# Heller Aff – TOC

## Notes

### Articles

### Outline

#### To read

* This was an unbroken aff that we wrote for TOC
* It uses court action to generate advantages by reversing a past decision

#### Privacy Advantage

* District v Heller massively expanded 2nd Amendment power
* Gun ownership justified eroding 4th amendment protections
* Justified stop and frisk and increased violations of privacy + racism
* Spills over to justify expanded executive powers and surveillance
* Taking away 2nd Amendment justification rebuilds 4th amendment in lower courts

#### 3D Printing Advantage

* States will restrict access to 3D printers now
* Blocked by 2nd Amendment protection of 3D printed guns
* 3D printers collapse the economy, cause war, and increase violence

#### Gun Violence Advantage

* DC and Chicago ban was effective

#### Originalism

#### Frontierism

#### Separation of Powers Add-on?

* District v Heller was unprecedented extension of judicial power
* Originalism interp. bad?

#### Elections?

## 1AC – TOC

### Advantage – 4th Amendment

#### Advantage One is the 4th Amendment.

#### The Supreme Court's interpretation of the 2nd Amendment in District v. Heller rationalized increased police power to perform searches, lowered standards for warrants, and decimated legislation against abuse of police powers

Dery 9 [George M. Dery III (Professor, California State University Fullerton, Division of Politics, Administration, and Justice; former Deputy District Attorney, Los Angeles, California), "Unintended Consequences: The Supreme Court’ s Interpretation of the Second Amendment in District of Columbia V. Heller Could Water-Down Fourth Amendment Rights," University of Pennsylvania Journal of Law and Social Change, 2009] AZ

Thus, the prospect of gun violence motivated the Court in Long to expand Terry in two significant respects. First, the Court extended the scope of the Teny frisk beyond a search of a suspect's person to include what it termed an "area search" of a car's passenger compartment.139 Second, the Court in Long altered the requisite police justification for a frisk by changing the focus of the threat to the police officer. While Terry required that an officer reasonably suspect that a person is "armed and presently dangerous," the Court in Long only mandated that the officer believe "the suspect is dangerous and the suspect may gain immediate control of weapons."140 The potential danger of weapons, and perhaps the danger of guns in particular, has caused not only an evolution of the original boundaries of the Teny frisk, but also, a shift in its underlying rationale. Moreover, perhaps the greatest impact of guns on the expansion of Terry occurred in Pennsylvania v. Mimms.141 In Mimms, police officers lawfully stopped Harry Mimms to issue him a citation for driving with an expired license plate.142 One officer approached and asked Mimms to step out of the car.143 When Mimms complied, the officer noticed a "large bulge" under the driver's jacket and the resulting frisk revealed a revolver.144 The officer had ordered Mimms out of his car even though he "did not have even the slightest hint" that he "might have a gun."145 Indeed, the officer freely admitted he had "no reason to suspect foul play from the particular driver at the time of the stop" and instead just had the practice of ordering all drivers out of the car "as a matter of course. "146 The Court, in a per curiam opinion, focused on whether the "incremental intrusion" resulting from the request to get out of the car once the vehicle was lawfully stopped was permissible under the Fourth Amendment.147 Balancing the interests to determine the reasonableness of the officer's order to step out of the vehicle, the Court first weighed the government's needs in having drivers exit their vehicles.148 The State urged an officer safety rationale and contended that "establishing a faceto-face confrontation diminishe[d] the possibility, otherwise substantial, that the driver can make unobserved movements; this, in tum, reduces the likelihood that the officer will be the victim of an assault."149 The Court readily agreed, stating, "[w]e think it too plain for argument that the State's proffered justification-the safety ofthe officer-is both legitimate and weighty ."150 To establish the need to protect officers approaching vehicles, the Court again utilized the same study on police shootings that it had relied upon in both Adams and Long.151 The Court feared for police safety even when issuing traffic summons because, it argued, "a significant percentage of murders of police officers occurs when the officers are making traffic stops." 15 When weighed against this "legitimate" government concern for officer safety, the driver's interest in avoiding the "inconvenience" of stepping out of the car seemed "de minimis."153 Therefore, the Court in Mimms held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle" without violating the Fourth Amendment.

#### An expansion of an individual right to bear arms eviscerates 4th Amendment protections by bolstering the State's legal interest in preserving police safety

Dery 9 [George M. Dery III (Professor, California State University Fullerton, Division of Politics, Administration, and Justice; former Deputy District Attorney, Los Angeles, California), "Unintended Consequences: The Supreme Court’ s Interpretation of the Second Amendment in District of Columbia V. Heller Could Water-Down Fourth Amendment Rights," University of Pennsylvania Journal of Law and Social Change, 2009] AZ

Be careful what you wish for, because you just might get it. For years, there has been a vehement call for recognition of the Second Amendment as an individual right rather than as a collective right premised on the duty to field militias.315 In Heller, the Supreme Court finally resolved the issue, ruling definitively that the "Second Amendment conferred an individual right to keep and bear arms."316 In order to remove any doubt, the Court issued a thirty-six page opinion, meticulously analyzing the text of the Amendment 17 and comprehensively reviewing the history of the individual right to keep and bear arms dating back to the time ofthe Stuart kings.318 Yet, as discussed above, expanding gun rights may consequently impede individual rights that are arguably even more central to liberty: the Fourth Amendment's freedom from government intrusions into individual privacy and personal security. In supporting the interpretation later adopted by the Supreme Court, Judge Kozinski described the Second Amendment not only as an individual right, but also as a "doomsday provision" to use in "those exceptionally rare circumstances where all other rights have failed."319 In other words, he believed that the Framers recognized that the individual's right to keep and bear arms was essential to protect the rights conferred by the Constitution. Yet, a situation necessitating armed rebellion against our own government in order to ensure the enforcement of the rights guaranteed by the Constitution is difficult to fathom. A much more likely and imminent threat to individual liberty is the slow erosion of rights, including and especially the narrowing of Fourth Amendment protections, as outlined throughout this article. Fearing the daily dangers that officers face from guns, the Court is likely to continue to support broader law enforcement searching powers. In this incremental fashion, the Fourth Amendment is weakened by "thousands upon thousands of petty indignities."320 Police are, of course, endangered by a variety of weapons besides firearms. Even a partial listing offered by the Court over a century a~o sounds ominous: "a dirk, a knife, a sword cane, a slung shot, or a club." 21 These weapons certainly pale in comparison to the various weapons used today. Thus, guns are not the only threat the Court considers when it crafts rules guarding officer safety. Still, with its danger at a distance, its convenience, its ease of use, and its ubiquity, the gun must play a major role in the Justices' decision-making. This is borne out by the Court's own language. The Court in Terry refused to spare every citizen on the street 3from the "indignity"322 of being frisked, proclaiming that "[t]here is no reason why an officer ... should have to ask one question and take the risk that the answer might be a bullet."323 In sanctioning police intrusions as varied as grabbing a gun from a waistband,324 frisking the passenger compartment of a vehicle for weapons,325 ordering out occupants of vehicles,326 and searching incident to arrest,327 the Court voiced a special concern about "shootings." The existence of a "shot gun and a pistol in a flush tank" prompted the Court to create the hot pursuit exception for police intrusions into the home,328 and a .22 caliber handgun steered the Court to uphold the seizure and handcuffing of a person in a house searched pursuant to a warrant.329 Indeed, gun violence was such a focal point for the Court that it limited Fourth Amendment rights four times on the basis of a single scientific study of police officer shootings.330 In Heller, the Court made the powerful declaration that the Second Amendment is an individual right that "takes certain policy choices off the table."331 The government's options to proactively address the existence, proliferation, and use of guns will inevitably be restricted, and thus it must rely more heavily on a reactive approach. The expansion of gun rights will pressure the Court to further limit Fourth Amendment freedoms against search and seizure in order to protect the lives of police officers. Thus, its promotion of the right to possess a gun will cause the Court to further fear the bullet.

#### Expanding police power causes rampant racism, mass incarceration, violence against black communities, and creates a culture of fear for minorities

Robertson 13 [Cassandra Chaney & Ray V. Robertson, "Racism and Police Brutality in America," JOURNAL OF AFRICAN AMERICAN STUDIES, December 2013] AZ

Racism and Discrimination According to Marger (2012), “racism is an ideology, or belief system, designed to justify and rationalize racial and ethnic inequality” (p. 25) and “discrimination, most basically, is behavior aimed at denying members of particular ethnic groups’ equal access to societal rewards” (p. 57). Defining both of these concepts from the onset is important for they provide the lens through which our focus on the racist and discriminatory practices of law enforcement can occur. Since the time that Africans were forcibly brought to America, they have been the victims of racist and discriminatory practices that have been spurred and/or substantiated by those who create and enforce the law. For example, The Watts Riots of 1965, the widespread assaults against Blacks in Harlem during the 1920s (King 2011), law enforcement violence against Black women (i.e., Malaika Brooks, Jaisha Akins, Frankie Perkins, Dr. Mae Jemison, Linda Billups, Clementine Applewhite) and other ethnic women of color (Ritchie 2006), the beating of Rodney King, and the deaths of Amadou Diallo in the 1990s and Trayvon Martin more recently are just a few public examples of the historical and contemporaneous ways in which Blacks in America have been assaulted by members of the police system (King 2011; Loyd 2012; Murch 2012; Rafail et al. 2012). In Punishing Race (2011), law professor Michael Tonry’s research findings point to the fact that Whites tend to excuse police brutality against Blacks because of the racial animus that they hold against Blacks. Thus, to Whites, Blacks are viewed as deserving of harsh treatment in the criminal justice system (Peffley and Hurwitz 2013). At first glance, such an assertion may seem to be unfathomable, but that there is an extensive body of literature which suggests that Black males are viewed as the “prototypical criminal,” and this notion is buttressed in the media, by the general public, and via disparate sentencing outcomes (Blair et al. 2004; Eberhardt et al. 2006; Gabiddon 2010; Maddox and Gray 2004; Oliver and Fonash 2002; Staples 2011). For instance, Blair et al. (2004) revealed that Black males with more Afrocentric features (e.g., dark skin, broad noses, full lips) may receive longer sentences than Blacks with less Afrocentric features, i.e., lighter skin and straighter hair (Eberhardt et al. 2006). Shaun Gabiddon in Criminological Theories on Race and Crime (2010) discussed the concept of “Negrophobia” which was more extensively examined by Armour (1997). Negrophobia can be surmised as an irrational fear of Blacks, which includes a fear of being victimized by Black, that can result in Whites shooting or harming an AfricanAmerican based on criminal/racial stereotypes (Armour 1997). The aforementioned racialized stereotypical assumptions can be deleterious because they can be used by Whites to justify shooting a Black person on the slightest of pretense (Gabiddon 2010). Finally, African-American males represent a group that has been much maligned in the larger society (Tonry 2011). Further, as victims of the burgeoning prison industrial complex, mass incarceration, and enduring racism, the barriers to truly independent Black male agency are ubiquitous and firmly entrenched (Alexander 2010; Chaney 2009; Baker 1996; Blackmon 2008; Dottolo and Stewart 2008; Karenga 2010; Martin et al. 2001; Smith and Hattery 2009). Thus, racism and discrimination heightens the psychological distress experienced by Blacks (Robertson 2011; Pieterse et al. 2012), as well as their decreased mortality in the USA (Muennig and Murphy 2011).

#### Diluted 4th Amendment protections massively expand government power, enabling mass surveillance – that chills democratic deliberation and kills privacy

Hafetz 13 [Jonathan Hafetz, "How NSA surveillance endangers the Fourth Amendment," National Constitution Center, 8/13/2013] AZ

The New York Times has reported that the National Security Agency (NSA) is combing through vast amounts of Americans’ email and text communications into and out of the country. This latest revelation—part of the continuing fallout from the disclosures of government documents by former NSA contractor Edward J. Snowden—underscores the frayed fabric of the Constitution’s Fourth Amendment and the threat to the values it protects. We already knew that the government was sweeping up international communications of American citizens under the FISA Amendments Act of 2008 (FAA). While the FAA authorizes the government to target foreigners abroad, it also permits the government to collect Americans’ communications with those foreign targets, as well as to retain and disseminate that information to other government agencies and foreign governments. The Times story, however, makes clear that the NSA is also acquiring—without a warrant—the communications of any foreigner “about the target,” once a target has been identified, thus sweeping in an even wider range of communications by U.S. citizens than previously believed. The Fourth Amendment provides a bulwark against this type of dragnet surveillance. Before searching Americans’ private communications, the Fourth Amendment requires that the government demonstrate probable cause or individualized suspicion. The Fourth Amendment also interposes an independent judiciary between the government and its citizenry—requiring that the government obtain a warrant by making this individualized showing before a federal judge. Review by a neutral and independent decisionmaker is crucial to the Madisonian system of checks and balances, designed to prevent government overreaching and safeguard individual freedoms. The NSA surveillance programs undermine these protections, threatening to render them a dead letter for all “foreign intelligence information”—a category broadly defined to include information not only about terrorism, but also about intelligence activities, national defense, and even the “foreign affairs” of the United States. Further, given the lax standards the NSA uses to determine whether prospective surveillance targets are foreigners abroad, errors are inevitable. This means that the NSA is likely collecting the content of purely domestic communications as well. In 1978, Congress established a special court—known as the Foreign Intelligence Surveillance Court (FISC)—to review requests for national security surveillance. But, at best, the FISC is merely providing review of the overall surveillance programs conducted under the FAA, and not individual requests for information. Moreover, no FISC ruling explaining its legal analysis of the FAA or “about the target” searches of Americans’ cross-border communications has been disclosed to the public. The secrecy that shrouds the FISC’s decisions heightens the risk to the Fourth Amendment, as even the reasoning used to justify massive government surveillance remains secret. The impact of NSA surveillance is deep and far-reaching. Vacuuming up Americans’ communications undermines basic principles of privacy. It also chills the communications and discourse essential to a democratic society and fundamentally alters the citizenry’s relation with its government. The NSA’s widespread, suspicionless surveillance of Americans’ private communications will not only impact the work of journalists, lawyers, and others who frequently communicate with people abroad. It will also affect the conduct of ordinary citizens, now fearful of visiting a controversial website or discussing a particular topic via email. Over time, the vibrant exchange of ideas essential to democracy will diminish and trust in the government will erode. At the same time, the government will be emboldened to justify further incursions on individual liberty in name of protecting the United States from terrorism or other threats.

#### **A strong 4th Amendment would ensure privacy against law enforcement interests – curtails surveillance and protects liberty**

Raysman and Brown, June 9, 2015

Richard Raysman is a partner at Holland & Knight and Peter Brown is the principal at Peter Brown & Associates; “How Has Digital Ubiquity Affected Fourth Amendment Law?”; New York Law Journal; http://www.newyorklawjournal.com/id=1202728535476/How-Has-Digital-Ubiquity-Affected-Fourth-Amendment-Law#ixzz3eVZI52AM

[http://www.newyorklawjournal.com/id=1202728535476/How-Has-Digital-Ubiquity-Affected-Fourth-Amendment-Law#ixzz3eVYB5zo9](http://www.newyorklawjournal.com/id%3D1202728535476/How-Has-Digital-Ubiquity-Affected-Fourth-Amendment-Law#ixzz3eVYB5zo9) – JRS)

Conclusion As Riley and its progeny epitomize, Fourth Amendment jurisprudence has been permanently altered as a result of the proliferation of data storage devices, namely smart phones and PCs. After all, some of the most forceful language from the majority opinion in Riley elucidates why a search of a purse versus an examination of a hard drive is an irreconcilable dissimilarity. The implications for privacy interests and law enforcement prerogatives are now continuously subject to rapid revision. Some exceptions to the Fourth Amendment warrant requirement remain unchecked, while others appear anachronistic. The exceptions contingent on the consent or prior search of a device remain largely intact, as whether by choice or not, one's privacy interests in personal information, no matter how damning or testimonial, is diminished once it has been divulged to someone other than law enforcement. However, even when such interest is weakened, the breadth and depth of information that can be gleaned from a cursory glance at contacts, messages, files, and metadata, even during an ostensibly targeted search as in Lichtenberger, warrants a reassessment of law enforcement rights to this information, even after it is no longer technically private. What is most apparent is that privacy interests associated with these devices have been reappraised, and subsequently heightened. As the Chief Justice opined in Riley, modern cell phones are hardly "just another technological convenience," and in fact could contain and reveal "the privacies of life." Accordingly, such gateways to the most intimate components of one's life must be evaluated with a greater emphasis on retaining that privacy, even at the expense of the ability of law enforcement to combat crime. Precisely how much such ability will be constricted remains largely uncertain, but the trend heretofore has favored the accused, even in milieus in which governmental interests are reiterated to be at their apogee.

### Advantage – 3D Printing

#### Advantage Two is 3D Printing.

#### States like California are generating political momentum to regulate 3D printers – registration, licensing, and stricter regulations

Neal 13 [Ryan Neal (staff writer), "3D Printer Regulation Proposed: Democrats Fear Criminals Printing Guns," International Business Times, 5/13/2013] AZ

In the wake of the [first fully-functional 3-D printed gun](http://www.ibtimes.com/liberator-worlds-first-3d-printed-gun-successfully-fired-defense-distributeds-blueprints-now-free), more lawmakers are proposing regulations to prevent these weapons from reaching dangerous hands. Sen. Leland Yee (D-Calif.) went a step beyond other proposals by calling for laws that would track the 3-D printers themselves as well as people with access to them, out of concern that someone who uses the technology could create a gun. While Yee didn’t have specific details of how the legislation on 3-D printers would work, he stated that background checks, mandatory serial numbers and even a registration process could all be included. “Terrorists can make these guns and do some horrible things to an individual and then walk away scot-free, and that is something that is really dangerous,” Yee [told CBS Sacramento](http://sacramento.cbslocal.com/2013/05/08/sen-leland-yee-proposes-regulations-on-3-d-printers-after-gun-test/). Yee joins two other Democrats, Rep. Steve Israel (D-NY) and Sen. Chuck Schumer (D-NY), in leading a charge to regulate 3-D-printed guns. Israel and Schumer [called for a renewal](http://www.dailymail.co.uk/news/article-2320264/3D-printer-gun-Texas-anarchist-group-fires-worlds-pistol-entirely-plastic.html) of the Undetectable Firearms Act, which expires this year, and to add new language that bans plastic guns created with 3-D printing.

#### A ban on 3D printers effectively reduces criminal activity and prevents unrestricted use for personal ends – unfortunately, Heller's ruling inhibits substantive regulation of 3D printers

McCutcheon 14 [Caitlyn R. McCutcheon (J.D., University of Illinois College of Law, 2014), "Deeper than a Paper Cut: Is It Possible to Regulate Threedimensionally Printed Weapons or Will Federal Gun Laws Be Obsolete Before The Ink Has Dried?" Journal of Law, Technology, and Policy, 2014] AZ

A ban on the private ownership of 3-D printers would effectively close this avenue of firearm manufacture and theoretically eliminate the many security threats posed by 3- D printed firearms. 1. A Short-Sighted Reaction to an Unstoppable Problem Implementing a ban on 3-D printers would not be the first time that the U.S. government has prohibited user technology designed to circumvent the law.147 Currently, the main deterrent to possessing a 3-D printer is the cost of ownership; essentially, the price indirectly regulates the number of 3-D printed weapons. 148 The 3-D printing industry’s push to offer affordable printers into the market, though, could eventually allow federally-prohibited persons to obtain in-home 3-D printers and manufacture undocumented and untraceable plastic firearms. Although the majority of consumers do not need a 3-D printer in their homes,149 there are a number of concerns associated with prohibiting the private ownership of 3-D printers. The main worry is that at this time, given the online release of the Liberator’s files, any governmental action would only deter rather than prevent the proliferation of 3-D printed firearms.150 As a result, a ban on 3-D printer ownership may be a delayed and stifling measure. 151 It is also unclear whether prohibiting ownership of this technology, as a tool to create firearms, interferes with the right to build selfdefense weapons.152 A regulation of this nature may also sacrifice individual innovation and deny law-abiding citizens the many benefits of desktop 3-D printing.153 In subjected to the heightened scrutiny applied to the Second Amendment. A showing that a person may obtain the gun by other means (buying a manufactured gun from someone else), without a showing of an important state interest, would not be narrowly tailored enough to survive review. In fact, the ability to make a personalized gun that is not available on the market for oneself may render the countervailing governmental interest less salient. A ban on manufacturing one’s own firearms, not for sale, but for personal consumption would hardly be a “longstanding” prohibition, as defined in the dicta in Heller.82 Since the time of the American Revolution, gun-owners have created their own firearms and ammunition.83 Further, the right is heightened because people can now customize their weapons to meet specific self-defense needs. Peter Jensen-Haxel derives from Heller the principle that people have “a strong interest in deciding the characteristics of the defensive device in which to put faith.”84 Specifically, “[r]ather than accepting prepackaged attribute bundles determined by marketability, personal design allows someone to choose without limitation the characteristics he or she believes are best suited to self-defense.”85 People can pick different feature that are “most reliable” for their needs.86 For example, one custom-design a gun that strikes the right balance between a longer barrel (more accurate) and shorter barrel (lighter). 3D printing of guns may even “provide the physically disabled with meaningful access to self-defense.”87 Customizing a firearm for a person with a disability may in fact be a constitutionally-protected reasonable accommodation. Forcing a person to purchase a pre-fabricated gun on the market that fails to meet a person’s need would not be a viable alternative and may fail the narrow tailoring necessary to survive constitutional scrutiny.

#### The Heller ruling prevents effective regulation of 3D printers – they're seen as a necessary means to make arms

Blackman 14 [Josh Blackman (Assistant Professor, South Texas College of Law), "The 1st Amendment, 2nd Amendment, and 3d Printed Guns," Tennessee Law Review, 2014] AZ

Supporting the right to keep and bear arms, and the “corresponding right” to acquire arms, is the right to make arms. The right to acquire arms must entail, at the minimum, the creation of arms somewhere in the supply chain. The base of the Second Amendment pyramid, before selling, or bearing, must be the creation of guns. If the government permitted the owning of firearms, and the acquisition of firearms, but prohibited the manufacturing or importation of firearms, the vitality of the Second Amendment would implode fairly quickly. In light of Heller, a personal right to make one’s own arms for individual use has a much stronger constitutional pedigree than the right to buy and sell arms from others, especially in the commercial context. There are no “longstanding prohibitions” on making a gun for oneself. Americans have been making their own guns since the founding of the Republic.79 This practice, deeply rooted in our nation’s history and tradition, is fairly well-established.80 Today, it is legal to make a gun for personal use, with very limited exceptions.81 In contrast, the sale of firearms has been burdened much more heavily than the right to make firearms. The right to make arms can be viewed as constitutional guarantee to provide the means necessary to keep and bear arms. The creation of guns, by 3D printing, or other means, directly serves the right protected in Heller. A ban on 3D printing would be subjected to the heightened scrutiny applied to the Second Amendment. A showing that a person may obtain the gun by other means (buying a manufactured gun from someone else), without a showing of an important state interest, would not be narrowly tailored enough to survive review. In fact, the ability to make a personalized gun that is not available on the market for oneself may render the countervailing governmental interest less salient. A ban on manufacturing one’s own firearms, not for sale, but for personal consumption would hardly be a “longstanding” prohibition, as defined in the dicta in Heller.82 Since the time of the American Revolution, gun-owners have created their own firearms and ammunition.83 Further, the right is heightened because people can now customize their weapons to meet specific self-defense needs. Peter Jensen-Haxel derives from Heller the principle that people have “a strong interest in deciding the characteristics of the defensive device in which to put faith.”84 Specifically, “[r]ather than accepting prepackaged attribute bundles determined by marketability, personal design allows someone to choose without limitation the characteristics he or she believes are best suited to self-defense.”85 People can pick different feature that are “most reliable” for their needs.86 For example, one custom-design a gun that strikes the right balance between a longer barrel (more accurate) and shorter barrel (lighter). 3D printing of guns may even “provide the physically disabled with meaningful access to self-defense.”87 Customizing a firearm for a person with a disability may in fact be a constitutionally-protected reasonable accommodation. Forcing a person to purchase a pre-fabricated gun on the market that fails to meet a person’s need would not be a viable alternative and may fail the narrow tailoring necessary to survive constitutional scrutiny.

#### 3D printing expands undetectable counterfeiting – that crushes intellectual property and increases inflation

Greenbaum 15 [Josh Greenbaum (Principal at Enterprise Applications Consulting), "Illegal, Immoral, and Here to Stay: Counterfeiting and the 3D Printing Revolution," Wired Magazine, 2015] AZ

IF YOU’RE LOOKING for a way to gauge how the 3D printing market will evolve, look no further than the dawn of two other revolutionizing technologies – the desktop printing market and the VHS standard. And be prepared for a decidedly off-color story. While many of us have fond memories of watching a favorite movie when it first came out on VHS, or admiring the first three-color party invitation we printed on a laser printer, the fact remains that innocent pursuits were not the sole reason either of these technologies took off. And we shouldn’t expect 3D printing to be any different. The reality is that in both cases, the illegal, illicit, and otherwise unwholesome played a major role in the growth of both the VHS and desktop printing markets. While it’s clear that most applications of these technologies were G-rated, there were plenty that weren’t. And when it comes to 3D printing, that unwholesome and downright illegal activity called counterfeiting is likely to become one of the major reasons why 3D printing will be a major growth industry in the coming years. To be sure, as with all technologies, from the Paleolithic stone ax to 20th century nuclear fission, there are applications for good that hopefully outweigh the not-so-good. And 3D printing will have its fair share: from the manufacture of prosthetics and spare parts to on-demand organs, foods, and your child’s next toy, the 3D printing revolution will by and large have a positive impact on society as a whole. But the threat of a major surge in counterfeiting based on the availability of relatively cheap 3D printers, increasingly sophisticated printing materials, and a never-ending supply of CAD designs available on the Internet will fuel an enormous black market in counterfeit parts. And the potential impact of 3D printers for counterfeiting just keeps on growing: A recent report by Gartner Group speculates that intellectual property loss due to 3D printer counterfeiting could total $100 billion by 2018. What is it about 3D printing that will make it, in the words of Scientific American, “the counterfeiter’s best friend”? Just like the desktop printing industry of the 1980s, it’s that perfect storm of three important factors: the availability of a breakthrough device at a consumer price, the availability of the raw materials needed to copy something valuable, and the right software for turning the new technology into a counterfeiter’s “best friend.” 1985 was the year the perfect storm hit the desktop publishing market. The first widely available laser printer, the HP Laserjet, hit the market priced at the high end of the consumer market at about $3,000. This printer could handle pretty much any kind of paper, and print rapidly and accurately. At the same time, Aldus Pagemaker, the first widely available desktop publishing package, also hit the market, similarly priced at the high-end of the consumer market at under $700. Hello, forged credentials, certificates, permits, bills of lading, and eventually, money. Voila, another friend of the counterfeiter was born. The illicit side of the VHS market had a slightly different trajectory. In the mid-1970s, the Betamax video standard arrived, taking advantage of the ready availability of VCRs priced in the $1,200 range. In 1977, Sony’s Betamax was challenged by upstart JVC’s VHS standard, with a couple of twists. Twist number one was the VHS could record a full-length movie, while Betamax maxed out at an hour. Twist number two was that while Sony resisted licensing Betamax for use by the pornography industry, JVC had no such qualms. Within 10 years, VHS ruled the market, and the world of entertainment has never been the same. 2014 was the years 1977 or 1985 in the world of 3D printing. Hobbyist 3D printers started showing up priced at less than $600, though a printer capable of handling the demands of the counterfeiter was still priced in the $2,500 range. And while the printers weren’t exactly free, a wide range of freeware, too numerous to mention here, showed up to allow would-be makers and counterfeiters an incredible pallet of designs, drivers, and controllers. It’s true that the materials needed to do the most sophisticated counterfeits are not as widely available as the market will eventually require, but a wide range of thermoplastics, advanced polymers, and other materials are now available to assist the counterfeiter. And it’s a given that, as the printers become more sophisticated, and the consumers become more demanding, that list will only grow over time. Where does it all end?

#### Counterfeit money causes inflation by increasing the supply of money, which tanks growth—investor perception negates stimulus benefits.

Volcker 11 — Paul A. Volcker, served as Chairman of the Federal Reserve from 1979 to 1987, worked for the federal government for over 30 years serving under John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, Jimmy Carter, and Ronald Reagan, 2011 (“A Little Inflation Can Be a Dangerous Thing,” *New York Times*, September 18th, Available Online at http://www.nytimes.com/2011/09/19/opinion/a-little-inflation-can-be-a-dangerous-thing.html?\_r=1&pagewanted=print, Accessed 06-30-2012)

So now we are beginning to hear murmurings about the possible invigorating effects of “just a little inflation.” Perhaps 4 or 5 percent a year would be just the thing to deal with the overhang of debt and encourage the “animal spirits” of business, or so the argument goes.

It’s not yet a full-throated chorus. But remarkably, at least one member of the Fed’s policy making committee recently departed from the price-stability script.

The siren song is both alluring and predictable. Economic circumstances and the limitations on orthodox policies are indeed frustrating. After all, if 1 or 2 percent inflation is O.K. and has not raised inflationary expectations — as the Fed and most central banks believe — why not 3 or 4 or even more? Let’s try to get business to jump the gun and invest now in the expectation of higher prices later, and raise housing prices (presumably commodities and gold, too) and maybe wages will follow. If the dollar is weakened, that’s a good thing; it might even help close the trade deficit. And of course, as soon as the economy expands sufficiently, we will promptly return to price stability.

Well, good luck.

Some mathematical models spawned in academic seminars might support this scenario. But all of our economic history says it won’t work that way. I thought we learned that lesson in the 1970s. That’s when the word stagflation was invented to describe a truly ugly combination of rising inflation and stunted growth. My point is not that we are on the edge today of serious inflation, which is unlikely if the Fed remains vigilant. Rather, the danger is that if, in desperation, we turn to deliberately seeking inflation to solve real problems — our economic imbalances, sluggish productivity, and excessive leverage — we would soon find that a little inflation doesn’t work. Then the instinct will be to do a little more — a seemingly temporary and “reasonable” 4 percent becomes 5, and then 6 and so on. What we know, or should know, from the past is that once inflation becomes anticipated and ingrained — as it eventually would — then the stimulating effects are lost. Once an independent central bank does not simply tolerate a low level of inflation as consistent with “stability,” but invokes inflation as a policy, it becomes very difficult to eliminate. It is precisely the common experience with this inflation dynamic that has led central banks around the world to place prime importance on price stability. They do so not at the expense of a strong productive economy. They do it because experience confirms that price stability — and the expectation of that stability — is a key element in keeping interest rates low and sustaining a strong, expanding, fully employed economy. At a time when foreign countries own trillions of our dollars, when we are dependent on borrowing still more abroad, and when the whole world counts on the dollar’s maintaining its purchasing power, taking on the risks of deliberately promoting inflation would be simply irresponsible.

#### IP rights promote growth – innovation and competition

Maskus 2k [Keith E. Maskus (Professor of Economics @ University of Colorado, Boulder), "INTELLECTUAL PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT," 2000] AZ

Economists recognize several channels through which IPRS could stimulate economic development and growth. These processes are interdependent and it is appropriate to adopt a comprehensive view of the incentives associated with intellectual property protection. Intellectual property rights could play a significant role in encouraging innovation, product development, and technical change. Developing countries tend to have IPRS systems that favor information diffusion through low-cost imitation of foreign products and technologies. This policy stance suggests that prospects for domestic invention and innovation are insufficiently developed to warrant protection. However, inadequate IPRS could stifle technical change even at low levels of economic development. This is because much invention and product innovation are aimed at local markets and could benefit from domestic protection of patents, utility models, and trade secrets. In the vast majority of cases, invention involves minor adaptations of existing technologies and products. The cumulative impacts of these small inventions can be critical for growth in knowledge and productive activity. To become competitive, enterprises in developing countries typically must adopt new management and organizational systems and techniques for quality control, which can markedly raise productivity. Such investments are costly but tend to have high social returns because they are crucial for raising productivity toward global norms (Evenson and Westphal, 1995). They are more likely to be undertaken in an environment where risks of unfair competition and trademark infringement are small. Moreover, IPRS could help reward creativity and risk-taking among new enterprises and entrepreneurs. Countries that retain weak standards could remain dependent on dynamically inefficient firms that rely on counterfeiting and imitation. An example of this process is that protection for utility models has been shown to improve productivity in countries with lagging technologies. In Brazil, utility models helped domestic producers gain a significant share of the farm-machinery market by encouraging adaptation of foreign technologies to local conditions (Dahab, 1986). Utility models in the Philippines encouraged successful adaptive invention of rice threshers (Mikkelsen, 1984). Maskus and McDaniel (1999) considered how the Japanese patent system (JPS) affected postwar Japanese technical progress, as measured by increases in total factor productivity (TFP). The JPS in place over the estimation period 1960-1993 evidently was designed to encourage incremental and adaptive innovation and diffusion of technical knowledge into the economy. Mechanisms for promoting these processes included early disclosure of, and opposition proceedings to, patent applications, an extensive system of utility models, and narrow claim requirements in patent applications. The authors found that this system encouraged large numbers of utility model applications for incremental inventions, which were based in part on laid-open prior applications for invention patents. In turn, utility models had a strongly positive impact on real TFP growth over the period, while patent applications had a weaker but still positive effect. They concluded that utility models were an important source of technical change and information diffusion in Japan, while patent applications provided both a direct and an indirect stimulus to productivity. It is interesting to note that as Japan has become a global leader in technology creation, its patent system has shifted away from encouraging diffusion and more toward protecting fundamental technologies. Recent studies suggest that innovation through product development and entry of new firms is motivated in part by trademark protection, even in poor nations. A survey of trademark use in Lebanon provided evidence on this point (Maskus, 1997). Lebanon has an extensive set of intellectual-property laws but they are weakly enforced. Firms in the apparel industry claimed to have a strong interest in designing apparel of high quality and style aimed at Middle Eastern markets. Such efforts have been frustrated by trademark infringement in Lebanon and in neighboring countries. This problem was yet larger in the food products sector, where legitimate firms suffered from rivals passing off goods under their trademarks. The problem has seriously hampered attempts to build markets for Lebanese foods in the Middle East and elsewhere. Related difficulties plagued innovative producers in the cosmetics, pharmaceuticals, and metal products sectors. Thus, local product development and establishment of new firms have been stifled by trademark infringement targeted largely at domestic enterprises. Similar problems exist in China, as found in a second survey (Maskus, et al, 1998). While the information was anecdotal, it suggested that trademark infringement negatively affected innovative Chinese enterprises. Many examples were cited of difficulties facing Chinese producers of consumer goods, such as soft drinks, processed foods, and clothing. The establishment of brand recognition in China requires costly investments in marketing and distribution channels. Enterprises that achieved this status quickly found their trademarks applied to counterfeit products. Such products were of lower quality and damaged the reputation of the legitimate enterprise. Furthermore, this problem was difficult to overcome and, in some cases, forced enterprises to close down or abandon their trademarks. According to survey respondents, this situation had a deterrent effect on enterprise development and effectively prevented interregional marketing. In turn, enterprises were less able to achieve economies of scale. Chinese trademark infringement was concentrated on products with low capital requirements and high labor intensity. These are sectors in which China has strong comparative advantages. On this evidence, the authors concluded that trademark violations may be particularly damaging to enterprise development in poor nations. Similar comments apply to copyrights. Copyright industries, such as publishing, entertainment, and software, are likely to be dominated by foreign enterprises (which can absorb temporary losses and afford the costs of deterring infringement) and pirate firms in countries with weak protection and enforcement. Thus, lower-quality copies would be widely available but the economy’s domestic cultural and technological development would be hampered. This situation was clear in the Lebanese survey. Lebanon has a small but vibrant film and television industry that could successfully export to neighboring economies if those countries engineered stronger copyright protection. In China, the domestic software industry has grown rapidly in the area of particular business applications, which did not suffer extensive unauthorized copying, but has faced obstacles in developing larger and more fundamental programs. Thus, domestic commercial interests in stronger copyrights have emerged and are now playing a role in promoting enforcement. Intellectual property rights also could stimulate acquisition and dissemination of new information. Patent claims are published, allowing rival firms to use the information in them to develop further inventions. This learning process takes place in 10 to 12 months in the United States (Mansfield, 1985). Knowledge formation is cumulative and as new inventions build on past practices the process of technical change could accelerate (Scotchmer, 1991). Patents, trademarks, and trade secrets also afford firms greater certainty that they face limited threats of uncompensated appropriation. This certainty could induce them to trade and license their technologies and products more readily, enhancing their diffusion into the economy.

#### **Economic decline causes war – studies prove.**

Royal 10 – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-214

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

### Advantage – Originalism

#### Advantage Three is Originalism.

#### District v. Heller established originalism as the norm in legal debates about constitutional rights

Solum 9 [Lawrence B. Solum (Associate Dean for Faculty and Research, John E. Cribbet Professor of Law, and Professor of Philosophy, University of Illinois), "District of Columbia v. Heller and Originalism," Northwestern Law Review, 2009] AZ

Supreme Court decisions that squarely address the fundamental issues of constitutional theory are rare, but, as we have already seen, District of Columbia v. Heller80 is such a decision. The key passage in the majority opinion is unmistakably originalist: “In interpreting this text, we are guided by the principle that ‘[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.’”81 The implications of the majority’s conclusion that the Second Amendment protects an individual right to possess and carry weapons were disputed by Justice Stevens and Justice Breyer in their dissenting opinions. Justice Stevens, in particular, offered a lengthy dissent, focusing in part on the purposes that animated the Second Amendment and raising a number of arguments relevant to the original intentions of the Framers.82 The majority opinion in Heller covers a good deal of territory, much of it contested by the dissents, but, for the purpose of completing this brief survey of the contemporary development of originalist theory, the important feature of Heller is methodological. The Court examined each of the operative words and phrases in the Second Amendment, examining the semantic content of “the people,” “keep,” “bear,” and “arms.” The Court concluded its examination as follows: “Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation.”83 In examining each of the operative words and phrases, the Court examined evidence of usage from the period the Second Amendment was proposed and ratified. For example: Before addressing the verbs “keep” and “bear,” we interpret their object: “Arms.” The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel Johnson’s dictionary defined “arms” as “weapons of offence, or armour of defence.” Timothy Cunningham’s important 1771 legal dictionary defined “arms” as “any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.”84 Another example: The phrase “keep arms” was not prevalent in the written documents of the founding period that we have found, but there are a few examples, all of which favor viewing the right to “keep Arms” as an individual right unconnected with militia service. William Blackstone, for example, wrote that Catholics convicted of not attending service in the Church of England suffered certain penalties, one of which was that they were not permitted to “keep arms in their houses.”85 Additionally: “At the time of the founding, as now, to ‘bear’ meant to ‘carry.’86 Bracketing the question as to whether Heller’s analysis of the linguistic evidence was correct, the methodology of Justice Scalia’s majority opinion was clear: the Court focused on the evidence of the original public meaning of the text. Given the inevitable differences between judicial practice and constitutional theory, it is hard to imagine finding a clearer example of original public meaning originalism in an actual judicial decision.

#### Heller is a landmark case for originalists – the aff's rejection of Scalia's originalism in Heller spills over to the rest of American jurisprudence

Solum 9 [Lawrence B. Solum (Associate Dean for Faculty and Research, John E. Cribbet Professor of Law, and Professor of Philosophy, University of Illinois), "District of Columbia v. Heller and Originalism," Northwestern Law Review, 2009] AZ

Heller is a case for the ages. It will be debated and discussed for years to come. For some, Heller will be significant as a landmark case on the meaning of the Second Amendment. For others, Heller will represent a barrier to effective gun control legislation or a vindication of the rights of gun owners. But it is at least possible that Heller’s ultimate significance will lie in its long-term implications for the relationship between originalism as an academic theory of constitutional interpretation on the one hand, and as a component of constitutional practice on the other. Heller is certainly the clearest and most prominent example of originalism in contemporary Supreme Court jurisprudence, but there is no guarantee that the majority opinion in Heller will have generative force. Heller was a 5–4 decision, and both the future composition of the Court and the votes of the current nine Justices are uncertain and unpredictable. One can imagine a future in which the Heller majority’s originalist methodology becomes a matter of academic interest—an opinion that comes to be viewed as the short-lived zenith of originalism in constitutional practice. Nevertheless, it is at least possible to conceive of a world in which Heller represents a turning point in constitutional practice—the first step on a long journey from the instrumentalist constitutional jurisprudence that dominated the second half of the twentieth century towards a constitutional practice that emphasizes the importance of fidelity to the text and rigorous adherence to the rule of law. If we are currently at a constitutional crossroads, the next step may be particularly momentous. When the Second Amendment returns to the Supreme Court in a case challenging a state statute or local ordinance, the stakes will be high. The Court might retreat from Heller, perhaps as the result of a change in personnel or a change in heart. Alternatively, the Court might affirm Heller’s endorsement of an individual right to possess and carry weapons but move away from its originalist reasoning. There is also at least one final possibility: the next step might be a decision that reverses the abandonment of original meaning in the Slaughter-House Cases. Such a decision would reverberate throughout constitutional jurisprudence. It would leave no doubt about the importance of originalist theory for constitutional practice.

#### Originalism justifies discriminatory legislation by placing an unreasonable burden on the plaintiff in cases involving discrimination

King 12 [Donna King (University of Central Florida, Sociology Doctoral Student; Florida A & M University College of Law, JD, Magna Cum Laude, 2012; University of Central Florida, B.S., 1991), "The War on Women’s Fundamental Rights: Connecting U.S. Supreme Court Originalism To Rightwing, Conservative Extremism In American Politics" Cardozo Journal of Law and Gender, 12/5/2012] AZ

Throughout the history of the United States, African Americans and American women have encountered similar background structural injustices—i.e., “moral slavery”—and these similarities became the foundation for the Supreme Court’s sex discrimination jurisprudence.180 In order to create a balance between protecting individual property rights and “looking after the welfare of society,” the Court began to veer away from its history of being “averse to creating too great a disruption to the status quo.”181 Indeed, even today, there exists a social and economic struggle between an extreme rightwing court and justices eager to employ the balance of the Fourteenth Amendment’s post-Slaughter-House powers.182 Because of the rich, deeply complicated history of the Civil War Amendments and the difficulty in accessing their legislative history, the Supreme Court did not take full account of the Reconstruction era during the nineteenth and twentieth centuries. 183 This lack of attention to the legislative history of the Reconstruction era created a constitutional jurisprudence that is inconsistent with the Framers’ intent of the Fourteenth Amendment’s protections.184 As a result of this failure to rely on the legislative history of the Amendment, constitutional doctrines and precedents relied upon today are not grounded in an analysis of the Framers’ intent, allowing for inconsistent interpretations of the Constitution which fuels political debate over fundamental rights.185 Indeed, one might assume that the Constitution suddenly changed its meaning in the early 1970s when the Supreme Court determined, for the first time, that a state law violated the Fourteenth Amendment on the basis of sex discrimination.186 However, it was not a change to the Constitution that caused the Court to suddenly determine that a state law was unconstitutional because it discriminated on the basis of sex; rather, it was a change in the Court’s attitude, pressures from a changing society, and a shift to a legal argument analogous to race discrimination doctrine that convinced the Court to begin the process of developing its sex discrimination doctrine.187 Still, sex discrimination doctrine, similar to race discrimination doctrine, is not grounded in the legislative history of the Fourteenth Amendment, nor is it supported by the Privileges or Immunities Clause of the Fourteenth Amendment.188 Sex discrimination doctrine derives its principles from the Due Process and Equal Protection Clauses of the Amendment, causing women’s fundamental rights to become more susceptible to state action.189 Indeed, ultraconservative originalist Court justices assert that women’s fundamental rights are not supported by the Fourteenth Amendment.190

#### Women's rights are in danger – recent wave of conservatism threatens gender equality absent a firm signal from the Supreme Court

King 12 [Donna King (University of Central Florida, Sociology Doctoral Student; Florida A & M University College of Law, JD, Magna Cum Laude, 2012; University of Central Florida, B.S., 1991), "The War on Women’s Fundamental Rights: Connecting U.S. Supreme Court Originalism To Rightwing, Conservative Extremism In American Politics" Cardozo Journal of Law and Gender, 12/5/2012] AZ

Although the U.S. Supreme Court, in Planned Parenthood of Southeastern Pennsylvania v. Casey, “recognized the meaning of liberty as ‘the right to define one’s own concept of existence’ and stated that ‘[t]he destiny of the woman must be shaped . . . on her own conception of . . . her place in society[,]’” today’s economic, political and social climates echo anything other than women’s control over their own futures.193 The rightwing, conservative extremists’ ideological force, seeking to strip women of their fundamental right to control their reproductive health, bears greater overall meaning for the scope of American civil rights.194 Indeed, “[a]n exclusively masculine ideal of liberty” shapes the laws that govern today’s United States judicial system, greatly influencing the American political process.195 Undeniably, one of the many fallacies of sex discrimination doctrine is that it only deals with some forms of state action—particularly those regulating the social position between the sexes—while ignoring all others.196 The Fourteenth Amendment’s protections relevant to women are not fairly and consistently applied.197 The Slaughter-House Court never gave the Privileges or Immunities Clause an opportunity to provide women any fundamental rights guarantees.198 Consequently, inconsistent Supreme Court jurisprudence currently threatens women’s fundamental rights.199 “Constitutional doctrines created by courts . . . flesh out and implement the constitutional text and underlying principles. But they are not supposed to replace them.”200 The Framers of the Fourteenth Amendment understood that women’s fundamental rights “are universal and independent of all local State legislation.”201 “The rights of life and liberty are theirs whatever States may enact.”202 Even Justice Scalia admits that “‘many provisions of the Constitution . . . are necessarily broad—such as due process of law . . . [and] equal protection of the laws.’”203 Nevertheless, he stated “‘the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn’t.’”204 Scalia further explained that “‘[i]f the current society wants to outlaw discrimination by sex,’” a change to the Constitution is necessary.205 These types of comments from a rightwing originalist justice create the sort of political atmosphere that fuels the war on women’s fundamental rights.206 There is no need for the current society to change the Constitution “to outlaw discrimination by sex” as Justice Scalia suggests, because the Privileges or Immunities Clause of the existing Fourteenth Amendment of the United States Constitution already protects United States citizens from such state action. 207 By not grounding its reasoning in the legislative history of the Fourteenth Amendment, sex discrimination doctrine is an extremely vulnerable constitutional rule of law.208 “[T]he scope of [today’s] constitutional protections against sex discrimination . . . depend[s] upon which day of the week you happen to catch a Supreme Court Justice.”209 The notion of challenging discriminatory state laws threatening women’s fundamental rights is more tenuous than ever before.210 The possibility of a rightwing, conservative extremist Court reducing the fundamental rights of women is real and intensifying.211 Consequently, today’s political debates over proposed legislation suggest that the current trend is to enact laws impeding on women’s fundamental rights, initiating an exodus of rights at the hands of conservative political leaders.212

#### US reproductive rights leadership is key to a sustained global model that promotes human development

Barot 9 - Sneha, Senior Public Policy Associate at the Guttmacher Institute (“Reclaiming the Lead: Restoring U.S. Leadership in Global Sexual and Reproductive Health Policy”, Guttmacher Policy Review, Winter, Volume 12, Number 1)

The world has changed markedly since 1994, when U.S. leadership in global sexual and reproductive health policy was on full display at the historic International Conference on Population and Development (ICPD) in Cairo. The agreements reached at this landmark event—actively supported by the United States—have been largely responsible for shifting the global discourse on population issues from one focusing on meeting macro-demographic targets for “population control” to a framework defined by recognizing the reproductive health and rights of women as the best way to promote development.

In the 15 years since the ICPD, even as U.S. policy regressed, the international community continued to move forward, embarking on a new development agenda outlined in the Millennium Development Goals (MDGs). Embraced by donor and developing nations alike (but largely ignored by the Bush administration), the MDGs established ambitious targets and goals related to reducing poverty and furthering development, including addressing women’s health and equality.

From its first week in office, the Obama administration has strongly signaled its intent to restore the country’s reputation and its commitment to a progressive foreign policy that prioritizes development assistance and embraces the MDGs. As expected, President Obama moved quickly to overturn some of the most heinous policies of the previous administration affecting U.S. international family planning and reproductive health assistance. But to truly demonstrate seriousness and significance when it comes to sexual and reproductive health and rights, more must be done. The United States must reclaim its leadership role in the international arena by fulfilling its commitments to Cairo and the MDGs, and by forthrightly promoting a global agenda on women’s sexual and reproductive health. It can take the first steps by reprioritizing women’s health in its own foreign assistance policy and by negotiating strongly on these issues at a series of upcoming international conferences.

The Legacy of the ICPD and MDGs

The “Programme of Action” that emerged from Cairo endorsed by 179 countries represented major strides in the area of women’s health and rights—gains strongly supported and negotiated by the U.S. delegation, under the chairmanship of Undersecretary of State for Global Affairs Timothy Wirth. At its heart, the ICPD embodied a breakthrough acknowledgment of the critical role of women—including the achievement of their legal rights and the elevation of their social status—as necessary and integral to “sustainable development” at the family, community and country level. Meeting women’s needs was officially recognized at the global level as the appropriate, fundamental goal guiding the formation and implementation of development and population policy.

Thus, after Cairo, it was unacceptable to promote population control as the raison d’etre for environmental sustainability, economic development or family planning programs. Instead, the ICPD affirmed the basic reproductive right of “all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.” To that end, countries committed to achieving universal access to reproductive health care by 2015.The following year, at the 1995 Fourth World Conference on Women in Beijing, the Cairo principles were reaffirmed.

Although the Cairo agreement signified important steps forward, the outcomes were by no means perfect. Political compromises over contentious issues such as abortion were necessary. Nonetheless, the consensus reached around even this controversial issue still represented progress. For example, while access to abortion was not recognized as a reproductive right per se, Cairo moved the discussion of abortion to the health impacts of unsafe abortion, which the final document recognizes as a major public health issue.

Six years later, the world’s leaders converged again to craft an agenda to end extreme poverty by 2015 outlined in the Millennium Declaration. At the New York headquarters of the United Nations (UN) in 2000, 189 countries pledged to meet eight development goals related to poverty, education, gender equality, maternal and child health, HIV/AIDS and the environment (see box). Attempts to promote an explicit reproductive health and rights agenda within the MDGs, however, were vigorously undercut during negotiations by the Bush administration and its allies within the so-called G77, a coalition of developing countries seeking to enhance their negotiating power within the UN by acting jointly. These deficiencies have been at least partly remedied over time. In the 2005 World Summit Outcome document, world leaders agreed to integrate the ICPD goal of universal access to reproductive health by 2015 into the strategies aimed at achieving the MDGs on maternal and child health, HIV/AIDS, gender equality and poverty. The UN Millennium Project, an independent advisory board commissioned by the UN to develop concrete plans to implement the MDGs, subsequently produced a blueprint endorsing the necessity of sexual and reproductive health to attaining the MDGs and describing interventions to that effect. Now, universal access to reproductive health is listed as a target for the MDG on maternal health, and fulfilling the unmet need for family planning is identified as a strategy for achieving this target.

Although the ICPD marked the jumping off point for the world to move forward, U.S. policy regressed in the years immediately following. With the takeover of the House of Representatives by a conservative Republican leadership hostile not only to abortion rights but also to family planning programs, U.S. funding levels for international family planning assistance declined from their high-water mark in FY 1995, and by FY 2008, funding had dropped by nearly 40% when accounting for inflation. Policy restrictions subsequently imposed by the Bush administration further undermined U.S. credibility and leadership. From 2001 until President Obama rescinded it in January, the Mexico City policy (otherwise known as the global gag rule) prohibited U.S. funding for family planning to indigenous groups overseas that engaged in any services, dissemination of information or advocacy activities on abortion with other funds. And every year since 2002, President Bush blocked congressionally appropriated funding for the United Nations Population Fund on the basis of unfounded allegations of its complicity with coercive abortion practices in China.

These policies have had repercussions beyond access to sexual and reproductive health services. Because the sexual and reproductive health of a country’s women and their partners is so integral to its ability to achieve other development targets, the larger objectives of social and economic development as espoused by the ICPD and the MDGs have also been [set back] ~~crippled~~. Developing countries that do not provide or are impeded from providing adequate access to sexual and reproductive health care can only attain limited economic and social progress. Moreover, the global gag rule obstructed human rights and democratic values that the United States ostensibly cares about, such as civil and political rights related to speech and assembly, which are constitutionally protected for its own citizens and recognized in international treaties.

#### Global abortion rights would save hundreds of thousands every year

Sadik 2k [Nafis Sadik (executive director of United Nations Population Fund), UNFPA, "The State of the World Population," 2000, https://www.unfpa.org/sites/default/files/pub-pdf/swp2000\_eng.pdf] AZ

More equal power relations between men and women, combined with increased access to good reproductive health care, would save the lives of hundreds of thousands of women, including many of those who die from pregnancyrelated causes. If women had the power to make decisions about sexual activity and its consequences, they could avoid many of the 80 million unwanted pregnancies each year, 20 million unsafe abortions, some 500,000 maternal deaths (including 78,000 as a result of unsafe abortion), and many times that number of infections and injuries. They could also avoid many of the 333 million new sexually transmitted infections contracted each year. Adolescent girls are particularly vulnerable (Chapter 2). Violence against women also takes a steep toll on women’s health, well-being and social participation (Chapter 3). Men must involve themselves in protecting women’s reproductive health as a matter of self-interest and to protect their families, as well as for its own sake (Chapter 4). The equality of women and men is integral to development (Chapter 5). It is also a human right (Chapter 6). Governments must take the fundamental decisions. Donor countries have agreed to support these priorities, but donors in the 1990s have not met even half of the agreed resource targets in the area of population and reproductive health (Chapter 7).

#### Independently human development drastically reduces the risk war—even rational actors have an incentive to go to war

Kim and Conceicao 10 - United Nations - Department of Economic and Social Affairs (DESA),United Nations Development Programme (UNDP) [Namsuk Kim and Pedro Conceição. “THE ECONOMIC CRISIS, VIOLENT CONFLICT, AND HUMAN DEVELOPMENT” International Journal of Peace Studies, Volume 15, Number 1, Spring/Summer 2010]RMT

Not only the economic performance variables (level of income or growth rate), but other components of human development, such as education attainment, may also affect the risk of conflict. Stylzed facts suggest that education outcomes are closely linked with the outbreak of conflict. Collier and Hoeffler (2004) find strong evidence that higher levels of secondary school attainment are associated with a lower risk of civil war. If the enrollment rate is 10 percentage points higher than the average in their sample, the risk of war is reduced by about three percentage points (a decline in the risk from 11.5 percent to 8.6 percent). This draws on date that refers to the period between 1960 and 1999 for developing countries. Very few countries with low human development could achieve high levels of political stability. We use the Human Development Index (HDI) to measure the human development (UNDP, 2008b), and the Political Stability and Absence of Violence reported in Kaufmann et al. (2009, p.6) to capture perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism. Figure 3 plots the political stability indicator and HDI for 178 countries. High values of the political stability indicator imply that the country suffers less violence, and the high HDI represents high levels of human development. The figure suggests that high HDI (say, above 0.5) does not guarantee high political stability. However, low HDI (below 0.5) is clearly associated with political instability (below zero). Going now to the theory behind the outbreak of conflict, a great number of potential channels and mechanisms have been studied through which social, political and economic factors can cause conflict. Following Blattman and Miguel (2009), four distinctive models are briefly reviewed in this section: 1) Contest model; 2) Rational behavior with asymmetric information or imperfect bargaining; 3) Collective action and selective incentives; 4) Feasibility hypothesis. The most well-known framework is the contest model where two competing parties allocate resources to production and appropriation (Garfinkel, 1990; Skaperdas, 1992). The chance of winning the contest depends on the relative efficiency of the technology to allocate resources, and the model has been supported by some empirical findings. Garfinkel and Skaperdas (2007) employ conventional optimization techniques and game-theoretic tools to study the allocation of resources among competing activities - productive and otherwise appropriative, such as grabbing the product and wealth of others as well as defending one's own product and wealth. The prediction of the contest model is consistent with the human development and conflict nexus. If the human development is low, then resources might not be allocated efficiently by the government because of weak institutions and low human capital. The ineffective resource mobilization by the government can be exploited by skillful revolutionary leaders, and the odds of overtaking the political power increases. Therefore, the low human development can increase the incentive to organize the rebel, and in turn, increase the risk of political instability. When the conflict is regarded as a deviation from equilibrium between players, it could occur when the players either act irrationally, or act rationally with asymmetric information or incomplete bargaining (Fearon, 1995). Especially, rational wars can occur if: (i) there is private and exclusive information about military strength, or there is an incentive to misrepresent the information; (ii) two parties cannot commit a cease-fire in the absence of a third-party enforcer (Blattman and Miguel, 2009, p.11). Acemoglu and Robinson (2006) demonstrate the existence of an equilibrium in a bargaining process between the rich and the poor. A number of studies, including Powell (2007), Esteban and Ray (2008), Chassang and Pedro-i-Miquel (2008), and Dal Bó and Powell (2007), show how conflict is sometimes unavoidable with asymmetric information or in multi player settings. Conflict can also occur when the bargaining process is incomplete, that is, credible commitment to maintain peace cannot be made (Powell, 2006; Walter, 2006; Garfinkel and Skaperdas, 2000). The relationship between low human development and conflict might support various theoretical works on conflicts between rational players with incomplete information or bargaining.

### Plan – Final

#### The United States federal government should ban private ownership of handguns in the District of Columbia by ruling in favor the defendant in the case of *District of Columbia v. Heller*.

#### The plan would overrule a flawed reading of the 2nd Amendment

Aborn 12 [Richard F. Aborn (president of the Citizens Crime Commission of New York City, a partner in the law firm Constantine Cannon, and the managing director of Constantine & Aborn Advisory Services) and Marlene Koury, "Toward a Future, Wiser Court: A Blueprint for Overturning District of Columbia v. Heller" Fordham Urban Law Journal, 2012] AZ

We can sketch a rough blueprint to overturn Heller by applying the factors of Part IV. First, we must ask ourselves whether Heller is out of sync with societal opinions, such that we might consider its reasoning out of date. To answer this question, we must first acknowledge a problem facing gun control advocates who would seek to overturn Heller: the relative strength, or lack thereof, of the gun control movement. As it stands today, the gun control movement has not been as successful—or as well-funded—as the gun rights movement and its avatar, the NRA.191 Although a majority of Americans support gun control laws, typically these beliefs are held as one among many.192 On the other hand, the gun rights movement, and in particular, the NRA, is simply more concentrated (both politically and financially), more strategically savvy, and more tenacious in furthering its aims.193 The answer to the question of whether Heller’s reasoning is out of date, sadly, is probably not. The reasoning behind Heller is intellectually flawed, but the gun rights movement remains in full force and that movement has been, unfortunately, louder than its opposition. The challenge here is one of mobilization and advocacy. Gun control advocates need to reframe the Second Amendment debate to place more focus on the rights of innocent citizens whose lives are threatened by gun violence—and those whose lives have been touched by such violence. As it stands, much of the Second Amendment debate is framed by the NRA and its sympathizers (and corporate sponsors), who focus exclusively on the rights of gun owners to the exclusion of the rights of all other citizens. It is appalling that in the United States, hundreds of thousands of people are the victims of crimes committed with guns; approximately 100,000 people are shot and 30,000 people are killed by guns each year.194 Since Heller, a gunman shot Congresswoman Gabrielle Giffords and seventeen other people at a shopping center in Arizona;195 two men, both dressed as Santa Claus, killed a total of fifteen people in two separate incidents in Texas and California;196 a seventeen-year-old killed three fellow students with a handgun at a school in northeast Ohio;197 and another seventeen year-old, Trayvon Martin, was killed with a handgun by an overzealous neighborhood watch guard.198 These deaths, along with more than a hundred thousand others in the United States since June 26, 2008,199 are simply unacceptable and, worse, largely avoidable. Despite the high rate of gun violence gripping America, the NRA continues to rout the gun control movement and to win public relations and policy battles. In order to push Heller out of odds with public sentiment, the gun control movement needs to ratchet up its public engagement and publicly articulate how Heller undermines public safety by reading an individual right to handguns into the Constitution. We deserve to have legislatures address the problem of gun violence without being encumbered by a specious reading of the Second Amendment. The Supreme Court is ill-equipped to make these types of policy decisions. A key challenge for gun-control advocates after Heller is swaying public opinion against it and, more generally, against opposition to reasonable gun-control legislation that is meant not to disarm gun owners, but rather to ensure the safety of all citizens, gun owners included. Second, the powerful dissent in Heller supports its overturning. Justice Stevens’s dissent is strong and well-reasoned. He stresses two critical, glaring flaws in the majority opinion that may be exposed by future Courts (or future litigants): (i) that the majority concocts a substantive right into the Constitution from near nothingness; and (ii) that the majority ignores that the resolution of the case has harmful, real-world consequences, stripping away the right to regulate guns from the states and legislatures.200 As to the reading of the Second Amendment, in particular, Justice Stevens provides a textual analysis,201 examines the historical context of the debates surrounding the Amendment’s adoption, particularly why the Framers were interested in guaranteeing the right of state militias to bear arms,202 and shows why the majority’s historical sources are insufficient to bear the weight of the conclusions Justice Scalia hangs on them.203 Litigants may use Justice Stevens’s dissent as a guide to exploit the holes in the majority’s reasoning in future cases presented to wiser Courts. In concluding his arguments, Stevens provides powerful language that shows why the case is not only poorly reasoned and incorrect, but also harmful to the established system of placing guncontrol policy in the hands of elected officials rather than the Court: Until today, it has been understood that legislatures may regulate the civilian use and misuse of firearms so long as they do not interfere with the preservation of a well-regulated militia. The Court’s announcement of a new constitutional right to own and use firearms for private purposes upsets that settled understanding . . . . The Court would have us believe that over 200 years ago, the Framers made a choice to limit the tools available to elected officials wishing to regulate civilian uses of weapons, and to authorize this Court to use the common-law process of case-by-case judicial lawmaking to define the contours of acceptable gun-control policy . . . . I could not possibly conclude that the Framers made such a choice.204 Third, the implications of the future Court’s composition, while obviously important, are also at this time unknowable. Observers of the Court will always ponder the intersection of presidential politics with the Justices’ health, longevity, and willingness to continue serving, but we can only speculate at this point. Certainly, the next presidential election could have a large impact on the future of Heller, particularly if President Obama wins the reelection and has the opportunity to appoint additional Justices to the Supreme Court.205 Should that occur, litigants would be wise to act swiftly to present a challenge to Heller while the Court would be responsive to such a challenge. Finally, the fourth factor, the degree of consensus, favors the overturning of Heller simply given the narrowness of the decision. Although it would be pure speculation as to who might have a change of heart, the narrow 5-4 split, coupled with Justice Stevens’s strong dissent, leaves Heller on a fairly precarious perch. All it would take is one changed mind. One.

#### The interpretation of the 2nd Amendment as a collective right is most accurate and strikes the right balance between security and liberty

Tarr 14 [Ian Tarr (staff writer), "The Second Amendment: Individual or Collective Rights?," Brown Political Review, 4/1/2014] AZ

In his new book, Six Amendments: How and Why We Should Change the Constitution, former U.S. Supreme Court Justice John Paul Stevens proves that retiring from the bench does not mean retiring from controversy. Apparently determined to venture into the foray of contentious political and legal debate one more time, the 93 year-old Justice set his sights on the perennial flashpoint that is the Second Amendment. In doing so, he touched upon an important schism in constitutional jurisprudence, one that informs today’s assault weapons bans and gun registries (or lack thereof). The issue is: does the Second Amendment guarantee that an individual can carry a gun solely for private purposes like self-defense, or is it a right that primarily extends to collective needs, such as maintaining a militia? Anyone familiar with his increasingly liberal viewpoints would probably not be surprised to learn that Stevens strongly advocates for the latter. In fact, to make his support for a collectivist reading perfectly clear, he goes as far as to propose a rewording of the Second Amendment. The Constitution currently states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.” Stevens would iron out all the wrangling over this clause by inserting the deceptively small five-word phrase, “when serving in the militia.” This caveat would dramatically reverse the current trend, which has been to bolster the individual’s right to carry a wide range of weapons for self-defense. Rather than a drastic departure from the historical right to bear arms, Stevens’ proposed revision would actually be a return to the viewpoint of past Judges. Until the Roberts Court reexamined the issue of collective vs. individual gun rights in 2008, the most recent ruling on the matter was the 1939 case, United States v. Miller. Over seventy years ago, the Court unanimously ruled that if a particular type of weapon – in this case, a sawed-off shotgun – does not clearly have “some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.” This ruling was widely accepted as an affirmation of the collectivist, militia-based interpretation, even by typically staunch liberty advocates like the ACLU. Over the next several decades, gun laws significantly constrained firearm purchases made by non-militia individuals for non-militia purposes.

### plans – old

#### Interpreting the Second Amendment as a collective right dependent on militia membership, the United States federal government should revise its decision in the case of *District of Columbia v. Heller* and rule in favor of the defendant.

#### Basing its decision on Justice Breyer's dissenting opinion, the United States federal government should revise its decision in the case of *District of Columbia v. Heller* and rule in favor of the defendant.

#### Basing its decision on Justice Breyer's dissenting opinion, the Supreme Court of the United States should revise its decision in the case of *District of Columbia v. Heller* and rule in favor of the defendant.

#### Basing its decision on Justice Breyer's dissenting opinion, the Supreme Court of the United States should revise its decision in the case of *District of Columbia v. Heller* and rule against an individual "right to keep and bear arms."

#### Plan: The Supreme Court of the United States ought to recalibrate the decision in *District of Columbia v. Heller* to ban the private ownership of handguns, using Justice Breyer’s dissenting opinion.

### Advantage – Frontierism

#### Advantage \_ is Frontierism.

#### The decision perpetuates the cult of the colt, romanticizing white racial violence and frontier individualism

Burkett 08 - Maxine Burkett, Associate Professor of International Environmental Law at University of Hawai’i at Manoa, former director of the Center for Island Climate Adaptation and Policy, former Associate Professor, University of Colorado School of Law, 2008 (“￼Much Ado About... Something Else: D.C. v. Heller,\* the Racialized Mythology of the Second Amendment, and Gun Policy Reform” 12 *J. Gender, Race, and Just.57,* p. 76-83, Available Online at <http://scholarspace.manoa.hawaii.edu/bitstream>/handle/10125/35631 /Burkett\_12JGenderRace&Just57.pdf?sequence=1, Accessed 3/8/16)IG

In explaining why the District's ban on handguns is impermissible, the Heller majority observed that the handgun is the preferred weapon for self defense. 100 The Court thus embraced the cultural mythology underlying the Cult of the Colt:101 the notion that the gun owner is both the guardian of the free state and the defender of home and hearth. This section adds a missing piece to the gun debate puzzle by explaining the racialized nature of the cultural values and cultural identities at stake in the rhetoric of Second Amendment protection for gun ownership. In so doing, this section interrogates a variation on the "white-male effect" that Kahan identifies but does not seek to dismantle.'02 For with respect to the virtues and risks of self-arming, African Americans have never had the mastery of the debate and have rarely had the advantage of Second Amendment interpretation. Instead, the public health crisis engendered by guns in African American communities has persisted and worsened while "private financial and political fortunes"' 3 have been made within the gun industry and gun lobby.

The section begins by examining the cultural values-which ultimately have coalesced into a mythological identity-of the American gun owner, exploring the relationship between those values and the rhetoric surrounding the Second Amendment. The section then turns to a discussion of the racialized underpinnings of the mythology of American gun ownership, from its origins in the Constitution to its incarnation in both the disarmament and the armament of African Americans. This discussion suggests that the cultural mythology surrounding the right to bear arms both gains force from and perpetuates itself through a perennial struggle between white and black America. The section concludes that the myth and its varied cultural incarnations have had an immense social cost, a cost felt most severely by black America.

A. The Political Use of the Second Amendment

1. The White American Mythology of Gun Ownership

In describing the Cult of the Colt, Richard Slotkin has argued that despite the "fundamental principle of American politics that a democracy is a government of laws and not of men," Americans have clung stubbornly to a belief that "might be called the 'Cowboy Corollary' to the Declaration of Independence: 'God may have made men, but Samuel Colt made them equal. ' ' 4 Indeed, Colt's invention of the repeating revolver has been linked, by historians such as Daniel Boorstin, to a "democratization" of American justice.105 Yet as Slotkin points out, this mythology of Coltgenerated equality rests on a fundamental error: "The whole point in having a weapon is to gain an edge," and "the peculiar advantage of owning a repeating firearm like the Colt is not realized in a gunfight against an equally armed opponent. Rather, it lies in the capacity of a technologically advanced weapon to enable its user to defeat larger numbers of less wellarmed adversaries."' 6 In short, the gun permits its holder to transcend his perceived position of inferiority and to gain superiority over, rather than equality with, his adversaries. 0 7

It was precisely by means of this skewed sense of "equalizing," however, that the Colt became mythologized as "the gun that won the West" through its performance in the Indian wars. 108 Indeed, today's gun culture had its origins in a conflation of two American identities with similarly vexed senses of equality: the militia heritage of the South and the frontier heritage of the expanding West.109 When Samuel Colt himself began spinning mythologized narratives of his inspiration for creating the repeating revolver, he turned not to an image of the bold frontiersman blazing new trails through the wilderness or to an image of "equalized" gunfighters settling supposed duels of honor. 10 Instead, he painted a portrait of the solitary white planter potentially overwhelmed by a slave revolt but finding salvation in his gun.'11 The same gun that could win the West through suppression of Indian tribes could, in Colt's vision, preserve the South through suppression of slave revolts.' 12 In both cases, whites temporarily finding themselves part of a threatened racial minority could use the Colt to achieve superiority and control-an "equalization" process with obviously baneful consequences for the white majority if it were made available to Indians, slaves, or free blacks. 113

Not surprisingly, the privilege of gun ownership in Colonial America attached to and was evidence of true citizenship, trumping the distinction of suffrage.114 As Professor Kahan has explained,

One could draw inferences about another's social competence, economic class, profession, and even desirability as a suitor from whether he carried a "Kentucky rifle," an "English shotgun," or a dueling pistol. To prevent the appropriation of status-and to repel subversive threats to authority-norms and laws regulated who could possess such weapons. Thus, "[w]ell into the nineteenth century the gun was a more widely held badge of membership in the body politic than the ballot.5

As a badge of citizenship in pre-twentieth century America, the privilege of gun ownership-and of achieving superiority over a more powerful opponent-thus belonged almost exclusively to white men. Despite the growing obsolescence of the armed militia and the diminishing Western frontier, "cultural momentum" has perpetuated the mythic image of the armed patriot,' 16 "bearing his arms about him and keeping them in his house, his castle, for his own defense."' 117 In American popular culture, the gun owner was and is a self-sufficient man fighting for hearth and home. 1 8 Today's gun owner, like his predecessor, tends to embrace the image of the nineteenth-century "true man," the ruralsouthern or western-white male." 9 By contrast, his cultural and ideological counterpart, who tends to support gun control, generally is urban, eastern, female, and black. 120 Yet the contemporary gun owner is also an educated member of the middle class, one who arguably is as troubled by senseless gun violence in urban America as most. 121 What, then, is the impetus for protected gun ownership in the twenty-first century United States?

2. The Argument for Self-Defense

The call to arms has been popularized in recent years by the argument for self-protection and crime deterrence. 122 Ronald Reagan, a member of the NRA, argued that law-abiding citizens had a right to bear arms in furtherance of their safety and welfare; liberals, he explained, were indifferent to this right, at the expense of the deserving American family.' 23 Endorsing the right to protect oneself and one's family is a difficult position to contradict. Through this argument, gun advocates have dressed gun ownership in the most respectable of clothes. This dress makes the right to own guns today seem more palatable, if not completely sensible, while drawing our attention from some of the very tangible effects-and subtle underpinnings-of gun ownership.

Carl T. Bogus, for instance, argues that gun ownership among whites correlates with racial prejudice, in effect perpetuating the racial subjugation that helped to create the Cult of the Colt in American history. Professor Bogus cites the work of Robert Louis Young:

Gun ownership, as a response to crime, is not born of fear but of anger and a desire for the means to retaliate. Those who fear criminals buy locks, burglar alarms and watchdogs. Those who loathe criminals buy guns. Those who hate blacks are likely to feel a deeper hatred for imagined criminals and are therefore more likely to own guns than those who do not. 124 These gun owners thus embrace the mythology of their predecessors, in that their guns serve as much as a political and cultural weapon as a physical one.125

Indeed, as Young's argument demonstrates, the line between defensive or retaliatory action and offensive attack can blur in the context of race. One striking example is the case of Bernhard Goetz. Goetz, while in a New York City subway car, was approached by four black youths who asked him for five dollars.' 21 In response to their request, and his perceived threat of attack, he shot each youth repeatedly, permanently disabling one.' 27 His response to the perceived threat was far greater than what many would consider purely defensive. However, the reasonableness of his actions would be viewed through race-tinged lenses. "[F]or many Americans, crime has a black face,"' 28 Jody Armour explains. His actions were found reasonable, 129 and Goetz was acquitted, 130 a verdict that a great majority of the city supported.131

Through his trial, in fact, Goetz became a media celebrity championing the cause of self-armament. He was a vocal proponent of the "fundamental human right of self-protection" and strongly advocated for distribution of an additional 25,000 guns to trained citizens.1 32 It was not long, however, before Goetz's race politics would explicitly color his call for self-arming. A neighbor, Myra Friedman, repeated Goetz's racist views, among them his belief that 14th Street needed to be cleansed of the "spics and niggers."' 133 With that revelation, Goetz's call for his right to bear arms for self-defense dissolved into what Young has suggested is often a racially motivated ambition to hurt others rather than to defend oneself.134

To be sure, many in the public viewed the verdict as a statement on the "moral value" of black victims.' 35 Representative Albert Vann, from Brooklyn, explained "[i]f Goetz was a black man who shot four white youths on a subway train, there would be no doubt about the verdict. The Goetz case is just more evidence that blacks are not safe in New York City. ' 136 Self-defense arguments that may seem to work in a benign, raceneutral manner for white America, in other words, take on a significantly different meaning in the context of black-white interactions. "It may well be true," George Fletcher explains, "that racial fears invariably infuse routine judgments in American society about what kinds of acts are self- defense.37

3. The Role of the NRA and Gun Advocacy

Gun advocates argue that more guns will reduce crime and increase self-protection. Vigorous marketing, by groups such as the NRA, both creates and sustains the desire for guns as a mythologized symbol of individualism and self-protection. 3s This marketing also romanticizes "the culture of martial virtue and frontier independence that the gun connotes."'1 39 Certainly, if racial minorities are tacitly-and sometimes explicitly-perceived as savages, 140 the frontier man is the required counterpart within the Cult of the Colt. The NRA provides the gun, and the mythologized culture it represents, to all willing Americans, and it does so by routinely exploiting fears of crime in a heavily racialized manner. NRA propaganda urgently wams of "stranger danger" and argues that selfprotection is not just a right, indirectly invoking pre-Heller misperceptions of Second Amendment jurisprudence,' 4' but a responsibility. 142 In its portrayals of the "enemy" against whom guns will be used, the NRA has juxtaposed frightening scenarios with photos of black men. 143

Furthermore, the gun lobby has fed the struggle between its suburban and rural white membership and the black underclass, championing its own romanticized Second Amendment rights over the clear results of gun violence. As Andrew Herz argues, "[t]he pleasure of more efficient or pleasurable hunting and target competition weapons is seen to outweigh the hundred of lives lost to semi-automatic gunfire."' 144 Herz cites Paul Blackman, an NRA research coordinator, who dismisses gun violence as affecting only those who have illegally acquired a gun. The racist underpinnings of NRA rhetoric are highlighted in Blackman's assertion.

The NRA engages in a "chilly" dismissal of the deaths of "bad" kids and "[t]urns a blind eye to the hundreds of utterly innocent children of color slain and injured each year by random gunfire." 145 The cost to certain members of society is simply unworthy of notice or redress. This sentiment is expressed throughout the rhetoric of gun advocates. If gun advocates are not disregarding urban casualties, they are appealing to legislatures not to punish good law-abiding Americans by disarming the whole nation because of the actions of the unruly. Virtuous white citizens are pitted against the mayhem of black gun ownership. Former U.S. House Representative Randy (Duke) Cunningham of San Diego shared this viewpoint in not as few words:

I went to [Senator Charles] Schumer's district, and I understand why he hates guns. They have all the projects and they shoot each other, and they do drugs, and they kill each other, and that is bad. But the answer is not just to be negative, but to look and see what is reasonable. 146

Interestingly, even gun advocates' interest in the safety of white suburbs has yielded to their desire to perpetuate the cultural values that inform the mythology of gun ownership. Professor Kahan explains, Indeed, when gun control proponents tried to leverage national anguish over recent school yard shootings into stricter gun control laws, control opponents in the House of Representatives countered with a Kulturkampf Blitzkrieg, linking gun control to abortion, promiscuity, irreligiosity, and myriad other practices and policies perceived to be threatening to their constituents' cultural identities. 147

These cultural identities, which find expression in calls for the right to bear arms for self-defense, have been nourished by the nation's racialized constitutional history.

#### The second amendment legitimized violence against slaves and natives and colonial expansion - handguns were created to better react to slave uprisings

Burkett 08 - Maxine Burkett, Associate Professor of International Environmental Law at University of Hawai’i at Manoa, former director of the Center for Island Climate Adaptation and Policy, former Associate Professor, University of Colorado School of Law, 2008 (“￼Much Ado About... Something Else: D.C. v. Heller,\* the Racialized Mythology of the Second Amendment, and Gun Policy Reform” 12 *J. Gender, Race, and Just.57,* p. 86-88, Available Online at <http://scholarspace.manoa.hawaii.edu/bitstream>/handle/10125/35631 /Burkett\_12JGenderRace&Just57.pdf?sequence=1, Accessed 3/8/16)IG

The Second Amendment is inextricably entangled in the historical struggle between white property owners and African Americans. We can only understand the purposes, motivations, and consequences of the Second Amendment if we first understand the origins and the evolution of the militia system and its Southern counterpart, the slave patrols, and the failure of the republican promise. Understanding these elements colors the way in which we read the right to bear arms. Originally, the militia was meant to protect white settler communities from Native Americans. The growing number of enslaved Africans, however, soon supplanted the threat of the Native Americans, and the emergent mythology of the gun was nourished by the explicit link between gun ownership and the ability for solitary white slaveholders to resist uprisings by their slaves. Professor Slotkin quotes from an early Colt promotional statement, published in the 1838 Journal of the American Institute, providing the following creation narrative:

Mr. Colt happened to be near the scene of a sanguinary insurrection of negro slaves, in the Southern district of Virginia. He was startled to think against what fearful odds the white planter must ever contend, thus surrounded by a swarming population of slaves. What defense could there be in one shot, when opposed to multitudes, even though multitudes of the unarmed? The master and his family were certain to be massacred. Was there no way, thought Mr. Colt, of enabling the planter to repose in peace? no [sic] longer to feel that to be attacked, was to be at once and inevitably destroyed? that [sic] no resistance could avail, were the negroes once spirited up to revolt?... The boy's ingenuity was from that moment on the alert.1

Aware of the threats created by slave uprisings and Indian attacks on the frontier, Samuel Colt shrewdly targeted his first marketing "toward outfits like the Texas Rangers (whose enemies were Indians armed with bows or single-shot muskets) and toward Southern planters."1 64

Even before Colt had been inspired to protect the Southern planters, however, the militia system had adapted to the needs of the slave-holding society.165 That adaptation took the form of slave patrols, commissioned to maintain order through terror. This and the following section explore the political and philosophical impulses-the precursors of today's gun culture-at the time of drafting the Second Amendment and reveal a racialized intent behind the Amendment. Indeed, a brief history of varied cultural interpretations of the Amendment vis-A-vis African Americans demonstrates the ways in which such interpretation intimately affected the condition of blacks throughout America.

1. "To The Security of the Master and the Public Tranquility" 166

Disarmed Slaves and Freedmen

From the dawn of colonialism, white slave traders had a definitive advantage in weaponry over natives. Bogus explains, "The non-white world literally found itself looking down the barrel of a gun."'1 67 The helplessness of Africans in America, with respect to weapons, made their enslavement much easier. Despite this disadvantage, Africans often rebelled. Prior to 1860, there were at least 200 reported slave revolts,1 68 even with slave owners' and overseers' strict disarmament measures. As a result, slave revolts were a constant fear. White fears inspired innumerable de facto and de jure attempts at keeping black men and women, slave or free, impotent. That fear inspired the slave patrols, of which even the most indolent would mobilize to "ketch a nigger."1 69 The willingness of whites to use violence to keep the enslaved or displaced in their abject position added to the unequal access to arms and ensured white supremacy for the early nation. The South was the pioneer of gun legislation. 170 Besides the fact that guns were a part of the "lawways and folkways" of the South, Cottrol and Diamond explain that white domination was crucial to the maintenance of order in America's "first truly multiracial society."'171 During the early nineteenth century, throughout the South, laws proliferated that limited gun ownership to free white men. For example, Tennessee explicitly limited the right to that dominant group. 172 Mississippi prohibited gun ownership for both slaves and free blacks.' 73 In South Carolina, slaves were only able to handle guns with written permission, and slave owners were required to search slave quarters for guns. 174

#### The individualist interpretation of the second amendment affirms militarism and racist vigilantism

Burkett 08 - Maxine Burkett, Associate Professor of International Environmental Law at University of Hawai’i at Manoa, former director of the Center for Island Climate Adaptation and Policy, former Associate Professor, University of Colorado School of Law, 2008 (“￼Much Ado About... Something Else: D.C. v. Heller,\* the Racialized Mythology of the Second Amendment, and Gun Policy Reform” 12 *J. Gender, Race, and Just.57,* p. 90-92, Available Online at <http://scholarspace.manoa.hawaii.edu/bitstream>/handle/10125/35631 /Burkett\_12JGenderRace&Just57.pdf?sequence=1, Accessed 3/8/16)IG

Akhil Amar argues that the early Reconstruction period witnessed a conceptual change in the reading of the Second Amendment, necessarily impacting the political discourse surrounding a right to bear arms. At this time there was a definitive individualization of the Second Amendment in response to the needs of new citizens. In interpreting the Amendment, there was, Amar explains, a "shift from 'keep' to 'own,' from 'bear' to 'carry,' from 'arms' to 'firearms,' from 'militia' to 'persons,' and from collective self-defense ('the security of a free state') to individualized self-defense."1 86 For the safety and dignity of blacks, ardent Reconstructionists liberalized the Amendment. 187 The safety and dignity of blacks, however, would quickly come under attack.

a. Vigilante, Extralegal, and Ad Hoc Legal Attempts to Disarm

Violent opposition met federal attempts at ameliorating the lot of the newly emancipated. Again, a fear of insurrection, as well as a newly perceived threat of the "collision" of races,' 88 fueled vigilante efforts to disable attempts at black self-empowerment. Whites would organize as militias for the purpose of exacting compliance with white supremacy.' 89 Major General Carl Shurz detailed abuses, including the deprivation of arms-bearing. 190 Moreover, Major General Shurz described the organized militias as the "greatest evils" confronting the freedmen. 191 To the extent that they were disarming freedmen, they were acting wisely in the eyes of many, including lawmakers. Senator Saulsbury, an unabashedly racist Representative from Delaware, opposed a Civil Rights Bill that would prohibit the disarmament of the freedmen by states.' 92 At the same time, Senator Saulsbury invoked the Second Amendment for the protection of "the whole white population" to arm themselves and organize into militias. 193

Notwithstanding the attempts to thwart militia aggression and to empower blacks through legal access to self-protection (and, by extension, self-preservation and personal liberty) the South attempted to effectuate a new form of slavery articulated in the "Black Codes." Described as a "twilight zone between slavery and freedom,"'194 the Black Codes were passed on the heels of the Civil War. Among these codes were laws that forbade blacks not in the military from carrying firearms and laws prohibiting whites from lending weapons or ammunition to free blacks or Mulattoes.'95 One law, Florida's Act of 1893, had the explicit purpose of disarming blacks only, though it was couched as a broad gun control act.196 Concurring in the Florida Supreme Court's 1941 opinion in Watson v. Stone, Justice Buford stated explicitly that the purpose of the act was "to give white citizens in sparsely settled areas a better feeling of security. The statute was never intended to be applied to the white population and in practice has never been so applied."'197 These laws were glaring attempts at subjugating blacks, and they were successful. 9 '

This legal disarmament led to continued oppression by extralegal entities. The Ku Klux Klan and similar renegade groups emerged as the neo-slave patrols at the close of the Civil War. Driven by their selfproclaimed "patriotic mission," these private organizations replaced the State arm of suppression.'99 The early Klansmen and nightriders actively confiscated arms from blacks at all costs. 200 In the early 1900s, throughout the North and South, states with a significant Klan population adopted laws limiting blacks' access to guns, either through explicit gun regulations or by laws giving local officials wide discretion in granting licenses for firearms.20 1 In addition to disarmament, lynching became the new form of physical degradation to which these extralegal entities subjected blacks. Between 1882 and 1968, lynching became a frequent occurrence.20 2 Blacks were often lynched for the pettiest social transgressions. Headlines described lynching for blacks for being too familiar with white women and even for hiring a lawyer for a property dispute. 203

#### The connection between gun ownership and the “good family man” constructs a heteronormative, neoliberal, colonialist, masculine subject that valorizes its frontier settler past.

Gahman 15 [Levi Gahman, Centre for Social, Spatial, and Economic Justice, University of British Columbia. Gun rites: hegemonic masculinity and neoliberal ideology in rural Kansas. Gender, Place and Culture, 201 Vol. , No. 9, 1203–1219, <http://dx.doi.org/10.1080/0966369X.2014.970137>] SW 12/20/2015

Being considered a ‘Good Family Man’ was a major theme in many of the interviews and focus groups. The emphasis for men to be in a (heterosexual) relationship and accomplish the task of providing for the family is well researched in current literature (Butler 1999; Pascoe 2005; Schrock and Schwalbe 2009). As such, heterosexuality is the compulsory standard for men in the area, often producing what critical scholars refer to as compelled masculine heterosexualities (Richardson 2010; Sweeney 2013). Heterosexuality is presumed to be ‘natural’ and is perceived to be necessary in order for males to fulfil their role as men. Richard, a 68-year-old participant, articulates such notions:

I’m a man, it’s my duty to make sure that my family comes first . . . there is a certain job that I have to do, and there are certain jobs that my wife has to do. God designed us that way, it’s just the way it is. Men can’t get pregnant, and women are not as strong as men . . . it’s like we were designed to be able to do different things. I’m not saying one is worse than the other, it’s natural . . . I can work harder, I don’t have to miss work to raise a baby, I can support the family by bringing home a paycheck, and I can make sure they are safe. Maybe its just the way I was raised, but that’s the way I see it . . .

As the area is predominantly Christian (a former Catholic Mission), the cultural norms governing the population overwhelmingly stem from conservative interpretations that Christian doctrine maintains in regard to marriage and sexuality (i.e. it should be between a ‘man and woman’, is monogamous and recognized by God, and is for procreation and raising a nuclear family). Thus, it is from a heteronormative colonial pulpit that some of the most taken-for-granted patriarchal influences are derived. The authority that religiously endorsed gendered binaries carry for men in the area reinforces sex roles that a ‘man and his wife’ must adhere to. As a result, men (and women) in Southeast Kansas often sustain traditional gender roles based upon illusory static dualisms.

As a consequence, a reductionist gender order is formed in which women are often described as having ‘womanly qualities’ (e.g. emotional, nurturing, irrational, fragile), and men, on the contrary, were typically described as tough, rational, aggressive, and strong. Based upon this reasoning, supported by the pervasive conservative principles in the area, the underlying message is that men are, and should be, ‘providers and protectors’. Conversely, women are situated as bodies or things to be owned, are in need of protection, and are deficient or lacking if not partnered with a man. Andrew, a 34-year-old father of two, highlights these discursive formations:

. . . if owning a gun helps me protect my wife and kids and provide for the family – then I’m surer than shit going to have one. Don’t get me wrong, I know guns can be dangerous and all, but I respect the hell out of them. I keep them around just in case I ever need to use them, cause you never know when a criminal may be on the loose and all drugged up, or when a pervert may come sneaking around. It’s times like that when a guy has to ‘man up’ and protect what’s his. And if that requires shooting some nutcase then that’s what he’s got to do.

One outcome of these discourses of (conservative) Christianity and masculinity is that in order to safeguard their families men often own guns as a way to fulfil the role of protector. Guns are viewed as one of the most appropriate means of quickly and effectively defending oneself or one’s family. Several of the participants not only noted that they have guns ‘just in case’, but also because they were living ‘out in the country’. Statements such as these highlight how residing in rural places allows for the justification of owning firearms. The rationale behind these justifications are that men need to protect ‘what is theirs’ not only from possible criminals, but also from other outside threats such as wild animals and stray vermin that may be rabid, diseased, or simply hungry, as these all pose risks to their livestock, garden, and crops.

In contrast to the use of guns for protection and provision, recent research in surrounding both disability and masculinity has suggested that at times the underlying reasons men own guns is because of the disillusionment, powerlessness, and despair they may face due to their current socio-economic situations or aging bodies (Cukier and Sheptycki 2012; Kellner 2012; Stroud 2012). Despite this, from the perspectives of the participants, gun use is not an attempt to compensate for feelings of helplessness, insecurity, or vulnerability that arise from being compromised by an exploitative capitalist labour market, disabling society, or, as Faludi (2011) points out, cultural norms surrounding masculinity itself, rather, owning a gun serves a purpose. Oftentimes, the stated purpose for owning a gun is that it is necessary to have a ‘tool’ in order to defend their family, possessions, and ‘way of life’. It should also be noted that due to the complex nature of conducting research with participants in itself, there is no way to entirely confirm or deny that the primary motivations for gun ownership by participants is due to feelings of fear and helplessness, rather I point to such potentialities simply because they are possibilities that do remain.

Woven into the fabric of masculine subjectivities in Southeast Kansas is a set of guiding principles that grant men social status, or ‘respect’, as a result of their involvement in the paid workforce, their adherence to economically productive self-discipline (earning a paycheck), and through their maintenance of a ‘competition-improves-us-all’ mentality. These perspectives ultimately produce everyday existences that promote material production, rugged individualism, and (neo)liberal subjectivities. Such characteristics have been attributed to ‘Self-Made Men’ in the USA since before the nineteenth century, and continue to intensify in contemporary times (Kimmel 1996, 26). Several geographers have also noted how waged labour and capitalistic production is tied to masculinity (Brandth and Haugen 2005; Longhurst 2000; McDowell 2011). Thus, to further explain the masculinist norms governing Southeast Kansas, it is necessary to look at the proliferation of neoliberal ideology within the USA, as well as how it has been fused with local Christian beliefs that the region is ritually subjected to.

For many of the participants, the tenets of neoliberalism (privatization, deregulation, free enterprise, cuts to social welfare, etc.) have fused with conservative Christianity to manufacture individualistic subjectivities that hold fast to the conviction that what one does in life (or does not do) in relation to Christian dogma, work ethic, and self-reliance determines their social standing as well as what happens to them in the afterlife. As a result, many participants expressed a desire to be ‘successful’, ‘good’, and ‘respectable’. Several men noted that achieving those goals is solely a matter of personal responsibility based upon the decisions they make, which are often closely linked to religious practice. Consequently, these liberal subjectivities leave little room for factoring in larger sociopolitical structures that influence the decisions people are allowed to make. As such, the interlocking influences of race, class, gender, sexuality, ability, age, and nationality often go unnoticed, remain invisible, or are dismissed altogether in favour of blaming or praising individual choices.

Accordingly, the role of being ‘head of the household’ typically becomes the duty of the man, and his ability to protect and defend is often seen as an extension of his dedication to his loved ones. The propagation of such patriarchal beliefs is a direct result of the indoctrination that community members receive from socially conservative clergy members, a colonial education system, and corporatized media/marketing that endorses heteronormative social relationships. The result is the reification of an increasingly atomized mindset in which individuals believe they are solely responsible for their own social position in life. For men in rural Southeast Kansas, this is made manifest in the belief that they are in exclusive control of their own ability to succeed. As the well-being of the family is a core value for many men in the area, the subsequent safeguarding of their wife and children is paramount. In turn, owning a gun is thus reaffirmed as a symbol of masculine conviction and commitment to the family.

Various research has also noted that gun ownership is closely tied to the role a man has in providing for his family, bonding with his children, and passing down technical expertise to future generations (Cox 2007; Stroud 2012). The role of the gun for many young children has become a prominent rite of passage and nostalgic symbol of time spent with their father. In Southeast Kansas these narratives of father–son (and sometimes daughter) bonding are usually couched with qualifiers noting that ‘safety and respect’ are first and foremost when handling guns. Several participants mentioned being taught to ‘respect’ guns, learning that firearms are to be used primarily for sport/hunting/protection, and that caution should always be taken in order to ensure safety.

At times, these narratives of safety and respect serve to distance guns from their associations as weapons by suggesting they are simply ancestral heirlooms. This rhetorical act of removing violence from guns and framing them as objects used in rites of passage is highlighted by James, a 32-year-old father, when asked about his thoughts on whether guns led to violence:

They are just tools, they can be used for good or bad. I have been around guns most of my life, we mainly use them for shooting clay pigeons, target practice, or hunting. Growing up, we took a hunter’s safety course and learned to always treat guns with respect. My granddad and uncle were the ones who got me into hunting and shooting . . . It’s just something that has been passed down through the generations. When we go out hunting we’re on land that’s been in the family since the 1800s . . . so hunting keeps that connection going. I still have a rifle that’s been in the family for decades. Its something I’ll pass on to my son, or my daughter if she’s interested, and it’s probably something my kids will pass down as well.

As can be indicted from the quote above, the ownership and use of guns signifies a tie to family history, a connection to past ancestors, a relationship with the land, and a bond to the pioneer spirit of relatives who settled the area. These bucolic, sentimental connotations of guns being tied to the initial stages of colonialism of the area effectively negate the imperialistic genocide that was enacted upon Indigenous people during the time of white settlement. Consequently, such narratives effectively create what Foucault (Rabinow 1991, 74) refers to as a ‘regime of truth’. For men in Southeast Kansas, the existing regime of truth codifies their local history as one in which settler-missionaries tamed a chaotic and wild landscape into tranquil agrarian homesteads.

The glorification of the settler past the participants emphasized when speaking of the community’s ‘frontier’ history also functions as a veil that whitewashes the underlying colonial violence that eventually displaced the Indigenous people (Osage Nation) of the area. The Osage lived in the Ohio River Valley until the mid-1600s and later moved into what is now known as Missouri and Arkansas as a result of white settlement and compulsory dislocations. During the early 1800s (a time of intense land dispossession and ethnic cleansing that included the Indian Removal Act and the Trail of Tears) they were forced into Southeast Kansas. The Osage resided in the region until 1865, when they were again pressured into signing a treaty that ceded their lands and forcibly displaced them into current day Oklahoma (Osage County) where they are currently based (Rollins 1995; Warrior 2005). Several participants spoke fondly of how far back their ancestry was dated in the area, what land has stayed in the family, and how a ‘rugged pioneer mentality’ is still retained and passed on as a set of traditional practices and beliefs.

#### Neoliberalism rips apart communal bonds to maintain the illusion that structural inequalities are individual problems – the impact is systemic victim-blaming, poverty, and violence.

Smith 12 [(Candace, author for Societpages, cites Bruno Amable, Associate Professor of Economics at Paris School of Economics) “Neoliberalism and Individualism: Ego Leads to Interpersonal Violence?” Sociology Lens is the associated site for Sociology Compass, Wiley-Blackwell’s review journal on all fields sociological] AT

There appears to be a link between neoliberalism, individualism, and violence. In reference to the association between neoliberalism and individualism, consider neoliberalism’s insistence that we do not need society since we are all solely responsible for our personal well-being (Peters 2001; Brown 2003). From a criminological standpoint, it is not hard to understand how this focus on the individual can lead to violence. According to Hirschi’s (1969) social control theory, for instance, broken or weak social bonds free a person to engage in deviancy. Since, according to this theory, individuals are naturally self-interested, they can use the opportunity of individualization to overcome the restraining powers of society. Bearing in mind neoliberalism’s tendency to value the individual over society, it could be argued that this ideology is hazardous as it acts to tear apart important social bonds and to thereby contribute to the occurrence of ego-driven crimes, including violent interpersonal crimes. Such a thought suggests that as neoliberalism becomes more prominent in a country, it can be expected that individualism and, as a result, interpersonal violence within that country will increase. When it comes to individualization, this idea is one of the fundamental aspects of neoliberalism. In fact, Bauman (2000:34) argues that in neoliberal states “individualization is a fate, not a choice.” As Amable (2011) explains, neoliberals have realized that in order for their ideology to be successful, a state’s populace must internalize the belief that individuals are only to be rewarded based on their personal effort. With such an ego-driven focus, Scharff (2011) explains that the process of individualization engenders a climate where structural inequalities are converted into individual problems.

## 1AR Add-Ons

### 1AR A/O – Federalism

#### Heller killed state rights and overturned federalist balance

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

The Court’s nascent Second Amendment jurisprudence will inevitably upset the states’ longstanding authority over gun regulations. Heller’s renunciation of federalist principles in the context of the Second Amendment is problematic for a number of reasons, not least of which is that gun regulations are so tied to regional preferences and local concerns. Constitutionalizing the issue of firearms regulation will erode the diversity which geography and demography would otherwise produce. Of course, Heller itself invalidated only the firearm regulations operating in the District of Columbia, which is under the control of Congress and thus not subject to the same federalist concerns as the states. But the Court would hardly have gone to such great lengths to recognize a robust Second Amendment right if it did not plan to incorporate that right against the states as well.270 Heller plainly signaled as much: The Court first noted that its 1875 decision in United States v. Cruikshank failed to incorporate the Second Amendment against the states. The Court then proceeded to all but label Cruikshank’s holding erroneous, observing that Cruikshank “did not engage in the sort of Fourteenth Amendment inquiry required by our later cases” and was decided at a time when the Court had not yet applied even the First Amendment to the states.271 The Court in Heller also hinted broadly at its expectation of a future Second Amendment docket. The Court volunteered (less than subtly): “We may as well consider at this point (for we will have to consider eventually) what types of weapons Miller permits.”272 It is difficult to imagine that the referenced future decisions will not focus on state regulations. Moreover, the majority drafted a list of “presumptively lawful regulatory measures,” many—if not all—of which are in place at the state level.273 But enumeration presupposes something not enumerated,274 so the Court’s list suggests that there are other state regulatory measures that it will find to be unlawful when, to the surprise of no one, it incorporates the Second Amendment against the states. 1. Traditional State Authority. So the shadow is cast over the traditional authority of the states in the same manner that drew such heated criticism in Roe. Heller acknowledged that the regulation of firearms has historically fallen within the states’ police power over public safety;275 indeed, the Court discussed both state constitutional provisions and state and local regulations dealing with firearms that were contemporaneous with the nation’s founding.276 Congress has mostly respected states’ control of gun regulations in the years since the founding,277 and the Court itself has previously been jealous of any such congressional interference.278 But Heller gave us several reasons to suspect that the Court will show no more respect than Roe did to a long tradition of state legislative primacy. First, the Court read early state constitutional provisions and local regulations to support the majority’s own preferred reading of the Second Amendment. Consider for a moment the Court’s treatment of founding-era state constitutions. It seems reasonable that provisions in those constitutions that expressly referred to a right of self-defense might have meant something different than the Second Amendment, which included no such express reference.279 But the Heller majority summarily dismissed that sensible, textual theory as “worthy of the mad hatter.”280 Instead, the Court chose to read the different texts to mean the same thing.281 If the Court is willing to deride its opponents for suggesting that texts with different words have different meanings when comparing state and federal gun provisions, can we not expect the Court to continue to override differences between state and federal policies in subsequent decisions? Consider also Heller’s treatment of founding-era gun regulations. While Heller conceded the existence of a ban in colonial Boston against keeping loaded guns indoors, the Court effectively rewrote the text of that prohibition—as well as laws penalizing with a fine the firing of weapons in colonial cities like Philadelphia and New York—by reading a non-textual self-defense exception into the statute.282 Again, does this signal anything less than the Court’s determination to curtail the states’ authority to enact their own policies controlling firearms? Second, Heller failed to appreciate the traditional power of the states over firearm regulations because the Second Amendment itself can be seen to embody federalist principles. Under this view, the Amendment was drafted as a means of protecting the sovereignty of the states by safeguarding the states’ militias against federal disarmament (but of course leaving the states to regulate the arms of their militias as they pleased).283 But the majority dismissed that historical, federalism-based interpretation through sheer ipse dixit: “The Second Amendment right, protecting only individuals’ liberty to keep and carry arms, did nothing to assuage Antifederalists’ concerns about federal control of the militia.”284 Thus, while the Court might conceivably give more consideration to federalism in future cases extending beyond the District, Heller has already announced the majority’s lack of respect for traditional principles of federalism in connection with the Second Amendment. All the anguish over Roe’s displacement of traditional state prerogatives was forgotten. By the time the Court finishes explicating the full scope of its new Second Amendment right, the states’ power over guns may resemble little more than the fading grin of the Cheshire cat. 2. The Federal Design. The Court’s apparent willingness to constitutionalize the field of firearms also threatens to sacrifice—as in Roe—the many prospective benefits produced by different policies in different places under our federal structure. For one, Heller diminished the benefits of decentralized decision-making in adapting gun policies to local opinions and concerns. In particular, establishing a more uniform national gun policy through the Second Amendment would be particularly improvident because gun regulations are so uniquely tied to the different views and conditions among regions, individual states, and even smaller units of government.285 It should go without saying that preferences for gun regulations vary widely among regions within the United States. Even a cursory review reveals that firearm regulations tend to be stricter in coastal, northeastern, and a few midwestern states than in the mountain west and southern states, where antipathy to gun control runs deep and wide. For example, only seven states currently ban assault weapons: California, Connecticut, Hawaii, Massachusetts, Maryland, New Jersey, and New York.286 The regional distribution of those states is readily apparent. Licensing requirements for purchasing or owning a firearm exist in eleven states: California, Connecticut, Hawaii, Illinois, Iowa, Massachusetts, Michigan, New Jersey, New York, North Carolina, and Rhode Island.287 These examples provide a flavor of the regional differences in gun laws throughout the nation and the corresponding benefits of decentralized firearm policies. The marked differences between gun regulations in individual states also demonstrate the utility of allowing states to tailor their polices to local preferences. California, for instance, has enacted the following laws, among others: bans on assault weapons, large capacity ammunition magazines, and fifty caliber rifles; regulations of ammunition and nonpowder guns; waiting periods for gun purchases; a limit of one handgun purchase per person per month; regulations of firearm dealers and gun shows; universal background checks for all firearm transfers; licensing requirements for handguns; and locking device requirements.288 Montana and Arkansas, on the other hand, have enacted none of those policies.289 And North Carolina, for example, operates somewhere in between: it regulates ammunition, non-powder guns, and gun dealers, and it also requires licenses for handguns, but it shares none of California’s additional restrictions.290 Important distinctions also exist between policies at the statewide and local levels, suggesting even further benefits of localized decision-making. For example, no state bans all types of handguns.291 But some cities have enacted complete handgun bans, including Chicago (and some of its suburbs), San Francisco, and, of course, the District of Columbia.292 Similarly, nearly every state issues permits to allow concealed carrying of weapons.293 But a number of cities—including Chicago, Cleveland, Columbus, Hartford, New York City, and Omaha—restrict concealed carrying much more strictly than their respective states; some of those cities prohibit concealed carrying altogether, while others bar the practice with limited exceptions.294 These local policies are undoubtedly premised on the perceived dangers associated with guns in urban environments, namely higher rates of violent crime (particularly homicides) involving firearms (particularly handguns).295 Conversely, the absence of such restrictions in other localities may reflect the central place of firearms in the life of more rural communities. Indeed, the connection between gun policy and local conditions was quite apparent in Heller. As Justice Breyer stressed in dissent, the District enacted its handgun ban to counteract the specific problems of gun violence in the “District’s exclusively urban environment.”296 Thus, deference to the District’s judgment would have seemed “particularly appropriate” because that judgment was based on “particular knowledge of local problems and insight into appropriate local solutions.”297 But the majority in Heller rejected such deference without even appearing to consider the important federalism interests that informed criticism of Roe. The variation in views that made a state-by-state approach seem desirable in the area of abortion law somehow became irrelevant to the majority in Heller. The Heller decision emphasized instead the severity of the District’s handgun ban in comparison to other historical examples of statewide gun regulations.298 But that emphasis completely failed to appreciate the distinctions between the local conditions faced by the District today and those faced by Georgia and Tennessee in the mid-nineteenth century. Thus, Heller set the Court on the path of ignoring and abandoning the benevolent effects of decentralized policy-making on gun regulations—just as the Court did with respect to abortions in Roe.

#### Heller prevents states from acting as labs for democracy – region-specific gun control produces better outcomes and creates research needed for effective gun regulation in the future – filters out their impact

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

Heller also endangers, like Roe before it, another fundamental benefit of federalism: experimentation and innovation in the natural laboratories of the states. Experimentation among states and cities is critical to producing effective gun regulations. The persistence of gun violence in the schools, offices, malls, and fast-food restaurants of our country demonstrates that some creative thought is necessary. And state and local governments need the freedom to improvise and innovate and, in particular, to adapt their solutions to the unique circumstances in their own community.299 Furthermore, innovative policies in one jurisdiction benefit not only that jurisdiction, but through the sharing of information and results, the nation as a whole. As discussed above, legislatures are in a better position than courts to weigh empirical evidence with respect to gun policies.300 But that empirical data must come from somewhere. And that somewhere is the natural laboratory of federalism. Variations in policy between state and local governments provide results that legislatures can compare, thereby pushing the entire nation toward more efficacious solutions. One important example is the prickly issue of causation: do gun restrictions cause more or fewer gun crimes?301 More guns may equate to more violence or to more mutual deterrence, and judges, as noted, are in the least advantageous position to answer such thorny questions. Innovative policies could help to resolve the causation issue by showing how violence changes when regulations change in various settings.302 As was the case with abortion policies before Roe, states and cities were exercising their prerogative to innovate prior to the Heller decision. The District’s handgun ban—no matter how unwise in the eyes of a majority of the Court—is a ready example of such an experiment. Richmond, Virginia presents an alternative, innovative technique for combating gun violence. Beginning in the late 1990s, Richmond “reduced firearm-related violence dramatically . . . not by making gun purchases more difficult—Virginia is one of the easiest places to legally buy a handgun—but by severely punishing all gun crimes, including those as minor as illegal possession.”303 As expected, the results of those efforts have been shared with representatives from other cities who have visited Richmond to learn about its enforcement program.304 Furthermore, in states like California, innovations at the local level have continually spawned reforms at the state level.305 And at the state level, for example, twenty-nine states have enacted legislation permitting concealed carrying of firearms since 1990.306 Heller threatens to curb this experimentation and its benefits. As with Roe, innovation now faces almost certain litigation. While the Court in Heller insisted that numerous policy options are still available to the District,307 the lessons of Roe are clear: as the Court establishes a national set of restrictions on gun regulations, it will limit the space in which states and cities can innovate. Although Justice Kennedy was in the majority in Heller, he previously observed in Lopez the specific danger that a mere federal statute poses to beneficent local experimentation on gun regulations.308 The threat of litigation under a federal constitutional rule increases that danger exponentially.309 And as was the case after Roe, many jurisdictions are likely to respond to the Heller decision not with new and thoughtful solutions for the problems of gun violence, but with legislation aimed at evading the Court’s decision. In fact, the District of Columbia revised its regulations after Heller in what appears to be the narrowest manner possible—and a manner that may still conflict with Heller’s announcement of a vigorous right to self-defense in the home.310 Such efforts— provoked by the Court’s overreaching—reposition resources that could be devoted to useful thinking into how to avoid lawsuits.

#### U.S. federalism is modeled and prevents every existential risk

Calabresi 94

Steven, Calabresi, Assistant Prof – Northwestern U., 1994, Michigan Law Review, p. 831-2

First, the rules of constitutional federalism should be enforced because federalism is a good thing, and it is the best and most important structural feature of the U.S. Constitution. Second, the political branches cannot be relied upon to enforce constitutional federalism, notwithstanding the contrary writings of Professor Jesse Choper. Third, the Supreme Court is institutionally competent to enforce constitutional federalism. Fourth, the Court is at least as qualified to act in this area as it is in the Fourteenth Amendment area. And, fifth, the doctrine of stare decisis does not pose a barrier to the creation of any new, prospectively applicable Commerce Clause case law. The conventional wisdom is that Lopez is nothing more than a flash in the pan. Elite opinion holds that the future of American constitutional law will involve the continuing elaboration of the Court's national codes on matters like abortion regulation, pornography, rules on holiday displays, and rules on how the states should conduct their own criminal investigations and trials. Public choice theory suggests many reasons why it is likely that the Court will continue to pick on the states and give Congress a free ride. But, it would be a very good thing for this country if the Court decided to surprise us and continued on its way down the Lopez path. Those of us who comment on the Court's work, whether in the law reviews or in the newspapers, should encourage the Court to follow the path on which it has now embarked. The country and the world would be a better place if it did. We have seen that a desire for both international and devolutionary federalism has swept across the world in recent years. To a significant extent, this is due to global fascination with and emulation of our own American federalism success story. The global trend toward federalism is an enormously positive development that greatly increases the likelihood of future peace, free trade, economic growth, respect for social and cultural diversity, and protection of individual human rights. It depends for its success on the willingness of sovereign nations to strike federalism deals in the belief that those deals will be kept. The U.S. Supreme Court can do its part to encourage the future striking of such deals by enforcing vigorously our own American federalism deal. Lopez could be a first step in that process, if only the Justices and the legal academy would wake up to the importance of what is at stake.

### 1AR A/O – Court Trust

#### Heller wrecked public trust in an independent judiciary – it was seen as an arbitrary, biased interpretation

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

When a constitutional question is so close, when conventional interpretive methods do not begin to decisively resolve the issue, the tie for many reasons should go to the side of deference to democratic processes. For a court that decides to strike down legislation based on an interpretation of the Constitution that is only plausible and not incontrovertible will appear to the public to be exercising discretion. And when a court appears to be exercising that discretion in a way that arguably accords with the political preferences of the judges in the majority—as was the case in Heller—more members of the public lose faith in the idea that justice is blind. For as Taylor continues, “even though all nine justices claimed to be following original meaning, they split angrily along liberal-conservative lines perfectly matching their apparent policy preferences, with the four conservatives (plus swing-voting Justice Anthony Kennedy) voting for gun rights and the four liberals voting against.”56 The upshot of all this argumentation is that both sides fought into overtime to a draw. And the argumentative exchange, even under the guise of an originalist inquiry, came perilously close to recreating Roe’s fundamental misapprehension—namely that law is politics pursued by other means. What is lacking in Heller is what was lacking in Roe: the sort of firm constitutional foundation from which to announce a novel substantive constitutional right.

#### Coram nobis restores public trust in the courts

Brown 3 - Wilson M. Brown, III Counsel of Record Jeff A. Almeida Rebecca Green DRINKER BIDDLE & REATH LLP (“Petition For a Writ of Error in Coram Nobis To Remedy Fraud Upon This Court”, https://www.fas.org/sgp/jud/reynoldsmotion.pdf, March 4, 2003) RMT

This Court commands this power. Indeed, to hold the public trust and confidence that are the bedrock of its authority, this Court must have the power to root out and remedy abuses of its jurisdiction by those appearing before it

[T]ampering with the administration of justice involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Hazel-Atlas, 322 U.S. at 246.

Petitioners invoke the Court's inherent power to remedy fraud. They seek issuance of a writ of error coram nobis, an ancient writ preserved for this Court by the All Writs Act, 28 U.S.C Â§ 1651(a) and suited to the challenges of this case. They also urge that the Court, concurrently or alternatively, exercise its equitable powers to accord them relief for the wrong the government did them and this Court.

#### Prevents organized crime

**Muller & Schrage 14** [Christopher, Robert Wood Johnson Foundation Health & Society Scholar Columbia University, Daniel, established the Integrated Product Lifecycle Engineering (IPLE) Laboratory; 11/3/15; The ANNALS of the American Academy of Political & Social Science; “Mass Imprisonment and Trust in the Law”; <https://books.google.com/books?id=EMw_AwAAQBAJ&pg=PA153&lpg=PA153&dq=%22jury+nullification%22+%22increase+crime%22&source=bl&ots=SDZ7VAIgnR&sig=bFFYhgxwE7bWxRhZNJ1Xv4AcQ3Y&hl=en&sa=X&ved=0CB4Q6AEwAGoVChMIha3ii_v1yAIVFPtjCh1irAbb#v=onepage&q=%22jury%20nullification%22%20%22increase%20crime%22&f=false>; JL]

**Declining trust in the law may also increase crime and with it imprisonment**. A large body of evidence in psychology suggests that people obey the law not because they fear it, but because they believe it is legitimate (Tyler 2006: Tyler and Huo 2002; Tyler et al. 2007; Meares 2009). Some argue that as imprisonment becomes ever-present, it loses its ability to deter (Stuntz 201]. 54 ). Ethnographic evidence from sociology documents that young people turn to gangs and Violence when they feel that the state does not protect them (Anderson 2000; Venkatesh 2006). “’Waning trust may also reduce the likelihood that residents report crime, thereby forcing police to rely on the very “hunches and generalizations” about the community that first undermined its trust in legal institutions (Kinsey, Lea. and Young 1986. 39).

#### Extinction!

Dobriansky 1(Paula – Under Secretary for Global Affairs at the State Department , “The Explosive Growth of Globalized Crime,”<http://www.iwar.org.uk/ecoespionage/resources/transnational-crime/gj01.htm>)

Certain types ofinternational crime **-- terrorism, human trafficking, drug trafficking, and contraband smuggling -- involve** serious violence **and physical harm**. Other forms -- fraud, extortion, money laundering, bribery, economic espionage, intellectual property theft, and counterfeiting -- don't require guns to cause major damage. Moreover, the spread of information technology has created new categories of cybercrime. For the United States, international crime poses threats on three broad, interrelated fronts. First, the impact is felt directly on the streets of American communities. Hundreds of thousands of individuals enter the U.S. illegally each year, and smuggling of drugs, firearms, stolen cars, child pornography, and other contraband occurs on a wide scale across our borders. Second, the expansion of American business worldwide has opened new opportunities for foreign-based criminals. When an American enterprise abroad is victimized, the consequences may include the loss of profits, productivity, and jobs for Americans at home. Third, **international criminals engage in a variety of activities that pose a** grave threat **to the** national security of the United States and **the** stability and values **of the entire world community. Examples include the acquisition of** w**eapons of** m**ass** d**estruction, trade in banned or dangerous substances, and trafficking in women and children**. **Corruption and the enormous flow of unregulated, crime-generated profits are** serious threats **to the stability of democratic institutions and free market economies around the world.**

### 1AR A/O – SOP

#### Heller expanded the role of judiciary into the realm of policymaking, changing the balance between courts and Congress

Stevens 8 [John Paul Stevens (justice of the Supreme Court of the United States), with whom Justice Souter, Justice Ginsburg, and Justice Breyer join, "Stevens' Dissent," *District of Columbia v. Heller*, 2008, https://www.law.cornell.edu/supct/html/07-290.ZD.html] AZ

The Court concludes its opinion by declaring that it is not the proper role of this Court to change the meaning of rights “enshrine[d]” in the Constitution. Ante, at 64. But the right the Court announces was not “enshrined” in the Second Amendment by the Framers; it is the product of today’s law-changing decision. The majority’s exegesis has utterly failed to establish that as a matter of text or history, “the right of law-abiding, responsible citizens to use arms in defense of hearth and home” is “elevate[d] above all other interests” by the Second Amendment . Ante, at 64. Until today, it has been understood that legislatures may regulate the civilian use and misuse of firearms so long as they do not interfere with the preservation of a well-regulated militia. The Court’s announcement of a new constitutional right to own and use firearms for private purposes upsets that settled understanding, but leaves for future cases the formidable task of defining the scope of permissible regulations. Today judicial craftsmen have confidently asserted that a policy choice that denies a “law-abiding, responsible citize[n]” the right to keep and use weapons in the home for self-defense is “off the table.” Ante, at 64. Given the presumption that most citizens are law abiding, and the reality that the need to defend oneself may suddenly arise in a host of locations outside the home, I fear that the District’s policy choice may well be just the first of an unknown number of dominoes to be knocked off the table.39 I do not know whether today’s decision will increase the labor of federal judges to the “breaking point” envisioned by Justice Cardozo, but it will surely give rise to a far more active judicial role in making vitally important national policy decisions than was envisioned at any time in the 18th, 19th, or 20th centuries.

#### Heller was judicial supremacist

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

In this freewheeling enterprise, both sides travel through time and across the ocean assembling their eclectic array of support for their positions. In the face of such equivocal evidence, plausibly supporting both the majority and the dissent’s position, the choice before the Court was a discretionary one. Heller was wrong because the majority exercised its discretion to assert judicial supremacy in a manner, I will argue, that will place the courts in the same position envisioned by the judicial supremacists in Roe. Justice Stevens and his fellow dissenters should have prevailed—not because Justice Stevens’s analysis of the Second Amendment was more persuasive, but simply because it was equally so: “[e]ven if the textual and historical arguments on both sides of the issue were evenly balanced, respect for the well-settled views of all our predecessors on this Court, and for the rule of law itself, would prevent most jurists from endorsing such a dramatic upheaval in the law.”91 Heller was not a case of statutory interpretation, where the Court is obliged to weigh close arguments and find the better answer. Even in the statutory arena, there exist interpretive maxims that accord the benefit of the doubt on the most difficult questions to Congress92 and the states.93 If Heller now stands for the opposite proposition that ties in constitutional adjudication are to go to the interventionist, then Roe’s vision of judicial primacy will be well on its way. If further evidence that Heller veered toward judicial lawmaking is needed, one can find it in the majority’s statement that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”94 As Justice Breyer notes, the Court does not explain why these restrictions are embedded in the Second Amendment.95 The Constitution’s text, at least, has as little to say about restrictions on firearm ownership by felons as it does about the trimesters of pregnancy. The Heller majority seems to want to have its cake and eat it, too—to recognize a right to bear arms without having to deal with any of the more unpleasant consequences of such a right. In short, the Court wishes to preempt democracy up to point. But up to what point and why? Justice Scalia eloquently warned the majority in Casey that [T]he American people love democracy and the American people are not fools. As long as this Court thought (and the people thought) that we Justices were doing essentially lawyers' work up here— reading text and discerning our society's traditional understanding of that text—the public pretty much left us alone. Texts and traditions are facts to study, not convictions to demonstrate about. But if in reality our process of constitutional adjudication consists primarily of making value judgments; if we can ignore a long and clear tradition clarifying an ambiguous text . . . then a free and intelligent people's attitude towards us can be expected to be (ought to be) quite different. The people know that their value judgments are quite as good as those taught in any law school—maybe better.96 Thus the dangers of letting “value judgments” drive constitutional interpretation. Roe was rightfully criticized not simply because it was an anti-originalist opinion, but because it was anti-democratic, allowing the Justices to make “value judgments” that belonged to the people themselves. Some observers may be tempted to view Heller as a revenge of sorts for Roe. One substantive constitutional right deserves another: a sort of judicial tit-for-tat. Without Heller, the course of constitutional law may seem a one-way ratchet, where one side creates a succession of new rights, and the other has no counter. But the game of dueling activist Constitutions will become too painful to watch, and the reputational loss to law from the programmatic assumption of political authority will become too great to bear.

#### Heller acted like a legislature, making judgments on state laws

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

Justice Breyer’s dissent in Heller sounds familiar. He criticized the majority for acting like a legislature. He noted that courts typically defer to legislatures’ empirical judgments, and that legislatures are better than courts at analyzing facts. He acknowledged there is a right at stake, but finds that the D.C. regulation is reasonable. This sounds all too much like Justice Rehnquist in Roe, who would have upheld Texas’s law as a reasonable regulation of the Fourteenth Amendment’s due process right.206 Justice Rehnquist’s dissent weighed in heavily on the defects of the judicial perspective and the virtues of the legislative craft. But in Heller, the calculus has not changed one whit. Every one of the infirmities that Justice Rehnquist identified in Roe—the superior capacity of legislatures to evaluate facts, the narrow perspective that judges bring to contested social issues, and the straitjacket that a constitutional rule places on legislative compromise and changing information—is also present in Heller. 1. Separation of Powers and Comparative Expertise. Both Roe and Heller turn on complicated facts. Under the Court’s new Heller rule, whether a state regulation passes constitutional muster depends on whether that regulation interferes with the Second Amendment’s right to bear arms. Therefore, Heller (like Roe) has given birth to a balancing test that will force courts into the “conscious weighing of competing factors” as they decide which state interests are sufficiently strong and which regulations unduly burden the new right.207 Ironically, Justice Scalia deplores this sort of balancing. In Heller, he rebutted Justice Breyer’s dissent by chiding that judges cannot balance away the core of an enumerated right. In the Second Amendment context, this core is “the lawful purpose of self-defense.”208 But the Court’s dicta on the likely constitutionality of commercial sale regulations and felon possession bans sure looks like balancing: because the history is ambiguous, the opinion seems to announce that some state interests in safety outweigh some personal interest in gun possession. In this way, Heller reads like Roe, deciding issues not before the Court and making casual empirical assumptions to justify those decisions. State courts that have ruled on state rights to bear arms have traditionally underenforced the right by deferring to legislative regulations on guns. Adam Winkler, who has studied these decisions, suggests that state courts defer because courts are ill-suited to “ ‘prescrib[ing] workable standards of state conduct and devis[ing] measures to enforce them.’”209 Winkler suggests that heightened judicial scrutiny in this area would raise “[p]rofound questions of institutional competence” because “[t]he debates over the effectiveness of various forms of gun control are dense, and the empirical data often conflicting, leaving courts understandably reluctant to engage with them.”210 Winkler argues that judicial interference in complicated issues of social science might have particularly dangerous consequences where forcing states to ease gun restrictions could lead to more violent deaths.211 And deference in the area of gun control should mirror judicial deference in areas like prison regulations, where complex security problems require that local officials have maximum flexibility to adapt to changing information and new threats.212 Two specific issues—trigger locks and concealed carry laws—illustrate the inability of courts to decide issues of gun policy. First, the D.C. law at issue in Heller required residents to keep lawfully owned firearms “unloaded and disassembled or bound by a trigger lock or similar device,” with some exceptions.213 The Court concluded that the trigger lock requirement rendered guns inoperable, and impossible to use for the core right of selfdefense. Therefore, the requirement was unconstitutional.214 But the Court wrote that laws regulating the storage of guns (presumably to keep them beyond the reach of thieves and children) would likely be upheld.215 The Court never explains why exactly safe storage laws are constitutional, or how they intrude less on Second Amendment rights than trigger locks do. It is not even clear that trigger locks do render guns inoperable.

#### Courts are ill-suited to regulate guns – they're unaccountable, uninformed, and inefficient. Allowing regional legislatures to innovate on gun control creates successful regulations that solve their impact

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

2. Political Process and Compromise. Next, as with abortion, there is no political process problem when it comes to gun control—in fact, debate over guns has been quite vigorous. Since its founding in 1976, the National Rifle Association has grown to over four million members,228 and advocacy groups for gun control, such as the Brady Campaign and the Coalition to Stop Gun Violence, are also strong. The latter group is comprised of 45 national organizations that include child welfare advocates, religious associations, and public health professionals who work at the grass-roots level to oppose gun violence.229 These interest groups reflect the strong and varying views held by the public on this issue: polls taken just after Heller show that about 54 percent of Americans support stricter gun control laws, while 40 percent oppose them;230 twenty-seven percent think that stricter laws would reduce violent crime a lot, 21 percent think more laws would reduce violence somewhat, and 50 percent think stricter laws would not reduce violent crime at all.231 This issue is clearly one that has engaged the electorate’s attention, engendered intense feeling, and spawned muscular interest group participation. There is no reason to remove it from what is plainly a highly energized electorate and place it in the lap of the courts. Instead, the Court should have left these and other decisions to elected bodies. This is partly because legislatures are responsive; they can adjust gun regulations as social conditions change, as trigger lock technology improves, and as study shows more clearly whether gun control increases or decreases violent crime. Legislatures can also capture community experiences not easily expressed in empirical studies—for instance, local concerns about domestic violence, a desire to get guns off the streets, or parents’ worries about adolescent suicide or childhood accidents. Legislators are funnels for lots of information, and—perhaps most importantly—they are periodically elected and democratically accountable. Finally, legislators represent a broader cross-section of society than judges do: a teacher is not disqualified from serving in a legislature, but he is effectively disqualified from serving on a court. As Justice Scalia has argued, the Court “has no business imposing upon all Americans the resolution favored by the elite class from which the Members of [the Court] are selected.”232 This is because judges not only bring to the Court a relatively narrow set of life experiences, but because judges, like most people, talk primarily to people within their own social and professional set. Their political decisions generally “reflect[] the views and values of the lawyer class.”233 Moreover, it is patently wrong to have an issue that will not only affect people’s lives, but could literally cost them their lives, decided by courts that are not accountable to them. Some studies suggest that restrictions on handguns reduce violent crime, and that overturning these laws may lead to increased rates of murder and suicide.234 Absent the clearest sort of textual mandate, we should not entrust courts with such life and death decisions. As noted above, the sheer hubris of unelected and unaccountable judges taking over the legislative function on a sensitive political issue was at the core of conservative criticism of Roe. Justice Scalia, for instance, has criticized the Court for employing an “ad hoc nullification machine” that prevents one part of our democratic society—those morally opposed to abortion—from persuading the majority that its views are correct.235 But no one has explained why either the Court’s hubris or its takeover is any more justified when gun regulation is at issue. Like citizens who oppose abortion, gun control advocates are now “deprived . . . of the political right to persuade the electorate” that their views are correct.236

#### Separation of power solves unaccountable decisions to go to war – causes extinction

Adler 96 - (David, professor of political science at Idaho State, The Constitution and Conduct of American Foreign Policy, p. 23-25)

The structure of shared powers in foreign relations serves to deter the abuse of power, misguided policies, irrational action, and unaccountable behavior. As a fundamental structural matter, the emphasis on joint policymaking permits the airing of sundry political, social, and economic values and concerns. In any event, the structure wisely ensures that the ultimate policies will not reflect merely the private preferences or the short-term political interests of the president. Of course this arrangement has come under fire in the postwar period on a number of policy grounds. Some critics have argued, for example, that fundamental political and technological changes in the character of international relations and the position of the United States in the world have rendered obsolete an eighteenth-century document designed for a peripheral, small state in the European system of diplomatic relations. Moreover, it has been asserted that quick action and a single, authoritative voice are necessary to deal with an increasingly complex, interdependent, and technologically linked world capable of massive destruction in a very short period of time. Extollers of presidential dominance have also contended that only the president has the qualitative information, the expertise, and the capacity to act with the necessary dispatch to conduct U.S. foreign policy. These policy arguments have been reviewed, and discredited, elsewhere; space limitations here permit only a brief commentary. Above all else, the implications of U.S. power and action in the twentieth century have brought about an even greater need for institutional accountability and collective judgment that existed 200 years ago. The devastating, incomprehensible destruction of nuclear war and the possible extermination of the human race demonstrate the need for joint participation, as opposed to the opinion of one person, in the decision to initiate war. Moreover, most of the disputes at stake between the executive and legislative branches in foreign affairs, including the issues discussed in this chapter, have virtually nothing to do with the need for rapid response to crisis. Rather, they are concerned only with routine policy formulation and execution, a classic example of the authority exercised under the separation of powers doctrine. But these functions have been fused by the executive branch and have become increasingly unilateral, secretive, insulated from public debate, and hence unaccountable. In the wake of Vietnam, Watergate, and the Iran-Contra scandal, unilateral executive behavior has become even more difficult to defend. Scholarly appraisals have exploded arguments about intrinsic executive expertise and wisdom on foreign affairs and the alleged superiority of information available to the president. Moreover, the inattentiveness of presidents to important details and the effects of “group-think” that have dramatized and exacerbated the relative inexperience of various presidents in international relations have also devalued the extollers arguments. Finally, foreign policies, like domestic policies, are a reflection of values. Against the strength of democratic principles, recent occupants of the White House have failed to demonstrate the superiority of their values in comparison to those of the American people and their representatives in Congress

### 1AR A/O – Court Clog

#### Heller causes court clog and a spate of lawsuits

The Economist 8 ["The first domino?," The Economist, June 2008] AZ

AFTER frantically tearing through the Supreme Court’s majority opinion in Heller this morning, I took some time to listen to Justice John Paul Stevens read his dissent, which the Court's public information office piped in over loudspeakers. Much of his lengthy—46 page—written analysis focused on very old lawmaking and jurisprudence, concluding: The Court properly disclaims any interest in evaluating the wisdom of the specific policy choice challenged in this case, but it fails to pay heed to a far more important policy choice—the choice made by the Framers themselves. The Court would have us believe that over 200 years ago, the Framers made a choice to limit the tools available to elected officials wishing to regulate civilian uses of weapons, and to authorize the Court to use the common-law process of case-by-case judicial lawmaking to define the contours of acceptable gun control policy. Absent compelling evidence that is nowhere to be found in the Court’s opinion, I could not possibly conclude that the Framers made such a choice. History lesson aside, Mr Stevens frets that this ruling will open the door to many new lawsuits challenging existing gun laws: I fear that the District’s policy choice may well be just the first of an unknown number of dominoes to be knocked off the table. I do not know whether today’s decision will increase the labour of federal judges to the “breaking point” envisioned by Justice Cardozo, but it will surely give rise to a far more active judicial role in making vitally important national policy decisions than was envisioned at any time in the 18th, 19th or 20th centuries. Indeed, gun-control advocates worry that city officials across the country will now have to spend time dealing with gun-law challenges rather than more pressing matters, and I am sure NRA types are itching to force them to do so. So what types of restrictions might withstand judicial scrutiny under the latest ruling? The majority writes: It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues. The Court’s opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. The majority also suggested that Americans do not have the right to carry “dangerous and unusual” weapons. Precisely how that wording applies to a range of existing laws—and in particular what manner of "conditions and qualifications on the commercial sale of arms" are constitutional—will be up to courts to figure out for some time yet. Gun-control activists find some hope in the notion that unambitious new laws might get past both courts and legislatures as gun owners worry less that the government is aiming to confiscate their weapons. But only time—and, no doubt, a spate of new lawsuits—will tell.

#### Reversing Heller frees up judicial resources and avoids unending debates about firearms by leaving gun control to the legislature

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

It is not as if the Justices in Heller were not warned. The problems the thicket presents—consuming judicial resources and forcing unending arbitrary decisions outside the realm of judicial competency—came to the forefront in the aftermath of Roe as courts got drawn into deciding complex abortion issues. It is astonishing that the Court has entered the gun-control thicket given the recency of its experience with Roe. Many of the justices currently on the Court criticized the Court’s immersion in abortion—a similarly contentious, technical, value-laden field—but seem content to replicate the difficulties the abortion quagmire created. It would be heartening to think the Court was chastened by its misadventure and determined not to repeat it. Perhaps the dissenters have been chastened, for they have sounded Scalia-like alarums about “the Court’s unjustified entry into this thicket.”160 But the majority has disregarded its own long decades of red flags. Rather than emulating Roe, Heller should have provided the corrective. So now, predictably and inevitably, the litigation will take off. Courts across the country will face detailed questions about firearms regulations and will provide varied and often inconsistent answers. Circuit splits and open questions will persist for our lifetimes. And for what purpose? What justifies the judiciary asserting its primacy in yet another new arena? Surely not its greater expertise. Surely not, as in apportionment, a dysfunctional political process. As Justice Stevens observed in Heller, “no one has suggested that the political process is not working exactly as it should,” in firearms regulation.161 Accordingly, the Court should honor the structure of our constitution, stay out of the thicket, and leave the highly motivated contestants in this field to press their agendas in the political process where the issue properly belongs and where for centuries it has remained.

#### Federal court clog causes collapses the federal judiciary – overburdens dockets, expansion can't keep pace

Oakley 96 ~John B. Oakley, Distinguished Professor of Law Emeritus US Davis School of Law, 1996 The Myth of Cost-Free Jurisdictional Reallocation~

￼Personal effects: The hidden costs of greater workloads. The hallmark of federal justice traditionally has been the searching analysis and thoughtful opinion of a highly competent judge, endowed with the time as well as the intelligence to grasp and resolve the most nuanced issues of fact and law. Swollen dockets create assembly-line conditions, which threaten the ability of the modern federal judge to meet this high standard of quality in federal adjudication. No one expects a federal judge to function without an adequate level of available tangible resources: sufficient courtroom and chambers space, competent administrative and research staff, a good library, and a comfortable salary that relieves the judge from personal financial pressure. Although salary levels have lagged—encouraging judges to engage in the limited teaching and publication activities that are their sole means of meeting such newly pressing financial obligations as the historically high mortgage expenses and college tuitions of the present decade—in the main, federal judges have received a generous allocation of tangible resources. It is unlikely that there is any further significant gain to be realized in the productivity of individual federal judges through increased levels of tangible resources,13 other than by redressing the pressure to earn supplemental income.14 ￼On a personal level, the most important resource available to the federal judge is time.15 Caseload pressures secondary to the indiscriminate federalization of state law are stealing time from federal judges, shrinking the increments available for each case. Federal judges have been forced to compensate by operating more like executives and less like judges. They cannot read their briefs as carefully as they would like, and they are driven to rely unduly on law clerks for research and writing that they would prefer to do themselves.16 If federal judges need more time to hear and decide each case, an obvious and easy solution is to spread the work by the appointment of more and more federal judges. Congress has been generous in the recent creation of new judgeships,17 and enlargement ￼of the federal judiciary is likely to continue to be the default response, albeit a more grudging one, to judicial concern over the caseload consequences of jurisdictional reallocation. Systemic effects: The hidden costs of adding more judges. Increasing the size of the federal judiciary creates institutional strains that reduce and must ultimately rule out its continued acceptability as a countermeasure to caseload growth. While the dilution of workload through the addition of judges is always incrementally attractive, in the long run it will cause the present system to collapse. I am not persuaded by arguments that the problem lies in the declining quality of the pool of lawyers willing to assume the federal bench18 or in the greater risk that, as the ranks of federal judges expand, there will be more frequent lapses of judgment by the president and the Senate in seating the mediocre on the federal bench.19 In my view, the diminished desirability of federal judicial office is more than offset by the rampant dissatisfaction of modern lawyers with the excessive commercialization of the practice of law. There is no shortage of sound judicial prospects will￼ing and able to serve, and no sign that the selection process—never the perfect meritocracy—is becoming less effective in screening out the unfit or undistinguished. Far more serious are other institutional effects of continuously compounding the number of federal judges. Collegiality among judges, consistency of decision, and coherence of doctrine across courts are all imperiled by the growth of federal courts to cattle-car proportions. Yet the ability of the system to tolerate proliferation of courts proportional to the proliferation of judges is limited, and while collapse is not imminent, it cannot be postponed indefinitely. Congress could restructure the federal trial and appellate courts without imperiling the core functions, but the limiting factor is the capacity of the Supreme Court to maintain overall uniformity in the administration and application of federal law. That Court is not only the crown but the crowning jewel of a 200-year-old system of the rule of law within a constitutional democracy, and any tinkering with its size or jurisdiction would raise the most serious questions of the future course of the nation.

### Extra cards

#### Heller made gun control a national issue when it should be delegated to the states – crushes dual sovereignty

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

Heller elevated the review of gun regulations to the national level, “where it is infinitely more difficult to resolve.”311 These efforts will serve only to make the debate over gun laws more intractable. Others have reacted to Heller by proposing that the decision may actually lessen divisiveness. Their theory is that Heller will encourage reasonable debate because the decision took the polarizing policy of handgun prohibitions off the table.312 But those arguments merely replicate the failed predictions that Roe would resolve the abortion issue. As the Court blueprints its Second Amendment jurisprudence and subjects every state and local regulation to federal court review, the national controversy over gun policy will intensify. Placing issues in the courts is no safety valve, and it builds frustration in those whom judicial decisions disenfranchise. So, Heller jettisoned the many benefits of federalism, and it did so despite the lessons of Roe. This course is both troubling and perilous. Federalism must remain more than a pliable means to substantive ends—treated as either a rhetorical device to be employed when convenient or a nuisance to be ignored when less so. It is disheartening that Justices who deplored decisions like Roe on federalism grounds ignore the constraints of federalism when the substantive terrain shifts to firearms. It is disheartening that the dissenting Justices in Heller decline to apply their federalism-based critiques across the board, even on issues like abortion. The shoe must be worn when it pinches as well as when it comforts.313 Uneven treatment denies dual sovereignty the respect it deserves and will fuel accusations of a policy-driven Court.

#### link turns stop and frisk

Dery 9 [George M. Dery III (Professor, California State University Fullerton, Division of Politics, Administration, and Justice; former Deputy District Attorney, Los Angeles, California), "Unintended Consequences: The Supreme Court’ s Interpretation of the Second Amendment in District of Columbia V. Heller Could Water-Down Fourth Amendment Rights," University of Pennsylvania Journal of Law and Social Change, 2009] AZ

B. The Ruling in Heller May Accelerate an Erosion of Fourth Amendment Rights during Police Stop and Frisks The idea, expressed in Heller, that expanding one right promotes freedom in general might be too simplistic. A nation of individuals with access to firearms does indeed put government officials on notice, but the resulting consequences may lead to gradual limitations on freedom. Specifically, the impact on individual rights when a government is dealing with a potentially armed populace was dramatically illustrated in the seminal Fourth Amendment case, Terry v. Ohio.84 In Terry, on Halloween in 1963, Cleveland Police Detective Martin McFadden noticed two men, Chilton and Terry, behaving very peculiarly, which caused him to suspect that the men were planning "a stick up" of a store. 85 Fearing that "they might have a gun," Officer McFadden approached the two men, identified himself, and asked for their names.86 When the men "mumbled" their responses, McFadden spun Terry around, patted down the outside of hisclothing, felt a pistol, and ultimately recovered from his breast pocket a .38 caliber revolver.87 The facts in Terry presented the Court with "difficult and troublesome issues" concerning a "sensitive area of police activity"- the stop and frisk. 88 On the one hand, Chief Justice Warren, writing for the Court, emphasized that the Fourth Amendment right against unreasonable search and seizure was an " inestimable right of personal security" that belonged "as much to the citizen of the streets of our cities as to the homeowner closeted in ills study."89 Specifically, the Court declared that "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person .... " 9 ° Cognizant of the realities of police encounters with civilians on the street, the Court noted that such police activity could "exacerbate police-community tensions," 91 because "field interrogations are a major source of friction between the police and minority groups."92 Chief Justice Warren considered the negative effects that street detentions might cause in the hands of an unprofessional officer, who may be motivated by "the need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets." 93 However, the Court in Terry considered, on the other hand, that "the rapidly unfolding and often dangerous situations on city streets" required giving police "an escalating set of flexible responses" 94 to ensure their safety. Cruef Justice Warren recognized that officers performing field detentions have an interest more immediate and fundamental than the investigation of crime: the interest in surviving the encounter.95 The Courtstated, "American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded."96 The Court made an explicit connection between guns and officer fatalities, specifying that "[f]ifty-five of the 57 officers killed in 1966 died from gunshot wounds, 41 of them inflicted by handguns easily secreted about the person.'m The Court continued, "[t]he easy availability of firearms to potential criminals in this country is well known and has provoked much debate." 98 The Court then specifically linked gun violence to its ruling by declaring, "[ w ]hatever the merits of gun-control proposals, this fact is relevant to an assessment of the need for some form of self-protective search powers." 99 The subsequent legal rule allowed police to perform a stop and frisk for weapons for the protection of the police officer when "he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." 100 As for the scope of the police search, the Court found reasonable an officer's pat down, 101 or a "carefully limited search" of "outer clothing" in order to "discover weapons which might be used against him." 102 The Terry Court recognized that its rule was novel, admitting that " [ w ]e would be less than candid if we did not acknowledge that his question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity- issues which have never before been squarely presented to this Court." 103 Moreover, the Court realized the signifi cance of its extension of police search powers. Chief Justice Warren flatly stated, it is simply fantastic to urge that [a frisk] performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.' It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly. 104 The Court cited the following as an "apt description" of a frisk: "[t]he Officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made ofthe prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet." 105 Despite its intrusiveness, the Court justified upholding the government's new right to search by declaring, "we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest."

#### weakened 4th amendment

Dery 9 [George M. Dery III (Professor, California State University Fullerton, Division of Politics, Administration, and Justice; former Deputy District Attorney, Los Angeles, California), "Unintended Consequences: The Supreme Court’ s Interpretation of the Second Amendment in District of Columbia V. Heller Could Water-Down Fourth Amendment Rights," University of Pennsylvania Journal of Law and Social Change, 2009] AZ

Of course, the Fourth Amendment is hardly the only constitutional right to generate conflict between competing concerns. In the Second Amendment context, 9 a long-running debate has developed between those who interpret the right to keep and bear arms as a collective right needed only to establish militias, 10 and those who see the right to bear arms as an individual right required to check tyranny. 11 The individual right view won a decisive victory in the 2008 Supreme Court case, District of Columbia v. Heller. 12 The Court in Heller was presented with two very different interpretations of the Second Amendment. 13 The government argued that the Second Amendment protects "only the right to possess and carry a firearm in connection with militia service." 14 Dick Heller, in contrast, asserted that the constitutional provision protects "an individual right to possess a firearm unconnected with service in the militia, and to use that [fire]arm for traditionally lawful purposes, such as self-defense within the home." 15 The Heller Court sided with Dick Heller's individual rights view of the Second Amendment, holding that "the District's ban on handgun possession in the home violates the Second Amendment." 16 However, individual rights cannot be viewed in a vacuum. The characterization of the Second Amendment as an individual right may lead to further erosion of individual privacy and security rights protected by the Fourth Amendment. As the Court in Heller acknowledged, "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." 17 Thus, a practical consequence of Heller might be a limitation of the government's options to address gun violence. As a result, police officers, finding themselves less protected by gun control legislation, may resort to self-help by committing more frequent or more intrusive searches or seizures. Therefore, the Court, mindful of the danger to officers posed by firearms, may hesitate in the future to maintain current Fourth Amendment protections

#### Stevens justified his dissent based on a rigorous historical reading of the 2nd Amendment

Aborn 12 [Richard F. Aborn (president of the Citizens Crime Commission of New York City, a partner in the law firm Constantine Cannon, and the managing director of Constantine & Aborn Advisory Services) and Marlene Koury, "Toward a Future, Wiser Court: A Blueprint for Overturning District of Columbia v. Heller" Fordham Urban Law Journal, 2012] AZ

Justice Stevens issued a passionate dissent,67 calling the majority’s analysis “a strained and unpersuasive reading” of the Second Amendment that resulted in “a dramatic upheaval in the law.”68 In his astute dissent, Justice Stevens not only articulates how the majority failed to give proper deference to the Court’s own longstanding Miller decision, but also—and perhaps more importantly—he provided clues to future advocates looking to overturn Heller .69 In particular, Stevens demonstrates how the majority’s textual interpretation is sophistic and divorced from the intentions of the framers, and he detects the carelessness of the majority’s choice to arrogate for the judiciary gun-control policy decisions that instead should be made by the legislature.70 In his dissent, Justice Stevens reads the Second Amendment as establishing the right “to keep and bear Arms” in connection with service to the nation in the militia.71 In direct contradiction with the majority view, he argues that the “militia” preamble is connected to the phrase “to keep and bear Arms,” meaning that the Second Amendment applies only to state militia service—not to an individual right.72 Justice Stevens concluded that the Founders would have expressly articulated an individual right to bear arms in the Amendment if they meant to confer such a right, as certain states expressly did in their own declarations of rights.73 He drew on historical evidence that demonstrated that the purpose of the Second Amendment was to prevent the federal government from disarmingstate militias.74 As to the right of self-defense, Justice Stevens argued that “there is no indication that the Framers of the [Second] Amendment intended to enshrine the common-law right of selfdefense in the Constitution.”75 In addition, Justice Stevens noted that the majority provided no basis for revising the interpretation of the Second Amendment from the purpose outlined in Miller .76 Justice Stevens argued that Miller should not be undermined or limited, as it interpreted the Second Amendment correctly and as Courts, legislators, and litigants have relied on it for over seventy years.77 He argued that [t]he view of the Amendment we took in Miller —that it protects the right to keep and bear arms for certain military purposes, but that it does not curtail the Legislature’s power to regulate the nonmilitary use and ownership of weapons—is both the most natural reading of the Amendment’s text and the interpretation most faithful to the history of its adoption.78 In response to the majority view that Miller only prohibited “dangerous and unusual” weapons, he concluded that “[t]he Court would have us believe that over 200 years ago, the Framers made a choice to limit the tools available to elected officials wishing to regulate civilian uses of weapons . . . . I could not possibly conclude that the Framers made such a choice.”79 Indeed, Justice Stevens concluded that “a review of the drafting history of the Amendment demonstrates that its Framers rejected proposals that would have broadened its coverage to include [civilian use of weapons].”80 With his impassioned dissent, Justice Stevens aimed to strike the intelligence of a future, wiser Court. He also sounded the alarm: now gun control advocates and citizens must respond. Stevens’s analysis lays the technical framework that would allow a future Court to overturn Heller , while outrage over the Court’s decision to take gun control policy decisions away from bodies that are elected, and better equipped to study and address the problem of gun violence, has the potential to galvanize a movement that would engineer cases offering a future Court the opportunity to right the wrong of Heller.

#### Prisons are fundamental to and indisputably productive of US globality. Their focus on one localized signification of oppression elides the role of the prison in inaugurating and sustaining white supremacist genocidal violence

Rodríguez 07 - Professor and Chair of Ethnic Studies @ UC Riverside [Dr. Dylan Rodríguez, “American Globality and the US Prison Regime: State Violence and White Supremacy from Abu Ghraib to Stockton to Bagong Diwa,” Kritika Kultura 9 (2007): pg. 22-48

To consider the US prison as a global practice of dominance, we might begin with the now-indelible photo exhibition of captive brown men manipulated, expired, and rendered bare in the tombs of the US-commandeered Abu Ghraib prison: here, I am concerned less with the idiosyncrasies of the carceral spectacle (who did what, administrative responsibilities, tedium of military corruption and incompetence, etc.) than I am with its inscription of the where in which the worst of US prison/state violence incurs. As the bodies of tortured prisoners in this somewhere else, that is, beyond and outside the formal national domain of the United States, have become the hyper-visible and accessible raw material for a global critique of the US state—with Abu Ghraib often serving as the signifier for a generalized mobilization of sentiment against the American occupation—the intimate and proximate bodies of those locally and intimately imprisoned within the localities of the United States constantly threaten to disappear from the political and moral registers of US civil society, its resident US Establishment Left, and perhaps most if not all elements of the global Establishment Left, which includes NGOs, political parties, and¶ sectarian organizations. I contend in this essay that a new theoretical framing is required to critically address (and correct) the artificial delineation of the statecraft of Abu Ghraib prison, and other US formed and/or mediated carceral sites across the global landscape, as somehow unique and exceptional to places outside the US proper. In other words, a genealogy and social theory of US state violence specific to the regime of the prison needs to be delicately situated within the ensemble of institutional relations, political intercourses, and historical conjunctures that precede, produce, and sustain places like the Abu Ghraib prison, and can therefore only be adequately articulated as a genealogy and theory of the allegedly “domestic” US prison regime’s “globality” (I will clarify my use of this concept in the next part of this introduction). Further, in offering this initial attempt at such a framing, I am suggesting a genealogy of US state violence that can more sufficiently conceptualize the logical continuities and material articulations between a) the ongoing projects of domestic warfare organic to the white supremacist US racial state, and b) the array of “global” (or extra-domestic) technologies of violence that form the premises of possibility for those social formations and hegemonies integral to the contemporary moment of US global dominance. In this sense, I am amplifying the capacity of the US prison to inaugurate technologies of power that exceed its nominal relegation to the domain of the criminal juridical. Consider imprisonment, then, as a practice of social ordering and geopolitical power, rather than as a self-contained or foreclosed jurisprudential practice: therein, it is possible to reconceptualize the significance of the Abu Ghraib spectacle as only one signification of a regime of dominance that is neither (simply) local nor (erratically) exceptional, but is simultaneously mobilized, proliferating, and global. The overarching concern animating this essay revolves around the peculiarity of US global dominance in the historical present: that is, given the geopolitical dispersals and dislocations, as well as the differently formed social relations generated by US hegemonies across sites and historical contexts, what modalities of “rule” and statecraft give form and coherence to the (spatial-temporal) transitions, (institutional-discursive) rearticulations, and (apparent) novelties of “War on Terror” neoliberalism? Put differently, what technologies and institutionalities thread between forms of state and state-sanctioned dominance that are nominally autonomous of the US state, but are no less implicated in the global reach of US state formation? The intent of this initial foray into a theoretical project that admittedly exceeds the strictures of a self-contained journal article is primarily suggestive: on the one hand, I wish to examine how the institutional matrix and technological module of the US prison regime (a concept I will develop in the next section of the essay) is a programmatic (that is, strategic and structural rather than conspiratorial or fleeting) condensation of specific formations of racial and white supremacist state violence and is produced by the twinned, simultaneous logics of social ordering/disruption (e.g. the prison as both and at once the exemplar of effective “criminal justice” law-and-order and culprit in the mass-based familial and community disruption of criminalized populations). On the other hand, I am interested in considering how the visceral and institutionally abstracted logic of bodily domination that materially forms and reproduces the regime of the American prison is fundamental, not ancillary, to US state-mediated, state-influenced, and state-sanctioned methods of legitimated “local” state violence across the global horizon. To put a finer edge on this latter point, it is worth noting that given the plethora of scholarly and activist engagements with US global dominance that has emerged in recent times, and the subsequent theoretical nuance and critical care provided to treatments of (for example) US corporate capital, military/warmaking capacity, and mass culture, relatively little attention has been devoted to the constitutive role of the US prison in articulating the techniques, meanings, and pragmatic forms of state-building within post-1990s social formations, including those of the US’s ostensible peer states, as well as places wherein militarized occupation, postcolonial subjection, and proto-colonial relations overdetermine the ruling order. In place of considering the US prison as a dynamic, internally complex mobilization of state power and punitive social ordering, such engagements tend to treat the prison as if it were, for the most part, a self-evident outcome or exterior symptom of domination rather than a central, interior facet of how domination is itself conceptualized and produced. In this meditation I am concerned with the integral role of the US prison regime in the material/cultural production of “American globality.” In using this phrase I am suggesting a process and module of state power that works, moves, and deploys in ways distinct from (though fundamentally in concert with) American (global) “hegemony,” and inaugurates a geography of biopolitical power more focused than common scholarly cartographies of American “empire.” For my purposes, American globality refers to the postmodern production of US state and state-sanctioned technologies of human and ecological domination—most frequently formed through overlapping and interacting regimes of profound bodily violence, including genocidal and protogenocidal violence, warmaking, racist and white supremacist state violence, and mass-scaled imprisonment— and the capacity of these forms of domination to be mobilized across political geographies all over the world, including by governments and states that are nominally autonomous of the United States. American globality is simultaneously a vernacular of institutional power, an active and accessible iteration of violent human domination as the cohering of sociality (and civil society) writ large, and a grammar of pragmatic immediacy (in fact, urgency) that orders and influences statecraft across various geographies of jurisdiction and influence. It is in this sense of globality as (common) vernacular, (dynamic, present tense) iteration, and (disciplining) grammar that the current formation of global order is constituted (obviously) by the direct interventions of the US state and (not as obviously) by the lexicon (as in the principles governing the organization of a vocabulary) of US statecraft. American globality infers how the US state conceptualizes its own power, as well as how these conceptualizations of power and American state formation become immediately useful to—and frequently, structurally and politically overbearing on—other state formations and hegemonies. The prison regime, in other words, is indisputably organic to the lexicon of the US state, and is thus productive of American globality, not a by-product or reified outcome of it. In the remainder of this essay, I raise the possibility that the US conceptualization of the prison as a peculiar mobilization of power and domination is, in the historical present, central to how states, governments, and social orderings all over the world are formulating their own responses to the political, ecological, and social crises of neoliberalism, warfare, and global white supremacy. Pg. 22-25

#### Yes court clog

Stevens 8 [John Paul Stevens (justice of the Supreme Court of the United States), with whom Justice Souter, Justice Ginsburg, and Justice Breyer join, "Stevens' Dissent," *District of Columbia v. Heller*, 2008, https://www.law.cornell.edu/supct/html/07-290.ZD.html] AZ

In 1934, Congress enacted the National Firearms Act, the first major federal firearms law.1 Upholding a conviction under that Act, this Court held that, “[i]n the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than eighteen inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.” Miller, 307 U. S., at 178. The view of the Amendment we took in Miller—that it protects the right to keep and bear arms for certain military purposes, but that it does not curtail the Legislature’s power to regulate the nonmilitary use and ownership of weapons—is both the most natural reading of the Amendment’s text and the interpretation most faithful to the history of its adoption. Since our decision in Miller, hundreds of judges have relied on the view of the Amendment we endorsed there;2 we ourselves affirmed it in 1980. See Lewis v. United States, 445 U. S. 55 , n. 8 (1980).3 No new evidence has surfaced since 1980 supporting the view that the Amendment was intended to curtail the power of Congress to regulate civilian use or misuse of weapons. Indeed, a review of the drafting history of the Amendment demonstrates that its Framers rejected proposals that would have broadened its coverage to include such uses. The opinion the Court announces today fails to identify any new evidence supporting the view that the Amendment was intended to limit the power of Congress to regulate civilian uses of weapons. Unable to point to any such evidence, the Court stakes its holding on a strained and unpersuasive reading of the Amendment’s text; significantly different provisions in the 1689 English Bill of Rights, and in various 19th-century State Constitutions; postenactment commentary that was available to the Court when it decided Miller; and, ultimately, a feeble attempt to distinguish Miller that places more emphasis on the Court’s decisional process than on the reasoning in the opinion itself. Even if the textual and historical arguments on both sides of the issue were evenly balanced, respect for the well-settled views of all of our predecessors on this Court, and for the rule of law itself, see Mitchell v. W. T. Grant Co., 416 U. S. 600, 636 (1974) (Stewart, J., dissenting), would prevent most jurists from endorsing such a dramatic upheaval in the law.4 As Justice Cardozo observed years ago, the “labor of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not lay one’s own course of bricks on the secure foundation of the courses laid by others who had gone before him.” The Nature of the Judicial Process 149 (1921).

#### Heller turned courts into battlegrounds for policymaking

Wilkinson 9 [J. Harvie Wilkinson III (Circuit Judge, United States Court of Appeals for the Fourth Circuit), "Of Guns, Abortions, and the Unraveling Rule Of Law," Virginia Law Review, Vol. 95, No. 2, p. 253, 2009] AZ

When a constitutional question is so close, when conventional interpretive methods do not begin to decisively resolve the issue, the tie for many reasons should go to the side of deference to democratic processes. For a court that decides to strike down legislation based on an interpretation of the Constitution that is only plausible and not incontrovertible will appear to the public to be exercising discretion. And when a court appears to be exercising that discretion in a way that arguably accords with the political preferences of the judges in the majority—as was the case in Heller—more members of the public lose faith in the idea that justice is blind. For as Taylor continues, “even though all nine justices claimed to be following original meaning, they split angrily along liberal-conservative lines perfectly matching their apparent policy preferences, with the four conservatives (plus swing-voting Justice Anthony Kennedy) voting for gun rights and the four liberals voting against.”56 The upshot of all this argumentation is that both sides fought into overtime to a draw. And the argumentative exchange, even under the guise of an originalist inquiry, came perilously close to recreating Roe’s fundamental misapprehension—namely that law is politics pursued by other means. What is lacking in Heller is what was lacking in Roe: the sort of firm constitutional foundation from which to announce a novel substantive constitutional right. Consider the text of the Second Amendment. Does the Amendment’s prefatory clause limit the scope of the right found in the operative clause, or merely explain its justification? Justice Scalia, rejecting the arguments made by professors of linguistics and English to the contrary,57 dismissed quickly the possibility that the prefatory clause could restrict the operative clause, and concluded that the right in the operative clause need only be “consistent with the announced purpose” in the prefatory clause.58 Justice Stevens in his dissent called this approach “novel” and not in keeping with conventional interpretive methods.59 He argued that rather than attempting to determine the meaning of the operative clause independently of the prefatory clause, and then checking to make sure that the meaning of the operative clause is “consistent with the announced purpose,” the Court should have read the two clauses together.60 Both sides cite support for their vigorously-defended positions.61 Is “keep and bear arms” a construction that refers specifically to military uses, or does it mean the personal right to possess and carry firearms?

## Solvency

### Coram Nobis

#### Coram nobis rulings are key to remove the applicability of cases

Block 14 - University of Virginia School of Law, J.D./M.A., 2001 Hardy Cross Dillard Scholarship Goldsten Award for Distinction in the Classroom Virginia Law Review, Executive Editor U.S. Military Academy, B.S., 1993. Harry S. Truman Scholar Nationally recognized sports lawyer with first-chair trial and appellate experience. On behalf of both sports- and non-sports clients, Mr. Block often handles cases involving high-stakes requests for preliminary injunctive relief. (“BRIEF AMICI CURIAE OF KAREN KOREMATSU, JAY HIRABAYASHI, AND HOLLY YASUI IN SUPPORT OF APPELLANTS” SYED FARHAJ HASSAN, ET AL., Appellants, v. THE CITY OF NEW YORK Appellee. Document: 003111676264) RMT

The Judiciary has vacated the internment-era convictions through coram nobis actions.

 As discussed above, in the 1980s Korematsu, Yasui, and Hirabayashi successfully vacated their convictions through writs of error coram nobis based on newly discovered wartime government records. These records proved the internment was not just a “mistake,” but that the government knew at the time that its claim of military necessity to justify the internment was false, and deliberately suppressed, altered, destroyed, and misrepresented material evidence to secure favorable judicial rulings in the internment cases. See generally Irons, supra, at 347–67

These decisions underscore the danger of uncritical judicial deference to government national security claims. These decisions also underscore the availability of judicial relief for constitutional injury. Coram nobis relief is appropriate in criminal cases when “the errors [are] of the most fundamental character, that is, such as rendered the proceeding itself irregular and invalid.” United States v. Mayer, 235 U.S. 55, 69 (1914); see also United States v. Morgan, 346 U.S. 502, 512– 13 (1954). As coram nobis relief is appropriate only when the applicant has finished serving his or her sentence, “adverse consequences” stemming from the conviction must exist “sufficient to satisfy the case or controversy requirement of Article III.” Hirabayashi, 828 F.2d at 604.

In considering Korematsu’s coram nobis petition, the court noted that because of the grave injustice done, “denial of the motion would result in manifest injustice and that the public interest is served by granting the relief sought.” Korematsu, 584 F. Supp. at 1417. In grant ing coram nobis relief to Hirabayashi, the court recognized the lasting injury done to an individual whose rights are infringed solely due to his membership in a certain community: “A United States citizen who is convicted of a crime on account of race is lastingly aggrieved.” Hirabayashi, 828 F.2d at 607. ]

In addition to pointing out the ongoing harm of this manifest injustice stemming from the express race-based classification defining the internment and Korematsu’s, Hirabayashi’s and Yasui’s related convictions, the court in the Korematsu coram nobis case explicitly pointed out the need for timely and exacting scrutiny of claims of military need:

Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.

### A2 Plan Flaw

No impact – a reasonable understanding of what the plan does versus a strict textual reading of the plan is sufficient

### A2 No Inherency

### A2 Self Defense

#### The impact is tiny – a few deaths in DC are far outweighed by the suffering of millions due to incarceration and abuse of police powers

### A2 Circumvention – Top Level

#### Removing ownership of guns isn't relevant for solvency – the question isn't about the actual existence of guns in potential crimes, but the legal standing given to police officers by Heller's interpretation of the 2nd Amendment. Even if the amount of guns in the U.S. increases slightly after the aff, the legal justification for a State interest is gone

### A2 Circumvention – Other Branches

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

Lawrence Baum, Department of Political Science, Ohio State University, June 2003 [“The Supreme Court in American Politics,” http://arjournals.annualreviews.org/doi/full/10.1146/annurev.polisci.6.121901.085526;jsessionid=n1HzQqZJALRe]

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

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

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

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

### 2nd amendment unclear

#### 2nd amendment interpretation even now is not clear one way or the other

Little 14 - Rory K. Little, Professor of Law at UC Hastings, February 21, 2014, “Guns Don't Kill People, 3D Printing Does? Why the Technology is a Distraction from Effective Gun Controls” UC Hastings Scholarship Repository, 65 Hastings Law Journal 1505*,* p. 1507, Available Online at http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2117&context=faculty\_scholarship, Accessed 4/11/16)IG

Because of the United States' unique revolutionary and frontier history-when our country was wide open, sparsely populated, and full of game and dangers-the American "spirit" has incorporated a historical reliance on guns. This history and spirit generated a powerful 2oth century "gun lobby," which has opposed recent state and federal efforts to regulate guns.0 The political lobbying power of our domestic "gun lobby" is huge, and the Second Amendment also places some as- yet-undefined limits on the extent of gun controls. Thus the likely constitutional, as well as real-politik, contours and limits of "gun control" are as yet unknown. In the six years since Heller (and less than four since McDonald"), lower courts have struggled to determine what sort of gun regulations are and are not constitutional, producing a number of not- entirely-consistent decisions. 2 No one yet knows the precise limits that the Second Amendment requires.

As a consequence of these bipolar attitudes toward guns, the history of gun control in this country is inconsistent and incomplete. There are gaps in federal firearms laws that allow guns to be sold or exchanged in untraceable ways, and the laws of the fifty states are markedly divergent.4 Moreover, persons who use firearms illegally or in furtherance of illegal enterprises are, by definition, inclined to ignore regulatory laws. Thus, the supply of illegal firearms in the United States today seems to be both adequate and largely unrestrained. Guns in the United States are not "controlled" so much as episodically regulated.

## 3D Printing Advantage

### A2 Regulation Fails

#### Even if it's not perfect, regulation is possible and reduces harms

Castro 13 [Daniel Castro (vice president at the Information Technology and Innovation Foundation (ITIF) and director of the Center for Data Innovation), "Should Government Regulate Illicit Uses of 3D Printing?" Information Technology and Innovation Foundation, 2013] AZ

Remember that a policy can be effective without being perfectly enforceable Threats to public safety and intellectual property rights are global problems, and 3D printing introduces new risks. As noted earlier, because of the distributed nature of the Internet and the limited jurisdiction of governments, it is nearly impossible for one country to solve these problems alone. This means that we need thoughtful leadership about how countries can work in partnership to address these problems. For example, countries can work together to develop international frameworks for intellectual property rights enforcement and best practices for domestic policies. Policies do not need to be 100 percent enforceable to be effective. By using a layered approach that combines a variety of policy tools, countries can get closer to desired outcomes. This is not unique to Internet policy. Even countries that tightly control guns or drugs still have contraband, though typically at much lower levels than countries with more permissive laws. Each country must find the balance that is appropriate for its circumstances. CONCLUSION In short, 3D printing is a new technology that raises old policy questions. We should promote the technology while also ensuring that we have strong enforcement mechanisms and penalties, both domestically and internationally, to punish bad actors who abuse the technology by producing items that would be illegal regardless of how they were created. This will allow consumers to continue to reap the benefits of the technology while also protecting them from its potential harms.

### Right to Make Arms

#### Heller established a right to make arms

Blackman 14 [Josh Blackman (Assistant Professor, South Texas College of Law), "The 1st Amendment, 2nd Amendment, and 3d Printed Guns," Tennessee Law Review, 2014] AZ

Part II places the individual right to keep and bear arms, as recognized in District of Columbia v. Heller, in the context of its two subsidiary rights: acquiring and making arms. First, before one can keep and bear arms, as the Constitution guarantees, one has to obtain the gun from somewhere. Thus, any meaningful Second Amendment right encompasses the right to acquire arms. This right can be reasonably regulated, but not banned. The right to acquire arms must offer constitutional protection for both participants in the transaction—the buyer and the seller. Again, these rights can be reasonably limited, but not banned. Second, the seller of the gun has to be able to obtain the gun from somewhere to resell it—either acquiring a used gun, or, through making a new gun. Both of these sources in the Second Amendment supply chain must be protected, and subject to constitutional scrutiny. The latter represents the right to make arms, which can also be reasonably regulated but not banned. The right to make arms for personal use, more so than commercial manufacturing, historically has been subject to virtually no regulations. It is deeply rooted in our nation’s history and traditions. The Second Amendment, consistent with Heller, protects three guarantees: the right to keep and bear arms, the right to acquire arms (for both the buyer and seller), and the right to make arms.

### --Fishing Impact

#### 3D printing kills fish

Geere 15 [Duncan Geere, "Uh-oh: 3D printers are bad news for fish," Techradar, 11/5/2015] AZ

But ecotoxicologists are discovering that the technology might come with some unexpected costs for marine life. Researchers led by William Grover at the University of California, Riverside, tested the toxicity of objects created by two common types of 3D printer - those that use melted plastic and those that use light to turn liquid resin into solids. They found that parts from both types of printer are measurably toxic to zebrafish embryos. Embryos exposed to parts created by the plastic-melting printer had slightly decreased survival rates compared to a control group. But those that had been exposed to the liquid-resin printer had significantly-decreased survival rates, with more than half dead by day three and all dead by day seven. Of the few that hatched before dying, 100 percent had developmental abnormalities.

#### Hurts fish real bad

Navarro 15 [Alyssa Navarro (staff writer), "3D Printed Materials May Be Toxic, Study Finds," Tech Times, 11/9/2015] AZ

Materials created through 3D printing may be toxic, a recent study revealed. Scientists at the University of California, Riverside found that these 3D parts are dangerous to certain species of fish embryo, raising questions about how these waste materials should be disposed. A year ago, Shirin Mesbah Oskui, one of the researchers of the study, utilized a 3D printed disk to help her analyze several zebrafish embryos in her lab. Oskui discovered that doing so had killed the baby fish. Oskui, together with her adviser Assistant Professor William Grover, then studied two types of 3D printers. The first printer melts plastic to build a 3D part while the second printer uses light to turn 3D liquid into a solid material. The 3D printers they assessed were a Dimension Elite printer made by Stratasys and a Form 1+ stereolithography printer made by Formlabs, respectively. Scientists found that materials from both printers were relatively toxic to zebrafish embryos. Parts from the Form 1+ printer were the most dangerous, they said. Because 3D parts were toxic to zebrafish embryos, other species of fish may also be affected. The team managed to create a simple post-printing treatment that includes exposure to ultraviolet light, which reduced levels of toxicity from the second printer. Grover compared 3D printers to tiny factories in a box. "We regulate factories. We would never bring one into our home. Yet, we are starting to bring these 3D printers into our homes like they are toasters," he said. Grover said other people should be aware of the material's harmful effects to fish embryos. The findings in the study were the first of its kind to look into the subject, he said. He also said that the findings of the study implicated an industry that is currently booming. Reports by industry-tracking group Canalys said the 3D printing sector was worth US$2.5 billion in 2013 and is expected to grow to US$16.2 billion within the next three years. The team hopes to address more questions regarding the use of 3D printers. They wonder if the plastic could cause chemicals to go into waterways, and what is the best way to dispose of these materials. "Many people, including myself, are excited about 3D printing," added Grover. "But, we really need to take a step back and ask: how safe are these materials?" The group's findings were published in the journal Environmental Science and Technology Letters on Nov. 04, 2015.

#### Collapse of fish stocks kills millions from starvation and causes extinction

WWF 15 [World Wildlife Fund, "Failing fisheries and poor ocean health starving human food supply – tide must turn," WWF, 9/16/2015] AZ

GLAND, Switzerland – Populations of fish critical to human food security are in serious decline worldwide with some at risk of collapse according to the emergency edition of a WWF report released today. WWF’s Living Blue Planet Report finds that much of the activity threatening the ocean is avoidable and solutions do exist to turn the tide. The updated study of marine mammals, birds, reptiles and fish shows that populations have been reduced on average by half globally in the last four decades, with some fish declining by close to 75 percent. The latest findings spell trouble for all nations, especially people in the developing world. To reverse the downward trend, global leaders must ensure that ocean recovery and coastal habitat health feature strongly in the implementation of the UN’s sustainable development goals that will be formally approved later this month. Negotiations on a new global climate deal are also an important opportunity to forge agreement in support of ocean health. “We urgently published this report to provide the most current picture of the state of the ocean,” said Marco Lambertini, Director General of WWF International. “In the space of a single generation, human activity has severely damaged the ocean by catching fish faster than they can reproduce while also destroying their nurseries. Profound changes are needed to ensure abundant ocean life for future generations.” Research in the WWF report indicates that species essential to commercial and subsistence fishing – and therefore global food supply – may be suffering the greatest declines. Underscoring the severe drop in commercial fish stocks, the report details the dramatic loss of 74 per cent of the family of popular food fish that includes tunas, mackerels and bonitos. “We are in a race to catch fish that could end with people starved of a vital food source and an essential economic engine. Overfishing, destruction of marine habitats and climate change have dire consequences for the entire human population, with the poorest communities that rely on the sea getting hit fastest and hardest. The collapse of ocean ecosystems could trigger serious economic decline – and undermine our fight to eradicate poverty and malnutrition,” said Lambertini. The report shows a decline of 49 per cent of marine populations between 1970 and 2012. The analysis tracked 5,829 populations of 1,234 species, making the data sets almost twice as large as past studies and giving a clearer, more troubling picture of ocean health. The findings are based on the Living Planet Index, a database maintained and analyzed by researchers at the Zoological Society of London (ZSL). In response to alarming statistics raised in WWF’s Living Planet Report 2014, this special report studies how overfishing, damage to habitat and climate change are affecting marine biodiversity. Adding to the crisis of falling fish populations, the report shows steep declines in coral reefs, mangroves and seagrasses that support fish species and provide valuable services to people. Over one-third of fish tracked by the report rely on coral reefs, and these species show a dangerous decline of 34 per cent between 1979 and 2010. Research shows that coral reefs could be lost across the globe by 2050 as a result of climate change. With over 25 per cent of all marine species living in coral reefs and about 850 million people directly benefiting from their economic, social and cultural services, the loss of coral reefs would be a catastrophic extinction with dramatic consequences on communities. “The ocean is an integral part of our lives. We are kept alive by the clean air, food and other services it provides. More than that, we are simply drawn to the ocean and its wildlife, whether a trip to the seaside or an encounter with the penguins at the ZSL London Zoo. This report suggests that billions of animals have been lost from the world’s oceans in my lifetime alone. This is a terrible and dangerous legacy to leave to our grandchildren,

### --Counterfeiting Impact

#### 3D printing expands undetectable counterfeiting – that crushes intellectual property and increases inflation

Greenbaum 15 [Josh Greenbaum (Principal at Enterprise Applications Consulting), "Illegal, Immoral, and Here to Stay: Counterfeiting and the 3D Printing Revolution," Wired Magazine, 2015] AZ

IF YOU’RE LOOKING for a way to gauge how the 3D printing market will evolve, look no further than the dawn of two other revolutionizing technologies – the desktop printing market and the VHS standard. And be prepared for a decidedly off-color story. While many of us have fond memories of watching a favorite movie when it first came out on VHS, or admiring the first three-color party invitation we printed on a laser printer, the fact remains that innocent pursuits were not the sole reason either of these technologies took off. And we shouldn’t expect 3D printing to be any different. The reality is that in both cases, the illegal, illicit, and otherwise unwholesome played a major role in the growth of both the VHS and desktop printing markets. While it’s clear that most applications of these technologies were G-rated, there were plenty that weren’t. And when it comes to 3D printing, that unwholesome and downright illegal activity called counterfeiting is likely to become one of the major reasons why 3D printing will be a major growth industry in the coming years. To be sure, as with all technologies, from the Paleolithic stone ax to 20th century nuclear fission, there are applications for good that hopefully outweigh the not-so-good. And 3D printing will have its fair share: from the manufacture of prosthetics and spare parts to on-demand organs, foods, and your child’s next toy, the 3D printing revolution will by and large have a positive impact on society as a whole. But the threat of a major surge in counterfeiting based on the availability of relatively cheap 3D printers, increasingly sophisticated printing materials, and a never-ending supply of CAD designs available on the Internet will fuel an enormous black market in counterfeit parts. And the potential impact of 3D printers for counterfeiting just keeps on growing: A recent report by Gartner Group speculates that intellectual property loss due to 3D printer counterfeiting could total $100 billion by 2018. What is it about 3D printing that will make it, in the words of Scientific American, “the counterfeiter’s best friend”? Just like the desktop printing industry of the 1980s, it’s that perfect storm of three important factors: the availability of a breakthrough device at a consumer price, the availability of the raw materials needed to copy something valuable, and the right software for turning the new technology into a counterfeiter’s “best friend.” 1985 was the year the perfect storm hit the desktop publishing market. The first widely available laser printer, the HP Laserjet, hit the market priced at the high end of the consumer market at about $3,000. This printer could handle pretty much any kind of paper, and print rapidly and accurately. At the same time, Aldus Pagemaker, the first widely available desktop publishing package, also hit the market, similarly priced at the high-end of the consumer market at under $700. Hello, forged credentials, certificates, permits, bills of lading, and eventually, money. Voila, another friend of the counterfeiter was born. The illicit side of the VHS market had a slightly different trajectory. In the mid-1970s, the Betamax video standard arrived, taking advantage of the ready availability of VCRs priced in the $1,200 range. In 1977, Sony’s Betamax was challenged by upstart JVC’s VHS standard, with a couple of twists. Twist number one was the VHS could record a full-length movie, while Betamax maxed out at an hour. Twist number two was that while Sony resisted licensing Betamax for use by the pornography industry, JVC had no such qualms. Within 10 years, VHS ruled the market, and the world of entertainment has never been the same. 2014 was the years 1977 or 1985 in the world of 3D printing. Hobbyist 3D printers started showing up priced at less than $600, though a printer capable of handling the demands of the counterfeiter was still priced in the $2,500 range. And while the printers weren’t exactly free, a wide range of freeware, too numerous to mention here, showed up to allow would-be makers and counterfeiters an incredible pallet of designs, drivers, and controllers. It’s true that the materials needed to do the most sophisticated counterfeits are not as widely available as the market will eventually require, but a wide range of thermoplastics, advanced polymers, and other materials are now available to assist the counterfeiter. And it’s a given that, as the printers become more sophisticated, and the consumers become more demanding, that list will only grow over time. Where does it all end?

#### Counterfeit money causes inflation by increasing the supply of money, which tanks growth—investor perception negates stimulus benefits.

Volcker 11 — Paul A. Volcker, served as Chairman of the Federal Reserve from 1979 to 1987, worked for the federal government for over 30 years serving under John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, Jimmy Carter, and Ronald Reagan, 2011 (“A Little Inflation Can Be a Dangerous Thing,” *New York Times*, September 18th, Available Online at http://www.nytimes.com/2011/09/19/opinion/a-little-inflation-can-be-a-dangerous-thing.html?\_r=1&pagewanted=print, Accessed 06-30-2012)

So now we are beginning to hear murmurings about the possible invigorating effects of “just a little inflation.” Perhaps 4 or 5 percent a year would be just the thing to deal with the overhang of debt and encourage the “animal spirits” of business, or so the argument goes.

It’s not yet a full-throated chorus. But remarkably, at least one member of the Fed’s policy making committee recently departed from the price-stability script.

The siren song is both alluring and predictable. Economic circumstances and the limitations on orthodox policies are indeed frustrating. After all, if 1 or 2 percent inflation is O.K. and has not raised inflationary expectations — as the Fed and most central banks believe — why not 3 or 4 or even more? Let’s try to get business to jump the gun and invest now in the expectation of higher prices later, and raise housing prices (presumably commodities and gold, too) and maybe wages will follow. If the dollar is weakened, that’s a good thing; it might even help close the trade deficit. And of course, as soon as the economy expands sufficiently, we will promptly return to price stability.

Well, good luck.

Some mathematical models spawned in academic seminars might support this scenario. But all of our economic history says it won’t work that way. I thought we learned that lesson in the 1970s. That’s when the word stagflation was invented to describe a truly ugly combination of rising inflation and stunted growth. My point is not that we are on the edge today of serious inflation, which is unlikely if the Fed remains vigilant. Rather, the danger is that if, in desperation, we turn to deliberately seeking inflation to solve real problems — our economic imbalances, sluggish productivity, and excessive leverage — we would soon find that a little inflation doesn’t work. Then the instinct will be to do a little more — a seemingly temporary and “reasonable” 4 percent becomes 5, and then 6 and so on. What we know, or should know, from the past is that once inflation becomes anticipated and ingrained — as it eventually would — then the stimulating effects are lost. Once an independent central bank does not simply tolerate a low level of inflation as consistent with “stability,” but invokes inflation as a policy, it becomes very difficult to eliminate. It is precisely the common experience with this inflation dynamic that has led central banks around the world to place prime importance on price stability. They do so not at the expense of a strong productive economy. They do it because experience confirms that price stability — and the expectation of that stability — is a key element in keeping interest rates low and sustaining a strong, expanding, fully employed economy. At a time when foreign countries own trillions of our dollars, when we are dependent on borrowing still more abroad, and when the whole world counts on the dollar’s maintaining its purchasing power, taking on the risks of deliberately promoting inflation would be simply irresponsible.

#### IP rights promote growth – innovation and competition

Maskus 2k [Keith E. Maskus (Professor of Economics @ University of Colorado, Boulder), "INTELLECTUAL PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT," 2000] AZ

Economists recognize several channels through which IPRS could stimulate economic development and growth. These processes are interdependent and it is appropriate to adopt a comprehensive view of the incentives associated with intellectual property protection. Intellectual property rights could play a significant role in encouraging innovation, product development, and technical change. Developing countries tend to have IPRS systems that favor information diffusion through low-cost imitation of foreign products and technologies. This policy stance suggests that prospects for domestic invention and innovation are insufficiently developed to warrant protection. However, inadequate IPRS could stifle technical change even at low levels of economic development. This is because much invention and product innovation are aimed at local markets and could benefit from domestic protection of patents, utility models, and trade secrets. In the vast majority of cases, invention involves minor adaptations of existing technologies and products. The cumulative impacts of these small inventions can be critical for growth in knowledge and productive activity. To become competitive, enterprises in developing countries typically must adopt new management and organizational systems and techniques for quality control, which can markedly raise productivity. Such investments are costly but tend to have high social returns because they are crucial for raising productivity toward global norms (Evenson and Westphal, 1995). They are more likely to be undertaken in an environment where risks of unfair competition and trademark infringement are small. Moreover, IPRS could help reward creativity and risk-taking among new enterprises and entrepreneurs. Countries that retain weak standards could remain dependent on dynamically inefficient firms that rely on counterfeiting and imitation. An example of this process is that protection for utility models has been shown to improve productivity in countries with lagging technologies. In Brazil, utility models helped domestic producers gain a significant share of the farm-machinery market by encouraging adaptation of foreign technologies to local conditions (Dahab, 1986). Utility models in the Philippines encouraged successful adaptive invention of rice threshers (Mikkelsen, 1984). Maskus and McDaniel (1999) considered how the Japanese patent system (JPS) affected postwar Japanese technical progress, as measured by increases in total factor productivity (TFP). The JPS in place over the estimation period 1960-1993 evidently was designed to encourage incremental and adaptive innovation and diffusion of technical knowledge into the economy. Mechanisms for promoting these processes included early disclosure of, and opposition proceedings to, patent applications, an extensive system of utility models, and narrow claim requirements in patent applications. The authors found that this system encouraged large numbers of utility model applications for incremental inventions, which were based in part on laid-open prior applications for invention patents. In turn, utility models had a strongly positive impact on real TFP growth over the period, while patent applications had a weaker but still positive effect. They concluded that utility models were an important source of technical change and information diffusion in Japan, while patent applications provided both a direct and an indirect stimulus to productivity. It is interesting to note that as Japan has become a global leader in technology creation, its patent system has shifted away from encouraging diffusion and more toward protecting fundamental technologies. Recent studies suggest that innovation through product development and entry of new firms is motivated in part by trademark protection, even in poor nations. A survey of trademark use in Lebanon provided evidence on this point (Maskus, 1997). Lebanon has an extensive set of intellectual-property laws but they are weakly enforced. Firms in the apparel industry claimed to have a strong interest in designing apparel of high quality and style aimed at Middle Eastern markets. Such efforts have been frustrated by trademark infringement in Lebanon and in neighboring countries. This problem was yet larger in the food products sector, where legitimate firms suffered from rivals passing off goods under their trademarks. The problem has seriously hampered attempts to build markets for Lebanese foods in the Middle East and elsewhere. Related difficulties plagued innovative producers in the cosmetics, pharmaceuticals, and metal products sectors. Thus, local product development and establishment of new firms have been stifled by trademark infringement targeted largely at domestic enterprises. Similar problems exist in China, as found in a second survey (Maskus, et al, 1998). While the information was anecdotal, it suggested that trademark infringement negatively affected innovative Chinese enterprises. Many examples were cited of difficulties facing Chinese producers of consumer goods, such as soft drinks, processed foods, and clothing. The establishment of brand recognition in China requires costly investments in marketing and distribution channels. Enterprises that achieved this status quickly found their trademarks applied to counterfeit products. Such products were of lower quality and damaged the reputation of the legitimate enterprise. Furthermore, this problem was difficult to overcome and, in some cases, forced enterprises to close down or abandon their trademarks. According to survey respondents, this situation had a deterrent effect on enterprise development and effectively prevented interregional marketing. In turn, enterprises were less able to achieve economies of scale. Chinese trademark infringement was concentrated on products with low capital requirements and high labor intensity. These are sectors in which China has strong comparative advantages. On this evidence, the authors concluded that trademark violations may be particularly damaging to enterprise development in poor nations. Similar comments apply to copyrights. Copyright industries, such as publishing, entertainment, and software, are likely to be dominated by foreign enterprises (which can absorb temporary losses and afford the costs of deterring infringement) and pirate firms in countries with weak protection and enforcement. Thus, lower-quality copies would be widely available but the economy’s domestic cultural and technological development would be hampered. This situation was clear in the Lebanese survey. Lebanon has a small but vibrant film and television industry that could successfully export to neighboring economies if those countries engineered stronger copyright protection. In China, the domestic software industry has grown rapidly in the area of particular business applications, which did not suffer extensive unauthorized copying, but has faced obstacles in developing larger and more fundamental programs. Thus, domestic commercial interests in stronger copyrights have emerged and are now playing a role in promoting enforcement. Intellectual property rights also could stimulate acquisition and dissemination of new information. Patent claims are published, allowing rival firms to use the information in them to develop further inventions. This learning process takes place in 10 to 12 months in the United States (Mansfield, 1985). Knowledge formation is cumulative and as new inventions build on past practices the process of technical change could accelerate (Scotchmer, 1991). Patents, trademarks, and trade secrets also afford firms greater certainty that they face limited threats of uncompensated appropriation. This certainty could induce them to trade and license their technologies and products more readily, enhancing their diffusion into the economy.

#### **Economic decline causes war – studies prove.**

Royal 10 – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-214

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

### Zimpacts

#### 3D printing causes indoor pollution, increasing energy use, and overuse of plastics– the US should preempt a growing reliance on 3D printers

Gilpin 14 [Lyndsey Gilpin , "The dark side of 3D printing: 10 things to watch," TechRepublic, 3/5/2014] AZ

But 3D printers are still potentially hazardous, wasteful machines, and their societal, political, economic, and environmental impacts have not yet been studied extensively. To make sure you aren't thrown off guard by the conversations to come, we've compiled a list of 10 things you need to know about the dangers and potentially negative impacts of 3D printers. 1. 3D printers are energy hogs When melting plastic with heat or lasers, 3D printers consume about 50 to 100 times more electrical energy than injection molding to make an item of the same weight, according to research by Loughborough University. In 2009, research at MIT's Environmentally Benign Manufacturing program showed that laser direct metal deposition (where metal powder is fused together) used hundreds of times the electricity as traditional casting or machining. Because of this, 3D printers are better for small batch runs. Industrial-sized 3D printers may not be the answer to lessening our use of coal power any time soon. 2. Unhealthy air emissions 3D printers may pose a health risk when used in the home, according to researchers at the Illinois Institute of Technology. The emissions from desktop 3D printers are similar to burning a cigarette or cooking on a gas or electric stove. The 2013 study was the first to measure these airborne particle emissions from desktop 3D printers. While heating the plastic and printing small figures, the machines using PLA filament emitted 20 billion ultrafine particles per minute, and the ABS emitted up to 200 billion particles per minute. These particles can settle in the lungs or the bloodstream and pose health risk, especially for those with asthma. 3. Reliance on plastics One of the biggest environmental movements in recent history has been to reduce reliance on plastics, from grocery bags to water bottles to household objects that can be made from recycled materials instead. The most popular—and cheapest—3D printers use plastic filament. Though using raw materials reduces the amount of waste in general, the machines still leave unused or excess plastic in the print beds. PLA is biodegradable, but ABS filament is still the most commonly used type of plastic. The plastic byproduct ends up in landfills. If 3D printing is going to be industrialized, that byproduct or other recycled plastic needs to be reused.

#### Plastic weapons cause terrorism

Johnson 13 [Carrie, Justice Correspondent for the Washington Desk. She covers a wide variety of stories about justice issues, law enforcement and legal affairs for NPR's flagship programs Morning Edition and All Things Considered, as well as the Newscasts and NPR.org. While in this role, Johnson has chronicled major challenges to the landmark voting rights law, a botched law enforcement operation targeting gun traffickers along the Southwest border, and the Obama administration's deadly drone program for suspected terrorists overseas, Plastic Guns Made With 3-D Printers Pose New Security Concerns, NPR, http://www.npr.org/sections/alltechconsidered/2013/11/14/245078880/plastic-guns-made-with-3-d-printers-pose-new-security-concerns]

Technology helps police solve crimes every day. But some innovations can also present new public safety concerns — and such is the case with guns built using 3-D printers. Agents at the Bureau of Alcohol, Tobacco, Firearms and Explosives have spent months testing plastic weapons. And in findings released Tuesday, they say the guns are both lethal and hard to detect. It can take a top-of-the-line 3-D printer between 10 and 18 hours to build parts for a plastic gun, a gun made out of strong and flexible material with bullets that can penetrate a person's vital organs or even a skull at close range. "When these 3-D firearms are manufactured, some of the weapons can defeat normal detection such as metal detectors, wands, and it could present a problem to public safety in a venue such as an airport, an arena, a courthouse," says ATF assistant director Richard Marianos.

## 4th Amendment Advantage

### Police Powers Impacts

#### Abuse of police powers perpetuates racism, causes mass incarceration, and creates an atmosphere of fear

Karakatsanis 15 [Alec Karakatsanis (attorney, founder of Equal Justice Under Law), "Policing, Mass Imprisonment, and the Failure of American Lawyers," Harvard Law Review, 4/10/2015] AZ

In a system that guarantees the right to trial unless the right is waived knowingly, intelligently, and voluntarily, over 90% of all defendants plead guilty because they are told that they will be given more serious punishment if they do not plead guilty. Although our legal system proclaims that “[i]n our society[,] liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,”34× 34. United States v. Salerno, 481 U.S. 739, 755 (1987). over 500,000 human beings are kept in an American cage every single day solely because they are too poor to make a monetary payment to secure their pretrial release. I have seen, within the past several months, a woman held in jail for two weeks after being pulled over for failure to stop completely at a stop sign and for disobeying the order of a police officer because she could not pay $200, and another woman jailed for over a month because of her inability to pay several hundred dollars in a case charging her with being a passenger in a car that contained a burned marijuana cigarette butt in the ashtray. After conducting interviews with community groups, victims, and lawyers in dozens of cities, as well as performing simple Internet searching, I have been unable to find a major metropolitan American police force without a recent history of systemic constitutional abuses. Unlawful policing tactics have also spawned a pandemic of perjury, popularly called “testilying” by police officers and others. Although quantification of this problem is difficult, my interviews of public defenders, criminal defendants, and police officers around the country support the conclusion that the vast majority of criminal cases concerning guns and drugs include some kind of false or misleading statements in order to conceal a constitutional violation. Just as we are irrationally drawn to focus on “bad criminals,” many people look at these stories and seek to blame “bad cops.” This is a serious mistake. Part of the system’s success is its ability to get people to focus on criticizing “bad apples” rather than on challenging deeper structural problems. For many decades, American courts have allowed criminal convictions based on policing and forensic techniques that lack a scientific basis. Even after these methods were formally exposed as unscientific by the most prestigious collection of American scientists,37× police, prosecutors, and courts continued to use them every day nonetheless. Although every member of our culture understands that armed confrontations with law enforcement are pervaded by coercion and abuse, the legal system presumes such interactions to be consensual. In a society that holds out its police forces and courts as guardians of justice, an overwhelming driving force of local policing and municipal court practice in wide swaths of the country is revenue generation.38× In courtrooms across America, people are sent to jail every day on the basis of a single witness’s testimony (often a police officer) with no supporting evidence, even though, as a matter of common sense, it is impossible for a reasonable person not to have a doubt about the observations or motivations of a single human witness. Instead, most lawyers and judges typically view the motion for a directed verdict as a meaningless formality rather than as a fundamental obligation to ensure that no conviction is entered if a reasonable person would have had a reason to doubt guilt.40× 40. For example, although courts created a doctrine that a person cannot be convicted of perjury based only on the testimony of a single other witness, see Weiler v. United States, 323 U.S. 606, 607 (1945) (“The general rule in prosecutions for perjury is that the uncorroborated oath of one witness is not enough to establish the falsity of the testimony of the accused set forth in the indictment.” (quoting Hammer v. United States, 271 U.S. 620, 626 (1926)) (internal quotation marks omitted)), American courts nonetheless allow such convictions for much more serious crimes, like murder, and routinely allow police officers to secure convictions for entirely victimless crimes that may not even have occurred. In a society that requires prisoners to be treated humanely, American jails and prisons are cesspools of disease.

### A2 stop and frisk good

#### l o l

Pitulik 13 [Scott Pitulik, "Frisk Assessment," Slate Magazine, 8/19/2013] AZ

But the next two statistics are eye-catching because they appear to undermine the city’s more fundamental argument about the effectiveness of stop-and-frisk. Weapons were seized in 1.0 percent of the stops of blacks, 1.1 percent of the stops of Hispanics, and 1.4 percent of the stops of whites. Contraband other than weapons was seized in 1.8 percent of the stops of blacks, 1.7 percent of the stops of Hispanics, and 2.3 percent of the stops of whites. These supposed success rates are what one might expect to find if you stopped and frisked any random cross-section of humanity, say, in the parking lot before a Jets or Giants football game.

### --Internet Freedom Impact

#### Washington will inevitably push for global Internet freedom – but US image is vital. The Internet freedom agenda’s key to the Global Economy.

Kalathil ‘10

Shanthi Kalathil - Adjunct Faculty and Adjunct Lecturer in the Communication, Culture, and Technology (CCT) Master of Arts Program at Georgetown University. Kalathil has extensive experience advising the U.S. government, international organizations and nonprofits on supporting civil society, independent media, technology, transparency and accountability. Previously a senior Democracy Fellow at the U.S. Agency for International Development and she has authored or edited numerous policy and scholarly publications, including the edited volume Diplomacy, Development and Security in the Information Age. She has taught courses on international relations in the information age at the Monterey Institute of International Studies and Georgetown University. Kalathil holds degrees from U.C. Berkeley and the London School of Economics and Political Science – “Internet Freedom: A Background Paper” – October 2010 - Available via: http://www.aspeninstitute.org/sites/default/files/content/images/Internet\_Freedom\_A\_Background\_Paper\_0.pdf

As use of the Internet has grown exponentially around the world, so too have concerns about its defining attribute as a free and open means of communication. Around the world, countries, companies and citizens are grappling with thorny issues of free expression, censorship and trust. With starkly different visions for the Internet developing, this era presents challenges—and also opportunities—for those who wish to ensure the Internet remains a backbone of liberty and economic growth. U.S. officials have made clear their vision for the Internet’s future. President Obama, in a speech before the UN General Assembly, said that the U.S. is committed to promoting new communication tools, “so that people are empowered to connect with one another and, in repressive societies, to do so with security. We will support a free and open Internet, so individuals have the information to make up their own minds.” His words were reinforced by FCC Chairman Julius Genachowski: “It is essential that we preserve the open Internet and stand firmly behind the right of all people to connect with one another and to exchange ideas freely and without fear.”1 Indeed, a free, widely accessible Internet stands at the heart of both global communication and global commerce. Internet freedom enables dialogue and direct diplomacy between people and civilizations, facilitating the exchange of ideas and culture while bolstering trade and economic growth. Conversely, censorship and other blockages stifle both expression and innovation. When arbitrary rules privilege some and not others, the investment climate suffers. Nor can access be expanded if end users have no trust in the network. However, making reality live up to aspirations for Internet freedom can prove difficult. Numerous global initiatives—spearheaded by governments, private sector and civil society—are attempting to enshrine the norms, principles and standards that will ensure the Internet remains a public space for free expression. At the same time, other norms are fast arising—particularly those defined by authoritarian countries that wish to splinter the Internet into independently controlled fiefdoms. Even as Internet access has expanded around the world, many governments are attempting to control, regulate and censor the Internet in all its forms: blogs, mobile communication, social media, etc. Such governments have devoted vast resources to shaping the Internet’s development within their own borders, and they are now seeking to shape the Internet outside their borders as well. Indeed, Internet experts are worried that national governments of all stripes will increasingly seek to extend their regulatory authority over the global Internet, culminating in a balkanized Internet with limited interoperability. Hence, the next few years present a distinct window of opportunity to elevate the principles of the free exchange of ideas, knowledge and commerce on the Internet. While U.S. leadership within this window is vital, a global effort is necessary to ensure that these norms become a standard part of the Internet’s supporting architecture.

#### Global economic decline risks nuclear war.

Merlini ‘11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

### --Democracy Impact

#### Surveillance crushes the US democracy model

HRW ‘14

(Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all. This evidence is internally quoting Alex Sinha, Aryeh Neier Fellow at Human Rights Watch and the American Civil Liberties Union. This evidence is also internally quoting the report “With Liberty to Monitor All: How Large-Scale US Surveillance is Harming Journalism, Law, and American Democracy,”. That report is based on extensive interviews with some 50 journalists covering intelligence, national security, and law enforcement for outlets including the New York Times, the Associated Press, ABC, and NPR. “US: Surveillance Harming Journalism, Law, Democracy” - July 28 - <http://www.hrw.org/news/2014/07/28/us-surveillance-harming-journalism-law-democracy>)

Large-scale US surveillance is seriously hampering US-based journalists and lawyers in their work, Human Rights Watch and the American Civil Liberties Union said in a joint report released today. Surveillance is undermining media freedom and the right to counsel, and ultimately obstructing the American people’s ability to hold their government to account, the groups said. The 120-page report, “With Liberty to Monitor All: How Large-Scale US Surveillance is Harming Journalism, Law, and American Democracy,” is based on extensive interviews with dozens of journalists, lawyers, and senior US government officials. It documents how national security journalists and lawyers are adopting elaborate steps or otherwise modifying their practices to keep communications, sources, and other confidential information secure in light of revelations of unprecedented US government surveillance of electronic communications and transactions. The report finds that government surveillance and secrecy are undermining press freedom, the public’s right to information, and the right to counsel, all human rights essential to a healthy democracy. “The work of journalists and lawyers is central to our democracy,” said report author Alex Sinha, Aryeh Neier Fellow at Human Rights Watch and the American Civil Liberties Union. “When their work suffers, so do we." The report is drawn from interviews with some 50 journalists covering intelligence, national security, and law enforcement for outlets including the New York Times, the Associated Press, ABC, and NPR. The US has long held itself out as a global leader on media freedom. However, journalists interviewed for the report are finding that surveillance is harming their ability to report on matters of great public concern. Surveillance has magnified existing concerns among journalists and their sources over the administration’s crackdown on leaks. The crackdown includes new restrictions on contact between intelligence officials and the media, an increase in leak prosecutions, and the Insider Threat Program, which requires federal officials to report one another for “suspicious” behavior that might betray an intention to leak information. Journalists interviewed for the report said that surveillance intimidates sources, making them more hesitant to discuss even unclassified issues of public concern. The sources fear they could lose their security clearances, be fired, or – in the worst case – come under criminal investigation. “People are increasingly scared to talk about anything,” observed one Pulitzer Prize winner, including unclassified matters that are of legitimate public concern. Many journalists described adopting elaborate techniques in an environment of tremendous uncertainty in an effort to protect evidence of their interaction with sources. The techniques ranged from using encryption and air-gapped computers (which stay completely isolated from unsecured networks, including the Internet), to communicating with sources through disposable “burner” phones, to abandoning electronic communications altogether. Those cumbersome new techniques are slowing down reporters in their pursuit of increasingly skittish sources, resulting in less information reaching the public. This situation has a direct effect on the public’s ability to obtain important information about government activities, and on the ability of the media to serve as a check on government, Human Rights Watch and the ACLU found. Journalists expressed concern that, rather than being treated as essential checks on government and partners in ensuring a healthy democratic debate, they may be viewed as suspect for doing their jobs. One prominent journalist summed up what many seemed to be feeling: “I don’t want the government to force me to act like a spy. I’m not a spy; I’m a journalist.” The Impact of Surveillance on the Practice of Law For lawyers, large-scale surveillance has created concerns about their ability to meet their professional responsibilities to maintain confidentiality of information related to their clients. Failure to meet those responsibilities can result in discipline through professional organizations, or even lawsuits. Lawyers also rely on the free exchange of information with their clients to build trust and develop legal strategy. Concerns over government surveillance are making it harder for attorneys – especially, but not exclusively, defense attorneys – to build trust with their clients or protect their legal strategies. Both problems corrode the ability of lawyers to represent their clients effectively. As with the journalists, lawyers increasingly feel pressure to adopt strategies to avoid leaving a digital trail that could be monitored. Some use burner phones, others seek out technologies designed to provide security, and still others reported traveling more for in-person meetings. Like journalists, some feel frustrated, and even offended, that they are in this situation. “I’ll be damned if I have to start acting like a drug dealer in order to protect my client’s confidentiality,” said one. The result of the anxieties over confidentiality is the erosion of the right to counsel, a pillar of procedural justice under human rights law and the US Constitution, Human Rights Watch and the ACLU found. The US has an obligation to protect national security, and under human rights standards, it may engage in surveillance to that end, but only to the extent that surveillance is lawful, necessary, and proportionate, and the least intrusive means to protect against tangible threats to national security. Many existing surveillance programs are indiscriminate or overbroad, and threaten freedom of expression, the right to counsel, and the public’s ability to hold its government to account. Programs allowing surveillance of non-US persons offer even fewer protections. The US should reform its surveillance programs to ensure that they are targeted and legitimate, increase transparency around national security and surveillance matters, and take steps for better protection of whistleblowers and the media, Human Rights Watch and the ACLU said. “The US holds itself out as a model of freedom and democracy, but its own surveillance programs are threatening the values it claims to represent,” Sinha said. “The US should genuinely confront the fact that its massive surveillance programs are damaging many critically important rights.”

#### Global democracy consolidation checks inevitable extinction.

Diamond ‘95

(Larry, Senior Fellow at the Hoover Institution, Promoting Democracy in the 1990s, December, http://www.wilsoncenter.org/subsites/ccpdc/pubs/di/fr.htm)

This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty, and openness. LESSONS OF THE TWENTIETH CENTURY The experience of this century offers important lessons. Countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbors to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically "cleanse" their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments. They are better bets to honor international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders, they respect competition, civil liberties, property rights, and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be built.

### --Unegbu Impact

#### Warrantless surveillance boosts a distinct form of racial, religious, and ethnic discrimination. The neg’s security interests only drive this racialized violence.

Unegbu ‘13

Cindy C. Unegbu - J.D. Candidate, Howard University School of Law - NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep - Howard Law Journal - 57 How. L.J. 433 - Fall, 2013 – lexis; lawrev

Picture this: you live in a society in which the government is allowed to partake in intrusive surveillance measures without the institutionalized checks and balances upon which the government was founded. In this society, the government pursues citizens who belong to a particular race or ethnicity, practice a certain religion, or have affiliations with specific interest groups. Individuals who have these characteristics are subject to surreptitious monitoring, which includes undercover government officials disguising themselves as community members in order to attend various community events and programs. The government may also place these individuals on watch lists, even where there is no evidence of wrongdoing. These watch lists classify domestic individuals as potential or suspected terrorists and facilitate the monitoring of their personal activity through various law enforcement agencies for an extended period of time. This "hypothetical" society is not hypothetical at all; in fact, it is the current state of American surveillance. The government's domestic spying activities have progressed to intrusive levels, primarily due to an increased fear of terrorism. n1 This fear has resulted in governmental intelligence efforts that are focused on political activists, racial and religious minorities, and immigrants. n2 [\*435] The government's domestic surveillance efforts are not only geared toward suspected terrorists and those partaking in criminal activity, but reach any innocent, non-criminal, non-terrorist national, all in the name of national security. The government's power to engage in suspicionless surveillance and track innocent citizens' sensitive information has been granted through the creation and revision of the National Counterterrorism Center n3 and the FBI's (Federal Bureau of Investigation) Domestic Investigations and Operations Guide. n4 The grant of surveillance power has resulted in many opponents, including those within the current presidential administration, who challenge the order for numerous reasons. n5 These reasons include the inefficiency of storing citizens' random personal information for extended periods of time, n6 the broad unprecedented authority granted to this body of government without proper approval from Congress, n7 and the constitutional violations due to the deprivation of citizens' rights. n8 [\*436] This Comment argues that the wide-sweeping surveillance authority granted to the government results in a violation of the Fourteenth Amendment's Equal Protection Clause due to far-reaching domestic monitoring practices. Surveillance practices, such as posing as members of the community and placing individuals on watch lists without suspicion of terrorist activity, result in the impermissible monitoring of individuals on the basis of their race or ethnicity. These practices, although done in the name of national security, an established compelling government interest, violate the Equal Protection Clause of the Fourteenth Amendment because they are not narrowly tailored to the stated interest. The procedures are not narrowly tailored to the interest of national security because of the over-inclusiveness of the measures.

### --Privacy Impact

#### Privacy is the top priority – it’s a gateway right that shapes individual autonomy.

PoKempner ‘14

Dinah PoKempner is general counsel of Human Rights Watch. Her work has taken her to Cambodia, the Republic of Korea, Vietnam, former Yugoslavia and elsewhere in documenting and analyzing compliance with international humanitarian law, war crimes and violations of civil and political rights. She has written on freedom of expression, peace-keeping operations, international tribunals, U.N. human rights mechanisms, cyber-liberties and security, and refugee law among other human rights topics, and oversees the organization’s positions on international law and policy. A graduate of Yale and Columbia University School of Law and a member of the Council on Foreign Relations, Ms. PoKempner also teaches at Columbia University. “World Report 2014” - World Report 2014 is Human Rights Watch’s 24th annual review of human rights practices around the globe. It summarizes key human rights issues in more than 90 countries and territories worldwide, drawing on events through November 2013. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all. http://www.hrw.org/world-report/2014

In a world where we share our lives on social media and trade immense amounts of personal information for the ease and convenience of online living, some have questioned whether privacy is a relevant concept. It is not just relevant, but crucial. Indeed, privacy is a gateway right that affects our ability to exercise almost every other right, not least our freedom to speak and associate with those we choose, make political choices, practice our religious beliefs, seek medical help, access education, figure out whom we love, and create our family life. It is nothing less than the shelter in which we work out what we think and who we are; a fulcrum of our autonomy as individuals.

#### Privacy is vital to autonomy and protecting independent thought.

PoKempner ‘14

Dinah PoKempner is general counsel of Human Rights Watch. Her work has taken her to Cambodia, the Republic of Korea, Vietnam, former Yugoslavia and elsewhere in documenting and analyzing compliance with international humanitarian law, war crimes and violations of civil and political rights. She has written on freedom of expression, peace-keeping operations, international tribunals, U.N. human rights mechanisms, cyber-liberties and security, and refugee law among other human rights topics, and oversees the organization’s positions on international law and policy. A graduate of Yale and Columbia University School of Law and a member of the Council on Foreign Relations, Ms. PoKempner also teaches at Columbia University. “World Report 2014” - World Report 2014 is Human Rights Watch’s 24th annual review of human rights practices around the globe. It summarizes key human rights issues in more than 90 countries and territories worldwide, drawing on events through November 2013. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all. http://www.hrw.org/world-report/2014

Some argue we must simply live with the reality of pervasive online surveillance, and that public expectation of privacy has eroded. But this is neither accurate nor dispositive. Our understanding of privacy has in fact grown far beyond “a right to be left alone” into a right of personal self-determination, embracing the right to choose whom we share our personal details with and what identity we project to various communities. When applied to the digital world, privacy gives us some boundaries against unwanted monitors, and with it the essential freedom for personal development and independent thought.

#### Constitutional privacy protections are the foundation of freedom. Mass surveillance is inherently repressive because it exposes individuals to inescapable, oppressive scrutiny.

Greenwald 14 — Glenn Greenwald, journalist who received the 2014 Pulitzer Prize for Public Service for his work with Edward Snowden to report on NSA surveillance, Founding Editor of *The Intercept*, former Columnist for the *Guardian* and *Salon*, recipient of the Park Center I.F. Stone Award for Independent Journalism, the Online Journalism Award for investigative work on the abusive detention conditions of Chelsea Manning, the George Polk Award for National Security Reporting, the Gannett Foundation Award for investigative journalism, the Gannett Foundation Watchdog Journalism Award, the Esso Premio for Excellence in Investigative Reporting in Brazil, and the Electronic Frontier Foundation’s Pioneer Award, holds a J.D. from New York University School of Law, 2014 (“The Harm of Surveillance,” *No Place To Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*, Published by Metropolitan Books, ISBN 9781627790734, p. 173-174)

Privacy is essential to human freedom and happiness for reasons that are rarely discussed but instinctively understood by most people, as evidenced by the lengths to which they go to protect their own. To begin with, people radically change their behavior when they know they are being watched. They will strive to do that which is expected of them. They want to avoid shame and condemnation. They do so by adhering tightly to accepted social practices, by staying within imposed boundaries, avoiding action that might be seen as deviant or abnormal.

The range of choices people consider when they believe that others are watching is therefore far more limited than what they might do when acting in a private realm. A denial of privacy operates to severely restrict one’s freedom of choice.

Several years ago, I attended the bat mitzvah of my best friend’s daughter. During the ceremony, the rabbi emphasized that “the central lesson” for the girl to learn was that she was “always being watched and judged.” He told her that God always knew what she was doing, every choice, every action, and even every thought, no matter how private. “You are never alone,” he said, which meant that she should always adhere to God’s will.

The rabbi’s point was clear: if you can never evade the watchful eyes of a supreme authority, there is no choice but to follow the dictates that authority imposes. You cannot even consider forging your own path beyond those rules: if you believe you are always being watched and judged, you are not really a free individual.

All oppressive authorities — political, religious, societal, parental — rely on this vital truth, using it as a principal tool to enforce orthodoxies, compel adherence, and quash dissent. It is in their interest to convey that nothing their subjects do will escape the knowledge of the authorities. Far more effectively than a police force, the deprivation of privacy will crush any temptation to deviate from rules and norms.

What is lost when the private realm is abolished are many of the [end page 173] attributes typically associated with quality of life. Most people have experienced how privacy enables liberation from constraint. And we’ve all, conversely, had the experience of engaging in private behavior when we thought we were alone — dancing, confessing, exploring sexual expression, sharing untested ideas — only to feel shame at having been seen by others.

Only when we believe that nobody else is watching us do we feel free — safe — to truly experiment, to test boundaries, to explore new ways of thinking and being, to explore what it means to be ourselves. What made the Internet so appealing was precisely that it afforded the ability to speak and act anonymously, which is so vital to individual exploration.

For that reason, it is in the realm of privacy where creativity, dissent, and challenges to orthodoxy germinate. A society in which everyone knows they can be watched by the state — where the private realm is effectively eliminated — is one in which those attributes are lost, at both the societal and the individual level.

Mass surveillance by the state is therefore inherently repressive, even in the unlikely case that it is not abused by vindictive officials to do things like gain private information about political opponents. Regardless of how surveillance is used or abused, the limits it imposes on freedom are intrinsic to its existence.

#### The 4th Amendment outweighs. An ethical ballot can’t even consider their security impact. That would treat privacy as mere inconvenience – obliterating liberty.

Smith ‘14

Peter J. Smith IV – attorney for the law firm LUKINS & ANNIS and Lead Council for This brief was was signed by the entire legal team, which includes four attorneys from the ELECTRONIC FRONTIER FOUNDATION and three additional attorneys from the AMERICAN CIVIL LIBERTIES UNION FOUNDATION - APPELLANT’S REPLY BRIEF in the matter of Smith v. Obama – *before the United States Ninth Circuit Court of Appeals*. October 16th – available at: https://www.eff.org/document/smiths-reply-brief

The government argues that it would be more convenient for law enforcement if the courts established a bright-line rule that extinguished all privacy in information shared with others. See Gov’t Br. 40. The government is surely right about this. The Bill of Rights exists, however, not to serve governmental efficiency but to safeguard individual liberty. Cf. Bailey v. United States, 133 S. Ct. 1031, 1041 (2013) (“‘[T]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment.’” (quoting Mincey v. Arizona, 437 U.S. 385, 393 (1978))); Riley, 134 S. Ct. at 2493 (“Our cases have historically recognized that the warrant requirement is ‘an important working part of our machinery of government,’ not merely ‘an inconvenience to be somehow “weighed” against the claims of police efficiency.’” (quoting Coolidge v. New Hampshire, 403 U.S. 443, 481 (1971))). Notably, the government made the same appeal for a bright-line rule in Jones and Maynard, see, e.g., Brief for the United States at 13, Jones, 132 S. Ct. 945, but the Supreme Court and D.C. Circuit rejected it.

## Originalism Advantage

### UX

#### Lower courts have adopted Scalia's basis of hyper-originalism from Heller – we control uniqueness

Merkel 15 [William Merkel (Associate Professor of Law, Charleston School of Law), "Hyper-Originalism and Judicial Legitimacy from Heller to Highland Park," American Constitution Society for Law and Policy, 12/10/2015] AZ

But the Supreme Court’s decision not to intervene in Highland Park may signal something other than uncertainty that there are five unshakable votes for expanding the scope of gun rights protection significantly beyond Heller. Justice Scalia’s often mocked paeans to originalism reached their most florid heights in Heller and have led to some palpably absurd arguments in lower courts. Take the case of Wrenn v. District of Columbia just argued in the D.C. Circuit. Competing amicus briefs in that case assert that the question of whether, in the year 2015, D.C. can place conditions on public carrying of handguns turns on the meaning of the Statute of Northampton, an English statute promulgated in 1328 a few decades before firearms were known in Europe. More specifically, the briefs dispute whether the Statute criminalized carrying weapons generally or only in situations where it was likely to cause fear in the general public. Or take the case of Peruta v. County of San Diego, in which Ninth Circuit Judge Diarmuid O’Scannlain struck down San Diego County’s “may issue” regime largely on the grounds that history is outcome determinative and, “correctly” read, the Statute of Northampton criminalized only weapons likely to cause terror to the public, thus firming up the assumption that access to other non-terrifying weapons by non-terrifying persons was lawful and largely immune to regulation in fourteenth century England and that it remains so in the United States today. Against this countervailing new orthodoxy of hyper-originalism, Judge Easterbrook’s interest balancing may well invoke “rational basis” standards in more ways than one. It is not unthinkable that at least five Supreme Court justices are rather less comfortable than their brethren Scalia and Thomas in pushing the cause of originalism to limits well beyond any rational measure of reductio ad absurdam. After all, as Justice Frankfurter was often quick to say, judicial legitimacy in the eyes of the public is no trivial thing. And to many jurists not named O’Scannlain, Thomas, or Scalia, it is by no means self-evidently legitimate for judges to tell democratically elected legislators in the United States that they may not regulate guns today because a parliament sitting in Northampton, England wrote a statute in Law French 700 years ago that (the hyper-originalists assure us), when properly construed, criminalized only certain terrible weapons wielded by certain terrifying characters in a limited set of terrifying circumstances.

#### Now is key – reversing Heller would bolster a movement toward living constitutionalism, which avoids the problems of originalism

Winkler 14 [Adam Winkler (professor of law at the University of California, Los Angeles), "Active Liberty Lives," Slate Magazine, 7/8/2014] AZ

No theory of constitutional interpretation is “perfect”—if by that one means denying a judge any meaningful discretion over how to rule. Breyer’s leaves a number of open questions. How broadly or narrowly should constitutional principles be defined? When historic practices conflict, which take precedence? What if relevant data is unavailable? Still, Noel Canning is significant for the fact that, after 20 years on the intellectual ropes, a principles-based approach to constitutional interpretation has been so prominently endorsed by the court. Scalia himself admits that even originalism permits of some judicial discretion. His theory, he insists, just has to be better than the alternative, invoking the analogy of two campers being chased by a bear. One asks the other, “How are we going to outrun the bear?” The other responds, “I don’t have to outrun the bear, I just have to outrun you!” After Noel Canning, it looks like Breyer’s active liberty is giving originalism a good race. Six years ago, Scalia wrote the majority opinion in District of Columbia v. Heller, the landmark Second Amendment case that established an individual right to use handguns in the home. Scalia’s heavy reliance on founding-era history in that case led some to call Heller Scalia’s crowning achievement. Originalism, however, now has some competition. Noel Canning embraces a progressive vision of the Constitution. And that may be Breyer’s greatest legacy.

### UX – RR

#### Reproductive rights are under assault – lower courts have limited women's rights

Patterson 4/5 [Richard N. Patterson (New York Times best-selling author of 22 novels, a former chairman of Common Cause, and a member of the Council On Foreign Relations), "The Reckoning of 2016: The Supreme Court and Reproductive Rights," Huffington Post, 4/5/2016] AZ

Whether you support Bernie or Hillary, how many of you want Republicans to abolish freedom of reproductive choice? I thought so. But here’s the kicker — in much of the country, the GOP already has. For millions of American women, freedom of choice is writ on water. And if you abandon your party’s nominee, whoever that may be, millions more may suffer. By musing aloud about punishing women once the GOP completes its relentless drive to stamp out abortion rights, Donald Trump has reminded us yet again of the stakes in this election. On the issue of choice, as with so much else, our national reckoning is now at hand and cannot be wished away. Put simply, the president who selects Antonin Scalia’s successor will determine the future of reproductive rights. That is not hyperbole — it is already graven on the American landscape. Start with access to a safe and legal abortion. For the less privileged women in most American states, this right is close to extinction. Across the country abortion clinics are closing at a record pace. A little over 700 remain — 43 years after Roe v. Wade, 90 percent of American counties have no clinics at all. In a large swath of red states, 400,000 women of reproductive age live more than 150 miles from the nearest clinic. Five states — Mississippi, Missouri, North Dakota, South Dakota and Wyoming — have just one.

### Yes Precedent – TL

#### Heller was a test case for originalism

Lund 9 [Nelson Lund (Patrick Henry Professor of Constitutional Law and the Second Amendment, George Mason University School of Law), "THE SECOND AMENDMENT, HELLER, AND ORIGINALIST JURISPRUDENCE," UCLA Law Review, May 2009] AZ

Heller turned out to be a test case in a different sense as well. With almost no relevant precedent to constrain its analysis, the Supreme Court was given the opportunity to apply a jurisprudence of original meaning to the Second Amendment’s manifestly puzzling text. The Chief Justice ensured that this would be a pretty fair test of originalism when he assigned the majority opinion to Justice Scalia. In recent decades, Antonin Scalia and other legal conservatives have used original meaning jurisprudence as a powerful weapon for criticizing decisions that effectively amended the Constitution through judicial fiat.2 But this has provoked counterattacks alleging that originalism gets deployed primarily as a weapon for selectively attacking decisions that we conservatives find objectionable on substantive or policy grounds.3 Can originalism truly offer a principled alternative to “living constitutionalism,” one that constrains judicial wilfulness and preserves the distinction between law and politics?

### Yes Precedent – Linguistic

#### Created precedent of strict linguistic originalism – multiple quotes from the decision prove

Solum 9 [Lawrence B. Solum (Associate Dean for Faculty and Research, John E. Cribbet Professor of Law, and Professor of Philosophy, University of Illinois), "District of Columbia v. Heller and Originalism," Northwestern Law Review, 2009] AZ

The Court in Heller did not explicitly articulate its use of the fixation thesis. The majority does, however, refer to eighteenth-century usage and meaning at the time of the adoption of the Second Amendment in numerous passages: the opinion refers to “founding era,”103 “18th century meaning,”104 “the founding period,”105 “the time of the founding,”106 “in the 18th century,”107 “in the 18th century or the first two decades of the 19th,”108 and “historical usage.”109 Moreover, the Court does not cite evidence of usage from other periods, such as early twenty-first-century usage or fifteenthcentury usage. This strongly suggests that the majority opinion is premised on the notion that the linguistic meaning of the Second Amendment was fixed by linguistic facts—patterns of usage—at the time of utterance, not before and not after. D. Clause Meaning or Framers’ Meaning We have already observed the evolution of originalist theory from the 1970s through the present. The tie that binds these theories together is the fixation thesis. Some original intentions originalists believe that the meaning of the Constitution was fixed by the intentions of the Framers—those who actually drafted the document. Other original intentions originalists believe that the intentions of the ratifiers fixed constitutional meaning. Alternatively, New Originalists (or original public meaning originalists) believe that patterns of usage by the public at the time of adoption fixed the meaning of the Constitution.

### Ext – Originalism Damages RR

#### Originalism justifies a sexist and homophobic interpretation of the 14th Amendment which permits gender-based discrimination

Politics USA 15 [Rmuse, "S.C. Says Constitution Allows Discrimination Against Women So Gay Discrimination Is Okay," PoliticsUSA, 4/11/2015] AZ

South Carolina Republicans joined the fray and filed an amicus brief with the Supreme Court defending their right to openly discriminate against the gay community based on the long history of Republicans discriminating against women. The crux of South Carolina’s argument in support of discriminating against gays is that if it constitutionally permissible to discriminate against women, then it is perfectly legal to discriminate against gays. Where most people would never admit they target women for discrimination, and get away with it, South Carolina Republicans shamelessly used it as legal precedent to express their religion-based bigotry toward the gay community. In the amicus brief filed by South Carolina’s attorney general against gays having the right to marry the person they love, the bigot argued that the High Court should follow the “original sexist intent” of the Constitution’s 14th Amendment. He claims the authors of the 14th Amendment intended to maintain discriminatory laws against women being equal with men under the law, so it is all the legal precedent religious bigots need to discriminate against gays. Yes, it is as despicable an argument as any evangelical bigot has come up with thus far, but it is also relatively accurate; if it was still 1868. The problem is that when the 14th Amendment became part of the Constitution, it did not include equality for women any more than it provided true equality under the law for people of color. In a sense, if the so-called ‘constitutional originalists‘ on the High Court rule according to what religious patriarchs intended in the 14th Amendment, then yes, gays have no more claim to equal rights under the law in 2015 than women did in 1868. According to congressional records, the dirty patriarchs drafting the amendment were fiercely adamant that according to the 10th Amendment, states could “not be forced to recognize married women as independent human beings with rights of their own.” They were the subservient property of their husbands and simple birth machines relegated to cleaning chamber pots and preparing meals. The primary author of the amendment, a patriarchal douchebag named John Bingham gave his unwavering assurance to other patriarchal congressmen that they “need not be alarmed that the amendment would alter the ‘condition’ of married women.” In fact, another anti-woman cretin, Samuel Shellagarger, promised that under the amendment’s ‘equal protection‘ clause, the 10th Amendment still guaranteed that “states could deprive women of the right to sue, enter into contracts, or testify in a court of law;” women were already denied the right to vote because of their “condition.” Since the 14th Amendment has been in effect, the High Court has often held that states laws putting women at a clear disadvantage receive “heightened scrutiny” under the equal protection clause; including the current conservative court that one hopes would strike down laws forbidding married women from owning property, voting, or entering into legal contracts. However, one seriously wonders how much the current conservative patriarchs on the Court are willing to allow women, much less gays, their equal rights according to recent rulings that disallowed women from filing lawsuits as a class, or use contraceptives without their evangelical and Catholic employers’ permission. The frightening aspect of how the conservatives on the court interpret South Carolina’s amicus brief is that they may adopt and restore the sexist and patriarchal “originalist” interpretation of the 14th Amendment and not only disallow gays from enjoying equal protections under the law, but open the door for a rash of Republican state-sponsored sexism the likes American women have never witnessed. It is worth noting that most Republicans do not support women choosing their own reproductive rights, receiving equal pay for equal work or even entering the workforce, and in many cases believe women should be sequestered at home in constant birthing mode and in servitude to the man of the house. These beliefs did not originate with the authors of the 14th Amendment, they are longstanding biblical principles Republicans still adhere to in 21st Century America. That South Carolina would have the temerity to use an originalist interpretation of the 14th Amendment, and its clearly anti-women tenets, as precedent to discriminate against the gay community is not only shameless, it informs just how bigoted Republicans are toward gays. One hopes the conservatives on the Supreme Court reject South Carolina’s blatantly anti-women argument to justify discriminating against LGBT people, but with the so-called “constitutional originalists” on the Court, it is entirely possible they will reject the “broader constitutional principles” of the 14th Amendment and adopt the 1868 concept that, Hell no, all Americans are not equal under the law; particularly if they are women or gay.

### A2 Heller Not Originalist

#### Heller was a hardline originalist decision – it bases the ruling solely in historical analysis, rather than value judgments

Shaman 8 [Jeffrey M. Shaman (Vincent de Paul Professor of Law, DePaul University College of Law), "The Wages of Originalist Sin: District of Columbia v. Heller," The American Constitution Society, 2008] AZ

Certainly there is nothing faint-hearted about Justice Scalia’s originalist analysis in Heller. That relevant circumstances concerning the Second Amendment may have changed over the years is of no moment to Justice Scalia. He acknowledges the problem of handgun violence in the nation, but deems it irrelevant because “the enshrinement of constitutional rights necessarily takes certain policy choices off the table.”27 He allows that an originalist view of the Second Amendment may be outmoded in present-day society where a standing army is wellsupplied with arms, where well-trained police forces provide personal security, and where gun violence is an extremely serious problem, but dismisses those considerations because “it is not the role of [the] Court to pronounce the Second Amendment extinct.”28 All of this, of course, begs the question by assuming that the Second Amendment must be interpreted according to its original meaning. As Justice Stevens points out in his dissenting opinion, the constitutional right that the Court announced in its opinion was not “enshrined” in the Second Amendment by the Framers as Justice Scalia so adamantly claims; rather, it was set forth by the Court itself in a groundbreaking decision investing the Second Amendment with meaning that was not previously realized.29 As we have seen, Justice Scalia’s opinion in Heller takes an extreme originalist stance. It engages in lengthy historical exposition to ascertain the original meaning of the Second Amendment at the time it was adopted in 1791 and allows for no evolution of the Amendment’s meaning. Changed circumstances have no bearing on Scalia’s analysis of the Amendment. Similarly, policy considerations are of no concern, and are dismissed out-of-hand. The analysis is thoroughly originalist and deeply steeped in history.

#### Heller explicitly rejected balancing as a test for gun bans and was definitively originalist

Barlow 12 [E. Garret Barlow ( J.D. candidate, April 2013, J. Reuben Clark Law School, Brigham Young University), "United States v. Reese and Post-Heller Second Amendment Interpretation," BYU Law Review, 2012] AZ

In his Heller II dissent, Judge Kavanaugh suggested that the Supreme Court’s decisions in Heller and McDonald established a precedent whereby “courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny.”68 He noted “the Supreme Court in Heller never asked whether the law was narrowly tailored to serve a compelling government interest (strict scrutiny) or substantially related to an important government interest (intermediate scrutiny). If the Supreme Court had meant to adopt one of those tests, it could have said so.”69 Instead, “the test the Court relied on—as it indicated by using terms such as ‘historical tradition’ and ‘longstanding’ and ‘historical justifications’—was one of text, history, and tradition.”70 Kavanaugh points out that, in his Heller dissent, Justice Breyer advocated intermediate scrutiny review of the D.C. gun law, discussing the government’s interests and the fit between the D.C statute and those interests, but the majority rejected a “judge-empowering ‘interest-balancing inquiry’ that ‘asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute’s salutary effects upon other important governmental interests.’”71 Judge Kavanaugh explained that the discord between the majority and dissent in Heller “was resolved in favor of categoricalism—with the categories defined by text, history, and tradition—and against balancing tests such as strict or intermediate scrutiny or reasonableness.”72

#### [A2 Exceptions] Not relevant – Scalia's opinion still created a norm of originalism for lower courts, even if Scalia's basic methodology was slightly diluted.

### A2 No Scalia = No Originalism

#### Scalia's death didn't change anything

Somin 2/22 [Ilya Somin, "The future of originalism after Scalia," Washington Post, 2/22/2016] AZ

Prominent legal scholar Eric Posner recently argued that originalism is likely to fade away in the aftermath of the death of Justice Antonin Scalia, its leading advocate on the Supreme Court. In Posner’s view, the Supreme Court is virtually the only significant audience for originalist constitutional arguments, and it is unlikely to be much interested anymore. Yale Law School Professor Jack Balkin responds that there are many other important audiences interested in originalist ideas, including lower court judges, conservative political movements, and the legal community outside the courts, among others. I think Balkin’s critique is largely on target, and would add some additional points. First, it is premature to conclude that the death of Scalia portends a major decline in interest in originalism among Supreme Court justices. It is quite possible that Senate Republicans will succeed in blocking President Obama’s nominee from replacing Scalia. If so, and a Republican candidate (at least one other than Donald Trump) wins the election, Scalia might well be replaced by a like-minded originalist. Originalism is now the dominant constitutional theory on the political right, and a GOP president would feel some pressure to replace Scalia with an adherent of the same worldview. Even if Obama is able to replace Scalia with a nonoriginalist liberal, originalism might still rebound from that setback in the near future. There are three other relatively elderly justices who might well leave the Court in the next few years, all of them nonoriginalists: Stephen Breyer, Ruth Bader Ginsburg, and Anthony Kennedy. Depending on who wins the 2016 and 2020 presidential elections, it is quite possible that some or even all of these justices might be replaced by successors more sympathetic to originalism. Even if they are replaced by Democratic presidents, it is possible that one or more of the new liberal justices might be jurists influenced by the growing liberal originalist movement led by scholars such as Akhil Amar and Balkin himself. A decade from now, the extent of support for originalism on the Supreme Court could easily be greater than it was just before Scalia’s passing, though it could also be smaller or about the same. All three scenarios are plausible.

### A2 Originalism Good

#### Originalism is just wrong – it whitewashes our history and institutionalizes historical uncertainties as law

Stein 13 [Joshua Stein (Yale Law School, J.D. expected 2014; UCLA, Ph.D. (History) 2009), "Historians Before the Bench: Friends of the Court, Foes of Originalism," Yale Journal of Law and the Humanities, 2013] AZ

Aside from his qualms about the past's indeterminacy, Justice Stevens raised another grievance in his McDonald dissent: the Court should not automatically give the past normative weight in adjudication. I argue in Part Two that historians should share his concern and should tread especially carefully when attempting to locate the legal-historical foundation for civil rights in the past. For Justice Stevens, the biggest problem with looking to the Americans of the past for answers was that they could be wrong. The Justice opined, "Some notions that many Americans deeply believed to be true, at one time, turned out not to be true . . . . The fact that we have a written Constitution does not consign this Nation to a static legal existence."" 1 Justice Stevens sought, it seems, to criticize the manner in which the Court attached too much importance to originalist interpretations. He continued, "[I]t makes little sense to give history dispositive weight in every case. And it makes especially little sense to answer questions like whether the right to bear arms is 'fundamental' by focusing only on the past."52 Historians do not generally deign to pass value judgments on the past, and to extent they do, it is usually to "revise" our gauzy, celebratory accounts of heroism and progress. Originalists, on the other hand, tend to ascribe greatness to the Founders. They whitewash history by passing on the puffery of the nation's founding myths. Historians should have seriousphilosophical reservations with original-intent analysis for that reason alone, irrespective of their professional commitment to the indeterminacy of the past. Historians should be further discouraged by the fact that there is no binding legal precedent for or consensus surrounding original-intent analysis. That is to say, it represents a special torment to forsake long-held professional principles for a practice that even many legal scholars and lawyers find dubious. The place of originalism in the canons of legal interpretation is not, appearances perhaps to the contrary, a settled question. Nothing in the Constitution and no major court decision from the founding era can be cited by lawyers or judges today holding that "when case law is lacking and plain text analysis falls short, thou shalt turn to pronunciations of the framers' intent." Justice Marshall understood this quite early on, when he wrote: "It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly."" Marshall did not believe the Constitution intended "to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances." 54 In short, historians should be deeply mindful both of their own objections to giving the past normative weight and of the controversy and doubt swirling around original-intent analysis.1

#### Originalism is inevitably arbitrary – historical analysis isn't a hard science and encourages elites' biases

Shaman 8 [Jeffrey M. Shaman (Vincent de Paul Professor of Law, DePaul University College of Law), "The Wages of Originalist Sin: District of Columbia v. Heller," The American Constitution Society, 2008] AZ

Originalism does not eliminate the necessity of making value judgments to interpret the Constitution. Instead, it obscures the policy-making aspect of constitutional interpretation by pretending that the meaning of constitutional provisions can be recovered from historical annals. We have seen, however, that the meaning of the Constitution does not reside in history and that when judges engage in originalist interpretation they recreate the past according to their own values.78 The interpretation of history is a complicated exercise that leaves a good deal of room for the historian to make value judgments. The historian “is committed to a doomed enterprise— the quest for an unattainable objectivity.”79 Historical analysis is a selective enterprise through which a judge imagines the past and thereby shapes it according to his or her personal vision of reality. Justice Scalia’s historical approach, then, implicates the same trait that Scalia himself finds so insufferable about balancing: it invests judges with discretion to read their own values into the Constitution. Moreover, the historical approach is more insidious than balancing, because it sneaks a judge’s personal views into the Constitution by denying their true nature and pretending they are nothing more than the original understanding of the document. Originalism can be a risky enterprise for judges: In searching the historical record for original meaning, there is often a temptation to discover what one wants to discover.80 A judge may think that he or she is finding the original understanding of a constitutional text, when in truth it is the judge’s own beliefs that are being revealed. Earlier originalists, purportedly searching for the intent of the framers of the Constitution, were prone to this failing81 and laterday originalists have not been immune from it, either, as shown so pointedly in the “shamelessly selective” reading of the historical record to which both Justices Scalia and Stevens fall prey in Heller. 82 Practitioners of originalism also have been accused of abandoning their originalist principles when it when it suits their political purposes to do so.83 William Marshall asserts that in a number of instances originalists can be seen ignoring the historical record when it conflicts with their political agenda.84 He concludes that originalism often devolves into “a doctrine only of convenience and not of principle.”85 More principled originalists may endeavor to hew more faithfully to the historical record. Even so, they are engaged in an impossible quest: the attempt to find a pre-determined meaning for the Constitution in the recesses of history. In truth, the meaning of the Constitution is not fixed in the past, nor anywhere else, for that matter. Rather, it is perpetually evolving and can best be determined through a creative process of purposive decision-making. Ideally, constitutional law is a vibrant, ongoing process, rooted in the past, existing in the present, and reaching for the future.

## T

### Pragmatics > Text

#### When there are two plausible interpretations of a term in the res, default to impacts to fairness and education rather than textual impacts. This is the best model for T debates – it avoids nasty, unclear debates about definitions that are essentially irresolvable and instead decides whose interp is better for debate.

### Reasonability

#### Use reasonability with a brightline of in round structural abuse- this means they need to prove an argument or practice skews reciprocal access to the ballot, not just qualitative harms.

### A2 Extra T

#### Not extra-T – the plan mandates that a court decision directly in conflict with a handgun prohibition be overturned. That's entirely reasonable, especially since the topic is so small. Just as bills in Congress declare all conflicting laws null and void, the aff should get to fiat that all conflicting court decisions are revised – otherwise aff loses every round on rollback

#### Our interp is best for research and policy education – a policy as radical as a handgun prohibition requires changes to existing case law, which generates its own unique impacts

#### We can gain advantages from overturning a past case – it's normal means for DC

### A2 "Heart of Topic"

#### No warrant for why that's the heart of the topic – District v Heller was a landmark case for national gun policy

Sanburn 10 [Josh Sanburn (reporter), "Top 10 Controversial Supreme Court Cases," Time Magazine, 12/13/2010] AZ

It had been 70 years since the Supreme Court had last tackled the central conundrum of the Second Amendment: Does the right to bear arms apply only to militias? This 2008 case specifically challenged Washington, D.C., gun-control legislation that generally prohibited carrying a pistol without a license and also required that all firearms be kept unloaded. In a split decision, the often conservative-leaning Roberts court concluded that the Second Amendment does protect an individual's right to possess a firearm unconnected with service in a militia. It was possibly the most important government statement regarding guns in the U.S. since the Second Amendment was ratified in 1791. Date Decided: June 26, 2008 Chief Justice Presiding: John G. Roberts Vote Split: 5-4. Dissenting justice John Paul Stevens wrote that the constitutional right to "keep and bear arms" refers to state militia service only. Dissenting justice Stephen Breyer wrote that, while the Second Amendment refers to individual rights of self-defense, it does not grant the right to keep loaded handguns in homes.

#### Even if it's not, TOC is the time to debate about fringe affs – we've discussed handgun bans for 4 months

### A2 Effects T -- W/M

#### We meet – the aff implements a ban on handguns in Washington

#### Effects T isn't a voting issue – every aff inevitably entails a number of steps to implement the aff – even a bill in Congress needs to be passed, signed by the president, and enforced by the police. Either no affs are allowed or there's no brightline to what constitutes effects T – proves their definition of effects T is arbitrary and doesn't justify voting neg

### A2 Effects T – C/I

#### Interpretation: The aff may advocate a policy that bans private ownership of handguns in the United States by overturning a court decision in conflict with that policy.

#### No abuse – every other aff plan would have to overturn the decision anyway, at which point their interp just becomes plans bad

#### Overlimiting--other affs would have to overturn this decision anyway – the only difference is that we specified in the plan text a mechanism. That's net better – produces better, more in-depth debates and prevents a 1AR shift that nullifies neg ground

### A2 Must Be National – C/I

#### Counter-Interp: The aff may specify either a single state in US, Washington DC, or the entirety of the US as long as they have a solvency advocate for the specification.

#### Research burden – this equalizes the playing field because it means that not only does the aff have to do specific research but also that the neg would have to do specific research that would apply to the aff. There is a lot of literature about DC, especially due to the Heller case in 2008.

#### Predictability and Topic Education – most gun regulation happens at a local level, so it makes sense that a handgun ban would happen at a state level, this also means it’s the core of the topic

#### States historically and currently regulate guns

Wood 15 [Robert H. Wood (current attorney in Florida), "A History of Firearms Legislation at the State and Local Levels," December 2015] AZ

The foregoing amply demonstrates that throughout the history of the United States, it is the states who have been the primary regulators of firearms, in conformity with the Constitution’s original limitations on the powers of the federal government. While the federal government has enacted some laws to alleviate what could legitimately be considered national problems, the states continue to make localized choices on issues such as concealed carry, waiting periods, permitting, purchase frequency, assault weapons, and possession in sensitive areas. Therefore, the right to bear arms in the United States appears to be alive and well.

#### Predictability is the most important internal link to fairness and education. Absent a predictable plan, no structural abuse matters because the round is skewed before it even begins. Key to education because research becomes more focused and in round discussions becomes a more thorough examination of the topic.

#### Topic education is the most important impact – we have a unique opportunity to discuss the topic now and we shouldn’t let it be wasted

#### Overlimiting – their interp creates unequal research burdens since aff only has one option, so negs can prep multiple case negs. Allowing region specific plans strikes the best balance since generics about self-defense and circumvention and gives the neg. a manageable number of plans to prep, but still allows the aff a good number of plans

### A2 Must Be National – Defense

#### All the same generic answers applies – circumvention, self-defense, and generic kritiks all apply regardless

#### My interp prevents affs from specifying a group or a type of gun, which avoids an infinite number of plans and ensures predictability

#### There are only a few regions that a handgun ban would really be viable in – topic lit checks abuse. DC is major aff in the literature – it had a handgun ban before, most empirics on bans in the US come from DC, and it's the national capital

### 2AR Overlimiting Standard

#### Extend our overlimiting standard. Outweighs for two reasons –

#### Forcing affs to only defend a single policy that bans handguns by the federal government overlimits the topic and creates stale, uneducational debates. Particularly on the Jan-Feb topic, which we debate for nearly five months, overlimiting uniquely decimates potentially innovative and interesting debates that could teach debaters new nuances about gun policy.

#### Overlimiting unbalances research burdens – the aff is at a structural disadvantage since the neg can just prep multiple case negs against the one aff, while the aff doesn't know the neg's positions.

### A2 "United States" = USFG

#### A law "in the United States" can be at the federal, state, or local level

Dugger n.d. [Ashley Dugger (practicing attorney, taught and written various introductory law courses), "What is Federalism? - Definition & Factors of U.S. Adoption," Study.com] AZ

Have you ever noticed how many laws we have in the United States? We have laws from our federal government, our state governments and our local governments. How do we know who's in charge? The United States government is based on federalism. Federalism is a method of government that allows two or more entities to share control over the same geographic region. Each person in the United States is subject to the laws of that city, county, state and our federal government. In a federalist government, the power is divided between the national government and other governmental units. In the U.S., this means the power is divided between our federal government and our state and local governments. This is different from a unitary government, where one unit holds the power. It's also different from a confederation, which is an association of independent governmental units. The [Articles of Confederation](http://study.com/academy/lesson/articles-of-confederation-strengths-weaknesses-quiz.html) originally established the United States as a confederation, where each of the states operated separately and independently from one another.

#### Best interpretation – the prepositional phrase "in the" implies only that laws are made within the United States, not any particular government

#### United States means fifty states or Washington DC

Business Dictionary [http://www.businessdictionary.com/definition/United-States.html] AZ

United States Definition: Fifty federated states plus District Of Columbia, American Samoa, Guam, Johnston Island, Midway and Wake Islands Northern Mariana Islands, and US Virgin Islands.

### A2 Definition of "In"

#### Dictionary.com defines in as

used to indicate inclusion within space, a place, or limits

#### Prefer this definition

#### First entry – most commonly used

#### Common usage – first entry on Dictionary.com. This outweighs – common usage determines how words are used and applied, which means my definition is likely more correct.

#### blah

### A2 Definition of Ownership – W/M

#### We meet – the plan bans ownership of handguns in a specific city within the US. Citizens of Washington D.C. lawfully CANNOT own a handgun.

## CP

### A2 Regs CP – 1AR TL

#### Perm do both – double the solvency

#### The CP can't solve – only an immediate removal of a *legal* authority has the same effect. Our advantage isn't about the ownership of guns – stare decisis provides a legal codification of the right, which only the aff can counter

#### Even if the counterplan restricted police powers, lower courts would take years to create a coherent national stance on the scope of the 4th amendment – only a *direct and immediate* signal by SCOTUS creates national and lasting change

#### The counterplan would immediately be rolled back on grounds of Heller

### A2 Regs CP – Yes Rollback

#### PICs bad—

#### Predictability – can choose any small part of the aff

#### Time skew – moots the 1ac

### A2 Amend Constitution CP

#### It's plan plus – reverses the decision and also removes the whole amendment

#### Perm do both

#### Doesn't solve originalism advantage

### A2 4th Amendment CP

#### Doesn't solve 3D printing advantage

#### Counterplan flaw – no test cases available

#### Perm do the counterplan – the aff is an instance

### A2 States CP

#### Impossible – District v Heller was a Supreme Court decision

#### Perm do both

### A2 Congress CP

#### Perm do both

#### Can’t solve - Congressional clarification doesn’t change jurisprudence

Elliot 11 - Associate Professor, the University of Alabama School of Law (HEATHER ELLIOTT\* “CONGRESS’S INABILITY TO SOLVE STANDING PROBLEMS” http://www.bu.edu/law/journals-archive/bulr/documents/elliott.pdf) RMT

This minimal approach, of course, does nothing to solve the problem that critics identify with the Court’s standing doctrine, although such language would make clear that Congress intends to force the constitutional question.133 The Supreme Court’s current standing doctrine locates the required injury-infact, causation, and redressability in Article III itself.134 To the extent that Congress simply clarifies that it imposes no additional restrictions on standing – by, for example, excluding those suffering economic injury from the class of those who may sue under certain environmental statutes135 – the problems with the current standing doctrine remain.

#### Perm do the counterplan – the plan said USFG

#### Court Backlash causes circumvention

Elliot 11 - Associate Professor, the University of Alabama School of Law (HEATHER ELLIOTT\* “CONGRESS’S INABILITY TO SOLVE STANDING PROBLEMS” http://www.bu.edu/law/journals-archive/bulr/documents/elliott.pdf) RMT

After analyzing these three options, I conclude that Congress is essentially unable to undertake these efforts. Where it does have power to solve standing problems, the practical problems with exercising that power ensure that Congress is no more likely than the Court to solve standing. Even worse, it is possible that congressional efforts to expand standing may prompt the Court to impose even stricter standing requirements, thus worsening the problem such efforts would intend to ameliorate

#### Only the courts solve—they have immense institutional and persuasive power, and provide political cover for action

Richard L. Pacelle, Associate Professor, Political Science, University of Missouri-St. Louis, THE ROLE OF THE SUPREME COURT IN AMERICAN POLITICS, 2002, p. 102.

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court rarther than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resource to justify its decision. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy. The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and the Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decision even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

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

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

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

## DA

### A2 Race DA [Gourevitch]

#### Wrong disad to read against this aff –

#### Removing the 2nd Amendment removes the legitimate state interest of police safety, which curtails police powers and reduces mass incarceration and an atmosphere of fear. That's Dery.

#### Originalism crushes racial justice – by applying a narrow interpretation of the 14th amendment, originalist justices can claim that the historical intent of the constitutional framers doesn't justify anti-discrimination laws. That's King.

#### Their impact evidence assumes that courts have the ability to sentence blacks to disproportionate punishment and favor police officers – the aff is an impact filter that eliminates the legal authority – that's Dery.

## Inflation Impacts

### Inflation Increases Unemployment

#### Inflation increases unemployment—empirically proven.

Pento 12 — Michael Pento, President and Founder of Pento Portfolio Strategies—a Registered Investment Advisory Firm that provides money management services and research for individual and institutional clients, regular guest on CNBC, Bloomberg, FOX Business News and other national media outlets, 2012 (“Why Higher Inflation Destroys Jobs,” *Forbes*, May 1st, Available Online at http://www.forbes.com/sites/michaelpento/2012/05/01/why-higher-inflation-destroys-jobs/, Accessed 06-30-2012)

What strikes me the most is that neither the Nobel Prize winner nor the Chairman of the Federal Reserve had the sagacity to completely repudiate the idea that inflation can in any way reduce the unemployment rate. Even a cursory look at the data throughout economic history proves that inflation is a destroyer of jobs. All they would have to do is look at the most salient periods of inflation that occurred over the last 40 years and see how negatively it affected the unemployment rate.

From 1971 (the year Nixon broke the gold window) through 1974, the annual percentage change on the Consumer Price Index (CPI) increased from 4.4% to 11.0%. According to Krugman and Bernanke, this should have sent the unemployment rate crashing. However, the unemployment rate increased from 6.1% at the end of 1971 to 7.2% in 1974. And since the unemployment rate is a lagging indicator, that figure increased even further to 8.2% in December of 1975.

In 1977 the CPI was 6.5% and it shot all the way up to 13.5% in 1980. Just as it did in the early part of the decade, the unemployment rate increased yet again to 7.2% in 1980 and hit 10.8% by the end of 1982! Finally, the other salient increase in the rate of inflation occurred between 1986 and 1990. The annual percentage change of inflation in ’86 was 1.9;, that shot up to 5.4% in 1990. The unemployment rate started that period at 6.6% and climbed to 7.3% at the end of 1991.

Therefore, I have to ask our dear Fed Chairman and Nobel Prize winner where the evidence is that inflation causes people to find work. In reality, it’s the exact opposite that occurs. Inflation robs the middle class of their purchasing power and sends them onto the government dole. Inflation also destroys investment in an economy because savers have no idea what interest rate is necessary to charge in order to profitably lend out their money over an extended period of time. And inflation causes tremendous economic imbalances, as capital is diverted into ephemeral asset bubbles instead of being allocated in a more viable manner.

If Krugman and Bernanke were correct in believing inflation has a positive influence on the workforce, Zimbabwe and Argentina would both be paragons of how to achieve full employment. The truth is that a high unemployment rate is the simply the result of a weak economy. And an economy can suffer through a recession while experiencing either inflation or deflation. But when an economy experiences a significant increase in the rate of inflation, it nearly always ends up with an unemployment rate that goes along for the ride. We can only hope that central bankers in the developed world assent to that principle very soon. Unfortunately, the ECB, BOJ and Fed continue to believe a positive rate of inflation must be maintained at all costs. That is one of the reasons why a high rate of unemployment has now become a structural condition in most of the developed world.

### Inflation Undermines Confidence

#### Higher inflation will destroy consumer and investor confidence, undermining the economy—empirically proven.

Samuelson 11 — Robert J. Samuelson, Economics Columnist for *The Washington Post*, 2011 (“Inflation is not the answer,” *The Washington Post*, August 24th, Available Online at http://www.washingtonpost.com/opinions/inflation-is-not-the-answer/2011/08/24/gIQAHh3ebJ\_print.html, Accessed 06-30-2012)

It’s a sign of desperation that the latest cure being suggested for the ailing economy is higher inflation. In the 1970s and early 1980s, inflation (peaking at 13 percent in 1979 and 1980) was a national curse. Now, it’s being advanced as an antidote to high unemployment and meager economic growth. It’s bad advice for the Federal Reserve, which holds its annual research retreat at Jackson Hole, Wyo., this week. What seems plausible in the classroom would probably backfire in the real world.

The economy’s central problem today is lack of confidence — fear — reflecting enormous uncertainty. Business managers and consumers don’t know what to expect. Facing stubborn joblessness, falling home values and volatile stock prices, they have become reflexively defensive. They hoard and hold back. A deliberate policy of higher inflation risks compounding the uncertainty and poisoning psychology even more.

That’s what happened in the 1960s and 1970s. Economists argued that modest increases in inflation (say, to 4 percent or 5 percent) would reduce unemployment by allowing more expansionary budget and monetary policies. Slightly higher inflation wouldn’t bother most Americans, and lower unemployment would be a clear gain. But inflation wasn’t kept under control. Unemployment rose (it averaged 6.2 percent in the 1970s compared to 4.5 percent in the 1950s), and accelerating price increases spooked Americans.

#### That takes out and turns their internal links—empirically proven.

Samuelson 11 — Robert J. Samuelson, Economics Columnist for *The Washington Post*, 2011 (“Inflation is not the answer,” *The Washington Post*, August 24th, Available Online at http://www.washingtonpost.com/opinions/inflation-is-not-the-answer/2011/08/24/gIQAHh3ebJ\_print.html, Accessed 06-30-2012)

All this explains why higher inflation appeals to economists across ideological lines. While Rogoff is slightly right of center, liberal economist and columnist Paul Krugman also favors it. The trouble is this: Inflation is hard to manipulate in precise and predictable doses. Once people become convinced that government will tolerate or encourage it, they adapt in unforeseen ways. We can’t know what would happen now, but we do know what happened in the 1960s and 1970s.

One adaptation was that companies and workers raised wages and prices much faster than expected. Higher interest rates followed. Rates on 10-year Treasury bonds went from 4 percent in 1962 to 8 percent in 1978. The stock market stagnated for nearly two decades. Consumers reacted to greater uncertainty by increasing their savings rates from 8 percent of disposable income in 1962 to 10 percent by 1971. That’s exactly the opposite of today’s goal — more, not less, consumer spending.

#### That causes dollar flight.

Samuelson 11 — Robert J. Samuelson, Economics Columnist for *The Washington Post*, 2011 (“Inflation is not the answer,” *The Washington Post*, August 24th, Available Online at http://www.washingtonpost.com/opinions/inflation-is-not-the-answer/2011/08/24/gIQAHh3ebJ\_print.html, Accessed 06-30-2012)

There might be other unpleasant surprises. If retail prices rose faster than wages — a good possibility with unemployment at 9.1 percent — higher inflation could act as a drag on the economy by reducing workers’ “real” purchasing power. If investors decided that the Fed had gone soft on inflation, there might be a panicky flight away from the dollar on financial and foreign exchange markets.

#### Confidence is the crucial internal link.

Samuelson 11 — Robert J. Samuelson, Economics Columnist for *The Washington Post*, 2011 (“Inflation is not the answer,” *The Washington Post*, August 24th, Available Online at http://www.washingtonpost.com/opinions/inflation-is-not-the-answer/2011/08/24/gIQAHh3ebJ\_print.html, Accessed 06-30-2012)

Inflation is not the answer. Remember: The economy’s basic problem is poor confidence spawned by pervasive uncertainties. The Fed shouldn’t make the problem worse by embracing policies that, whatever their theoretical attractions, will create more uncertainties in the real world.

#### The impact is magnified: higher inflation breaches investor trust, undermining overall confidence.

Watson 11 — William Watson, Professor of Economics at McGill University, 2011 (“The inflation swindle,” *Financial Post*, August 10th, Available Online at http://opinion.financialpost.com/2011/08/10/william-watson-the-inflation-swindle/, Accessed 06-30-2012)

The real fairness problem is that inflation is a swindle. It improves the balance sheets of borrowers, but worsens the balance sheets of lenders. Having got themselves overly indebted, governments engineer inflation to reduce the real value of their obligations, thus simultaneously reducing the real value of the assets of people and institutions that in good faith lent them the money.

It’s not quite the Bernie Madoff swindle. But it’s a swindle. Governments and others borrow money that they eventually pay back in dollars or euros or whatever that are worth substantially less than when their debt were contracted.

Once people see what’s going on, then of course they insist on inflation protection in their lending, either by demanding high interest rates or explicit indexing, as in the case of real-return bonds. But the generation of lenders that was caught unawares, having grown to trust government commitments to inflation targets, finds itself out of pocket and, needless to say, unlikely to trust governments ever again.

Lots of social science research over the last couple of decades has pointed to the overriding importance of trust in explaining why some societies and economies work better than others. Deliberately inflating our way out of a fiscal crisis would be a cynical breach of trust and a callous and costly way to solve the problem.

### A2: Inflation Motivates Investment

#### Inflation won’t jumpstart investment—other barriers trump.

Miron 11 — Jeffrey A. Miron, Senior Fellow at the Cato Institute, Director of Undergraduate Studies in the Department of Economics at Harvard University, former Chairman of the Department of Economics at Boston University, holds a Ph.D. in Economics from the Massachusetts Institute of Technology, 2011 (“Can Inflation Kickstart the Economy without Killing It?,” *NPR*, November 21st, Available Online at http://www.cato.org/publications/commentary/can-inflation-kickstart-economy-without-killing-it, Accessed 06-30-2012)

Higher inflation will not necessarily stimulate the economy because interest rates are not the only, and likely not the most important, factor that is limiting investment and hiring. Instead, pessimistic expectations by businesses about consumer demand, concern about an anti-business tilt in government policy, and fear of large tax increases to pay for entitlements, are plausibly playing larger roles. Thus raising the Fed's inflation target might generate higher inflation, with no other benefit to the economy.

### A2: Inflation Reduces Debt

#### Inflation can’t effectively reduce the debt—short-term refinancing.

Samuelson 11 — Robert J. Samuelson, Economics Columnist for *The Washington Post*, 2011 (“Inflation is not the answer,” *The Washington Post*, August 24th, Available Online at http://www.washingtonpost.com/opinions/inflation-is-not-the-answer/2011/08/24/gIQAHh3ebJ\_print.html, Accessed 06-30-2012)

Moreover, the power of higher inflation to erode the real value of U.S. government debt is limited, because much of that debt is short-term. About 30 percent matures in less than a year; another 25 percent or so matures in less than three years. All this debt will be refinanced. With higher inflation, it would probably be refinanced at higher interest rates that investors would demand as protection against rising prices.

### A2: Fed Will “Turn Off” Inflation Later

#### Policymakers won’t be able to effectively control inflation—political pressures.

Sivy 12 — Michael Sivy, Chartered Financial Analyst and former securities analyst for an independent stock research firm, former investment columnist at *Money*, has appeared as a stock-market commentator on ABC, CBS, NBC, Fox, CNBC, CNN and MSNBC, 2012 (“Is It Time to Start Worrying About Inflation Again?,” *Time Business*, February 20th, Available Online at http://business.time.com/2012/02/20/is-it-time-to-start-worrying-about-inflation-again/, Accessed 06-30-2012)

Some commentators argue that inflation isn’t a problem yet for several reasons: First, the consumer price index typically gives higher inflation readings than some other measures. Second, the economy is still relatively weak and unemployment remains high. That means any short-term price increases are likely to die out rather than fueling a self-sustaining inflation spiral. And third, policymakers have to balance the risks of inflation against the need to keep the economic recovery going and reduce unemployment. As long as unemployment is above 7%, inflation is a lesser risk than slipping back into recession.

Those arguments are perfectly reasonable if you believe that government technocrats are generally able to fine-tune the economy and are also uninfluenced by political considerations. Unfortunately, neither of those things is true. The political problem is obvious: It’s easy to announce that you are going to cut interest rates or take other steps to stimulate the economy. But it’s much harder to raise interest rates or otherwise cause short-term economic pain for the sake of a healthier economy at some point in the future. The temptation for policymakers will inevitably be to wait and be sure unpleasant measures are absolutely unavoidable.

#### Err neg—inflation is too hard to control.

Watson 11 — William Watson, Professor of Economics at McGill University, 2011 (“The inflation swindle,” *Financial Post*, August 10th, Available Online at http://opinion.financialpost.com/2011/08/10/william-watson-the-inflation-swindle/, Accessed 06-30-2012)

Then there’s the problem that inflation is hard to control. Alas, Ken Rogoff himself wouldn’t actually be in charge of the inflation he proposes. Politics and institutions would be and there’s no guarantee they’re capable of the deliberate and precise pedal-down, pedal-up policy he envisions. What if we get stuck, as we did for a long time in the 1970s, with the inflation pedal down?

# Neg

### 3D printing solvency defense?

Little 14 - Rory K. Little, Professor of Law at UC Hastings, February 21, 2014, “Guns Don't Kill People, 3D Printing Does? Why the Technology is a Distraction from Effective Gun Controls” UC Hastings Scholarship Repository, 65 Hastings Law Journal 1505*,* p. 1507, Available Online at http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2117&context=faculty\_scholarship, Accessed 4/11/16)IG

When considering the impact that 3D printing may have on gun control, I think it is vital to keep the two aspects conceptually separate. The existence of 3D printing is one aspect-a fascinating and largely unanticipated technological development that, having now permeated the popular consciousness, leads to creative and amazing flights of fancy. Such flights-total freedom in thought-are the joy that a new idea can bring before the tedium of logistical realities sets in.

The other aspect of the debate is reasonable gun control-and that issue seems to be entirely separate from the means of manufacturing guns. That is, if one believes that effective controls of the manufacture, possession, and misuse of firearms are necessary, one must confront that question based on whatever the realities of the gun "market" may be at any given moment. One must "control" guns, not 3D printing-or at least, not control 3D printing more so than any other aspect of gun production, possession, and use; or more than any other technology that facilitates crime.

Professors Desai and Magliocca have described the issue of 3D printing vis-A-vis guns as a "red herring., 24 I would make the point slightly differently: the technology of 3D printing is a distraction, albeit a relevant and fascinating one, from the question of whether and how best to regulate guns generally. The prospect of easily homemade guns is similarly a distraction from the question of how best to address the realities of 3D printing. The two topics are connected only in the way that all technology is connected to all conduct, including crime, that technology may facilitate.

Thus, when automobiles were invented-and have you stopped to consider the origins of the word "auto-mobile," a fascination that something could move independently, without a living thing attached?- some jurisdictions enacted laws to criminalize robbery-by-auto.25 The concept seems antiquated today: the problem is robbery, not automobiles. Cars just made robbery a little easier.

Similarly, when electrical wires began to span the country, Congress enacted a "wire fraud" statute 6 Wires, however, were simply new technology enabling age-old fraud. Electrical wires themselves were, of course, not prohibited or restricted in any way. The problem was (and is) fraud, not wires -and the means by which fraud is committed are largely irrelevant to criminalizing the unwanted conduct.

Similarly, if the danger and misuse of guns is the problem, then gun control must focus on those issues. The means by which guns are manufactured and distributed are relevant, but are not the central concern. Effective gun control must take into account whatever the means of production are-but the focus must be on preventing unlawful possession and uses of guns, not on banning or restrictively inhibiting a particular manufacturing technology.27

As others have recognized, the ability to inexpensively produce homemade guns has the potential to undermine some current firearm regulations. 8 But, as Professors Desai and Magliocca have argued, this prospect ought not to lead to efforts to "shackle 3D printing." 9 Rather, as has always been true in the face of new and surprising technological leaps, the challenge is to control dangerous guns and the people who use, or now make, them for criminal purposes-not to fear or inhibit the innovation itself.

3D printing of firearms raises two distinct problems. First, it makes it possible, or at least easier and cheaper, to make guns at home. Second, it can facilitate home manufacturers in evading whatever controls a legislature might place on commercial manufacturers. The second aspect is more threatening to the new technology. If we assume that criminals will ignore the legal and regulatory requirements (such as "you cannot print an operational firearm at home"), then placing such requirements on homemade guns will do no good. Because we cannot completely "control" what is manufactured in the privacy of one's home, a simpler

solution might be viewed as banning the home manufacture of guns entirely.

Thus, the simplest regulation would be one that entirely bans the 3D printing of guns at any location other than a licensed (and regulated) manufacturer. Another approach would be to ban possession of 3D printed guns entirely. However, one scholar has carefully argued that if, as Heller holds, the Second Amendment enshrines a right to possess a handgun in the home, then a Heller analysis must necessarily encompass a constitutional "right of individuals to manufacture their own firearms" at home as well.30 This might be right: if the Second Amendment protects a right to keep "arms" in the home for self-defense, then protecting a right to create such arms-just as protecting a right to purchase and transport them-would seem a logical corollary.3' On the other hand, so long as guns are available for purchase without too much governmental interference, perhaps home manufacture is unnecessary to the home possession right.

### --Exclusionary Rule

#### exclusionary rule degraded

Dery 9 [George M. Dery III (Professor, California State University Fullerton, Division of Politics, Administration, and Justice; former Deputy District Attorney, Los Angeles, California), "Unintended Consequences: The Supreme Court’ s Interpretation of the Second Amendment in District of Columbia V. Heller Could Water-Down Fourth Amendment Rights," University of Pennsylvania Journal of Law and Social Change, 2009] AZ

The Court's Changing Treatment of the Exclusionary Rule in the Fourth Amendment Context Shows How Characterization of a Rule as an Individual Right Has Practical Consequences The Court in Heller took pains to allay fears about the implications of its ruling. Justice Scalia stated that, "[!]ike most rights, the right secured by the Second Amendment is not unlimited."62 The Court concluded that: nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and gov-ernment buildings, or laws imposing conditions and qualifications on the commercial sale of arms. 63 II Yet, at the same time, the Court in Heller recognized that, "the enshrinement of constitutional rights necessarily takes certain policy choices off the table."64 Recognition of a rule as a constitutional right does, indeed, have significant practical consequences. It certainly did in the Fourth Amendment case, Mapp v. Ohio, where the Court adopted the exclusionary rule. 65 In Mapp, the Court, in an opinion authored by Justice Clark, held that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." 66 In support of its ruling, the Court characterized the exclusionary rule as "an essential part of both the Fourth and Fourteenth Amendments."67 Justice Clark reasoned that it was " logically and constitutionally necessary that the exclusion doctrine-an essential part of the right to privacy- be also insisted upon as an essential ingredient" of the right against unreasonable search and seizure.68 To hold otherwise, the Court asserted, would be to "grant the right but in reality to withhold its privilege and enjoyment."69 However, in future case, when the Court carved out exceptions to the exclusionary rule, it dismantled Mapp 's recognition of the exclusionary rule as a constitutional right. Specifically, in United States v. Calandra, the Court prohibited a grand jury witness from invoking the exclusionary rule to avoid questions that were based on evidence obtained in violation of the Fourth Amendment.70 In support of its ruling to limit the application of the exclusionary rule, the Calandra Court rejected the rationale in Mapp and called the exclusionary sanction a mere "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved."71 The Court reasoned that, "[a]s with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served."72 Two years later, the Court employed the reasoning of Calandra in United States v. Janis,73 where the Court admitted evidence in a federal civil proceeding which was '"unlawfully seized by a state criminal enforcement officer."74 In an effort to further avoid the exclusionary rule's unpleasant consequences, the Court even cast doubt on the rule's function as a remedy. In Stone v. Powell, the Court asserted not only that the exclusionary rule was "not a personal constitutional right," but also that the rule failed to provide a remedy to the victim of a Fourth Amendment violation. The Court pointed out that the rule fails to provide a remedy because "li]t is not calculated to redress the injury to the privacy of the victim of the search or seizure, for any '[r ]eparation comes too late. "'75 Privacy could not be returned and persons and things could not be un-seized. Therefore, the exclusionary rule's "primary justification" was to deter police from future illegal searches.76 As a result, the Court concluded that if the deterrent effect of exclusion was uncertain or its deteiTent effect was outweighed by its societal costs, then the exclusionary rule should not be implemented. 77 The Court has gone so far as to deem the exclusionary rule merely "prudential rather than constitutionally mandated."78 The repeated demotion of the exclusionary rule from a constitutional right to a judiciallycreated remedy, and, ultimately, to a prudential rule has allowed this sanction to be continually avoided. A partial listing of the exceptions to the exclusionary rule demonstrates the damage. The Court has prevented the exclusionary rule from suppressing illegally-obtained evidence in the following situations: when impeaching a defendant's testimony,79 where the government is introducing evidence at a parole revocation hearing,80 when officers relied in good faith on a search warrant,81 or where police relied on a computer's representation of the existence of an arrest warrant. 82 This dramatic devolution of the exclusionary rule as a means to protect Fourth Amendment rights demonstrates that recognizing a rule as an individual constitutional guarantee has practical outcomes. The inverse might easily occur with the Second Amendment: recognition of the right to keep and bear arms as an individual right could create practical limits on the government's ability to control guns.83

#### Exclusionary rule protects citizens from police powers and bulk surveillance

Schneier 9 [Bruce Schneier (Chief Technology Officer of Resilient Systems, a fellow at Harvard's Berkman Center, and a board member of EFF), "The Exclusionary Rule and Security," Schneier on Security, 1/28/2009] AZ

Earlier this month, the Supreme Court ruled that evidence gathered as a result of errors in a police database is admissible in court. Their narrow decision is wrong, and will only ensure that police databases remain error-filled in the future. The specifics of the case are simple. A computer database said there was a felony arrest warrant pending for Bennie Herring when there actually wasn't. When the police came to arrest him, they searched his home and found illegal drugs and a gun. The Supreme Court was asked to rule whether the police had the right to arrest him for possessing those items, even though there was no legal basis for the search and arrest in the first place. What's at issue here is the exclusionary rule, which basically says that unconstitutionally or illegally collected evidence is inadmissible in court. It might seem like a technicality, but excluding what is called "the fruit of the poisonous tree" is a security system designed to protect us all from police abuse. We have a number of rules limiting what the police can do: rules governing arrest, search, interrogation, detention, prosecution, and so on. And one of the ways we ensure that the police follow these rules is by forbidding the police to receive any benefit from breaking them. In fact, we design the system so that the police actually harm their own interests by breaking them, because all evidence that stems from breaking the rules is inadmissible. And that's what the exclusionary rule does. If the police search your home without a warrant and find drugs, they can't arrest you for possession. Since the police have better things to do than waste their time, they have an incentive to get a warrant. The Herring case is more complicated, because the police thought they did have a warrant. The error was not a police error, but a database error. And, in fact, Judge Roberts wrote for the majority: "The exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. The error in this case does not rise to that level." Unfortunately, Roberts is wrong. Government databases are filled with errors. People often can't see data about themselves, and have no way to correct the errors if they do learn of any. And more and more databases are trying to exempt themselves from the Privacy Act of 1974, and specifically the provisions that require data accuracy. The legal argument for excluding this evidence was best made by an amicus curiae brief filed by the Electronic Privacy Information Center, but in short, the court should exclude the evidence because it's the only way to ensure police database accuracy. We are protected from becoming a police state by limits on police power and authority. This is not a trade-off we make lightly: we deliberately hamper law enforcement's ability to do its job because we recognize that these limits make us safer. Without the exclusionary rule, your only remedy against an illegal search is to bring legal action against the police—and that can be very difficult. We, the people, would rather have you go free than motivate the police to ignore the rules that limit their power. By not applying the exclusionary rule in the Herring case, the Supreme Court missed an important opportunity to motivate the police to purge errors from their databases. Constitutional lawyers have written many articles about this ruling, but the most interesting idea comes from George Washington University professor Daniel J. Solove, who proposes this compromise: "If a particular database has reasonable protections and deterrents against errors, then the Fourth Amendment exclusionary rule should not apply. If not, then the exclusionary rule should apply. Such a rule would create an incentive for law enforcement officials to maintain accurate databases, to avoid all errors, and would ensure that there would be a penalty or consequence for errors." Increasingly, we are being judged by the trail of data we leave behind us. Increasingly, data accuracy is vital to our personal safety and security. And if errors made by police databases aren't held to the same legal standard as errors made by policemen, then more and more innocent Americans will find themselves the victims of incorrect data.

#### **District v Heller prevented extremist stances against gun control and helped combat gun culture**

Rostron 9 [Allen Rostron (Associate Professor of Law, University of Missouri–Kansas City School of Law), "PROTECTING GUN RIGHTS AND IMPROVING GUN CONTROL AFTER DISTRICT OF COLUMBIA V. HELLER" LEWIS & CLARK LAW REVIEW, 2009, http://ssrn.com/abstract=1516567] AZ

The Supreme Court’s decision in District of Columbia v. Heller, rejecting the narrow interpretation of the Second Amendment that most courts previously embraced, might seem to be a significant setback for gun control supporters and a major victory for gun rights advocates. Challenging that conventional wisdom, the author contends that Heller ultimately will help rather than hinder the push toward strong, sensible gun control laws. Justice Scalia’s opinion for the majority in Heller ultimately backs away from the most drastic implications of its reasoning and instead steers toward a more moderate approach under which virtually all existing gun laws should be upheld. Developments since Heller, including the continuing controversy over gun laws in the District of Columbia and the lower courts’ reactions to a wave of post-Heller challenges to the constitutionality of various federal and state gun laws, suggest that the ultimate effects of the Supreme Court’s decision in Heller will be far less dramatic than many initially expected. In the long run, the Heller decision’s most important effect may be to reduce the intensity and bitterness of the nation’s political and cultural debate over guns. By confirming that reasonable gun regulations will not lead to extreme measures like prohibition of all guns, Heller may turn out to be an important victory for both gun control and gun rights.