# 1NC

## 1

**Interpretation: The affirmative must defend a just government as a general principle, not specify a subset**

**CCC** Capital Community College [a nonprofit 501 c-3 organization that supports scholarships, faculty development, and curriculum innovation], “Articles, Determiners, and Quantifiers”, http://grammar.ccc.commnet.edu/grammar/determiners/determiners.htm#articles AG

The three articles — a, an, the — are a kind of adjective. The is called the definite article because it usually precedes a specific or previously mentioned noun; a and an are called indefinite articles because they are used to refer to something in a less specific manner (an unspecified count noun). These words are also listed among the noun markers or determiners because they are almost invariably followed by a noun (or something else acting as a noun). caution CAUTION! Even after you learn all the principles behind the use of these articles, you will find an abundance of situations where choosing the correct article or choosing whether to use one or not will prove chancy. Icy highways are dangerous. The icy highways are dangerous. And both are correct. The is used with specific nouns. The is required when the noun it refers to represents something that is one of a kind: The moon circles the earth. The is required when the noun it refers to represents something in the abstract: The United States has encouraged the use of the private automobile as opposed to the use of public transit. The is required when the noun it refers to represents something named earlier in the text. (See below..) If you would like help with the distinction between count and non-count nouns, please refer to Count and Non-Count Nouns. We use a before singular count-nouns that begin with consonants (a cow, a barn, a sheep); we use an before singular count-nouns that begin with vowels or vowel-like sounds (an apple, an urban blight, an open door). Words that begin with an h sound often require an a (as in a horse, a history book, a hotel), but if an h-word begins with an actual vowel sound, use an an (as in an hour, an honor). We would say a useful device and a union matter because the u of those words actually sounds like yoo (as opposed, say, to the u of an ugly incident). The same is true of a European and a Euro (because of that consonantal "Yoo" sound). We would say a once-in-a-lifetime experience or a one-time hero because the words once and one begin with a w sound (as if they were spelled wuntz and won). Merriam-Webster's Dictionary says that we can use an before an h- word that begins with an unstressed syllable. Thus, we might say an hisTORical moment, but we would say a HIStory book. Many writers would call that an affectation and prefer that we say a historical, but apparently, this choice is a matter of personal taste. For help on using articles with abbreviations and acronyms (a or an FBI agent?), see the section on Abbreviations. First and subsequent reference: When we first refer to something in written text, we often use an indefinite article to modify it. A newspaper has an obligation to seek out and tell the truth. In a subsequent reference to this newspaper, however, we will use the definite article: There are situations, however, when the newspaper must determine whether the public's safety is jeopardized by knowing the truth. Another example: "I'd like a glass of orange juice, please," John said. "I put the glass of juice on the counter already," Sheila replied. Exception: When a modifier appears between the article and the noun, the subsequent article will continue to be indefinite: "I'd like a big glass of orange juice, please," John said. "I put a big glass of juice on the counter already," Sheila replied. Generic reference: We can refer to something in a generic way by using any of the three articles. We can do the same thing by omitting the article altogether. A beagle makes a great hunting dog and family companion. An airedale is sometimes a rather skittish animal. The golden retriever is a marvelous pet for children. Irish setters are not the highly intelligent animals they used to be. The difference between the generic indefinite pronoun and the normal indefinite pronoun is that the latter refers to any of that class ("I want to buy a beagle, and any old beagle will do.") whereas the former (see beagle sentence) refers to all members of that class

**Standards**

**[1] Precision outweighs - anything outside the res is arbitrary and unpredictable because the topic determines prep, not being bound by it lets them jettison any word.**

**[2] Limits and Ground - decimates clash by exploding limits to infinite governments with infinite possible interps of what constitutes a just one, each with different political climates, economies, and human rights problems which makes contesting the aff with unifying neg ground impossible and means they can always pick the most aff skewed country.**

**[3] TVA – read your aff as an advantage under whole res – we still get your content education and sufficient aff ground by switching up aff advantages, frameworks, implementation, etc. But, 1ar theory checks pics and they incentivize more of them because nothing but cheaty generics link**

**Fairness and education are voters - debate is a game that needs rules to evaluate it and teaches portable skills we use lifelong. Drop the debater for deterrence since the whole round was skewed. No rvis - a] illogical---you shouldn’t win for being fair b] baiting—they’ll bait theory and prep it out—justifies infinite abuse and chilling us from checking abuse. Competing interps---a] reasonability’s arbitrary and forces judge intervention b] norm setting---we find the best possible norms c] reasonability collapses---you use offense/defense paradigm to evaluate brightlines. Neg shells come first--NC abuse was reactive so they were the root cause of the abuse**

## 2

**Interp: Unconditional rights must apply to every worker**

**Magnell 11** [Thomas Magnell, Quals: Philosopher, Department of Philosophy, Drew University, Madison, NJ, The Correlativity of Rights and Duties, J Value Inquiry (2011) 45:1–12]//BA PB

Unconditional rights may be either absolutely unconditional or relatively unconditional. An absolutely unconditional right is a right which every right-holder enjoys as something capable of having rights. These are the most fundamental of all rights. As rights which all right-holders have simply as right-holders, they are common to all people, institutions, corporations, societies, and at least some nonhuman animals. They do not need to be acquired. Because they are held unconditionally, they cannot be overruled. For the same reason, they are as minimal as can be. To draw anything more than the most minimal rights from right-holders as such is almost surely a mistake. The flights of fancy of natural rights theorists led Bentham to shout: ‘‘Natural Rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts.’’12 Still, notwithstanding Bentham’s finest flourish of phrasing, there may be some, for example, the right of a right-holder not to be subject to a wanton disregard of its interests. This would seem to be a right that at least some animals have as well as people taken individually or in groups. It is not a particularly robust right. An awful lot of harm can be inflicted upon a right-holder without showing a wanton disregard for the right holder’s interests. Even so, as minimal as it is, it is not a right that is always respected, as National Socialists and International Socialists showed in concentration camps and the Gulag. A relatively unconditional right is a right which all right-holders of a certain kind enjoy without qualification. This gives a clear sense to the much abused term ‘‘human rights,’’ though there may be others. In the strictest sense, human rights are relatively unconditional rights. They are rights which human beings have simply as human beings, or perhaps more precisely as persons, if not all human beings are accounted persons, whatever their role or situation within or apart from a society. A better term for them would be ‘‘person rights,’’ but here the common term is unlikely to be allowed to give way. Human rights are not acquired, though if personhood is a characteristic that human beings can come to have and come to lose, human rights may be gained or lost along with it. Some other right-holders may have the same rights unconditionally, but not all. Narrower on the one hand than absolutely unconditional rights, broader on the other than conditional rights, human rights cannot be conferred by declarations or political manifestos on non-human animals or people: not on non-human animals because non-human animals cannot have them, and not on people because people already have them. In the strictest sense, many of the rights that have come to be labeled as human rights in the fairly recent past, such as the supposed rights to a certain level of income or to a certain level of education are not human rights at all, however politically popular it may be to say that they are. If they are rights in any sense, they are civil rights, acquired rights that are conferred by some civil authority. Human rights in the strictest sense have a more philosophical tone. One notable human right is that of entering into obligations, the right, odd as it sounds, to bear duties. Another is the human right to freedom, the relatively unconditional right that people who are capable of acting autonomously have as such beings. We have a right to liberty without the need for the right to be conferred, while other beings, such as non-human animals that may have the broader absolutely unconditional rights, lack this relatively unconditional right. This is why liberty is intimately tied with human dignity, even as it is demonstrably allied with human prosperity. All other rights that have correlative duties are conditional rights, rights of only some right-holders. They are acquired rights. Their acquisition is conditional on meeting certain qualifications. Someone has a right to have a promise kept only if he meets the qualifications of being the promisee. Someone has a right to receive charity only if he meets the qualification of being in need. From this it should be evident that conditional rights may be either conditioned-rights or unconditionedrights. What makes a right conditioned is a condition of the right itself, that of the correlative duty, an imperfect duty, not being conferred on other qualified rightholders. What makes a right conditional is a condition for acquiring the right in the first place.

**Violation: NLRA says it doesn’t apply to public employees**

**Vote neg for precision--their definition just says in the squo NLRA doesn’t apply to some employees not that normal means is the NLRA or that an unconditional right to strike would therefore not apply to them**

**The standard is shiftiness--they can be infinitely shifty and redefine the plan in the 1AR--NLRA is vague and constantly reinterpreted in court which means they can just destroy all ground--no firefighters, police, or military DA**

## 3

**Interpretation: The affirmative must specify an explicit standard or role of the ballot to weigh offense through with a delineated text in the 1ac.**

**Violation: they don’t. The standard is minimizing death--causes masses of suffering and if you’re unsure, stay alive to find out.**

**Vote neg for clash--if we don’t know the standard we don’t know how to turn the aff or how to evaluate it and the 1ar can re-clarify to delink everything forcing a 2nr restart giving you a 7-6 time advantage–new frameworks don’t check since the re-shift the entire round mid way and skew previous speeches**

**Cx doesn’t check - a] prep skew - we were forced to prep a 1NC that hedges around the potential of you not speccing and had to prep multiple case negs b] incentivizes infinite abuse and hope you don’t get called out since its no risk if we ask you and you can strategically not meet then get extra time in cx to prep the shell since we asked**

## 4

**Plan breaks the PQD—it’s an entirely unprecedented act of court policymaking that justifies unrestrained Judicial intervention**

**Hall, 10** (Associate-Riggs, Abney, Neal, Turpen, Orbison & Lewis, Denver, CO & JD-Loyola Law School, 13 Chap. L. Rev. 265, Lexis)

It is beyond dispute that courts often weigh in, either explicitly or as a consequence of the decisions that they make, on certain policy issues. However, the manner in which policy issues are influenced by the judiciary has historically largely been limited to decisions upholding, striking down or interpreting acts of the legislature. For instance, examine the most significant cases of the courts that commentators often point to in identifying judicial activism. Two periods of the Supreme Court's history are continually identified as particularly "activist" periods in which the Court ventured into the realm of determining policy issues: The New Deal era and the Warren Court. n129 Before the New Deal era, the Supreme Court repeatedly declared legislative attempts to regulate worker rights, including [\*287] setting wage and hour requirements, unconstitutional, holding that such laws would impermissibly restrict the right to freedom of contract. n130 Following the famed "Switch in Time that Saved Nine," the Court suddenly began to uphold regulations setting maximum hours and minimum wages, overruling its previous precedents holding the opposite. n131 The Court decided that freedom of contract was not absolute and could permissibly be restricted where the restriction would improve health and safety or protect vulnerable groups. n132 In other words, the Court made a clear policy determination that freedom of contract should yield to worker protections where health and safety or vulnerable groups were concerned. However, it should be noted that the legislature had already made this policy choice in enacting the health and safety oriented laws in the first place, and so there was nothing "initial" about any policy determination made by the Court in these instances. The Warren Court is likewise frequently cited as being an "activist" Court for its decisions striking down numerous laws harmful to minorities and other historically vulnerable groups. n133 The Warren Court is perhaps best known for striking down the "separate but equal" doctrine in schools through Brown v. Board of Education, n134 predicated on the Court's determination that separate educational facilities based on race were inherently unequal, and thus ran afoul of equal protection. But even this decision was not setting any sort of initial policy. Instead, it was a determination that the policy previously set forth via the equal protection guaranteed by the 14th Amendment was not being advanced through segregated education. The Warren Court also recognized a constitutional right to privacy, which it held outweighed a state's interest in prohibiting its citizens from using contraceptives in striking down such a law enacted by the State of Connecticut. n135 While this could be considered a policy determination of sorts in some respects, the real policy being advanced by that decision is the Supremacy Clause - the Court in [\*288] effect prohibited a state from enacting a law that, in the Court's view, conflicted with the Constitution. Advancement of such a policy did not require any "initial" policy determination by the Court, as the Supremacy Clause is of course written into the Constitution. Some of the Court's brightest and most important moments have come amid accusations of judicial policy setting, including cases like Brown. n136 By the same token, some of the Court's lowest points, such as Korematsu v. United States, resulted from the Court's failure to inject itself into politically charged issues. n137 However, should the judicial branch be permitted to set far reaching emissions restriction policy, it would be taking a step beyond the purportedly "activist" decisions of The New Deal era or the Warren Court. As the District Court in Connecticut v. American Electric Power Co. correctly noted, the relief sought by the plaintiffs in that case would require the court to unilaterally set an appropriate level of emissions reduction as well as setting a schedule by which those reductions were to occur. n138 Moreover, any policy sufficient to redress the injuries claimed by the plaintiffs would require, at a minimum, a broad-based decision (or series of decisions) setting restrictions on many (or all) domestic energy producers in order to make any measurable dent on the consequences of global warming complained of by the plaintiffs. n139 In other words, contrary to the vehicles used by the Warren Court in eliminating "separate but equal" education, the judicial branch would not be simply evaluating actions taken by the elected officials of the legislative branch and making a decision to uphold or declare unconstitutional those actions. Instead, the judicial branch would be required to set forth, in the first instance, the policy options that should prevail in the ongoing debate on global warming and the mechanisms which should be implemented to achieve those policy goals. Consider an analogy to what the Warren Court would have had to undertake in Brown to match the largely legislative function that the judicial branch would have to assume in the global warming debate to determine the guiding policies for [\*289] emissions restrictions and implement the necessary changes in one fell swoop. First, allowing the judiciary to determine that domestic energy producers should be subject to emissions restrictions without any legislative action setting forth this policy would be akin to the Warren Court creating the concept of equal protection on its own, rather than extracting it from the 14th Amendment. There is no provision of legislatively enacted law to support such a decree from the judiciary at this point in time. Further, allowing the judiciary to set specific emissions restrictions on specific domestic energy producers to combat global warming would be the equivalent of the Supreme Court in Brown requiring that "Topeka High School A is to consist of no more than 70 percent white students, whereas Topeka High School B is to consist of no more than 60 percent white students, and Topeka High School C is to consist of no more than 65 percent white students." These, of course, were not the tactics taken by the Supreme Court in Brown. Rather, after initially striking down segregated education as unconstitutional under the equal protection clause of the 14th Amendment, the Court set further hearing on the matter of how to implement the necessary changes. n140 The following year, the case came back to the Supreme Court in Brown II. n141 In that case, the Court recognized that the judicial branch should not be charged with creating the programs to implement desegregation. n142 Rather, the Court held that "full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles." n143 The Brown and Brown II Courts followed a traditional pattern of legislation and jurisprudence in the context of major policy change. n144 First, a legislative body enacts a law. Second, a plaintiff damaged by the law challenges its validity before the courts. Third, the courts are charged with evaluating the validity of the law. Fourth, the courts either uphold or invalidate the law. Fifth, if the courts invalidate the law, they allow for the legislative branch (or if the legislative branch has delegated [\*290] rulemaking to an agency, that agency) to amend the scheme to bring it into compliance with the previously existing law, namely in Brown, the 14th Amendment. By contrast, judicial intervention into the global warming debate steps far outside this framework. To date, no legislative body has acted to set emissions restrictions for domestic energy producers. Rather, through cases like Connecticut v. American Electric Power Co., plaintiffs are attempting to fit an issue requiring widespread legislation into common law doctrines such as nuisance. n145 As such, rather than being charged with evaluating the validity of a law enacted by the elected officials of the legislature, the judicial branch, should it intervene, is instead left to create not only its own policies, but also the mechanisms for enforcing those policies. In sum, the actions that would necessarily be undertaken by the judiciary should it intervene in the global warming debate and attempt to create its own set of emissions restrictions without allowing for the other coordinate branches of government to act would exceed the actions of even those courts long accused of "judicial activism." The courts would need to determine whether emissions restrictions should be imposed on domestic energy producers at all, and if so, such restrictions should be imposed prior to the creation of a global emissions reduction agreement and how the emissions restriction scheme should be structured. These far reaching initial policy determinations that would be required of the judiciary are precisely what the third Baker factor is aimed to prevent, and so the political question doctrine precludes judicial intervention in this debate absent action by at least one of the other two branches of government.

**Legislature is where the right to strike should be changed, not the courts**

**Washington University Law Review 86** [Washington University Law Review, January 1986, " California Public Employees Granted Right t anted Right to Strik o Strike Without e Without Legislative Authorization—County Sanitation District No. 2 of Los Angeles County v. Los Angeles County Employees Association, Local 660, 699 P.2d 835 (Cal.)," Washington University Law Review, https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=2130&context=law\_lawreview, accessed 11-12-2021] BCortez

The specificity of the state legislation varies. The Illinois statute, for example, details the class of employees entitled to strike, the prerequisites for permissible strikes, and the procedures for employer petitions for judicial relief.'7 The Montana statute, on the other hand, broadly authorizes "concerted [bargaining] activities,"' 8 which the Montana Surpeme Court has interpreted to include a right to strike.' 9 In states that have refused to recognize a public employee right to strike, the courts have generally held that the legislature is the appropriate vehicle for such a change. In Port of Seattle v. International Longshoremen's & Warehousemen's Union,20 the Washington Supreme Court refused to overturn the common-law rule prohibiting public employee strikes, although it conceded justification for such a change.2 1 The court rejected the proposed modification, reasoning that the legislature is better equipped to evaluate policy issues and to determine the effects of a strike on public health and safety.22 Similarly, the New Jersey Superior Court sympathized with arguments allowing public employee strikes, but upheld the common-law prohibition.23 The court reasoned that the legislature should determine when the public interest dictated a change.24 Likewise, the Idaho Supreme Court found that the legislature had made a policy decision by not expressly providing for the right to strike in its labor statute.25 Thus, the court held that the common law would control until statutorily abrogated.26

**Collapse of US PQD triggers Japanese kick out of US forces**

**Chen 17** Po Liang Chen, PhD-Washington Law, Jordan Wada JD-Wash Law, in conjunction with Tatsuhiki Yamamoto, Professor, CAN THE JAPANESE SUPREME COURT OVERCOME THE POLITICAL QUESTION HURDLE?, 26 Pac. Rim L. & Pol'y J. 349, April 2017

In the wake of World War II, the current Constitution of Japan (the "Kenpo") was enacted under unusual circumstances, coordinately drafted by United States ("U.S.") and Japanese legal experts. n1 The Kenpo is known as the pacifist Constitution and this principle is expressed substantively in the Kenpo's Preamble and in Article 9. n2 Article 9, Paragraph 1, provides, "the [\*350] Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes." n3 Article 9, Paragraph 2, the "War Potential Clause," declares, "in order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained." n4 Since the Kenpo's enactment, the War Potential Clause has invariably represented the most controversial issue in Japanese politics. n5 Given the ambiguity in the War Potential Clause's language, concern over the constitutionality of Japan's military body - the Self-Defense Force ("SDF") - abounds. n6 Similar controversies regarding The Treaty of Mutual Cooperation and Security between the United States and Japan n7 ("Anpo") and the stationing of U.S. forces in Japan compounded. n8 Early disputes over the SDF, Anpo, and the stationing of U.S. forces comprise three of the most prominent factors shaping the field of Japanese politics, and planted seeds of dynamic social movements springing up since the 1950s. n9 On July 1, 2014, Japanese Prime Minister Shinzo Abe's Cabinet issued an executive reinterpretation of Article 9 ("2014 reinterpretation"). n10 The [\*351] government claimed the basic rationale remained the same, but many believed this reinterpretation n11 substantially shifted the meaning of Article 9's War Potential Clause away from its previous interpretation allowing only individual self-defense n12 to include collective self-defense. n13 This 2014 reinterpretation shook the roots of the Kenpo and its pacifist principle. n14 Although the 2014 reinterpretation will not produce a practical impact until potential new legislation enables the SDF to undertake acts and redefine its relationship with U.S. forces, the reinterpretation was criticized as a significant departure from longstanding policy. n15 Most Japanese constitutional scholars denounced the 2014 reinterpretation as unconstitutional, criticizing the Cabinet for bypassing the process of amending the Kenpo. n16 Thereafter, dormant social movements reawakened, summoning thousands of citizens to the streets, and bringing the issues of the constitutional legitimacy of the SDF, Anpo, and stationing of U.S. forces back into the political spotlight. n17 A deadlock between the hard-liner Cabinet and the pacifist people generated a constitutional crisis. n18 [\*352] At this critical moment of constitutional crisis, one of several serious obstacles the Supreme Court of Japan ("SCJ") must overcome to serve as Japan's court of last resort is its own political question doctrine. n19 SCJ jurisprudence is fairly characterized as exhibiting judicial restraint, often leaving the executive branch as the final interpreter of the Kenpo in practice. n20 Currently, for both political and legal reasons, no defined route for judicial review is established for Article 9 challenges. n21 When hearing disputes related to defense or foreign policy, especially concerning Anpo and stationing of U.S. forces, SCJ justices and sitting in the interior court judges have employed the concept of Tochi Koi Ron ("political question doctrine"), n22 a theory to the effect that certain acts of the Diet done in the name of the State or of the government are not subject to the power of judicial review. n23 This theory is influenced by the U.S. political question doctrine n24 and acts as one legal barrier preventing the Court from rendering a substantive opinion. n25 n25. Id. (since 1947, SCJ has developed its constitutional avoidance and political question doctrine to avoid deciding the merits of disputes related to Article 9, including the legitimacy of the Self-Defense Force, the Security Treaty between the US and Japan, and the stationing of U.S. Forces). Though Article 81 of the Kenpo grants the Court full judicial review power, SCJ has placed little emphasis on this text, and shies away from the Kenpo's framers' insistence on full judicial review. [\*353] Clarifying the political question doctrine in light of U.S. Supreme Court jurisprudence could remove one major hurdle that prevents SCJ from granting a merits hearing and settling the current constitutional crisis. Reexamining the meaning of political questions and contemplating its wane in the U.S. Supreme Court could provide SCJ with a jurisprudential basis to play a more effective role in interpreting the Kenpo. n26 Part I of this comment introduces the historical transplant of judicial review and the political question doctrine into Japan. Part II provides an overview of judicial review and the political question doctrine in the U.S., as a foundation for comparison. Part III recommends steps SCJ could take to clarify and restate its political question doctrine, and how it might use the U.S. political question doctrine's development from Baker v. Carr (1962) to Zivotofsky v. Clinton (2012) as an example when navigating a challenge to the 2014 reinterpretation. We conclude that overcoming the political question doctrine will help bring SCJ one step closer to the role of final interpreter of the Kenpo to provide clear guidance and produce a constructive dialogue among the government, scholars, and the people. I. Judicial Review and the Political Question Doctrine in Japan The political question doctrine is difficult to distill because it is intertwined with debates regarding the boundary of judicial review and the proper function of the judicial branch. Therefore, before reaching the political question doctrine in Japan, it will prove useful to review the historical context wherein judicial review was transplanted from the U.S. into Japan. This will provide a backdrop to examine the jurisprudential evolution of the political question doctrine in Japan, especially in SCJ over the past seventy years. A. The Establishment of SCJ and Judicial Review in 1947 The establishment of Japanese judicial review is swaddled in an unusual history. On August 14, 1945, the Empire of Japan surrendered to the United Allies and the U.S. appointed General Douglas MacArthur Supreme Commander for the Allied Powers ("SCAP"), marking the end of World War II. n27 Under Allied and SCAP supervision, Japanese Prime [\*354] Minister Kijuro Shidehara, appointed Joji Matsumoto chairman of the Constitution Research Committee ("Matsumoto Committee") to amend Japan's Meiji Constitution. n28 The Matsumoto Committee drafted two versions of its constitutional amendment. n29 No record exists of any Matsumoto Committee member proposing judicial review. General MacArthur was unsatisfied with the Matsumoto Committee's failure to revive democratic tendencies and respect fundamental rights in its proposal; he directed the Government Section ("GS") n30 to secretly begin a new draft (the "MacArthur proposal"). n31 On February 13, 1946, the SCAP formally rejected the Matsumoto Committee proposal and presented the until-then-clandestine MacArthur proposal. n32 Surprising the Japanese government, Article 73 n33 of the MacArthur proposal included a limited version of judicial review, reading: The Supreme Court is the court of last resort. Where the determination of the constitutionality of any law, order, regulation or official act is in question, the judgment of the Supreme Court in all cases arising under or involving Chapter III [rights of the people] of this Constitution is final; in all other cases where determination of the constitutionality of any law, ordinance, regulation or official act is in question, the judgment of the Court is subject to review by the Diet. n34 After reviewing and deliberating over the MacArthur proposal, the Japanese government embraced the idea of full judicial review and insisted on removing n35 the MacArthur proposal language that would have limited judicial review. n36 During negotiations between the GS and Japanese [\*355] government on March 4-5, 1946, the Japanese government emphasized the importance of judicial independence and public reliance on the judicial branch, rationales in contrast with the GS's concern of judicial oligarchy. n37 Thus, the March 6, 1946 draft of the constitution provides, "the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act,"-textually identical to Article 81 of the 1947 Kenpo, which is viewed as the origin of judicial review in Japan. n38 The March 6, 1946 draft was thereafter written in vernacular, and ultimately came into effect on May 3, 1947 as the 1947 Kenpo. n39 The birth of judicial review in Japan emanates a duality. On one hand, it is clear that judicial review was initiated as a legal transplant from the U.S. rather than from Japanese enthusiasm. n40 On the other hand, at the Kenpo's drafting, compared to the McArthur proposal's limited scope judicial review, the framing Japanese scholars and officials all preferred full judicial review, employing rationales of judicial independence and public reliance on the judicial branch. n41 Following the Kenpo's enactment, SCJ first took office in August 1947. n42 As with U.S. Supreme Court Chief Justice John Marshall in the early 19th Century, the issue of drawing the boundary of judicial review soon emerged. In response, the concept of Tochi Koi Ron n43 was considered and accepted by SCJ. n44 n43. The concept of Tochi Koi Ron was substantially influenced by the political question doctrine in the U.S. See supra note 22. Given that the U.S. acted as Japan's main judicial review donor, Japanese scholars and SCJ naturally noted the U.S. political question doctrine among their influences. n45 n45. Saiko Saibansho [Sup. Ct.] Dec 16, 1959, A no.710, 13 Saiko Saibansho Keiji Hanreishu [Keishu] 3225 (Japan) (Hachiro Fujita, J., & Toshio Irie, J., concurring) ("There are divergent views regarding the origin, the basis for the theory, or the scope of the acts which would fall within the purview of such restriction, such is a well established precedent and an accepted academic theory in the European and American countries, as may be perceived from such expressions as... "political question', appearing in American cases."). Meanwhile, the weight of [\*356] Article 81's text and unusual history diminished in SCJ's political questions case law. n46 B. The Sunagawa Case: Japan's Leading Precedent on the Political Question Doctrine Soon after the enactment of the 1947 Kenpo, communism in Far East Asia threatened the security of Japan. n47 The U.S. government and Japanese ruling elites agreed this necessitated the establishment of the Japanese Self-Defense Force and retention of U.S. forces for Japan to deter potential armed attacks or internal riots. n48 As a result of this decision, SCJ had to face three main types of constitutional challenges brought under the Kenpo's Article 9, Paragraph 2, War Potential Clause: challenges to the SDF, to Anpo, and to the stationing of U.S. forces in Japan. For disputes concerning the legitimacy of SDF, SCJ seemed to fall under the influence of the constitutional avoidance principles stated in the 1936 U.S. Supreme Court case Ashwander v. Tennessee Valley Authority, n49 and have not granted a merits hearing on the issue of the SDF's constitutionality. SCJ first faced a War Potential Clause challenge in the National Police Reserve Case (concerning the origin and predecessor of the SDF), filed by Japan's Socialist Party in 1952. n50 SCJ dismissed the case and held "it could not determine the constitutionality of a law or an official act in the abstract and in the absence of any concrete legal dispute." n51 In contrast to the constitutional avoidance analysis deployed on the issue of the legitimacy of SDF, SCJ adopted the political question doctrine in disputes involving Anpo and the stationing of U.S. forces. n52 SCJ initially [\*357] adopted the political question doctrine in the 1959 Sunagawa Case. n53 Japanese scholars have achieved consensus that the Sunagawa Case concerned political questions jurisprudence, and they continue to debate how far its political questions implications extend. n54 In the Sunagawa Case, SCJ invoked what it understood as the spirit of the political question doctrine to avoid the political controversy of whether Anpo and retaining U.S. forces in Japan violated the War Potential Clause. n55 Thereafter, the political question doctrine became a legal barrier to further Article 9 challenges. n56 In autumn of 1957, seven demonstrators protesting the expansion of a military base in the town of Sunagawa were charged with trespassing on a U.S. air base. n57 Their protest violated Article 2 of the Special Criminal Law, criminalizing trespasses against military bases stationing U.S. armed forces. n58 The case soon gained public attention because the Special Criminal Law raised an Article 9 issue: whether the authoritative basis of the Special Criminal Law, the 1952 United States-Japan Security Treaty, which allowed the stationing of U.S. forces, violated the War Potential Clause. n59 The Tokyo District Court acquitted the protesters on March 30, 1959, holding the 1952 United States-Japan Security Treaty's allowance of U.S. military personnel in Japan violated Article 9, Paragraph 2. n60 The Tokyo District [\*358] Court's decision churned up controversy over Article 9 and the undefined boundary of judicial review. n61 Addressing the dispute, SCJ took the case and overturned the district court, limiting the scope of judicial review on political question grounds. n62 The SCJ interpreted Article 9, Paragraph 2 as prohibiting the maintenance of war potential over which Japan exercises the right of command and supervision only, not the stationing of foreign armed forces in Japan. n63 Moreover, SCJ raised the political question doctrine without directly citing its name, n64 declining to rule on the merits whether the SDF is unconstitutional under Article 9. n65 The Sunagawa Case's majority noted that the issue of whether the stationing of U.S. armed forces under the 1952 United States-Japan Security Treaty conflicts with Article 9 featured "an extremely high degree of political consideration ... there is a certain element of incompatibility in the process of judicial determination of its constitutionality by a court of law which has as its mission the exercise of the purely judicial function." n66 SCJ further indicated, "legal determination as to whether the content of the treaty is constitutional or not is ... related to the high degree of political consideration or discretionary power on the part of the Cabinet ... and [\*359] ... the Diet." n67 The Court concluded judicial restraint was proper because highly political considerations belong to the people. n68 As for drawing the boundary of judicial review on issues with a high degree of political consideration, SCJ held that the 1952 United States-Japan Security Treaty and the stationing of U.S. forces were not "obviously unconstitutional and void," fell outside the scope of judicial review, and must be left to the discretion of the executive and legislature. n69 Accordingly, SCJ has "avoided ruling upon the merits of constitutional challenges to Japan's military activities and security arrangements under Article 9," and ruled that the Tokyo District Court exceeded the scope of judicial review. n70 In the Sunagawa Case, SCJ set a landmark for the political question doctrine, straddling the competing ideas of judicial supremacy and the avoidance of judicial oligarchy. The Court restricted judicial review of Article 9 challenges to those concerning the 1952 United States-Japan Security Treaty or the stationing of U.S. forces, and placed issues of "an extremely high degree of political consideration" outside the scope of Article 81's judicial review power. n71 For reviewable Article 9 issues (which exclude the constitutionality of the SDF), SCJ declared a clear mistake rule, deferring to the political branches so long as the act is "not obviously unconstitutional and void." n72 C. Evolution of the Political Question Doctrine After the Sunagawa Case After the Sunagawa Case, SCJ soon faced two questions: whether the political question doctrine and its clear mistake rule would extend to other disputes of high political consideration, and whether it would bind all future Article 9 disputes. As for other highly political disputes, one year after the Sunagawa Case, SCJ considered the issue of the procedure for dissolving the Diet in the Tomabechi Case, setting political questions criteria distinct [\*360] from Sunagawa. n73 On August 28, 1952, Prime Minister Shigeru Yoshida dissolved the house of representatives pursuant to Article 7 of the Kenpo. n74 Representative Gizo Tomabechi challenged the dissolution and sued for his unpaid salary. n75 In 1953, the Tokyo District Court held the dissolution invalid because it was not made at a Cabinet meeting. n76 In 1954, the Tokyo High Court reversed on appeal, ruling the Cabinet reached its decision in a legal manner, but rejecting the political question doctrine. n77 Representative Tomabechi appealed to SCJ. n78 As in the Sunagawa Case, SCJ evoked the political question doctrine without directly naming it. n79 SCJ held that judicial review should be precluded from touching action within the discretion of the political branches, including the Cabinet's act of dissolving the Diet. n80 The Court reasoned that this discretion should be viewed as subject to political accountability, controlled ultimately by the people. n81 In the Tomabechi Case, although the spirit of the political question doctrine was retained, SCJ used new rationales and distinguished it from the Sunagawa Case in two ways. First, SCJ did not mention the "not obviously unconstitutional and void" clear mistake rule. Second, SCJ emphasized the rationales of separation of powers and political accountability to justify its exercise of judicial restraint. As to whether the Sunagawa Case and its clear mistake rule would bind future Article 9 disputes, SCJ and the lower courts distinguished those cases from the Tomabechi Case. For cases that threatened to unleash an Article 9 issue, especially those challenging the constitutionality of Anpo and retaining U.S. forces in Japan, the application of the Sunagawa Case political question doctrine is binding. n82 In short, a dual standard for political [\*361] questions analysis bore over the lower courts. n83 First, the Sunagawa Case's clear mistake rule prevailed in Article 9 disputes including challenges to Anpo and stationing of U.S. forces. n84 Second, other disputes of high political consideration, such as the mutual relations between the political branches seen in the Tomabechi Case, are categorically precluded from judicial review. n85 Since the Sunagawa Case, SCJ has further split Article 9 disputes by subject matter. First, on Anpo and the stationing of U.S. forces disputes, SCJ affirmed the Sunagawa Case as binding precedent. SCJ cited the Sunagawa Case and adopted the political question doctrine and clear mistake rule, while refraining from ruling on the merits in the 1969 Zenshihosendai Case, n86 and the 1996 Okinawa Mandamus Case. n87 As for disputes regarding SDF and its military base, while SCJ refrained from stepping in on the 1982 Naganuma Case n88 and the 1989 Hyakuri Air Base [\*362] Case, n89 the lower courts were divided between the political question doctrine, n90 constitutional avoidance, n91 and striking down the SDF. n92

**That collapses deterrence**

**Newsham 15** Grant Newsham, senior research fellow – Japan Forum for Strategic Studies, J.D. – UC Berkeley, Executive Director – Corporate Security @ Morgan Stanley Japan, US military bases on Okinawa — still an essential deterrent, Asia Times, October 2015

One should first ask what is being ‘deterred’? Put simply, US forces forward deployed on Okinawa as elsewhere in Japan are intended to deter countries that would attack other nations or seek to seize land territory or dominate seas and airspace that are either international global ‘commons’ or owned by somebody else. For many years, the Okinawa bases were seen as playing a role in deterring a North Korean attack on South Korea. However, in recent years the People’s Republic of China (PRC) has strengthened the case for the US bases’ deterrent value. The PRC’s rapid military build-up, increasing Chinese military activities throughout the region, and claims to nearly all of the South China Sea have unsettled China’s neighbors — nearly all of whom look (even if furtively) to the United States to restrain China. Why do Okinawa bases deter? The Okinawa bases alone do not deter China or anyone else. But they are an important part of a larger network of American resources, power, and influence that give the PRC pause. One first notes Okinawa’s location. It is near Taiwan, close to contested areas in the East China Sea and the South China Seas, and not far from the Korean Peninsula. Okinawa is a perfect place from which to deploy and conduct a range of military operations to counter an aggressor or someone seeking to upset long established rules regarding freedom of navigation and flight, and even international boundaries. Time and distance still matter in warfare. Being close to where one will operate allows a more rapid and comprehensive response. Okinawa-based forces are able to move just about anywhere in Asia in a matter of days or even hours. This response time is much shorter than if based elsewhere in Japan — and weeks or months faster than US-based forces, even if based in Hawaii. Also, being nearby allows you to stay ‘on-scene’ longer. Try patrolling the South China Sea from bases in Hokkaido or Hawaii. By the time forces arrive it is almost time to go home. An illustration that helps one understand the importance of time and distance (and location) is to consider the effect of moving Tokyo Metropolitan Police Headquarters to Gotemba — 60 miles west of Tokyo. Theoretically, TMPD might send patrols into Tokyo for a few hours a day or as needed to respond to emergencies — before driving back to Gotemba to refuel. This is obviously less effective for maintaining law and order than actually being based in Tokyo. Similarly, US bases on Okinawa are located near where trouble might occur — and therefore better able to respond and to deter adversaries. China understands the importance of location Chinese behavior in the South China Sea shows it understands the role of ‘location’ as a part of deterrence. PLA forces operating out of Hainan Island can operate throughout the South China Sea. However, China’s recent island-building efforts much further south in the South China Sea demonstrate a clear understanding of the importance of basing forces ‘forward’ in the area one wants to control or influence. This forward location facilitates military operations — allowing a more rapid and constant presence — and it also ‘deters.’ Some critics have pointed out that China’s new man-made islands are indefensible in the event of war with a competent enemy. This is true enough, but it misses a larger point. Once the island bases – even with small military detachments in place — are established, they effectively ‘deter’ other countries from striking back — or even applying pressure — out of fear of provoking or starting a war with China. Thus, these small islands with military forces placed on them can restrain a potential adversary’s behavior. This restraining effect is otherwise known as ‘deterrence.’ US bases on Okinawa from which US Air Force, US Navy, US Marine, and US Army forces operate serve a similar function in bolstering American defense power and the possibility of using it in the region — as Beijing would probably admit. Aren’t US forces assigned to US bases on Okinawa too small to deter? Some commentators argue that there are not enough US forces on Okinawa to deter an aggressor, much less make a difference in the event of a major conflict in Asia. Besides the fact that even a small number of troops, ships, or aircraft rapidly deployed can make a difference, this argument overlooks the fact that in the event of a more serious contingency, Okinawa-based forces will be reinforced. They are intended to be employed as part of a larger effort involving US forces from overseas. Only a rash opponent would care to take on the full might of the United States. A similar dynamic applies on the Korean Peninsula. The relatively small number of US Army troops in South Korea stationed near the DMZ have a limited warfighting capability, but force the North to run the risk of bringing the full weight of the United States in the event of an attack. This deterrent effect has worked for many decades. Also, one should remember that deploying US troops from a distance (i.e. the US mainland or even Hawaii) is almost always a difficult domestic political decision. With forward deployed troops, the decision has mostly already been made — and if US troops are targeted or harmed, the certainty of a response is near 100 percent. This gives adversaries pause. It is, of course, possible to reduce US forces (and bases) on Okinawa to a point where they are operationally irrelevant or ineffective — and therefore of little deterrent value from a purely military standpoint. Similarly, such a reduction in forces and bases might easily be viewed by an adversary such as the PRC as a weakened US commitment to defending Japan writ large. The ‘political’ deterrent effect of US bases on Okinawa Ultimately, US bases on Okinawa — with all the challenges and costs they involve — demonstrate a political commitment on the part of both governments — to include America’s promise to defend Japan. This sort of commitment is closely watched as an adversary decides how much to push. One recalls the classic example of Saddam Hussein miscalculating the United States’ willingness to defend Kuwait in 1990 that led to the First Gulf War. One often detects a degree of puzzlement on the PRC’s part over the US’s willingness to defend Japan –and particularly certain territory in the Ryukyus, such as the Senkaku Islands. Solidly linked US and Japanese forces that are able to operate effectively together – to include forces based on Okinawa — are ultimately evidence of a strong political link between the two countries. This directly affects deterrence. The deterrent effect of American bases on Okinawa depends heavily on the state of the US-Japan political relationship. The stronger the political relationship, the more likely the US will use the bases (and its other military and non-military resources) to defend Japan – and the more likely it is that the Japanese government will make the necessary efforts to preserve the US bases. One tends to depend on the other. In this regard, the US and Japan should seriously consider integrating JSDF forces as fully as possible onto US bases in Okinawa — to include bringing the bases under Japanese control, such as at Atsugi and Misawa air bases. This would be politically beneficial as well as operationally useful. The deterrent effect of US and Japanese forces operating as ‘full’ allies and completely interoperable would be immense. This combination of military and political linkage has a deterrent value of its own and gives PRC strategic and operational planners considerable headaches. Although not widely reported in the press, PRC political warfare efforts on Okinawa to create opposition to US bases and other friction for the central government demonstrate China’s awareness of political deterrence arising from a strong US-Japan relationship. Such political warfare efforts are ongoing in Guam and the Commonwealth of Northern Marianas (CNMI) as well — where additional US bases are being built or planned. Importantly, the Guam/CNMI bases are intended to augment US bases on Okinawa and provide strategic depth and enhanced deterrence for US military capabilities in East Asia. Political deterrence also extends to third countries. The presence of US forces in Japan — and on Okinawa — is, as noted earlier, something many other regional nations desire and find reassuring. This tends to bolster their willingness — both individual and collective — to stand up to Chinese threats and/or blandishments — thus, deterring Chinese behavior that would otherwise be even more aggressive and assertive. Can’t US bases on Okinawa be moved to mainland Japan? Of course they can, and the PRC would think this is a splendid idea. However, the aforementioned ‘time and distance’ problems — and consequently weakened deterrence — would apply. Moreover, such a move would suggest a weakened US-Japan political relationship (and lessened deterrence) by virtue of Japan’s central government being unwilling to make the political effort needed to maintain US bases on Okinawa. Additionally, moving US bases to mainland Japan would leave a vacuum. Vacuums get filled, and it is possible the PRC will fill this vacuum. But it is almost unthinkable that a future Japanese administration would allow this to happen as the result of a drastically reduced military presence on Okinawa’s main island in light of the PRC threat. Thus, even if US forces leave their Okinawa bases, JSDF forces will certainly replace them. Importantly, in the absence of a US military presence on Okinawa, Chinese forces would be facing off more or less directly with Japan Self Defense Force units. Removing the deterrent effect on the PRC of the fear of harming US troops would be dangerous given deep-seated Chinese resentment of Japan and an increasing belief the PLA is a match for the JSDF. In the absence of ‘deterrent’ US forces on Okinawa, expect the PRC to push and ratchet up the pressure on Japan — and in the Ryukyus and the East China Sea, to which China has stated it is rightly entitled. This is dangerous. Other ideas that have been considered for reducing US bases and force presence on Okinawa while maintaining adequate operational and deterrent capability include a ‘virtual presence’ scheme and a scheme for ‘pre-positioning’ US equipment and flying in troops when contingencies arise. These are both doubtful concepts in terms of the ability to conduct effective military operations — and as importantly — to deter unacceptable behavior by regional nations. The ‘virtual presence’ solution calls for rotating forces, particularly US Marines, though it applies just as well to Air Force and US Navy units through the region for training, without actually having any bases in the area. However, without a single location serving as a ‘center of gravity’ from which military — and Marine — power is seen to derive, there would always be something ephemeral about its presence, and suggests the US is not really serious about its promise to defend Japan and its own interests. The ‘prepositioning’ school of thought claims US forces and Marines only need to have supplies and equipment staged on Okinawa, with troops flying out in the event of crisis. However, it is a truism that it is better to be located and to train in the region where you operate — just like a baseball team does best when practicing and playing at its home field. Also, pre-staged supplies and forward-based troops are viewed differently by adversaries. One is a vague promise of intervention, the other is a near certainty. Final comments Calculating the deterrent effect of bases and/or forces is always an imprecise business. Perhaps the most important determinant is the degree of commitment and willingness of one country to sacrifice for another. To date, the US-Japan defense relationship and the maintaining of US bases on Okinawa for over 40 years after Okinawa’s reversion to Japan has maintained peace and stability in Northeast Asia. This has also had a calming effect in other parts of the region. The Government of Japan obviously values the US bases on Okinawa or it otherwise would have closed them down — as is quite doable under the US-Japan Defense Treaty. However, the Japanese government must explain clearly and forcefully to the Japanese public why these bases are necessary for Japan’s national defense if it hopes to keep them. To date, no Japanese administration has done what is necessary in this regard. Maybe someday one will — as the more secure the US Okinawa presence, the greater the deterrent value. Importantly, deterrence has never been tested quite like it is today. The US military presence on Okinawa is, as noted, operationally important and also a measure of the US-Japan political relationship. Our adversaries know this, although in both the US and Japan many observers and commentators downplay the deterrent effect of US bases on Okinawa. Perhaps the ultimate test of the US Okinawa bases’ deterrent value is to remove the US military presence or drastically reduce it. Do so, and we will soon discover that they were a deterrent — and a good one indeed.

**US-China war is likely and goes nuclear**

**Kulacki 16** Gregory Kulacki, China Project Manager in the UCS Global Security Program, The Risk of Nuclear War with China, 2016,<http://www.ucsusa.org/nuclear-weapons/us-china-relations/risk-nuclear-war-china#.Wc8tb8iGMh4>

Mistrust and misunderstanding have plagued US and Chinese relations for years. Nowhere is this more evident—and more dangerous—than in the contrasting perspectives and policies each country holds on nuclear weapons. Could simmering tensions lead to a full-blown nuclear war? More specifically: could a minor skirmish or conventional war escalate into a full-blown nuclear conflict? Numerous factors suggest that it could—and that the likelihood of nuclear use between the United States and China may be increasing. The two countries have a very contentious history. Despite sincere and occasionally successful efforts to cooperate on shared concerns such as climate change and nuclear terrorism, lack of mutual trust sustains an entrenched and deepening antagonism. Both governments are preparing for war. Their preparations include improvements to their nuclear arsenals, including a trillion dollar investment in the United States. Both governments also believe that a demonstrable readiness to use military force­—including nuclear weapons—is needed to ensure the other will yield in a military confrontation. Discussions of contentious issues are exceedingly inadequate. Their militaries have produced shared understandings of the conduct of naval vessels and aircraft, but strategic dialogues on nuclear forces, missile defenses, and anti-satellite weapons are limited at best. United States and Chinese officials see the risk of nuclear use differently. US officials believe that if a military conflict starts, nuclear weapons may be needed to stop it—but Chinese officials assume no nation would ever invite nuclear retaliation by using nuclear weapons first. Their only concern is maintaining a credible threat of retaliation. These and other factors are exacerbated by recent developments between the two countries, including China’s apparent move toward hair-trigger alert—a policy that increases the risk of accidental nuclear war, especially in the early days of its development.

**Extinction**

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A war fought with 21st century strategic nuclear weapons would be more than just a great catastrophe in human history. If we allow it to happen, such a war would be a mass extinction event that ends human history. There is a profound difference between extinction and “an unprecedented disaster,” or even “the end of civilization,” because even after such an immense catastrophe, human life would go on. But extinction, by definition, is an event of utter finality, and a nuclear war that could cause human extinction should really be considered as the ultimate criminal act. It certainly would be the crime to end all crimes. The world’s leading climatologists now tell us that nuclear war threatens our continued existence as a species. Their studies predict that a large nuclear war, especially one fought with strategic nuclear weapons, would create a post-war environment in which for many years it would be too cold and dark to even grow food. Their findings make it clear that not only humans, but most large animals and many other forms of complex life would likely vanish forever in a nuclear darkness of our own making. The environmental consequences of nuclear war would attack the ecological support systems of life at every level. Radioactive fallout produced not only by nuclear bombs, but also by the destruction of nuclear power plants and their spent fuel pools, would poison the biosphere. Millions of tons of smoke would act to destroy Earth’s protective ozone layer and block most sunlight from reaching Earth’s surface, creating Ice Age weather conditions that would last for decades. Yet the political and military leaders who control nuclear weapons strictly avoid any direct public discussion of the consequences of nuclear war. They do so by arguing that nuclear weapons are not intended to be used, but only to deter. Remarkably, the leaders of the Nuclear Weapon States have chosen to ignore the authoritative, long-standing scientific research done by the climatologists, research that predicts virtually any nuclear war, fought with even a fraction of the operational and deployed nuclear arsenals, will leave the Earth essentially uninhabitable.

## 5

**Transportation Strikes are low now due to Federal Strike Bans.**

**Bauernschuster et Al 17**, Stefan, Timo Hener, and Helmut Rainer. "When labor disputes bring cities to a standstill: The impact of public transit strikes on traffic, accidents, air pollution, and health." American Economic Journal: Economic Policy 9.1 (2017): 1-37. (Faculty of Business Administration and Economics, University of Passau, Innstra)//Elmer

New York City's Taylor Law, which was put into effect in response to a transit strike in 1966, represents an example of a particularly draconian measure. Under Section 210, the law prohibits any strike or other concerted stoppage 01 worn or slowdown by public employees (Division of Local Government Services 2009). Instead, it prescribes binding arbitration by a state agency to resolve bargaining deadlocks between unions and employers. Violations against the prohibition on strikes are punishable with hefty penalties. The fine for an individual worker is twice the striking employee's salary for each day the strike lasts. In addition, union leaders face imprisonment. Since its inception in 1967, the Taylor Law has generated a lot of controversy. To proponents, it was successful in averting several potential transit strikes that would have imposed significant costs on the city and its inhabitants (OECD 2007). Indeed, New York City has only seen two transit strikes over the past four decades—in 1980 and in 2005. In both cases, harsh monetary penalties were imposed on workers and unions. The 2005 transit strike additionally led to the imprisonment of a union leader, and saw the Transport Workers Union (TWU) filing a formal complaint with the ILO. Since then, the ILO has urged the United States government to restore the right of transit workers to strike, arguing that they do not provide essential services justifying a strike ban (Committee on Freedom of Association 2011, 775). So far, the Taylor Law has not been amended in this direction.

**Transit Strikes cause mass damage that far outweighs any benefits – specifically causes high Air Pollution by causing shifts to Personal Traffic.**

**Bauernschuster et Al 17**, Stefan, Timo Hener, and Helmut Rainer. "When labor disputes bring cities to a standstill: The impact of public transit strikes on traffic, accidents, air pollution, and health." American Economic Journal: Economic Policy 9.1 (2017): 1-37. (Faculty of Business Administration and Economics, University of Passau, Innstra)//Elmer

This paper aims to answer two questions that are at the heart of the Taylor Law controversy and similar debates elsewhere: Do strikes in the public transportation sector cause disruptions that endanger the safety and health of urban populations? And how large are the costs of transit strikes to noninvolved third parties? To get at these questions, our analysis uses time series and cross-sectional variation in powerful registry data to quantify the effects of public transit strikes in five domains: traffic volumes, travel times, accident risk, pollution emissions, and health (see Figure 1). The context for our study are the five largest cities in Germany, which provides us with an ideal setting. In particular, in contrast to countries that have imposed de jure restrictions on public transit strikes, German courts de facto protect the right to strike in this sector. As a consequence, Germany regularly faces strikes by transit workers. Our analysis exploits 71 one-day strikes in public transportation over the period from 2002 to 2011. We identify the daily effects of these strikes using both time series and cross-sectional variation in our data. In a first step, we estimate the impact on the total length of time that cars are in operation (henceforth, total car hours operated). To do so, we make use of two data sources. First, we use hourly informa tion from official traffic monitors to estimate the effect of transit strikes on traffic volumes. Second, we use congestion data based on GPS speed measurements from TomTom, a global supplier of navigation and location products and services, to esti mate the effect on travel times. Combining the two estimates allows us to compute the effect on total car hours operated. In a second step, we explore likely knock-on consequences by expanding the analysis in three directions. First, we assess the impact of strikes on the incidence and severity of car accidents using detailed regis ter data, which includes all vehicle crashes recorded by the German police. Second, to investigate the effect on atmospheric pollution, we draw on hourly data from official air monitors. Third, we explore the effect on human health using register data, which includes information about all patients admitted to all German hospi tals. Our identification strategy is based on a generalized difference-in-differences approach. It flexibly captures daytime and day-of-week patterns, seasonality effects, and long-run time trends, which are all allowed to vary by city. What emerges is a picture of remarkable consistency. During the morning peak of a strike day, total car hours operated increase by 11 to 13 percent. This increase can be decomposed into two separate effects: a 2.5 to 4.3 percent increase in the number of cars on roads and a 8.4 percent increase in travel times. In addition, our results suggest that transit strikes pose a non-negligible threat to public safety and public health. We find a 14 percent increase in the number of vehicle crashes, which is accompanied by a 20 percent increase in accident-related personal injuries. Moreover, we observe that transit strikes have sizable effects on ambient air pollution. Emissions of particulate matter increase by 14 percent, while nitrogen dioxide concentrations in ambient air increase by 4 percent. Finally, analyzing health out comes related to air pollution, we find that young children are subject to negative health effects. Among this subgroup, hospital admissions for respiratory diseases increase by 11 percent on strike days. The costs of strikes—both to the parties directly involved in a dispute and to the public at large—have been the subject of extensive research since the mid-twentieth century. Until the 1990s, the main conclusion of the literature was that strikes impose significant financial costs on the workers and the firm directly involved in walkouts, but only negligible costs in most cases on non-involved third parties (Kaufmann 1992). Our study firmly rejects this conclusion: based on our estimates, the increase in aggregate travel time caused by a single strike corresponds to 1,550 full-time equivalent work weeks. This translates into third-party congestion costs of €3.2 million per strike or €228.9 million for all 71 strikes in our sample. Our work complements a small but impressive literature in economics analyzing the impact of strikes. Focusing on the hospital sector, Gruber and Kleiner (2012) investigate the effects of nurses' strikes on patient outcomes. After controlling for time and hospital specific heterogeneity, they observe increased mortality and read mission rates, and conclude that strikes in hospitals kill.3 Examining walkouts in the education sector, Belot and Webbink (2010) and Baker (2013) find that teacher strikes had negative effects on student achievement in Belgium and Canada. Finally, there are a few interesting studies of strike impact in the private sector. Krueger and Mas (2004) show that strikes in tire production facilities decreased the quality of tires resulting in an increase of fatal accidents. In a similar vein, Mas (2008) finds that strikes at Caterpillar led to lower product quality. In comparison to other strikes that have been studied in the literature, there is one specific aspect about urban public transport that makes it an intriguing case to study: the population at risk from strikes is potentially very large and likely to be affected along multiple dimensions. This is due to several interrelated facts: (i) in many advanced cities, the two major modes of transportation are private vehicles and public transit; (ii) urban public transport is typically provided under monopoly conditions—either by public sector companies or by operators working under licenses granted by public authorities; (iii) without the availability of a close substitute, public transit strikes are likely to significantly disrupt the normal travel of transit riders and disturb traffic patterns by increasing the use of private vehicles; (iv) two of the main externalities associated with an increase in the usage of private cars are traffic accidents and air pollution, and entire city populations—not just transit users—may be adversely affected in each of these areas when public transport shuts down. Quantifying these potential impacts is not just interesting in itself, but also an important ingredient to meaningful discussions about the regulation of labor relations in sectors providing services regarded as public or essential.4 The remainder of the paper is organized as follows. Section I provides the institutional setting and discusses how transit strikes might affect cities and their inhabitants. Section II describes the data. Section III outlines the empirical strategy, followed by the results in Section IV. Section V discusses the size of the effects by monetizing the third party costs of transit strikes and comparing them to the private costs of struck employers. Background A. The Role of Public Transit and the Regulation of Labor Relations The five largest German cities, home to roughly 8.2 million people, are characterized by an intensive use of public transportation. In 2013, Berlin, Hamburg, Munich, Cologne, and Frankfurt together accounted for a total number of 3.4 billion public transit users in their metropolitan areas.5 This corresponds to an average 9.3 million passengers a day. In Berlin, the German capital, roughly 43 percent of commuters use public transit, while about 38 percent travel by car (Wingerter 2014). Public transportation networks are extensive in all sample cities. In Hamburg, for example, the transportation network comprises 91 subway stations, 68 suburban train stations (S-Bahn), more than 1,300 bus stops connecting a network of nearly 1,200 km in a city with less than 2 million inhabitants. The importance of public transportation in major German cities is comparable to the role it plays in the largest city in the United States. New York City has a population of roughly 8.4 million people. In 2014, its Metropolitan Transportation Authority moved about 9 million riders per day or 3.3 billion passengers a year on subways, buses, and railroads.6 Approximately 56 percent of commuters in New York City use public transit, while about 27 percent travel by car.7 While the use of mass transit in New York City and major German cities is com parable, the regulation of labor relations in the public transportation sector differs markedly. As mentioned above, New York City's Taylor Law prohibits strikes by transit workers under the threat of harsh penalties. Other cities in the United States with no-transit-strike laws include Chicago, Boston, and Washington, DC. For a German, it must come as a surprise that many countries impose de jure restrictions on strikes in the public transportation sector. Indeed, in Germany, the right to strike is a fundamental right based on the Freedom of Association (Koalitionsfreiheit) as laid out in Article 9(3) of the constitution (Grundgesetz). Only civil servants, judges, and soldiers are excluded from the right to strike. Until the 1990s, the big infra structure industries—i.e., telecommunications, postal, and public transportation ser vices—were state monopolies. Workers in these industries had civil servant status and thus were not allowed to strike. However, when these industries were gradually privatized during the 1990s, newly hired workers were no longer given civil servant status and therefore gained the right to strike. Today, public transit workers, whether employed by Germany's rail operator Deutsche Bahn or local public transport providers, are allowed to engage in industrial action. The only de facto restriction on transit workers' right to strike is that the parties of an industrial conflict are responsible for the provision of a minimum service (Klaß et al. 2008). This is intended to act as a balance of their interests with those of non-involved third parties.8 In Germany, industrial action by transit workers is typically announced one day ahead of a strike. However, at that time, there is still substantial uncertainty as to exactly which services will be affected and to what degree. Thus, the actual extent of a strike cannot be clearly assessed prior to the start of a strike. The strikes we exploit in this study have the following feature in common: they do not shutdown the entire transportation system, but there are significant distortions in terms of service frequency. As a rule of thumb, at least one-third and up to two-thirds of all connections in affected cities are canceled or severely delayed on strike days. After the official end of a strike, it usually takes some hours until service is back to normal. Having described the context and setting of our study, we now go on to discuss how urban populations might be affected by public transit strikes. B. Public Transit Strikes and Car Traffic Given the intensive use of public transportation in major German cities, we expect strikes by transit workers to have profound short-run effects on the mode of transport of commuters. Some might feel forced to use their private car or motorbike or a taxi on strike days. Others might switch to their bike or just walk. Again others might postpone their journey. Van Exel and Rietveld (2001) summarize the existing evidence as follows: public transit strikes induce most public transit users to switch to the car (either as driver or passenger) and as a result traffic density as well as road congestion increases. A similar conclusion is reached by Anderson (2014), who ana lyzes freeway traffic during a 35-day strike by transit workers in Los Angeles. His estimations reveal an increase in delays during peak periods by almost 50 percent due to increased car traffic.9 Finally, Adler and van Ommeren (2015) exploit transit strikes in Rotterdam and also find positive effects of transit shutdowns on congestion. Based on these findings we formulate our first testable prediction. PREDICTION 1: Public transit strikes increase the number of cars on roads, especially during peak periods. Travel times increase due to rising traffic congestion. C. Car Traffic and Accidents The frequency and severity of road accidents depends on several traffic characteristics that may be affected by public transit strikes. Examples we have in mind include the number of cars in road systems, driving skills, driver behavior, and speed. First, an often-used specification by transport economists suggests that the expected number of road accidents rises with the number of potential accidents which, in turn, is an increasing function of the number of cars in the system (Shefer and Rietveld 1997). Edlin and Karaca-Mandic (2006) confirm this prediction by showing that traffic density increases accident costs substantially. Second, the expected number of road accidents is a function of the behavior and skills of drivers. In this regard, we would expect that public transit strikes reduce average driving skills since marginal drivers with less experience appear on road systems. This channel works to increase the frequency of road accidents. In addition, it is well understood that driving in high-density traffic can contribute to stress and therefore lead to behavioral patterns—e.g., tailgating, aggressive driving, braking abruptly—that increase accident risk (Transport Research Center 2007). More accidents are likely to result in additional personal injuries (Shefer and Rietveld 1997). However, the same logic does not necessarily apply to accidents involving severe injuries or fatalities: with an increase in congestion stemming from more cars in the system, average travel speed decreases, thus potentially causing a reduction in the number of severe accidents. Evidence from the United States indeed suggests a substantial reduction in the number of fatal road accidents during morning peak hours, periods in which traffic density is the highest (Farmer and Williams 2005). But there is also evidence, emerging from the United Kingdom, that the picture is more differentiated. In particular, congestion as a mitigator of crash severity is less likely to occur in urban conditions, but may still be a factor on higher speed roads and highways (Noland and Quddus 2005). Our focus will be on accidents in urban conditions. Thus, it remains a priori unclear whether an increase in congestion stemming from public transit strikes affects the incidence of severe accidents, and if so in what direction. Against this background, our second testable prediction is: PREDICTION 2: Public transit strikes increase the frequency of car accidents which, in turn, leads to a rise in accident-related injuries. The effect on accidents involving severe injuries or fatalities is a priori unclear. D. Car Traffic and Air Pollution Car traffic is associated with air pollution mainly due to engine exhaust. The chemical processes in fuel burning thus determine the expected effect of traffic on air pollution. Internal combustion engines powering the vast majority of cars in developed countries emit oxides of nitrogen, carbon monoxide, unburned or partially burned organic compounds, and particulate matter with the amounts depending amongst other things on operating conditions (Heywood 1988). In particular, it is well understood that congested stop-and-go traffic is associated with higher emissions than free-flow traffic. There are three reasons for this. First, the efficiency of internal combustion engines, which depends on revolutions per minute (rpm), is highest at medium speed (Davis and Diegel 2007). Acceleration and deceleration episodes decrease the time operated in the optimal rpm range, which in turn increases emissions per minute driven. Second, congestion increases travel times, and so leads to a rise in fuel consumption and emissions per distance driven. Third, particulate matter emissions not only stem from fuel burning process, but also from brake wear and tire wear on tarmac—both high in congested traffic. From an empirical viewpoint, several studies suggest that high traffic volumes and congestion are causes of ambient air pollution (see, e.g., Currie and Walker 2011; Knittel, Miller, and Sanders 2011). A pollutant that is not caused by car traffic, and therefore can be used for a placebo test, is sulfur dioxide (Lalive, Luechinger, and Schmutzler 2013). Indeed, sulfur dioxide emissions from cars are close to nonexistent since modern gasoline no longer contains significant amounts of sulfur. From these arguments our third testable prediction arises: PREDICTION 3: Public transit strikes increase road-traffic related air pollution. A pollutant expected to be unaffected is sulfur dioxide.

**Stable Mass Transit solves Transport Emissions which cause Warming.**

**Ionescu 21** Diana Ionescu 11-5-2021 "To Fight Climate Change, Support Public Transit"<https://www.planetizen.com/news/2021/11/115186-fight-climate-change-support-public-transit> (Diana is a contributing editor to Planetizen.)//Elmer

Andrew J. Hawkins argues in favor of boosting public transit as a crucial way to fight climate change, warning against the potential "death spiral" caused by declining ridership which reduces revenue, leading to worse service which discourages riders even further. As Hawkins writes, There’s more at stake than good buses and trains. The recent report from the United Nations Intergovernmental Panel on Climate Change confirms that a hotter, wetter, more inhospitable future is all but certain. The transportation sector is responsible for nearly a third of greenhouse gases, most of which come from tailpipe emissions. High-quality mass transit can do a lot to fight climate change, but only if people are willing to use it. Since the start of the pandemic, transit agencies have struggled against a raft of challenges as some riders abandon their systems while essential workers and other transit-dependent commuters rely on public transportation more than ever. Agencies around the country are implementing major service changes and reducing or eliminating fares in an effort to get riders back on board and expand the reach of their systems, with mixed results. These initiatives will create more benefits than just improved transit service for those who use it, transit supporters argue. As Hawkins concludes, "high-quality transit is the only real solution to our vast, seemingly intractable problems with climate change, inequality, land use, and housing."

## 6

**CP: The United States ought to engage in a prior and binding consultation with the International Court of Justice on whether to establish an unconditional right of workers to strike**

#### 

**They’ll say yes**

**Seifert ’18** (Achim; Professor of Law at the University of Jena, and adjunct professor at the University of Luxembourg; December 2018; “The protection of the right to strike in the ILO: some introductory remarks”; CIELO Laboral; http://www.cielolaboral.com/wp-content/uploads/2018/12/seifert\_noticias\_cielo\_n11\_2018.pdf; Accessed: 11-3-2021; AU)

The recognition of a right to strike in the legal order of the International Labour Organization (ILO) is probably one of the most controversial questions in international labor law. Since the foundation of the ILO in the aftermath of World War I, the recognition of the right to strike as a core element of the principle of freedom of association has been discussed in the International Labour Conference (ILC) as well as in the Governing Body and the International Labour Office. As is well known, the ILO, in its long history spanning almost one century, has not explicitly recognized a right to strike: neither Article 427 of the Peace Treaty of Versailles (1919), the Constitution of the ILO, including the Declaration of Philadelphia (1944), nor the Conventions and Recommendations in the field of freedom of association - namely Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948) - have explicitly enshrined this right. However, the Committee on Freedom of Association (CFA), established in 1951 by the Governing Body, recognized in 1952 that Convention No. 87 guarantees also the right to strike as an essential element of trade union rights enabling workers to collectively defend their economic and social interests1. It is worthwhile to note that it was a complaint of the World Federation of Trade Unions (WFTU), at that time the Communist Union Federation on international level and front organization of the Soviet Union2, against the United Kingdom for having dissolved a strike in Jamaica by a police operation; since that time the controversy on the right to strike in the legal order of the ILO was also embedded in the wider context of the Cold War. In the complaint procedure initiated by the WFTU, the CFA recognized a right to strike under Convention No. 87 but considered that the police operation in question was lawful. In the more than six following decades, the CFA has elaborated a very detailed case law on the right to strike dealing with many concrete questions of this right and its limits (e.g. in essential services) and manifesting an even more complex structure than the national rules on industrial action in many a Member State. This case law of the CFA has been compiled in the “Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO”3. In 1959, i.e. seven years after case No. 28 of the CFA, the Committee of Experts for the Application of Conventions and Recommendations (CEACR) also recognized the right to strike as a core element of freedom of association under Article 3 of Convention No. 874. Since then, the CEACR has reconfirmed its view on many occasions. Both CFA and CEACR coordinate their interpretation of Article 3 of Convention No. 875. Hence there is one single corpus of rules on the right to strike developed by both supervisory Committees of the Governing Body. Moreover, the ILC also has made clear in various Resolutions adopted since the 1950s that it considers the right to strike as an essential element of freedom of association6. On the whole, the recognition of the right to strike resulted therefore from the interpretative work of CFA and CEACR as well as of the understanding of the principle of freedom of association the ILC has expressed on various occasions. It should not be underestimated the wider political context of the Cold War had in this constant recognition of a right to strike under ILO Law. Although the very first recognition of the right to strike -as mentioned above- went back to a complaint procedure before the CFA, initiated by the Communist dominated WFTU, it was the Western world that particularly emphasized on the right to strike in order to blame the Communist Regimes of the Warsaw Pact that did not explicitly recognize a right to strike in their national law or, if they legally recognized it, made its exercise factually impossible; to this end, unions, employers’ associations but also Governments of the Western World built up an alliance in the bodies of the ILO7. In accomplishing their functions, CFA and CEACR necessarily have to interpret the Conventions and Recommendations of the ILO whose application in the Member States they shall control. In so doing, they need to concretize the principle of freedom of association that is only in general terms guaranteed by the ILO Conventions and Recommendations on freedom of association. But as supervisory bodies, which the Governing Body has established and which are not foreseen in the ILO Constitution, both probably do not have the power to interpret ILO law with binding effect8. This is also the opinion that the CEACR expresses itself in its yearly reports to the ILC when explaining that, “its opinions and recommendations are non-binding”9. As a matter of fact, the Governing Body, when establishing both Committees, could not delegate to them a power that it has never possessed itself: nemo plus iuris ad alium transferre potest quam ipse haberet10. According to Article 37(1) of the ILO Constitution, it is within the competence of the International Court of Justice to decide upon “any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution.” Furthermore, the ILC has not established yet under Article 37(2) of the ILO Constitution an ILO Tribunal, competent for an authentic interpretation of Conventions11. However, it cannot be denied that this constant interpretative work of CFA and CEACR possesses an authoritative character given the high esteem the twenty members of the CEACR -they are all internationally renowned experts in the field of labor law and social security law- and the nine members of the CFA with their specific expertise have. As the CEACR reiterates in its Reports, “[the opinions and recommendations of the Committee] derive their persuasive value from the legitimacy and rationality of the Committee’s work based on its impartiality, experience and expertise”12. Already this interpretative authority of both Committees justifies that national legislators or courts take into consideration the views of these supervisory bodies of the ILO when implementing ILO law. Furthermore, the long-standing and uncontradicted interpretation of the principle of freedom of association by CFA and CEACR as well as its recognition by the Member States may be considered as a subsequent practice in the application of the ILO Constitution under Article 31(3)(b) of the Vienna Convention on the Law of Treaties (1968): such subsequent practices shall be taken into account when interpreting the Agreement. Their constant supervisory practice probably reflects a volonté ultérieure, since other bodies of the ILO also have recognized a right to strike as the two above-mentioned Resolutions of the ILC of 1957 and 1970 as well as the constant practice of the Conference Committee on the Application of Standards to examine cases of violation of the right to strike as examples for breaches of the principle of freedom of association demonstrate. As this constant practice of the organs of the ILO has not been contradicted by Member States, there is a strong presumption for recognition of a right to strike as a subsequent practice of the ILO under Article 31(3)(b) of the Vienna Convention on the Law of Treaties.

**Prior submission is key to ICJ credibility---solves global cooperation.**

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Judicial independence for the ICJ does not necessarily benefit only less powerful nations who challenge the status quo. In his concept of “constrained independence” Helfer identifies advantages that powerful states gain through support of a credible judicial institution. Focusing on international tribunals, Helfer argues that subtle control mechanisms drawn from a variety of political options can, “allow states to capture the credibility-enhancing benefits of delegation to formally independent international tribunals while minimizing, although not eliminating, the potential for judicial excesses” (Helfer 2006, 3). Even with limited controls, states that submit authority to independent judicial bodies such as the ICJ are foregoing some sovereign control and potentially sacrificing self-interests. Helfer offers as a rationale for states to forego some control and support independent tribunals based on an argument for increased credibility to international law commitments. Increased credibility to commitments has clear advantages in multilateral negotiations where cooperation depends on mutual trust. In a world of declining hegemonic control, the United States is more dependent on multilateral cooperation in order to enhance its interests and obtain foreign policy goals. Renewed support for the ICJ through compulsory participation without reservations would improve the United States credibility towards international law commitments and build trust in multilateral cooperation. There are indications of United States willingness to move in this direction in the case of Avena and other Mexican Nationals Mexico v. United States of America 2003. The United States chose not to reject the case and actually filed pleadings to the Court. The ICJ eventually ruled in favor of Mexico. Although the United States strongly opposed this decision, it did not retaliate with political threats in the manner evident during the Nicaragua case in 1984. This is not to say that current United States policy toward international law commitments has taken a strong turn to the positive. Concerns over the newly instituted International Criminal Court and questions about the judicial procedures in cases of international detainees have created new problems for United States credibility to commitments in international law. However, the International Court of Justice offers the United States an opportunity to support international institutional cooperation while avoiding controversial and sensitive legal issues involving criminality and national security. Willingness to follow a model closer to Helfer’s “constrained independence” would also improve credibility in respect to other important institutions such as the World Trade Organization and its system for dispute settlement and compliance.

**Extinction---solves every impact**

Yuval Noah **Harari 18**, Professor of History at Hebrew University of Jerusalem, 9/26/18, “We need a post-liberal order now,” The Economist, <https://www.economist.com/open-future/2018/09/26/we-need-a-post-liberal-order-now>

The second thing to note about this vision of friendly fortresses is that it has been tried—and it failed spectacularly. All attempts to divide the world into clear-cut nations have so far resulted in war and genocide. When the heirs of Garibaldi, Mazzini and Mickiewicz managed to overthrow the multi-ethnic Habsburg Empire, it proved impossible to find a clear line dividing Italians from Slovenes or Poles from Ukrainians. This had set the stage for the second world war. The key problem with the network of fortresses is that each national fortress wants a bit more land, security and prosperity for itself at the expense of the neighbors, and without the help of universal values and global organisations, rival fortresses cannot agree on any common rules. Walled fortresses are seldom friendly. But if you happen to live inside a particularly strong fortress, such as America or Russia, why should you care? Some nationalists indeed adopt a more extreme isolationist position. They don’t believe in either a global empire or in a global network of fortresses. Instead, they deny the necessity of any global order whatsoever. “Our fortress should just raise the drawbridges,” they say, “and the rest of the world can go to hell. We should refuse entry to foreign people, foreign ideas and foreign goods, and as long as our walls are stout and the guards are loyal, who cares what happens to the foreigners?” Such extreme isolationism, however, is completely divorced from economic realities. Without a global trade network, all existing national economies will collapse—including that of North Korea. Many countries will not be able even to feed themselves without imports, and prices of almost all products will skyrocket. The made-in-China shirt I am wearing cost me about $5. If it had been produced by Israeli workers from Israeli-grown cotton using Israeli-made machines powered by non-existing Israeli oil, it may well have cost ten times as much. Nationalist leaders from Donald Trump to Vladimir Putin may therefore heap abuse on the global trade network, but none thinks seriously of taking their country completely out of that network. And we cannot have a global trade network without some global order that sets the rules of the game. Even more importantly, whether people like it or not, humankind today faces three common problems that make a mockery of all national borders, and that can only be solved through global cooperation. These are nuclear war, climate change and technological disruption. You cannot build a wall against nuclear winter or against global warming, and no nation can regulate artificial intelligence (AI) or bioengineering single-handedly. It won’t be enough if only the European Union forbids producing killer robots or only America bans genetically-engineering human babies. Due to the immense potential of such disruptive technologies, if even one country decides to pursue these high-risk high-gain paths, other countries will be forced to follow its dangerous lead for fear of being left behind. An AI arms race or a biotechnological arms race almost guarantees the worst outcome. Whoever wins the arms race, the loser will likely be humanity itself. For in an arms race, all regulations will collapse. Consider, for example, conducting genetic-engineering experiments on human babies. Every country will say: “We don’t want to conduct such experiments—we are the good guys. But how do we know our rivals are not doing it? We cannot afford to remain behind. So we must do it before them.” Similarly, consider developing autonomous-weapon systems, that can decide for themselves whether to shoot and kill people. Again, every country will say: “This is a very dangerous technology, and it should be regulated carefully. But we don’t trust our rivals to regulate it, so we must develop it first”. The only thing that can prevent such destructive arms races is greater trust between countries. This is not an impossible mission. If today the Germans promise the French: “Trust us, we aren’t developing killer robots in a secret laboratory under the Bavarian Alps,” the French are likely to believe the Germans, despite the terrible history of these two countries. We need to build such trust globally. We need to reach a point when Americans and Chinese can trust one another like the French and Germans. Similarly, we need to create a global safety-net to protect humans against the economic shocks that AI is likely to cause. Automation will create immense new wealth in high-tech hubs such as Silicon Valley, while the worst effects will be felt in developing countries whose economies depend on cheap manual labor. There will be more jobs to software engineers in California, but fewer jobs to Mexican factory workers and truck drivers. We now have a global economy, but politics is still very national. Unless we find solutions on a global level to the disruptions caused by AI, entire countries might collapse, and the resulting chaos, violence and waves of immigration will destabilise the entire world. This is the proper perspective to look at recent developments such as Brexit. In itself, Brexit isn’t necessarily a bad idea. But is this what Britain and the EU should be dealing with right now? How does Brexit help prevent nuclear war? How does Brexit help prevent climate change? How does Brexit help regulate artificial intelligence and bioengineering? Instead of helping, Brexit makes it harder to solve all of these problems. Every minute that Britain and the EU spend on Brexit is one less minute they spend on preventing climate change and on regulating AI.  In order to survive and flourish in the 21st century, humankind needs effective global cooperation, and so far the only viable blueprint for such cooperation is offered by liberalism. Nevertheless, governments all over the world are undermining the foundations of the liberal order, and the world is turning into a network of fortresses. The first to feel the impact are the weakest members of humanity, who find themselves without any fortress willing to protect them: refugees, illegal migrants, persecuted minorities. But if the walls keep rising, eventually the whole of humankind will feel the squeeze.

## 7

**CP: The United States ought to recognize an unconditional right of workers to strike except in the instance of medical workers during a public health emergency.**

**Mfutso-Bengu**, Joseph, **and** Adamson S **Muula**. “Is it ethical for health workers to strike? Issues from the 2001 QECH general hospital strike.” Malawi medical journal : the journal of Medical Association of Malawi vol. 14,2 (**2002**): 29-31. doi:10.4314/mmj.v14i2.10766 //SR

Summary Between 5th and 19th October 2001, a general strike in which virtually all workers at the Queen Elizabeth Central Hospital (QECH) were involved was effected. Hospital workers' grievances included low remuneration and poor work environment. The strike resulted in the virtual closure of the QECH, as the 1500-bed hospital was maintained less than a hundred in-patients. The outpatient department was closed. Patients that were still in hospital were being cared for by volunteer workers who included; the Red Cross, medical and nursing students and their lecturers. The two-week strike at QECH has left an almost indelible mark in as far as tertiary level health care delivery in Malawi is concerned. We report on the conduct of the hospital workers strike and discuss ethical issues in the light of the socio-political context of Malawi. While many people suggest that damage has definitely been done and felt, the ethical issues involved remain contentious as ever. Introduction Malawi has four public tertiary care hospitals of which the largest is the Queen Elizabeth Central Hospital (QECH) in Blantyre. The other referral hospitals are Zomba, Lilongwe, and Mzuzu. The QECH, a 1,500-bedded hospital is the teaching hospital for the University of Malawi College of Medicine, Malawi's only medical school and also hosts the Blantyre campus for the Kamuzu College of Nursing (KCN). The hospital operates at about 120 per cent capacity and functions as the ‘district hospital’ for Blantyre. There are between 10 and 20 deliveries conducted each day, at least 20 admissions are made each day to the medical and surgical wards and over 40 paediatric admissions. The bulk of clinical work is provided by clinical officers 1. The hospital is also served by about 15 intern doctors, 8 medical registrars and about 25 specialist doctors. From 5th and 19th October 2001, the hospital experienced a general strike in which virtually all cadres of workers were involved 2–7. We report the conduct of the strike, its implications and ethical issues pertaining to the general strike in as far as health workers are concerned. Political History Malawi attained political independence from Britain in 1964 having been under British rule since 1881. For the next 3 decades after independence, the country had one-party dictatorial rule. Political dissent and industrial action such as strikes were firmly discouraged. For the most part of the 30 years immediately post-independent, Malawi had a State President for Life and any attempt to stage a strike or public demonstration was construed as intention to bring down the government and therefore, tantamount to treason. The maximum penalty for treason in Malawi is death. Significant political change was experienced between 1992 and 1993 when general civil disobedience in form of street demonstrations, riots and strikes were used as tools to put pressure on the government to effect political change. In June 1993, a National Referendum was carried out in which Malawians were to choose whether to continue with the status quo i.e. one-party dictatorial rule or to change to plural politics. The main result of the National Referendum was that Malawians chose to change their political system to political pluralism. With the coming of political pluralism was the rebirth of democracy and recognition and respect of individual and group rights. For once in many years, Malawians had the right to form associations, political or otherwise. The right of collective bargaining and provision to wage industrial strikes was effected in Malawi's statutes. Between 1994 and 2001, Malawi has witnessed more strikes as compared to those witnessed between 1964 and 1994. The QECH Strike Between October 5th and 19th 2001, a general hospital strike was in session at QECH, Blantyre. Virtually all hospital workers i.e. clinical and nursing; administrative, catering and laundry, security and others refused to work. As has been observed elsewhere8, four main issues ignited the strike and these were dissatisfaction with the amount of; house allowances, monthly wages and risk and professional allowance. The disfranchised hospital workers had argued that they deserved better remuneration as their services were essential. Comparison was made to the Judicial Services where employees have better remuneration packages, as compared to health workers. The government (employer) on its part argued that it was not possible to meet the demands raised by the workers as doing so would have upset the 2001/02 national budget that had already been approved by the National Assembly in August 2001. During the course of the strike the 1,500-bedded QECH only managed to serve 196 patients mostly in the Burns Unit, Orthopaedics Department, Malaria Research Project ward, and paediatric oncology ward. Other patients were left to find their own care and many had been either encouraged to leave or discouraged from staying earlier. Over 500 patients from QECH were admitted at Mlambe Mission Hospital, which is under the Christian Health Association (CHAM) some 12 kilometres from QECH. Mlambe has capacity only for 250 in-patients and had only three doctors. While the professional health workers were on strike, 104 volunteers, 68 of whom were from the Red Cross, 36 others being nursing and medical students and their lecturers from the University of Malawi provided clinical, nursing and support services at the QECH. The ethics of the strike The big ethical question is; is it ethical for medical doctors to strike just like everyone else as was the case at QECH, which implied withdrawing treatment and healthcare to the patients entrusted to them? One would argue that such action undermined the right of patients to healthcare and the profession's duty to protect life and health. If we indeed agree that it is ethical for doctors to strike, then we ought to ask ourselves how should the strike be conducted? If we are against medical strike, then which other viable options do health workers with grievances against the employer have other than strike. According to World Medical Association declaration of Helsinki, it is the duty of the physician (health worker) to promote and safeguard the health of the people. The health of the patient will be the first consideration of the physician (health worker)9. The main aim of medical practice is to save life, preserve, promote and manage health. It is generally understood that health workers should always desist from harming their patients10 and their actions should always be in the best interest of the patient 11. On the other hand health workers that are employed on agreed remuneration packages have the right to be paid and they have the right to express dissatisfaction and protect themselves from unfair treatment and exploitation 12. However their own rights are limited by their responsibility to save life and promote health as laid down by the medical profession's code of conduct. It is suggested that there is a need to do a thorough risk benefit assessment, before health personnel decide to embark on strike. Is the strike in the best interest of health care delivery system? Patients ought to be notified and be given prior warning about the strike, so as to minimize harm. The Constitution of the Republic of Malawi recognizes that workers should be fairly remunerated and the provision for strike is enshrined13. Just because a thing is legal is not necessarily that it is ethical in all circumstances. When two rights are in competition or conflict, as was in this case, the right to be adequately remunerated and right for the healthcare the impasse could be solved by resorting to what we call re-evaluation of moral values. Not all-moral values have the same weight and scope; there is hierarchy of ethical norms and principle. Although moral values are hierarchical in nature, they are intermingled. For example, the right to life does not have the same weight as the right to privacy. Therefore the right to health care (and implicitly life) on the part of the patient may be considered overriding the right to better remuneration of health care workers. This is not a universal perception among health workers and it is a matter of controversy in many circumstances. In the context of a strike, one should ensure not undertake anything that could result in causing harm directly or indirectly to the patient. Any struggle undertaken by medical personnel that violates patient right to health is unethical. The struggle should be centered at improving overall working conditions and environment in the hospital. The problem with this understanding is that it is almost impossible to stage a strike which is not painful and does not hurt the patient as such would in essence defeat the whole effect of the strike. One could rightly argue that, the only ones who could better defend the plight of the patient are the health workers. If they forsake their patient who can then defend them? Therefore if the health workers want to improve their working conditions let them also fight for the living and care conditions of their patients. For the working condition of a health worker is the living condition of the patient, both are two sides of one coin. A health worker and a patient are not the same and yet they cannot be separated; one cannot be, without the other. Therefore government cannot improve the living conditions of patients without improving the working conditions of the health personnel. The duty and responsibility to protect life is among the first in hierarchy of values. Hence in a strike an attempt should be made to leave a skeleton staff. Some might say this could undermine the effectiveness of the strike. Others might argue that the absence of a skeleton staff could undermine the integrity of the health workers involved in the strike. It might also be argued that to put in place a skeleton staff could do more harm to the patients than good, because the small and less motivated staff could exhibit negligent behaviour being induced by over work, fatigue and stress but also carelessness. If the government and regulatory services say that it is unethical for medical personnel to strike, because medical service are in category of special services 14–16, where and how can the health personnel express their grievances when they discover that their professional services and good will are being abused in the name of professional ethics? If their work is crucial in our society, why do society not give them what is due to them?

**The counterplan is key to pandemic containment**

S **Damery et. al.**, H Draper, S Wilson, S Greenfield, J Ives, J Parry, J Petts and T Sorell. Healthcare workers' perceptions of the duty to work during an influenza pandemic. Source: Journal of Medical Ethics, Vol. 36, No. 1 (January **2010**), pp. 12-18 Published by: BMJ Stable URL: http://www.jstor.org/stable/20696709 //SR \*HCW = health care worker\*

The duty to work is presently under scrutiny because of the current swine flu pandemic. Pandemic influenza is, according to the National Risk Register, the potential emergency that is likely to have the greatest impact in the UK,6 and the serious nature of the threat is widely recognised internationally.710 Health services in the UK are already strained, and the situation is set to worsen as winter?the traditional influenza season? approaches. HCWs are at the forefront of both pandemic response and exposure to infection. An effective public health response that ensures that appropriate standards of conventional and critical patient care can be maintained depends on the majority of uninfected HCWs continuing to attend work, despite the risks they might face in doing so. We recently published research suggesting that absenteeism during an influenza pandemic may be significant, depending on the severity of the pandemic and the combination of adverse circum stances that arise as a result.11 In common with others, we have found that there are barriers to both the willingness and the ability to work.11-15 Pandemic preparedness plans typically focus on reducing barriers to ability (such as employers providing HCWs with transport to and from work if they are redeployed to an alternative site, or allowing greater flexibility of working hours).16 These plans assume that ability and willingness are discrete and complementary, such that addressing barriers to ability to work will have a corresponding positive influence on will ingness to do so. However, willingness may not necessarily be increased by the implementation of practical or pragmatic solutions but may be instead more deeply rooted in a number of factors, such as the extent to which HCWs feel included in preparedness planning, or various sociodemo graphic and family issues. These are likely to influence HCWs; willingness to work during a pandemic or other emergency.15 1718 The main findings of a large-scale survey of professional and non-professional HCWs in the West Midlands, which aimed to investigate the factors associated with willingness to work during an influenza pandemic, have been published elsewhere.11

**Disease causes extinction - defense is wrong**

Piers **Millett 17**, Consultant for the World Health Organization, PhD in International Relations and Affairs, University of Bradford, Andrew Snyder-Beattie, “Existential Risk and Cost-Effective Biosecurity”, Health Security, Vol 15(4), http://online.liebertpub.com/doi/pdfplus/10.1089/hs.2017.0028

Historically, disease events have been responsible for the greatest death tolls on humanity. The 1918 flu was responsible for more than 50 million deaths,1 while smallpox killed perhaps 10 times that many in the 20th century alone.2 The Black Death was responsible for killing over 25% of the European population,3 while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world’s population at the time.4 It is an open question whether a future pandemic could result in outright human extinction or the irreversible collapse of civilization. A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread worldwide to remote populations, overcome rare genetic resistances, and evade detection, cures, and countermeasures. Even evolution itself may work in humanity’s favor: Virulence and transmission is often a trade-off, and so evolutionary pressures could push against maximally lethal wild-type pathogens.5,6 While these arguments point to a very small risk of human extinction, they do not rule the possibility out entirely. Although rare, there are recorded instances of species going extinct due to disease—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.7,8 There are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and theWestern Abenaki (which suffered a staggering 98% loss of population). In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to virtually every human community worldwide, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over 95% of a population.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified as well.19-2

**Solves the aff--medical workers aren’t key or a huge part of the movement--solvency deficits will be minimal at best**

## 8

**Counterplan: The United States ought to recognize an unconditional right of workers to strike except in the instance that strikes directly demand discrimination towards certain groups of individuals in workplaces**

**Solves the aff and no reinterpretations–strict legislation**

**BPSC** [Unfair Labor Practices by Union, http://bpscllc.com/unfair-labor-practices-by-unions.html, N.D., Business & People Strategy Consulting Group, California's trusted source for workplace human resources and employment law] [SS]

Causing or Attempting to Cause Discrimination: Section 8(b)(2) makes it an unfair labor practice for a labor organization to cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a)(3). The section is violated by agreements or arrangements with employers, other than lawful union-security agreements, that condition employment or job benefits on union membership, on the performance of union membership obligations or on arbitrary grounds. But union action that causes detriment to an individual employee does not violate Section 8(b)(2) if it is consistent with nondiscriminatory provisions of a bargaining contract negotiated for the benefit of the total bargaining unit, or if the action is based on some other legitimate purpose. A union’s conduct, accompanied by statements advising or suggesting that action is expected of an employer, may be enough to find a violation of this section if the union’s action can be shown to be a causal factor in the employer’s discrimination. Contracts or informal arrangements with a union under which an employer gives preferential treatment to union members also violate Section 8(b)(2). However, an employer and a union may agree that the employer will hire new employees exclusively through the union hiring hall if there is no discrimination against nonunion members on the basis of union membership obligations. In setting referral standards, a union may consider legitimate aims such as sharing available work and easing the impact of local unemployment. The union may also charge referral fees if the amount of the fee is reasonably related to the cost of operating the referral service. A union that attempts to force an employer to enter into an illegal union-security agreement, or that enters into and keeps in effect such an agreement, also violates Section 8(b)(2), as does a union that attempts to enforce such an illegal agreement by bringing about an employee’s discharge. Even when a union-security provision of a bargaining contract meets all statutory requirements, a union may not lawfully require the discharge of employees under the provision unless they were informed of the union-security agreement and their specific obligation under it. A union violates Section 8(b)(2) if it tries to use the union-security provisions of a contract to collect payments other than those lawfully required, such as assessments, fines and penalties. Other examples of Section 8(b)(2) violations include: Causing an employer to discharge employees because they circulated a petition urging a change in the union’s method of selecting shop stewards Causing an employer to discharge employees because they made speeches against a contract proposed by the union Making a contract that requires an employer to hire only members of the union or employees “satisfactory” to the union Causing an employer to reduce employees’ seniority because they engaged in anti-union acts Refusing referral or giving preference on the basis of race or union activities when making job referrals to units represented by the union Seeking the discharge of an employee under a union-security agreement for failure to pay a fine levied by the union

**Racist union strikes have happened before**

Allison **Keyes**, JUNE 30, **2017**, "The East St. Louis Race Riot Left Dozens Dead, Devastating a Community on the Rise," Smithsonian Magazine, https://www.smithsonianmag.com/smithsonian-institution/east-st-louis-race-riot-left-dozens-dead-devastating-community-on-the-rise-180963885/ //SR

Racial tensions began simmering in East St. Louis—a city where thousands of blacks had moved from the South to work in war factories—as early as February 1917. The African-American population was 6,000 in 1910 and nearly double that by 1917. In the spring, the largely white workforce at the Aluminum Ore Company went on strike. Hundreds of blacks were hired. After a City Council meeting on May 28, angry white workers lodged formal complaints against black migrants. When word of an attempted robbery of a white man by an armed black man spread through the city, mobs started beating any African-Americans they found, even pulling individuals off of streetcars and trolleys. The National Guard was called in but dispersed in June.

**Flips their offense--they create more domination but racist strikes aren’t key to awareness and resistance to cap**