invalidated just months earlier. Two weeks later, he joined in a 5–4 ruling upholding a major New Deal measure, the National Labor Relations Act. The "switch in time [that] saved nine," as a wit of the day put it, removed the Court as an obstacle to New Deal legislation and ended FDR's bid to pack the Court.

In its 1937 decisions, the Court jettisoned the doctrine, established in *Lochner v. New York* (1905), that many federal and state government efforts to regulate wages and hours violated workers' "liberty of contract" under the Fourteenth Amendment.

The Supreme Court began ruling in favor of FDR's New Deal legislation in 1937 but not, some scholars now believe, because of his court-packing threats.

Summarizing the work of the scholars who have argued that the shift was not as abrupt as it seemed, Laura Kalman of the University of California, Santa Barbara, notes that Roberts himself wrote the majority opinion in an important 1935 case that paved the way for the 1937 "switch." The Court's many narrow votes during the 1930s showed that its approach was in flux. Finally, Roberts himself denied being swayed by politics. Indeed, he had cast his vote in *Parrish* before FDR made his court-packing proposal.

At bottom, Brinkley and Kalman observe, this is a debate about how the Supreme Court changes its mind. Is the Court (and the law more generally) a creature of politics, as legal realists and other thinkers of progressive bent have argued? That's the implication of the standard "switch in time" view of the 1937 events.

Or does the law evolve, as Brinkley puts it, through "a largely internal process, insulated from politics," and based on constitutional principles and precedents? That's a traditionalist view, but it has also been attractive to some of Kalman's revisionist scholars, who worry that viewing precedent-breaking decisions such as those of the 1960s and '70s as politically inspired will deprive them of legitimacy. As for Brinkley and Kalman, they doubt that the Court is often moved by either pure principle or pure politics.

FOREIGN POLICY & DEFENSE

A UN for Our Time

THE SOURCE: "Anarchy and Order in the New Age of Prevention" by Thomas M. Nichols, in ***World Policy Journal***, Fall 2005.

SINCE THE COLD WAR ENDED, THE campaigns of ethnic cleansing and genocide in Europe and Africa, the nuclear ambitions of rogue states such as North Korea and Iran, and terrorist attacks, especially those of 9/11, have led many nations to question the idea of absolute state sovereignty, doubt the adequacy of deterrence, and look at preventive force in a new light. "A new age of preventive war" is upon us, and a reformed United Nations is needed to preside over it, contends Thomas M. Nichols, a professor of strategy and policy at the Naval War College.

In the face of the crises of the 1990s, the UN's performance "was dismal even by the reckoning of its supporters." Its paralysis during the 1994 genocide in Rwanda cost many lives, and when genocide loomed in Kosovo five years later, the United States and its NATO allies "acted without the Security Council's approval rather than risk a Russian veto." After Kosovo, UN secretary-general Kofi Annan cautiously embraced "the principle that states could at times interfere in the

internal affairs of others." Two years later, a Canadian-sponsored international commission went further, saying that the UN has a duty to stop mass murder and ethnic cleansing, and that when the evidence is clear, preventive military action might be warranted. Annan himself in 2005 urged that as a "last resort" in cases of genocide, ethnic cleansing, and other crimes against humanity, the Security Council should be able to "take enforcement action according to the [UN] Charter."

Yet the UN as currently constituted appears dysfunctional. "If the United Nations cannot bring itself to condemn even the horrors of Darfur because such 'naming and shaming' can be stopped by reprehensible regimes eager to escape such censure themselves," asks Nichols, "how can it be expected to exercise actual force against such regimes in the future?" The solution, he argues, is for the UN to stop admitting "illiberal regimes" to the 10 rotating seats on the Security Council, and to qualify the veto enjoyed by each of the permanent Big Five members by giving a supermajority of the council the power to override any veto.

Nichols believes that these reforms could be adopted if the United States and other major powers demand them, and threaten not to bring future issues of international security before the UN. Without such reforms, he says, the organization "will be doomed, at least as an arbiter of the use of force."

EXCERPT

Soft on Terror?

All European governments are reluctant to drastically alter their legal systems and basic political approaches to terrorism. The issue of homeland security was raised and essentially settled a long time ago when these governments faced a more "indigenous" terrorism (Spain's ETA, Ireland's IRA, Germany's Baader-Meinhof gang, and Italy's Red Brigades). . . .

As far as European countries are concerned, the fight against terrorism is a matter of police and intelligence, not military action. The growing isolation of Islamic radicals in Europe should allow the Europeans to continue with this "soft" approach. . . .

However, this approach will never totally eradicate terrorism. The European tradition of terrorism and political violence that has forged the experience of the counterterrorist institutions makes it easier for young activists to become violent. Put somewhat differently, the stigma attached to carrying out violence is relatively weak in Europe.

—OLIVIER ROY,
a professor at the School of Advanced Studies in the Social Sciences in Paris and author of *Globalized Islam*, (2004), in ***Current History*** (Nov. 2005)

ECONOMICS, LABOR & BUSINESS

Business the Beneficent

A SURVEY OF RECENT ARTICLES

Corporations today claim that they can do well for their investors by doing good for their customers, their employees, their community, and even the environment. Managers, says David J. Vogel, a professor of business ethics at the University of California, Berkeley, believe that a socially responsible firm "will face fewer business risks than its less virtuous competitors: It will be more likely to avoid consumer boycotts, be better able to obtain capital at a lower cost, and be in a better position to attract and retain committed employees and loyal customers."

The relationship between doing good and being profitable used to be regarded as much more indirect, writes Vogel in ***California Management Review*** (Summer 2005). After a court ruled in 1954 against a Standard Oil of New Jersey shareholder who had objected to the firm's gift of