). Ignatieff suggests that the external projection of legitimacy or moral mission stems from the collapse of the left/right political framework, stating that ‘there are no good causes left—only victims of bad causes’ (ibid., 23). Governments, like many gap-year students, seek to define and find themselves through their engagement with the problems experienced by those in far-off countries. This search for a moral grounding through solidarity with the ‘victims of bad causes’ has led to an increasingly moralised ‘black and white’ or ‘good versus evil’ view of crisis situations in the non-western world.10 The jet-setting UK prime minister, Tony Blair, has been much criticised for appearing to deprioritise the domestic agenda in the wake of September 11, yet even his critics admit that his ‘moral mission’ in the international sphere has been crucial to enhancing his domestic standing. The search for ethical or moral approaches emphasising the government’s moral authority has inexorably led to a domestic shift in priorities making international policy-making increasingly high profile in relation to other policy areas. The emphasis on ethical foreign policy commitments enables western governments to declare an **unequivocal** moral stance, which helps to **mitigate** **awkward** **questions** of government mission and **political** **coherence** in the domestic sphere. The contrast between the moral certainty possible in selected areas of foreign policy and the uncertainties of domestic policy-making was unintentionally highlighted when President George Bush congratulated Tony Blair on his willingness to take a stand over Afghanistan and Iraq: ‘The thing I admire about this prime minister is that he doesn’t need a poll or a focus group to convince him of the difference between right and wrong’ (UKGovernment 2002). Tony Blair, like Bush himself, of course relies heavily on polls and focus groups for every domestic initiative. It is only in the sphere of foreign policy that it appears there are opportunities for western leaders to project a self-image of purpose, mission and political clarity. This is because it is easier to promote a position which can be claimed to be based on clear ethical values, rather than the vagaries of compromise and political pragmatism, in foreign policy than it is in domestic policy. There are three big advantages: first, the object of policy activism, and criticism, is a foreign government; second, the British or American government is not so accountable for matching rhetoric to international actions; and third, credit can be claimed for any positive outcome of international policy, while any negative outcome can be blamed on the actions or inaction of the government or population of the country concerned. The following sections highlight that the lack of connection between rhetorical demands and accountability for policy-making or **policy** **outcomes** has made selected high-profile examples of ethical foreign policy-making a **strong card** for western governments, under pressure to consolidate their standing and authority at home.

#### Ignoring political tradeoffs is totalitarian

Dean Richard **Villa**, Political Theory – UC Santa Barbara, **‘96**

(*Arendt and Heidegger: The Fate of the Political*, p. 246-7)

Arendt appropriates Heidegger’s genealogy of the technical sense of action in order to highlight the tradition’s persistent attempt to overcome plurality, the politically most relevant expression of the finitude of the human condition. Subjecting *praxis* to the rule of an end-representing reason makes it possible to exchange the nonsovereign freedom of **plural political actors** for the **command** **and** **control** exercised by the artisan. The Platonic “translation” of acting into the idiom of making established the pattern for deriving action from first philosophy or theory, a pattern that offered an escape from the irreducible relativity which besets the realm of human affairs. The substitution of making for acting initiates a paradigm of correspondence that, as Lyotard notes, delimits the Western tradition of political philosophy. Within the tropological space opened by this substitution, politics is viewed as the means or techné by which “the **‘fashioning’ of a people according to the** idea or **ideal** of just being-together” is accomplished.27

So long as political philosophy sees its task as the articulation of first principles with which actions, peoples, and institutions must be brought into accord, it reiterates the Platonic schema; moreover, it perpetuates the idea that politics resembles a plastic art. Arendt’s critique of the “Platonic” tradition reveals the drive to conflate political and artistic categories at the core of Western political theory, underlining the stubborn persistence of the state as artwork/politics as *techné* tropes. The strength of these figures is measured by the fact that the closure of the tradition barely shakes the logic of justification institutionalized by the Platonic separation of theory and practice. Western political theory, as Schürmann points out, has always demanded that action be grounded in some extrapolitical first (the cosmic order, natural or divine hierarchy, Reason and natural right, History, the greatest good for the greatest number, the emancipatory interest of the discursive community).28 As a result, it never really abandons the view that politics is a kind of **plastic art**, the “fashioning,” more or less **violent**, of a people in conformity with an ideal. The persistence of this trope is explained by its **efficacy for** **reducing plurality and difference**, and by its ability to represent violence and coercive power as “right.”29

Arendt’s theory of nonsovereign, agonistic action smashes this figure, breaking the circuit of justification through the liberation of action from the rule of grounding principles and pregiven ends.30 The essentially normative function of political theory – that is, the theoretical specification of the conditions for the legitimate exercise of power – is suspended.31 In its place Arendt develops a phenomenology of action and a narrative approach to the closure of the public realm in modernity, an approach designed to keep the memory of an agonistic public sphere alive. With this bracketing of the legitimation problematic, a new appreciation of spaces and practices not typically viewed as political becomes possible.32 Moreover, the Arendtian liberation of action throws the antipolitical, not to say the *inhuman*, consequences of the tradition’s conflation of artistic and political categories into sharp relief.

The teleocratic concept of action may be seen as the primary and most enduring expression of this conflation. With the collapse of transcendental grounds for the political, the logic of correspondence and justification built into this concept turns inward. The result is that the fashioning or “fictioning” of the community in conformity with an ideal of Justice is transformed into an exercise in self-production.33 And with this transformation, the threshold of modernity is traced.

We can see this transformation at work in the emergence of the Hobbesian problematic: the construction of the “Leviathan” needed to overawe its subjects is the work of those very subjects, in their “natural,” presubjected, and radically dissociated state.14 The example of Hobbes clearly demonstrates how, once the “art” of politics is deprived of its natural ground (once *techné* can no longer be seen as the completion or accomplishment of *physis*), a paradoxical and impossible logic asserts itself. The conundrum is simply put: the people, who do not yet exist *as a people*, must somehow always already be enough of a subject in order to author or fashion themselves *qua* community. The answers to this riddle proposed by the social contract tradition – Hobbes’s pact of association, which is simultaneously a transfer of power to a designated sovereign; Locke’s presupposition of what Laslett has called “natural political virtue”; the Rousseauian mechanism of the total alienation of individual rights and powers by which a communal, sovereign power is formed – have all been unconvincing, to say the least.35 Romanticism can be seen as the attempt to escape this paradox by radicalizing it. Instituting what Jean-Luc nancy has

called an “immanentist” logic of communal self-formation, romanticism elides the distinction between process and end: the subject is redefined as work in the double sense of self-formative activity *and* product.36 As Philippe Lacoue-Labarthe notes, in the romantic vision the community at work creates and works *itself*, thereby accomplishing the “subjective process *par excellence*, the process of self-formation and self-production.”37 The aim of the community of beings becomes “in essence to produce their own essence as community.”38

With this move, a peculiarly *modern* version of the traditional conflation of art and politics is created. The *organicity* of the political, origincally laid down by Plato’s *Republic*, takes a new and extreme form: the figure of the subject who is simultaneously artist *and* work absorbs that of the aesthetically integrated state. This subjectivization of the state as artwork trope culminates in the **totalitarian** **will** **to self-effectuation**: the will to the self-creation of a people characterized by full actualization, complete self-presence.39 The only community capable of achieving such self-presence is one from which plurality, difference, mediation, and alienation have been **expunged**: a community, in other words, that is not a *political* community at all.

**Warming**

**US-Russian relations key to solve warming**

**Taylor ‘8** Atlantic Correspondent in Moscow, (Jeffery, “Medvedev Spoils the Party” The Atlantic 2008 p. <http://www.theatlantic.com/doc/200811u/medvedev-obama>)

Like it or not, **the U**nited **S**tates **cannot solve crucial global problems without Russian participation**. **Russia commands** the **largest landmass** on earth; possesses vast reserves of **oil, natural gas, and** other natural **resources;** owns huge **stockpiles of weapons and** plutonium; and still wields **a potent brain trust. Given its influence in Iran and North Korea**, to say nothing of its potential as a spoiler of international equilibrium elsewhere, **Russia is one country with which the U**nited **S**tates **would do well to** re**establish a strong** working **relationship**—a strategic partnership, even—regardless of its feelings about the current Kremlin government. The need to do so trumps expanding NATO or pursuing “full-spectrum dominance.” **Once the** world financial **crisis passes**, **we** will find ourselves **return**ing **to worries about resource depletion, environmental degradation, and global warming – the greatest challenges facing humanity. No country can confront these problems alone. For the** **U**nited **S**tates, **Russia may** just **prove the “indispensable nation” with which to face a volatile future arm in arm.**

### K Team Impact

**Romney win leads to most hostile right wing takeover in history and overturns all green energy it also causes- tax cuts for rich, end of Dodd-Frank, no healthcare and end to key education incentives**

**Alterman 8-8**

Eric is a Distinguished Professor of English at Brooklyn College, “President Romney?” [http://www.thenation.com/article/169287/president-romney#](http://www.thenation.com/article/169287/president-romney)

a Romney White House, those digits may go limp with fatigue. **A Romney victory would** likely **bring with it a large majority in the House and** quite possibly a Republican **Senate** as well, and hence a tsunami of regressive legislation. As the longtime nonpartisan analysts Thomas Mann and Norman Ornstein argue, a Republican victory in November will likely prove a key turning point in modern American history. **It will offer Republicans the opportunity**, in Mann’s words, **to put “in place a radical view of policy that goes** well **beyond anything Republicans have proposed in the past**,” one that has moved so far rightward that “no Republican president in the modern era would have felt comfortable being a part of [it].” What’s more, they will likely succeed owing not only to Romney’s eagerness to blow with whatever winds may be buffeting him, but also, as Mann and Ornstein put it, to his party’s “demonstrated willingness to bend, break, or change legislative rules and customs that have stood in the way of radical change in the past.”¶ If you think the Tea Party has gone away, think again. Its members are not holding demonstrations so much anymore because they are staffing campaigns, winning Republican primaries (often against veteran incumbents and well-funded establishment favorites), or replacing the staffers of those they have scared into submission. As Dave Weigel writes in the Washington Monthly, “After 2010, the movement evolved. Activists got jobs with newly elected Republicans. Political organizations like the [corporate and conservative billionaire-funded and -controlled] Americans for Prosperity and FreedomWorks grew their staffs and budgets. Elected Republicans continued to draw on them for strength, support, and warm bodies at campaign events.” Under a Romney administration, many of these ignorant fanatics will be called upon to staff a significant number of the more than 3,000 federal appointments that a president makes, and his hundreds of potential judicial appointments as well.¶ **The result, should Romney become president, will be a mixture of policies that favor the superwealthy**, **punish the poor and middle class, restrict the rights of average Americans**, and—I say this without hyperbole—cause a degree of almost unimaginable and unprecedented chaos in virtually every area of American public life.¶ As president, Romney promises to focus on economic policy, and it is here where his impact may be greatest. The primary purpose of the modern Republican presidency has been to make the extremely rich far richer at the expense of the rest of us, and Mitt Romney promises to outdo all of his predecessors in this regard. George W. Bush’s $2.5 trillion in tax cuts, while ruinous to the nation’s balance of payments, succeeded in distributing only 12.5 percent of those trillions to his friends and cronies in the wealthiest 0.1 percent. **Romney does Bush quite a bit better by proposing**—on top of already unsustainable budget deficits—**an additional $10.7 trillion in tax cuts over the next 10 years, with fully 33 percent directed toward the top one-tenth of 1 percent**. The fine print calls for a reduction in both individual and corporate tax rates, as well as the complete elimination of both the estate tax and the alternative minimum tax. The net result would be that the superwealthy—those who enjoy an income in the vicinity of $3 million annually—keep an additional $250,000. According to the Urban Institute–Brookings Institution Tax Policy Center, the cost will likely exceed $9 trillion in lost revenue in the coming decade.¶ Meanwhile **Romney’s friends on Wall Street can** also expect, under his presidency, to see **the complete defenestration of the Dodd-Frank bill**, which helps (albeit insufficiently)**to protect consumers from the predatory practices of large financial institutions**, while at the same time placing limits on the kinds of malpractice that caused the 2008 financial crisis.¶ **Romney’s budget-busting plans** also **call for a cornucopia of new spending for each of the three major armed services, including** the addition of **100,000 ground troops** for the Army, an additional six new ships each year for the Navy, and more F-35 stealth warplanes for the Air Force. **This adds up to a $2 trillion increase** in the coming decade above what had previously been budgeted. (Congress and President Obama had earlier agreed to a $450 billion reduction.) These increases would come at a moment when the United States spends more on its military than its seventeen next-largest competitors combined. In fact, fully 64 percent of all 4.4 million employees on the federal payroll are already either in the uniformed military or work for the departments of Defense, Veterans Affairs and Homeland Security.¶ How will any of this be paid for? Romney pretends that significant savings will come from closing tax “loopholes,” but this is nonsense. Those loopholes were placed there specifically to reward the donors who pay the costs of our lawmakers’ political campaigns (just like the more straightforward across-the-board tax cuts for the superrich). Tea Party champions, including Senators Jim DeMint of South Carolina and Rand Paul of Kentucky, are trying to prevent the Treasury Department from cracking down even on wealthy expatriate tax cheats. The notion that these loopholes will somehow be eliminated—especially when they continue to be expanded every time the tax code is adjusted—is too childish for adults to take seriously, save perhaps for a few gullible reporters and right-wing pundits.¶ All of the above would put unbearable pressure on an already stretched entitlements budget, as well as on those federal programs for the poor and middle class that have so far escaped the scalpel, while simultaneously raising the tax burden on these households. Regarding the latter, for instance, a tax plan released by Senate Republican Minority Leader Mitch McConnell and Utah Senator Orrin Hatch ends the Child Tax Credit, the American Opportunity Tax Credit (for college tuition) and a more generous Earned Income Tax Credit—which, when added together, would raise taxes on more than 20 million families, according to Seth Hanlon, the director of fiscal reform at the Center for American Progress. It gets worse. **Romney has promised to** use the “reconciliation” process to **repeal Obamacare. But what will replace it?** Well, again, **chaos,** no doubt, **but also the Ryan plan**—named for its author, Wisconsin Republican and Ayn Rand devotee Representative Paul Ryan, and now gospel among the GOP faithful. Romney has called himself “very supportive” of the plan, adding: “I think it’d be marvelous if the Senate were to pick up Paul Ryan’s budget and adopt it and pass it along to the president.” The House of Representatives has already passed it 235 to 193, with only four Republicans in opposition.¶ Among its provisions is a rise in the eligibility age for Medicare for future retirees and a retraction in Medicaid coverage, including its replacement by a voucher system. **The net result would be** not only the jump in the size of the deficit predicted by the Congressional Budget Office, but also, **according to the calculations of the Urban Institute, the loss of Medicaid coverage for 27 million** Americans. Meanwhile, another 30 **million people—many of them children—would lose the insurance** **included in Obamacare**. Add it all up and, according to Harvard health policy researcher (and former Obama administration official) David Blumenthal, writing in The New England Journal of Medicine, “by 2020, 20% of Americans may be uninsured, even as 20% of our gross domestic product is devoted to health care.”¶ America’s children will also feel the wrath of Romney and the radical Republicans when it comes to education policy. **Romney** calls school choice “the civil rights issue of our era.” His education proposals eschew **any new funding for public schools**, preferring to direct it toward private school vouchers, privately managed charter schools and for-profit online schools. Like Wisconsin’s Scott Walker and other Koch-funded right-wing demagogues, Romney blames public school teachers and their unions not only for the failures of the US education system, but also for the fiscal problems facing state and local governments. He hopes to weaken these bastions of Democratic fundraising and people power by using federal funds to reward states for “eliminating or reforming teacher tenure.” (Republican budget plans also slash programs like Head Start.)¶ As education expert Diane Ravitch observes, “Vouchers have been the third rail of education politics since Milton Friedman proposed them in 1955.” But in what she calls a likely “template for the Romney plan,” the Louisiana legislature instituted a voucher system independent of a popular vote. Ravitch explains, “With no increase in funding, all the money for vouchers and private vendors and online charters will be deducted from the state’s public education budget.” Beneficiaries in Louisiana have included outfits like the Eternity Christian Academy, a school with only fourteen students that applied under the voucher system to enroll an additional 135. According to Reuters, its students “sit in cubicles for much of the day and move at their own pace through Christian workbooks, such as a beginning science text that explains ‘what God made’ on each of the six days of creation.” Students are not exposed to the theory of evolution because, as the pastor turned principal explains, “We try to stay away from all those things that might confuse our children.”¶ At the university level, Romney will encourage private sector involvement by inviting commercial banks to profit from the federal student loan program, in keeping with the right-wing Republican fear of (and contempt for) knowledge. Romney also favors the creation of for-profit online universities, recently described in a report by Senator Tom Harkin, chairman of the Senate health and education committee, as institutions characterized by “exorbitant tuition, aggressive recruiting practices, abysmal student outcomes, taxpayer dollars spent on marketing and pocketed as profit, and regulatory evasion and manipulation.”¶ \* \* \*¶ Then there’s the Supreme Court. The Roberts Court is already America’s most conservative since the New Deal. But with the addition of a single Romney nomination, it will become a rubber stamp for the ideological obsessions, corporate demands, and religious fanaticism on display at Tea Party rallies and Fox News–sponsored debates.¶ One need only take note of what former New York Times Supreme Court reporter Linda Greenhouse termed the “breathtaking radicalism” of the four dissenters in the Affordable Care Act decision to see where a Romney-appointed Court will be headed. With their signed opinions in the ACA case, Justices Scalia, Alito, Thomas and Kennedy “outed themselves,” in the words of legal scholar Jeffrey Rosen, “as partisans of the Constitution in Exile—the movement of economic libertarians who want the courts to resurrect pre–New Deal limits on federal power in order to dismantle the regulatory state piece by piece.” **Three** of the **justices will turn 80** or older **during the next four years**, and a fourth will be 77. **One more vote and the Roberts Court will enjoy unchecked power to increase** the legal rights of **corporations to pollute our air and rivers;** mistreat workers and fire them should they complain; **discriminate on the basis of race, gender or sexual orientation**; decertify unions; and control our political discourse with secretive campaign contributions and relentlessly scurrilous advertisements—indeed, to reduce the security of every American citizen. As legal reporter Dahlia Lithwick has written, “**If you care abou**t the future of **abortion** rights, stem cell research, worker protections, **the death penalty, environmental regulation, torture,** presidential power, warrantless surveillance, or any number of other issues, **it’s worth recalling that the last stop on the answer to each** of those matters **will** probably **be** before **someone in a black robe.**”¶ One area where the courts are certain to matter is immigration policy. It was here that Romney chose to burnish his Tea Party credentials most energetically during the primary season. He called Arizona’s draconian SB 1070—the one that allowed anyone’s papers to be checked on suspicion of looking Hispanic—a “model” for the rest of the nation. (This was before the Court found its key provisions unconstitutional.) He came out in favor of “self-deportation”—actually a right-wing euphemism for an immigration strategy of “attrition through enforcement”—and promised to veto the DREAM Act should its supporters somehow manage to pass it. Cognizant of how many votes this belligerent nativism would likely cost him among Hispanic voters, however, Romney has refused to say anything substantive on this issue since wrapping up the nomination. Still, it is no secret where he and his party stand, as immigration is one of the most animating issues for Tea Party enthusiasts.¶ Regarding the foreign policy agenda—which, after all, is where a president has the most freedom of action—an internal dossier from McCain’s presidential campaign noted back in 2008 that “Romney’s foreign affairs résumé is extremely thin, leading to credibility problems.” His disastrous July misadventures abroad did little to disabuse anyone of this view. Romney has surrounded himself with a group of extremely hawkish advisers, who even Colin Powell worries are “quite far to the right.” None had the prescience to oppose America’s disastrous invasion of Iraq, and more than a few give the impression of looking forward to trying something like it again.¶ Like most Republicans—and, to be fair, most Democrats—Romney has had next to nothing to say about America’s major foreign policy headaches of the past decade: Iraq, Afghanistan and Pakistan. But **if Romney becomes president, you’ll be hard-pressed to find a Vegas oddsmaker willing to take bets against an Israeli, American or American/Israeli attack on Iran**. While the Obama administration’s rhetoric on the question has hardly been reassuring to those who continue to favor diplomacy over bombing, Romney almost always manages to go the president one better. **Romney** has **called Iran’s** **leaders the “greatest threat to the world since** the fall of **the Soviet Union**, and before that, Nazi Germany.” He says he would not even consult Congress before beginning an attack. As he explained on CBS’s Face the Nation in mid-June, “If I’m president, the Iranians will have no question but that I will be willing to take military action if necessary to prevent them from becoming a nuclear threat to the world. I don’t believe at this stage, therefore, if I’m president, that we need to have a war powers approval or special authorization for military force. The president has that capacity now.”¶ True, an attack would likely cause a conflagration in the Middle East, including missile attacks on Tel Aviv (as the Iranians have promised), a violent uprising among the Palestinians, the end of the Palestinian Authority and the unchallenged ascension of Hamas on the West Bank and Hezbollah in Lebanon, and a likely wave of terrorism against Israeli and American targets worldwide. But insofar as **Romney and the Republican Party’s current foreign policy is** concerned—**dominated** as it is **by neoconservative adventurists**, **far-right American Jewish funders** like Sheldon Adelson, and **evangelicals obsessed with Israel’s role in biblical revelation**—whatever Bibi Netanyahu wants, Bibi gets.¶ Outside of the Middle East, Romney’s rhetoric has largely consisted of tough-guy talk of the kind that turns sometimes cooperative, sometimes recalcitrant strategic competitors into potentially threatening adversaries. For instance, he calls Russia “without question, our number one geopolitical foe” and accuses it of “always stand[ing] up for the world’s worst actors.” Likewise, Romney complains that China has “run all over us,” stealing American jobs and waging a “trade war” against the United States. Romney has said that he would haul China before the World Trade Organization on charges that it was manipulating its currency to ensure the relatively cheap prices of its exports.¶ About the Author¶ Just how he plans to do this, given our massive reliance on China to continue to buy Treasury (and private sector) bonds—to say nothing of its role in issues like regional security and environmental degradation—Romney doesn’t specify. But should he try it, we can be reasonably certain of the result: chaos.¶ And while Barack Obama’s environmental commitments, both foreign and domestic, have certainly failed to live up to the promise of his campaign, no one should expect any progress on global environmental issues from President Romney. No matter how alarming the threats we face, Romney’s business-first philosophy combined with the Tea Party’s anti-“gummint” fanaticism has created the political equivalent of a brick wall through which literally no environmental regulation will manage to pass. As the New York Times editorial page observes, the post-Massachusetts Romney emerged a “proclaimed skeptic on global warming, a champion of oil and other fossil fuels, a critic of federal efforts to develop cleaner energy sources and a sworn enemy of the Environmental Protection Agency.” Moreover, as with immigration, his post-primary rhetorical efforts to shed the “climate denier” label have not been accompanied by any serious shifts in policy.¶ Under President Romney, the United States will almost certainly ignore the threat from global warming. Indeed, his party is already seeking to strip the Environmental Protection Agency of its power to regulate carbon emissions. House Republicans have even proposed legislation—called the TRAIN Act (for Transparency in Regulatory Analysis of Impacts on the Nation)—to cut its power to regulate anything at all. **A Republican Congress will also reduce or perhaps entirely eliminate subsidies for green energy,** while preserving the tax breaks and subsidies for the oil and gas industries and opening up almost all US parklands, wilderness areas and offshore waters to drilling.¶ These are merely the highlights—and perhaps the most direct consequences—of a Romney win. But there will be many others as well.¶ \* \* \*¶ Some progressives argue that, nonetheless, President Obama has been such a disappointment that his defeat would not be an unmitigated loss for social justice movements. It’s true that with a Republican in the White House, more progressives would feel freer to give full voice to their complaints about America’s continued violations of civil liberties in its pursuit of suspected terrorists; its widespread use of pilotless drones to kill alleged enemies without due process; its inability to make any progress against global warming; its coddling of the criminals in the Bush administration, as well as those in the banking and housing industries who helped cause the 2008 crisis; and so on. But this freedom would come at a great cost: namely, seeing all of these problems—together with pretty much every other cause that progressives hold dear—worsen to a degree that most of us cannot even imagine. Protests will mount. Denunciations will fill the air. And the circulations of left-oriented publications and websites like this one will skyrocket. But the victims of these policies will suffer. Indeed, the millions of Americans who have been forced to live on the edge of financial collapse, or whose health is dependent on affordable and reliable healthcare, will see their margin of survival disappear.¶ Despite the many disappointments of his presidency, Barack Obama remains a vehicle for progressive change in America, one whose weaknesses reflect the weaknesses of the left in a system dominated by money, democratic dysfunction and a myopic media. Those are our real problems—not the attitude of the individual in the White House. And not one of them will improve once the power of the presidency is bestowed upon those who have created those problems and continue to profit by them. Indeed, nearly all of them will reach (and some may exceed) crisis proportions. And what that will lead to, no one—certainly not your author—can predict, save for one thing: chaos.

### Obama Wins

#### Obama will win- Silver model

Silver 10-5

Nate is a statistician and edits the New York Times’ election blog, “Obama Convention Bounce May not be Receding,” <http://fivethirtyeight.blogs.nytimes.com/2012/09/21/sept-20-obamas-convention-bounce-may-not-be-receding/>

Presidential November 6 Forecast- Obama 317.7. Electoral Votes Barack Obama 84.9% chance of winning. Romney 220.3. Mitt Romney 15.1% chance of winning.

#### Nate Silver is the best around

Leigh Bureau ‘10

the world’s preeminent lecture bureau, “Nate Silver,” http://www.leighbureau.com/speaker.asp?id=498

Nate Silver has been called a "spreadsheet psychic" and "number-crunching prodigy" by New York Magazine.¶ Nate comes out of the world of baseball statistics, but during the 2008 presidential election primaries, he turned his sights and his amazing predictive abilities and forecasting models to the game of politics and current events — with incredible results.¶ He began by predicting 2008 primary election results with stunning accuracy — and often in opposition to the better-known political pollsters. He then moved on to the general election, where he correctly predicted the presidential winner in 49 states and the District of Columbia.¶

# Courts

### CBA Good- For CP

**Picking least bad practical option key**

**Finnis, ‘80**

John Finnis, deontologist, teaches jurisprudence and constitutional Law. He has been Professor of Law & Legal Philosophy since 1989,1980, Natural Law and Natural Rights, pg. 111-2

**The sixth requirement** has obvious connections with the fifth, but introduces a new range of problems for practical reason, problems which go to the heart of ‘morality’. For this **is** the requirement **that one bring about good in the world** (in one’s own life and the lives of others) **by actions that are efficient** for their (reasonable) purpose (s). **One must not waste** one’s **opportunities by using inefficient methods**. One’s **actions should be judged by their effectiveness**, by their fitness for their purpose, by their utility, **their consequences… There is a wide range of contexts in which it is possible and only reasonable to calculate, measure, compare, weigh, and assess the consequences of alternative decisions**. Where a choice must be made it is reasonable to prefer human good to the good of animals. Where a choice must be made it is reasonable to prefer basic human goods (such as life) to merely instru­mental goods (such as property). **Where damage is inevitable, it is reasonable to prefer** stunning to wounding, wounding to maiming, maiming to death: i.e. **lesser rather than greater damage** to one-and-the-same basic good in one-and-the-same instantiation. **Where one way of participating in a human good includes** both **all the good** aspects and **effects of its alternative, and more, it is reasonable to prefer that way: a remedy that both relieves pain and heals is to be preferred to the one that merely relieves pain**. Where a person or a society has created a personal or social hierarchy of practical norms and orienta­tions, through reasonable choice of commitments, **one can** in many cases **reasonably measure the benefits and disadvantages of alternatives**. (Consider a man who ha decided to become a scholar, or a society that has decided to go to war.) Where one ~is considering objects or activities in which there is reasonably a market, the market provides a common de­nominator (currency) and enables a comparison to be made of prices, costs, and profits. Where there are alternative techniques or facilities for achieving definite, objectives, cost— benefit analysis will make possible a certain range of reasonable comparisons between techniques or facilities. Over a wide range of preferences and wants, it is reasonable for an individual or society to seek o maximize the satisfaction of those preferences or wants.

### Strickland Ev

#### Courts have authority to consider economic feasibility concerns

Strickland 07

(Carter H. Strickland Jr, Senior Policy Advisor for Air and Water, New York City Mayor's Office of Long-Term Planning and Sustainability; A.B., Dartmouth College, 1990; J.D., Columbia, 1995.; “Revitalizing the Presumption Against Preemption to Prevent Regulatory Gaps: Railroad Deregulation and Waste Transfer Stations,” 34 Ecology L.Q. 1147 - Kurr)

The Court has, in fact, recognized the rights of states to prevent collective harm through regulation without interference from federal law. Remarkably, these decisions came about in the context of state economic regulations, where there is a greater theoretical basis for Congress to create regulatory voids than in social regulations. In Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission, for example, the Court refused to preempt state regulation of utility economics despite the exclusive federal franchise over nuclear safety issues, reasoning that it "is almost inconceivable that Congress would have left a regulatory vacuum; the only reasonable inference is that Congress intended the states to continue to make these judgments [on the economic feasibility of nuclear power plants]." [n225](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n225) Since the federal government would not address whether ratepayers would face economic liabilities, the states could continue to do so. [n226](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n226) Similarly, in other utility regulations cases, the Court has used the presence or absence of regulatory gaps to bolster its analysis of congressional intent. [n227](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n227) The Court  [\*1197]  has held that while an "authoritative federal determination that [an] area is best left unregulated" may preempt state laws in that area, there must be a strong affirmative indication of that intent. [n228](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n228)Where gaps will otherwise persist, the Court will reject preemption where statutory interpretation shows that Congress's intent "was to fill a regulatory gap, not to perpetuate one." [n229](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n229) The Court has found that Congress intended to create a regulatory void and to allow market forces to set the price of commodities, [n230](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n230) and in another case the Court upheld state economic regulations where Congress was apparently indifferent to the matter. [n231](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n231) In any event, the Court said that Congress cannot make a decision to displace all state regulations, even on economic matters, "subtly" or through "deliberate federal inaction." [n232](http://www.lexisnexis.com.ezproxy.baylor.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1349525264566&returnToKey=20_T15706249819&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.329285.02196610876" \l "n232)

### Solves K Affs

#### Courts act independent of political backlash to create social change

Lemieux 05

(Scott Lemieux, Assistant Professor of Political Science at Hunter College, "Why Roe was Not Counterproductive: A Reply" 3-2-2005)

The key argument at the heart of our theoretical disagreement, I think, is Nathan's claim that "[t]he case against Roe is that the result of judicial activism was a particularly toxic form of counter-reaction that fused normal political disagreement into a mode of rightwing conspiracy thinking that fused social conservatives into a much broader New Right alliance." These kinds of qualitative arguments are hard to prove either way, and Nathan may be right, but I strongly believe that this is incorrect. First of all, I just don't think that the many scholarly proponents of this thesis have made the case; abortion rhetoric was quite toxic prior to 1973. More importantly, I think that the anti-elitist rhetoric of the New Right **can (and is) deployed** against any and all institutions they perceive as being against them. Allow me to return to Romer v. Evans. Again, this case arose out of an Amendment that resulted as a response to the protection of gay rights by democratically elected city councils. In his dissent, Scalia fulminated against the legislative success of a "geographically concentrated and politically powerful minority." Affirmative action is another classic example; conservatives are able to mine fury against courts who refuse to overturn the policies of democratically accountable officials. It seems to me that arguments against "judicial activism" are equally applicable against "elites" and "Congress" and "those bureaucrats do=n at the state capitol." Cultural reactionaries, angry at the disappearance of a past that in many cases never existed, can be a bottomless well of anger and resentment, and as the mobilization against state liberalization of abortion laws (as well as any number of other issues) makes clear. I simply don't believe that most conservative activists have a principled democratic theory that will cause them to react more positively to political losses that don't occur in the courts.

### A2 Perm Do Both – Avoids Politics

#### Links to politics – Only PRIOR court action solves

Garrett and Stutz, 2005

(Robert T. Garrett and Terrence Stutz, Dallas Morning News, "School finance now up to court Justices to decide if overhaul needed after bills fail in Legislature" lexis)

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

#### Perm forces the court to rule on a moot issue – this makes the decision meaningless and means the CP can’t shield from politics because congress is perceived as acting first

King 02

 (Matthew T. King, “COMMENT: TOWARDS A PRACTICAL CONVERGENCE: THE DYNAMIC USES OF JUDICIAL ADVICE IN UNITED STATES FEDERAL COURTS AND THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES,” Spring, 63 U. Pitt. L. Rev. 703)

The Court conceded that it would hear cases "when actual litigation brings to the court the question of the constitutionality of such legislation," but it will never simply test Congress's law-making savvy without an actual case or controversy. [n39](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n39) Harking back to Taney, the Court relied on the execution of a [\*710] timely, meaningful judgment as a primary factor in determining whether the case was legitimate. [n40](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n40) Over time, the Court has molded the cases and controversies requirement of Article III into a doctrine of justiciability. The central guideline and goal of this doctrine is the ability of a court to provide a meaningful decision. While courts reserve the right to declare cases non-justiciable for general reasons, time has honed this jurisprudence into three specific arenas: ripeness, mootness, and standing. 1. The Issue Must Be Ripe Ripeness means the case and facts at hand must be fully and actually developed. [n41](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n41) If not, no real case or controversy exists and the matter is to be dismissed. In his full summation of rules against advisory opinions, Justice Brandeis stated that the "Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.'" [n42](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n42) The next year, Anniston Manufacturing Co. called into question the constitutionality of numerous vital provisions of the 1936 Revenue Act. [n43](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n43) Only the cotton taxes and procedures for recovery of monies under the Agricultural Adjustment Act pertained to Anniston, yet it challenged the Act generally. [n44](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n44) In dismissing the case the Court specifically declined to rule on matters that had not yet created (and might never create) an aggrieved party. [n45](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n45) The Court bolstered Anniston with Electric Bond & Share Co. v. S.E.C. [n46](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n46) There, the Court refused to assess the validity of the entire Public Utility Holding Company Act when only three provisions applied to the companies bringing suit: [n47](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n47) "defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become [\*711] real." [n48](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n48) The Court would not decide the issues until they had ripened into a concrete set of facts and parties. [n49](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n49) 2. The Issue Must Not Be Moot Second is mootness, which requires that the case or facts have not yet run their course. [n50](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n50) A moot case is essentially the opposite of an unripe case. [n51](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n51) In United States v. Alaska Steamship Co., [n52](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n52) steamship companies contested the Interstate Commerce Commission's authority to require two different forms for bills of lading for domestic and export transportation. [n53](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n53) After the suit was filed, Congress passed an act amending federal power to regulate commerce and requiring a change in format for both types of bills. [n54](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n54) Under the new circumstances, the issue became moot. [n55](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n55) The Court described what a moot case is, and what it must do with one: Where by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot and should be treated accordingly. However convenient it might be to have decided the question of the power of the Commission to require the carries to comply with an order prescribing bills of lading, this court "is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power, or affect the duty, of the court in this regard." [n56](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294956963753&returnToKey=20_T11002820393&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.868317.8009671276#n56)

**Mootness means you don’t solve the net benefit and don’t shield – moot decisions carry no weight**

Kannan 98

(Phiip M., Member of the Tennessee Bar and corporate counsel, “Advisory Opinions by federal courts,” University of Richmond Law Review, May, 32 U. Rich. L. Rev. 769)

This definition of case and controversy includes the requirements that the court have subject-matter jurisdiction, [n11](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294957089457&returnToKey=20_T11002831293&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.451643.7521735614#n11) that  [\*772]  the issue be justiciable, [n12](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294957089457&returnToKey=20_T11002831293&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.451643.7521735614#n12) that the plaintiff have standing to raise the issue, [n13](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294957089457&returnToKey=20_T11002831293&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.451643.7521735614#n13) that the issue not be moot, [n14](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294957089457&returnToKey=20_T11002831293&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.451643.7521735614#n14) and that the court have authority to enter an enforceable remedy. [n15](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294957089457&returnToKey=20_T11002831293&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.451643.7521735614#n15) If any of these is absent, the pronouncement by a federal court would be non-binding and hence advisory. [n16](http://www.lexisnexis.com:80/lnacui2api/frame.do?reloadEntirePage=true&rand=1294957089457&returnToKey=20_T11002831293&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.451643.7521735614#n16)  [\*773]

### A2 K’s of the Courts

#### Their critique creates a divide between actual legal practices and theory that results in inaction – only normative engagement with the law can solve.

Balkin, ‘92

(Yale Law Professor, 90 Mich. L. Rev. 1966)

One of the most useful of Habermas' conceptions is the idea of a public sphere of discourse arising with the Enlightenment. 41 Through this public sphere the great issues of the day were debated in coffee houses, salons, literature, and eventually through the earliest forms of mass media. 42 An important consequence of the postmodern age is the destruction or at least transformation of this public sphere due to the rise of mass communication, which permits only unidirectional reception as opposed to the participatory dialogue upon which the traditional public sphere depended. 43 We might, by analogy, consider whether there has been a "public sphere" for legal discourse in this country. I would argue that such a public sphere, in which lawyers, judges, and the legal professoriat engaged in a more or less continual discourse on the growth, restatement, and reform of positive law, existed at least from the end of the nineteenth century. 44 This public sphere continues even today, although the growth of mass media as a method for distribution of legal information (Lexis, Westlaw, and computer satellite broadcasts of CLE programs) may also threaten its disintegration. But perhaps an equally important feature of the disintegration [\*1985] of this public sphere of legal discourse is the development of the special status of the legal academic. The legal academy has, for the past twenty-five years at least, become increasingly interdisciplinary. At the same time, it **has become increasingly distanced** from the work of actual lawyers and judges. Pierre Schlag's diatribes against normative legal scholarship 45 attack the retention of the form of the discourse of the public sphere after the sphere itself has dissolved. Schlag's attack is well taken with respect to certain types of law, although a remnant of a public sphere still remains with respect to other types, particularly local and commercial law (with the caveat that this public sphere has also been transformed by mediazation). Nevertheless, constitutional law is perhaps the best example of how a public sphere of legal discourse that once included practitioners, judges, and academics has largely disintegrated. In constitutional law, we clearly see the fragmentation of legal culture into an increasingly conservative body of judges and an academy that is quite liberal and whose work is increasingly irrelevant to the actual practice of constitutional adjudication. In my view, this is the best explanation of the puzzle I began this essay with. Postmodern legal culture is not necessarily a culture of lawyers and judges who embrace postmodern interpretive theories, but rather a legal culture mimetic of postmodernity**: fragmented, decentered, diffused.** As the judiciary becomes increasingly conservative, we witness increasing self-absorption within the legal academy and its increasing isolation from legal practice. Once again, these phenomena occur in differing degrees in different areas of the law, but they are especially pronounced with respect to constitutional scholarship. As a result, a new class of academics arises who have little or no interest in practical political activity, practical law reform, or even practical restatement of the law. Thus, the postmodern period is marked by the creation of a species of legal scholarship known as "legal theory." As a result of the rise of interdisciplinary scholarship, genres of scholarship defined by traditional practice areas (e.g., contracts, torts) are replaced by scholarly genres defined by theoretical allegiances (e.g., law and economics, feminist legal theory), which may cut across traditional doctrinal areas or simply be irrelevant to them. 46 As Sanford Levinson and I have described elsewhere, these developments create opportunities for fragmentation [\*1986] **not only between the legal academy and legal practitioners, but within the legal academy itself.** 47 The flip side of academic alienation from practitioners is academics' increasing lack of respect for the products of judges, legislatures, and administrative agencies. Academics increasingly recognize, or rather assume, the product of these bodies is written by clerks, politically biased, incompetently reasoned, or all three at once. At the same time, they attempt to redescribe law in terms of ideas that have no possible chance of being enacted into legal practice, at least absent a miraculous mass indoctrination of the judiciary. We thus witness the creation of a "shadow constitution" by progressive scholars, in which they declaim what the Constitution really means in the face of the increasing likelihood that it will never mean that in practice.

#### Their critique’s withdrawal from actual legal practice is a victory for conservative legalism – this ensures a return to the worst forms of constitutional interpretation.

Balkin, ‘92

(Yale Law Professor, 90 Mich. L. Rev. 1966)

I begin with a puzzle. It must certainly strike one as odd that the subject of postmodern constitutional law arises at a time when the actual arbiters of the Constitution -- the federal judiciary and in particular the Supreme Court of the United States -- appear to be more conservative than they have been for many years, and indeed, are likely to remain so for the foreseeable future. Postmodernism is often associated with what is new, innovative, and on the cutting edge of cultural development. Yet if we were to define the elements of a postmodern constitutional culture, it would be clear that one of the most central features of the present period -- if the expression "central" still has any remaining currency in an era of postmodernism -- is a judiciary which has no intention of being new or innovative in anything. Its intellectual leader, Justice Scalia, has even called for a constitutional jurisprudence of tradition, coupled with a return to an interpretive theory of plain meanings for statutes and original intention with respect to the Constitution. 1 To be sure, some might be tempted to explain away this phenomenon as an anomaly or an exception. The federal judiciary, they will say, is behind the times, much as the Lochner-era justices were. Eventually, when a different administration comes to power, and appoints new judges, the judiciary will catch up with the breathtaking developments we now discuss under the name of "postmodern" jurisprudence. Indeed, all about us we see, in the works of legal commentators and scholars, and even in the speeches of a few enlightened political leaders, the harbingers of a new dawn of constitutional postmodernism. [\*1967] The current climate of the federal judiciary is an aberration, a mistake which hinders the progress of a grand new postmodern day. Nevertheless, I think the attempt to see a postmodern constitutional jurisprudence in opposition to the increasingly conservative practice of constitutional law **is mistaken**. It is understandable why postmodern theorists might wish to identify postmodernism with the progressive, with the new that will eventually replace the old, and deny that title to the work of the Rehnquist Court and the rest of the Reagan judiciary. Yet to treat constitutional law as it is actually practiced by courts as foreign or exceptional to a postmodern era or as the target of an eventual postmodern revolution fails fully to grasp the meaning of postmodernism as a feature of current culture. Moreover, I think that such an attempted marginalization would be ironic coming from those who claim to adopt a postmodern (and especially poststructuralist) stance. Rather than seeing this political phenomenon as exceptional or aberrational to postmodern constitutional culture, I think we should see it as exemplary of that culture. Postmodern constitutionalism is the constitutionalism of reactionary judges surrounded by a liberal academy that despises or disregards them, and which is despised and disregarded in turn; postmodern constitutional culture is the culture in which the control of constitutional lawmaking apparatus is in the hands of the most conservative forces in mainstream life**, while constitutional law as practiced in the legal academy has cast itself adrift, whether out of desperation, disgust, or despair, and engaged itself in spinning gossamer webs of republicanism, deconstruction, dialogism, feminism,** or what have you. Postmodern legal culture **is the rout of progressive forces**, the increasing insularity, self-absorption, and fragmentation of progressive academic writing, and the increasing irrelevance of that writing to the positive law of the U.S. Constitution.

#### Their critique of legal theory presumes an outside to legal reasoning – it replicates the object of their criticism.

Heller, Stanford Law Professor, in ‘84

36 Stan. L. Rev. 127

The politics of Critical theory has centered on the analytic of delegitimation. An essential aspect of delegitimation has been exposing the constructed, artifactual status of the discursive categories of the dominant social order that were generally taken as natural and universal. Critical theory has sought to reveal the historically contingent roots of propositions that were privileged, or not reduced to prior material causes, by the orthodox discourse being criticized. For these purposes, the material theory of the subject is useful in transfiguring either the ontology of the natural subject or the privileged philosophical position accorded by existential philosophies to the immediate perception of phenomena. But the material theory of the subject is but one element of structuralist discourse. If Critical theory is to accept the existence of an underlying structure in order to establish its political program, **then it must face the consequences of structuralism's deconstruction** and the **possibility of contradiction** within its own presentation. One methodological problem within the logic of delegitimation concerns the position of the analyst: How does the analyst **step outside** his or her own conceptual categories to evaluate determining structures, if one's categories themselves were formed by these structures? Another problem concerns the audience: Delegitimation as a political strategy assumes people not only listen to critique, but also are sufficiently "rational" to be moved to action by the exposure of incoherence between practical reality and structural ideology. But if subjectivity is no more than the artifact of structure, where does this potential for recognition, appraisal, and choice arise? Delegitimation [\*171] seems to assume at once the validity of structural discourse and the reality of the phenomenological subject which structuralism denies.

#### Their critique of legal reasoning assumes the alternative is somehow more progressive – it could just as likely replicate authoritarianism.

McCormick, Yale University, June in ‘99

American Political Science Review, pp. 413 & 417

Arguments of this kind are not entirely new to twentieth-century legal theorizing. In the Anglo-American context, earlier in this century legal realism argued, with less metaphysical—or “postmetaphysical”—trappings, similar claims in a progressive agenda (see Ackerman 1983, 93—110). But perhaps no one in any century has elevated attention to indeterminacy, to gaps in statutory law, and exceptions in constitutional law to the level of high theory as strikingly as did the Weimar reactionary lawyer and eventual Nazi, Carl Schmitt.3 The example of Schmitt suggests that the ramifications of celebrating legal gaps and exceptions and of focusing extensively on indeterminacy **are not necessarily liberating**. In this regard, the recent work of JUrgen Habermas (1996) seeks to formulate an answer to the conundrum of legal indeterminacy without resorting to arguments used by authoritarian theorists. Continues Thus, the similarities of the Schmittian and CLS critiques, accompanied by a lack of adequate policy prescription on the part of CLS, despite a vast differ- ence in political intentions**, do not rule out results closer to those promoted by Schmitt than anything that could be called progressive.** In fact, **they may invite them**. Having undermined the imperfect but semiobjective formal standards of the liberal rule of law, and reluctant to employ criteria discredited as “metanarratives,” which might distinguish healthy expressions of social particularity from pathological ones, what guarantees that the CLS strategy will remain emancipatory? Schmitt rejected normative grounds to distinguish his concretely democratic, discretionary-presidential state from what he claimed were the more dishonest and “dangerous” kinds of concrete regulation and adjudication that prevailed in the liberal welfare state. **The results of Schmitt’s subsequent political endorsements are self-explanatory**. Schmitt sacrificed the law to the state; CLS runs the risk of sacrificing it to an undifferentiated and perhaps naive notion of society. CLS would scoff at Schmitt’s belief that an executive-state can be in any way neutral, much as it derides the very notion of legal neutrality. Schmitt would argue, how- ever, that CLS, while quite attuned to the presence of illegitimate socioeconomic interests embedded in the state, has no means by which to evaluate different kinds of groups within society and their expanded influence on the law once important legal standards have been removed. Weimar and recent trends around the world remind us that **all social movements are not necessarily benign,** especially once they have unqualified access to legal apparatuses.