# Topicality

## 1NC

#### Restrictions on production must mandate a decrease in the quantity produced

Anell 89 Lars is the Chairman of the WTO panel adopted at the Forty-Fifth Session of Contracting Parties on December 5, 1989. Other panel members: Mr. Hugh Bartlett and Mrs. Carmen Luz Guarda. “Canada – Import Restrictions on Ice Cream and Yoghurt,” http://www.wto.org/english/tratop\_e/dispu\_e/88icecrm.pdf

The United States argued that Canada had failed to demonstrate that it effectively restricted domestic production of milk. The differentiation between "fluid" and "industrial" milk was an artificial one for administrative purposes; with regard to GATT obligations, the product at issue was raw milk from the cow, regardless of what further use was made of it. The use of the word "permitted" in Article XI:2(c)(i) required that there be a limitation on the total quantity of milk that domestic producers were authorized or allowed to produce or sell. The provincial controls on fluid milk did not restrict the quantities permitted to be produced; rather dairy farmers could produce and market as much milk as could be sold as beverage milk or table cream. There were no penalties for delivering more than a farmer's fluid milk quota, it was only if deliveries exceeded actual fluid milk usage or sales that it counted against his industrial milk quota. At least one province did not participate in this voluntary system, and another province had considered leaving it. Furthermore, Canada did not even prohibit the production or sale of milk that exceeded the Market Share Quota. The method used to calculate direct support payments on within-quota deliveries assured that most dairy farmers would completely recover all of their fixed and variable costs on their within-quota deliveries. The farmer was permitted to produce and market milk in excess of the quota, and perhaps had an economic incentive to do so. 27. The United States noted that in the past six years total industrial milk production had consistently exceeded the established Market Sharing Quota, and concluded that the Canadian system was a regulation of production but not a restriction of production**.** Proposals to amend Article XI:2(c)(i) to replace the word "restrict" with "regulate" had been defeated; what was required was the reduction of production. The results of the econometric analyses cited by Canada provided no indication of what would happen to milk production in the absence not only of the production quotas, but also of the accompanying high price guarantees which operated as incentives to produce. According to the official publication of the Canadian Dairy Commission, a key element of Canada's national dairy policy was to promote self-sufficiency in milk production. The effectiveness of the government supply controls had to be compared to what the situation would be in the absence of all government measures.

#### Vote negative:

#### Including regulations is a limits disaster---undermines preparedness for all debates

Doub 76 William is a principal in the law firm of Doub and Muntzing. Previously he was a partner in LeBoeuf, Lamb, Leiby, and MacRae. He was a member of the U.S. Atomic Energy Commission (1971-1974). He served as a member of the Executive Advisory Committee to the Federal Power Commission (1968-1971) and was appointed by the President to the President’s Air Quality Advisory Board. He is a past chairman of the U.S. National Committee of the World Energy Conference. “Energy Regulation: A Quagmire for Energy Policy,” http://www.annualreviews.org/doi/abs/10.1146/annurev.eg.01.110176.003435

FERS began with the recognition that federal energy policy must result from concerted efforts in all areas dealing with energy, not the least of which was the manner in which energy is regulated by the federal government. Energy self sufficiency is improbable, if not impossible, without sensible regulatory processes, and effective regulation is necessary for public confidence. Thus, the President directed that "a comprehensive study be undertaken, in full consultation with Congress, to determine the best way to organize all energy-related regulatory activities of the government." An interagency task force was formed to study this question. With 19 different federal departments and agencies contributing, the task force spent seven months deciphering the present organizational makeup of the federal energy regulatory system, studying the need for organizational improvement, and evaluating alternatives. **More than 40 agencies were found to be involved** with making regulatory decisions on energy. Although only a few deal exclusively with energy, most of the 40 could **significantly affect** the **availability and/or cost of energy**. For example, in the field of gas transmission, there are five federal agencies that must act on siting and land-use issues, seven on emission and effluent issues, five on public safety issues, and one on worker health and safety issues-all before an onshore gas pipeline can be built. The complexity of energy regulation is also illustrated by the case of Standard Oil Company (Indiana), which reportedly must file about 1000 reports a year with 35 different federal agencies. Unfortunately, this example is the rule rather than the exception.

#### And precision---only direct prohibition is a restriction---key to predictability

Sinha 6 S.B. Sinha is a former judge of the Supreme Court of India. “Union Of India & Ors vs M/S. Asian Food Industries,” Nov 7, http://webcache.googleusercontent.com/search?q=cache:http://www.indiankanoon.org/doc/437310/

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus: "It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

## 2NC

### 2NC---Limits Work

#### Including energy regulations adds five million research hours

Tugwell 88 Franklin Tugwell joined The Asia Foundation's Board of Trustees in 2010. Dr. Tugwell has served as the President and CEO of Winrock International since 1999. Previously, Dr. Tugwell was the executive director of the Heinz Endowments of Pittsburgh, the founder and president of the Environment Enterprises Assistance Fund, and as a senior consultant for International Projects and Programs at PG&E Enterprises. He served as a deputy assistant administrator at USAID (1980-1981) and as a senior analyst for the energy program at the U.S. Office of Technology Assessment (1979-1980). Dr. Tugwell was also a professor at Pomona College and an adjunct distinguished professor at the Heinz School of Carnegie Mellon University. Additionally, he serves on the Advisory Board and International Committee of the American Council on Renewable Energy and on the Joint Board of Councilors of the China-U.S. Center for Sustainable Development. He also serves on the Board of Eucord (European Cooperative for International Development). Dr. Tugwell received a PhD in political science from Columbia University. “The Energy Crisis and the American Political Economy,” ISBN 0-8047-1500-9

Finally, administering energy regulations proved a costly and cumbersome endeavor, exacting a price all citizens had to pay. As the energy specialist Paul MacAvoy has noted: "More than 300,000 firms were required to respond to controls, ranging from the three dozen major refining companies to a quarter of a million retailers of petroleum products. The respondents had to file more than half a million reports each year, which probably took more than five million man-hours to prepare, at an estimated cost alone of $80 mil- lion."64 To these expenditures must be added the additional costs to the government of collecting and processing these reports, monitor- ing compliance, and managing the complex process associated with setting forth new regulations and adjudicating disputes. All to- gether, it seems likely that the administrative costs, private and public, directly attributable to the regulatory process also exceeded $1 billion a year from 1974 to 1980.^

#### Including energy regs is too big---it’s torture for the neg

Edwards 80 Opinion in BAYOU BOUILLON CORP. v. ATLANTIC RICHFIELD CO. Court of Appeal of Louisiana, First Circuit. May 5

Comprehending the applicability and complexity of federal energy regulation necessitates both a stroll down the tortuous legislative path and a review of legal challenges so numerous as to require the establishment of a Temporary Emergency Court of Appeals.

#### That destroys education---too much to comprehend

Stafford 83 G. William is an Associate at Ross, Marsh and Foster. Review of “Federal Regulation of Energy” by William F. Fox, Jr, http://felj.org/elj/Energy%20Journals/Vol6\_No2\_1985\_Book\_Review2.pdf

It may safely be said that any effort to catalogue "the entire spectrum of federal regulation of energy"' in a single volume certainly requires an enterprising effort on the part of the author. In this regard, Mr. Willam F. Fox, Jr., an Associate Professor of Law at Catholic University of America, has undertaken an examination of a vital aspect of United States policy in Federal Regulation of Energy, published in 1983 with an annual pocket supplement available. Despite the complex nature of the subject of his work, Mr. Fox has prepared a text that provides a significant description of many aspects of federal energy regulatory policy. Initially, the book's title may prove somewhat misleading in that it approaches the subject from an historical perspective focused more on substantive than procedural issues. Although a reader gets the impression that the author at time has tried to do too much -at least from the standpoint of the energy practitioner- the historical and technical insights it offers the student of federal energy relation are valuable. Moreover; its detailed explanations of the methods used to tneet federal energy goals are useful for those in the position of initiating energy policy. This strength notwithstanding, it appears unlikely that an energy law practitioner would benefit significantly from its use, other than from its historical point of view. A general impression is that the author may have been overly ambitious in his effort to undertake the monumental task of evaluating laws, regulations, and significant judicial decisions in a single work.

### 2NC---Regulation =/= Restriction

#### Regulation is strictly distinct from restriction of production

Qureshi 46 Indian representative at the United National Social and Economic Council. Verbatim report of the sixth meeting of committee IV. Oct 31st, http://www.wto.org/gatt\_docs/English/SULPDF/90220091.pdf

Mr. Chairman, I would like to point out that in Article 47, Paragraph 1, the regulation of production should not mean restriction of production, otherwise the whole aim of raising the standard of living will be defeated; nor should it mean to discourage the production of certain commodities if certain countries find it necessary to do so and to expand their production in the interests of their country.

#### Restriction narrower than regulation

Johnson, District Court Judge 9 Judge Thomas E. Johnson, US District Court for the Southern District of West Virginia, "Stover v. Fingerhut Direct Marketing, Inc. - Document 33," 8/26/2009 http://law.justia.com/cases/federal/district-courts/west-virginia/wvsdce/5:2009cv00152/61171/33

9 The fourth prong of the Central Hudson test refers to "regulation" of speech. 447 U.S. at 567. "Regulation" could be construed broadly as applying [\*\*29] a system of laws, including penalties, affecting a particular manner of commercial speech. However, in subsequent cases, the Supreme Court has employed the narrower word, "restriction," in place of "regulation." See, e.g., Bd. of Trs. v. Fox, 492 U.S. 469, 476, 109 S. Ct. 3028, 106 L. Ed. 2d 388 (1989) ("[G]overnment restrictions upon commercial speech may be no more broad or no more expansive than 'necessary' to serve its substantial interests").

### 2NC---Financial Burden =/= Restriction

#### Restrictions must be a formal prohibition, not an INDUCEMENT

Groves 97 Dr Peter J Groves, LLB, MA, PhD, MITMA, Solicitor. “Sourcebook on Intellectual Property Law,” Google Books

Then I come to the word 'restrict', A person though not prohibited is restricted from using something if he is permitted to use it to a certain extent or subject to certain conditions but otherwise obliged not to use it, but I do not think that a person is properly said to be restricted from using something by a condition the effect of which is to offer him some inducement not to use it, or in some other way to influence his choice. To my mind, the more natural meaning here is restriction of the licensee's right to use the article and I am fortified in that opinion by two considerations. If I am right in thinking that 'require' and 'prohibit' refer to legal obligations to buy or not to use, I see nothing to suggest that 'restrict' is used in quite a different sense which has nothing to do with legal obligation but which relates to financial disadvantage. And, second, to say that the effect will be to restrict seems to me much more appropriate if restriction refers to restriction of the licensee's right to use than it would be if restriction refers to an inducement not to use. The legality of the condition has to be determined at the time when the licence is granted and if the terms of the conditions are such as to restrict the licensee's right to use an article in certain circumstances then it can properly be said that its effect will be to restrict him from using it. But if, as in the present case, all that can be said is that the effect of the condition in some circumstances will be to offer a financial advantage, which may be considerable or may be small, if the licensee uses the licensor's goods, I do not see how it can be said that its effect will be to restrict the licensee from using other goods. The licensee may be influenced by this financial advantage or he may, perhaps for good reason, choose to disregard it; it is impossible to say in advance what the effect will be.

#### Attaching economic consequences to an action doesn’t restrict

SUPREME COURT OF CALIFORNIA 93 Howard v. Babcock, No. S027061. , SUPREME COURT OF CALIFORNIA, 6 Cal. 4th 409; 863 P.2d 150; 25 Cal. Rptr. 2d 80; 1993 Cal. LEXIS 6006; 28 A.L.R.5th 811; 93 Cal. Daily Op. Service 8975; 93 Daily Journal DAR 15372, December 6, 1993, Decided , Rehearing Denied February 3, 1994, Reported at: 1994 Cal. LEXIS 534.

[\*\*156] [\*\*\*86] Rule 1-500 provides: "(A) A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a [\*419] member to practice law, except that this rule shall not prohibit such an agreement which: [¶] (1) Is a part of an employment, shareholders', or partnership agreement among members provided the restrictive agreement does not survive the termination of the employment, shareholder, or partnership relationship; or [¶] (2) Requires payments to a member upon the member's retirement from the practice of law; or [¶] (3) Is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093 [providing for authority of State Bar Court to impose conditions of probation on disciplined attorneys]. [¶] (B) A member shall not be a party to or participate in offering or making an agreement which precludes the reporting of a violation of these rules." 6

CA(4)(4) We are not persuaded that this rule was intended to or should prohibit the type of agreement that is at issue here. HN10 An agreement that assesses a reasonable cost against a partner who chooses to compete with his or her former partners does not restrict the practice of law. Rather, it attaches an economic consequence to a departing partner's unrestricted choice to pursue a particular kind of practice.

We agree with the Court of Appeal in Haight, supra, 234 Cal.App.3d 963, declaring HN11an agreement between law partners that a reasonable cost will be assessed for competition is consistent with rule 1-500. Rejecting an interpretation of rule 1-500 like that proffered by plaintiffs here, the court stated: "We do not construe rule 1-500 in such a narrow fashion. . . . The rule does not . . . prohibit a withdrawing partner from agreeing to compensate his former partners in the event he chooses to represent clients previously represented by the firm from which he has withdrawn. Such a construction represents a balance between competing interests. On the one hand, it enables a departing attorney to withdraw from a partnership and continue to practice law anywhere within the state, and to be able to accept employment should he choose to do so from any client who desires to retain him. On the other hand, the remaining partners remain able to preserve the stability of the law firm by making available the withdrawing partner's share of capital and accounts receivable to replace the loss of the stream of income from the [\*420] clients taken by the withdrawing partner to support the partnership's debts." (Haight, supra, at pp. 969-970.) Concluding that the agreement was not invalid on its face, the court held that the validity of the agreement depended on whether it "amounts to an agreement for liquidated damages or an agreement resulting in a forfeiture." (Id. at p. 972.)

### 2NC---Prefer Anell

#### Prefer our Anell evidence---he defines ‘restriction on production’---they don’t---key to predictability

Haneman 59 J.A.D. is a justice of the Superior Court of New Jersey, Appellate Division. “Russell S. Bertrand et al. v. Donald T. Jones et al.,” 58 NJ Super. 273; 156 A.2d 161; 1959 N.J. Super, Lexis

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.¶ HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

### AT: Contextual Definitions

#### Contextual definitions bad – intent to define outweighs

Kupferbreg 87Eric University of Kentucky, Senior Assistant Dean, Academic & Faculty Affairs at Northeastern University, College of Professional Studies Associate Director, Trust Initiative at Harvard School of Public Health 1987 “Limits - The Essence of Topicality” http://groups.wfu.edu/debate/MiscSites/DRGArticles/Kupferberg1987LatAmer.htm

Often, field contextual definitions are too broad or too narrow for debate purposes. Definitions derived from the agricultural sector necessarily incorporated financial and bureaucratic factors which are less relevant in considering a 'should' proposition. Often subject experts' definitions reflected administrative or political motives to expand or limit the relevant jurisdiction of certain actors. Moreover, field context is an insufficient criteria for choosing between competing definitions. A particularly broad field might have several subsets that invite restrictive and even exclusive definitions. (e.g., What is considered 'long-term' for the swine farmer might be significantly different than for the grain farmer.) Why would debaters accept definitions that are inappropriate for debate? If we admit that debate is a unique context, then additional considerations enter into our definitional analysis.

### Financial Incentives

#### Financial incentives require the disbursement of public funds linked to energy production – excludes bailouts and regulations with incentive effects

Webb, 93 – lecturer in the Faculty of Law at the University of Ottawa (Kernaghan, “Thumbs, Fingers, and Pushing on String: Legal Accountability in the Use of Federal Financial Incentives”, 31 Alta. L. Rev. 501 (1993) Hein Online

In this paper, "financial incentives" are taken to mean disbursements 18 of public funds or contingent commitments to individuals and organizations, intended to encourage, support or induce certain behaviours in accordance with express public policy objectives. They take the form of grants, contributions, repayable contributions, loans, loan guarantees and insurance, subsidies, procurement contracts and tax expenditures.19 Needless to say, the ability of government to achieve desired behaviour may vary with the type of incentive in use: up-front disbursements of funds (such as with contributions and procurement contracts) may put government in a better position to dictate the terms upon which assistance is provided than contingent disbursements such as loan guarantees and insurance. In some cases, the incentive aspects of the funding come from the conditions attached to use of the monies.20 In others, the mere existence of a program providing financial assistance for a particular activity (eg. low interest loans for a nuclear power plant, or a pulp mill) may be taken as government approval of that activity, and in that sense, an incentive to encourage that type of activity has been created.21 Given the wide variety of incentive types, it will not be possible in a paper of this length to provide anything more than a cursory discussion of some of the main incentives used.22 And, needless to say, the comments made herein concerning accountability apply to differing degrees depending upon the type of incentive under consideration.

By limiting the definition of financial incentives to initiatives where *public funds are either disbursed or contingently committed*, a large number of regulatory programs with incentive *effects* which exist, but in which no money is forthcoming,23 are excluded from direct examination in this paper. Such programs might be referred to as *indirect* incentives. Through elimination of indirect incentives from the scope of discussion, thedefinition of the incentive instrument becomes both more manageable and more particular. Nevertheless, it is possible that much of the approach taken here may be usefully applied to these types of indirect incentives as well.24 Also excluded from discussion here are social assistance programs such as welfare and *ad hoc* industry bailout initiatives because such programs are not designed primarily to *encourage* behaviours in furtherance of specific public policy objectives. In effect, these programs are assistance, but they are not incentives.

## 2NR

#### Making production tough, expensive, or unlikely isn’t a restriction

Caiaccio 94 [Kevin, “Howard v. Babcock, the Business of Law Versus the Ethics of Lawyers: Are Noncompetition Covenants among Law Partners against Public Policy,” 28 Ga. L. Rev. 825 (1993-1994), Hein Online]

While the Howard court acknowledged the enforceability of some law practice covenants under the Business Code, the key issue became whether the agreement, which called for the loss of 82.5% of net profits by the departing partners, was one that "restricted" [\*820] the practice of law. n95 The court essentially adopted the Haight court approach, stating that a reasonable cost imposed on a departing partner does not restrict the practice of law. n96 The court labeled the cost a mere "economic consequence" to an "unrestricted choice." n97 The majority in Howard reasoned that such a construction was consistent with Rule 1-500 and that this construction struck a balance between competing interests. n98 According to the court, this interpretation allowed a departing partner to practice law anywhere in the state and represent any of the former firm's clients who were willing to follow. n99 The departing partner would, however, have to compensate the firm for its loss of income. Therefore, the court remanded for a factual determination as to whether the loss of withdrawal benefits constituted liquidated damages or an unacceptable penalty. n100¶ The majority opinion justified this break with years of nationwide precedent by reasoning that "a revolution in the practice of law has occurred." n101 This "revolution" required the "economic interests of the law firm to be protected as they are in other business enterprises." n102 The court supported its recognition of a "revolution" by noting the increased propensity of law firms--even large, seemingly stable firms--to split up as partners grab clients on the way out. n103 As a result, noncompetition agreements have become common, despite the near universal recognition by courts and ethics committees that such agreements are unenforceable. n104 Furthermore, the court reasoned that the pervasiveness of lateral hiring, even among high-level partners, has undermined the assumption that firms are stable institutions. n105 The court concluded that,¶ [\*821] due to these "sweeping changes" in the profession, the per se rule banning noncompetition agreements among law partners should be abolished. n106¶ The court then addressed some of the arguments made by the dissent and by other courts upholding the ban. According to the majority of the court, two primary arguments exist in support of the ban: (1) an attorney should have the freedom to practice law where and for whom he or she pleases, n107 and (2) clients are not commodities and should have the freedom to choose representation. n108 The majority argued that these freedoms are merely "theoretical" because they are routinely circumscribed. n109 For example, attorneys, like other professionals, may be fired or forced out by their partners despite the wishes of the client. n110 Similarly, an attorney is not required to accept representation of every client that seeks services, and a lawyer may even be required to decline representation of a prospective client if a conflict of interest exists. n111 In fact, an attorney has many grounds to justify terminating a relationship with a client. n112 Finally, the majority noted that, in civil cases, clients have no "right" to an attorney at all. n113 Thus, these "freedoms," upon which the per se rule is justified, are in fact already limited. n114¶ The court proceeded a step further, arguing that permitting restrictive covenants may even serve the client. According to the court, the ban promoted a "culture of mistrust" and damaged the stability of law firms. n115 Partners may be reluctant to refer clients to or support the practice of their fellow partners if fear persists that a partner may leave with those clients at any time. n116 The court concluded that the changing nature of the business of law, the permissibility of such covenants in other [\*822] professions, and the undesirable promotion of the culture of mistrust required the abolition of the per se ban on lawyer restrictive covenants. n117 The court remanded the case to the trial court for analysis under the test of reasonableness applicable to all restrictive covenants. n118¶ Justice Kennard, the sole dissenting justice, made several arguments in support of the per se ban. First, Kennard offered a different interpretation of Rule 1-500 of the Rules of Professional Conduct, arguing that the rule was unambiguous: agreements that restrict competition are unethical. n119 She criticized the majority's argument as flawed because it interpreted "restrict" to mean "prohibit" and claimed that a reasonable cost was not a restriction. n120 According to the dissent, this interpretation does not give the words their plain and ordinary meaning. n121 In their ordinary meaning, restrict and prohibit are not synonymous; a price as high as 82.5% of net profits certainly constitutes a restriction. n122 Therefore, the partnership agreement violated the clear meaning of the rule.¶ In support of this interpretive argument, the dissent cited the "discussions" that accompany the Rules and "provide guidance for interpretation." n123 The discussions accompanying Rule 1-500, which the majority ignored, were unequivocal:¶ $ (Rule 1-500$ ) permits a restrictive covenant in a law corporation, partnership, or employment agreement. The law corporation shareholder, partner, or associate may agree not to have a separate practice during the existence of the relationship; however, upon termination of the relationship (whether voluntary or involuntary), the member is free to practice law without any contractual restriction . . . . n124¶ According to the dissent, the court should not have endorsed an interpretation completely inconsistent with this unambiguous commentary. n125¶ Second, the dissent argued that, despite the majority's perceived "revolution" in the practice of law, n126 the law is still primarily a profession, and lawyers should continue to strive for the highest ethical standards. n127 Although no one in the private sector could continue to practice law without a profit, an attorney has a very high fiduciary duty. This duty often requires an attorney to place the interest of a client above her own interest. Therefore, the client's right to choose representation is paramount to the interests of the attorney. n128 Enforcing covenants not to compete, on the other hand, would subordinate the client's rights to the monetary interests of established firms. n129¶ Next, the dissent attacked the argument that, since noncompetition agreements are enforceable in other professions, lawyers should not be treated differently. n130 According to the dissent, the ethics rules of other professions are not helpful because "the nature, ideals, and practices of the various professions are different." n131 Notwithstanding the rules with respect to other professions, lawyers should strive to obtain the highest ethical standards because "ethics is not a subject in which the objective is to achieve consensus at the level of the lowest common denominator." n132 [\*824] ¶ Finally, the dissent noted that the purpose of ethics regulations is to protect the public, not the monetary interests of law firms. n133 According to the dissent, the majority subordinated the rights of clients and lawyers to the business interests of firms and justified this erosion of ethics standards by concluding that these rights are merely "theoretical" because they are already circumscribed. n134 The dissent strenuously disagreed with the majority's conclusion, arguing that this analysis was irrelevant. The issue in this case was not whether a partner may be forced out of a law firm, nor whether a conflict of interest existed; n135 the issue was whether the defendant-law firm could "prevent a willing attorney from representing a willing client." n136 Therefore, the majority's analysis on this point was merely "rationalization, not reasoning." n137¶ The dissent concluded that the court should not promote the weakening of ethical standards and that the integrity of the legal profession demanded upholding the per se ban on covenants not to compete between law partners. n138¶ IV. Analysis and Recommendations¶ Although the Howard court set out persuasive policy reasons for abolishing the per se ban on lawyer restrictive covenants, the majority's reasoning contained several flaws. First, the court misconstrued the meaning of the ethics rule: under the majority's interpretation, the rule prohibits only outright bans on competition. In reaching this conclusion, the court violated several rules of statutory construction. Second, the court failed to recognize the need to articulate a new standard for law partners. Instead, the court held that agreements between law partners should be analyzed under the "rule of reason" test applicable to ordinary business partnerships. This Comment contends that the rules of ethics, as currently written, mandate a higher standard for attorneys than for other types of partners. In abrogating the per se ban, courts should interpret the rule in a manner that balances the changing nature of the practice of law with the competing ethical considerations.¶ a. proper construction of the rules of professional conduct¶ The Howard court began its analysis by examining the California Business and Professions Code, which expressly permits reasonable restrictive covenants among business partners. n139 The court noted that this provision had long applied to doctors and accountants and concluded that the general language of the statute provided no indication of an exception for lawyers. n140 After reaching this conclusion, however, the court noted that, since it had the authority to promulgate a higher standard for lawyers, the statute alone did not necessarily control, n141 and the court therefore proceeded to examine the California Rules of Professional Conduct. n142 The court avoided the apparent conflict between the business statute and the ethics rule by undertaking a strained reading of the rule. In essence, the court held that the word "restrict" referred only to outright prohibitions, and that a mere "economic consequence" does not equal a prohibition. n143

# Politics

## 1NC

#### Debt ceiling compromise likely now but uniqueness doesn’t overwhelm the link---the impact is economic collapse

Klein 1/2 Ezra is a politics writer for the Washington Post. “The lessons of the fiscal cliff,” 2013, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/02/the-lessons-of-the-fiscal-cliff/?wprss=rss_ezra-klein>

There is a narrative in American politics that goes something like this: The White House can’t negotiate. House Republicans can’t be reasoned with. And so the country is caught between pragmatists who can’t hold their ground and radicals who can’t compromise.¶ **The last few days complicate those narratives.** The White House didn’t hold firm on their promise to let the Bush tax cuts expire for all income over $250,000. They agreed to a $450,000 threshold instead. But at the same time, they pocketed more than $600 billion in revenue, $30 billion in extended unemployment benefits and five years of stimulus tax credits without giving up any real spending cuts. ¶ Speaker John Boehner, negotiating on behalf of House Republicans, rejected the White House’s offers for a bigger deal that included big spending cuts and watched his “plan B” die on the House floor. But, with the support of many of his members, he ended up shepherding the McConnell-Biden package towards final passage. Republicans realized they couldn’t be blamed for pushing the country over the cliff. ¶ The question of who “won” the fiscal cliff won’t be answered till we know what happens when Congress reaches the debt ceiling. The White House says that there’ll be no negotiations over the debt ceiling, and that if Republicans want further spending cuts, their only chance is to hand over more tax revenue. If they’re right and they do manage to enforce a 1:1 ratio of tax hikes to spending cuts in the next deal, they’re going to look like geniuses.¶ Republicans swear they are crazy enough to push the country into default, and they promise that the White House isn’t strong enough to stand by and let it happen. If they’re right, and the White House agrees to big spending cuts absent significant tax increases in order to avert default, then Republicans will have held taxes far lower than anyone thought possible.¶ But both Republicans and Democrats can’t be right. If we take the lessons of this negotiation, here’s what will happen: The White House will negotiate **over the debt ceiling**. They’ll say they’re not negotiating over the debt ceiling, and in the end, they may well refuse to be held hostage over the debt ceiling, but the debt ceiling will be part of the pressure Republicans use to force the next deal. The White House fears default, and in the end, they always negotiate.¶ That said, the Republicans aren’t quite as crazy as they’d like the Democrats to believe. They were scared to take the country over the fiscal cliff. They’re going to be terrified to force the country into default, as the economic consequences would be calamitous. They know they need to offer the White House a deal that the White House can actually take — or at least a deal that, if the White House doesn’t take it, doesn’t lead to Republicans shouldering the blame for crashing the global economy. That deal will have to include taxes, though the tax increases could come through reform rather than higher rates.¶ The Republicans also have a problem the White House doesn’t: The public broadly believes they’re less reasonable and willing to negotiate than the Democrats are. The White House has a reputation for, if anything, being too quick to fold. They have more room to avoid blame for a default than the Republicans do. In the end, **if the White House** holds its ground, **Republicans will likely compromise** — though only after the White House has done quite a bit of compromising, too. ¶ The final moments of the fiscal cliff offered evidence that both sides see how this is going to go. In his remarks tonight, President Obama signaled he would hold firm on the debt ceiling. “While I will negotiate over many things, I will not have another debate with this Congress over whether or not they should pay the bills they’ve already racked up through the laws they have passed,” he said. And Boehner signaled that he knows tax reform will have to be part of the next deal. The post-deal press release his office sent out had the headline, “2013 Must Be About Cutting Spending and Reforming the Tax Code.” That said, the final days of the fiscal cliff, in which the deal almost broke apart a half-dozen times for a hal-dozen reasons, is a reminder that these tense, deadline negotiations can easily go awry. And so there’s a third possibility, too: That the White House is wrong about the Republicans will compromise, that the Republicans are wrong that the White House will fold, and so we really will breach the debt ceiling, unleashing economic havoc.

#### It’s top of the docket and PC is key

John Feehery 1-2, President of Communications and Director of Government Affairs for Quinn Gillespie and Associates, 1/2/13, “The Clock,” <http://www.thefeeherytheory.com/2013/01/02/the-clock/>

The small tax agreement passed by the House last night makes it harder for Obama to do other things with his time in the White House. ¶ That is the inevitable truth that seems lost on conservatives who opposed a deal to make permanent 98% of the Bush tax cuts. ¶ Mitch McConnell is a master at clock management, and as minority leader, his job is to make it as hard as possible for the President to enact his left-wing agenda. ¶ As I wrote yesterday, McConnell was the master strategist who decided that the Congress would deal first with taxes and then with spending. ¶ Conservative leaders (well, the ones most desperate to raise money attacking Republicans) are professionally apoplectic. They can’t believe that Republicans didn’t get any spending cuts included in this deal, after they torpedoed John Boehner’s plan which included massive spending cuts and popular tax provisions. ¶ But Plan C wasn’t designed to include spending cuts, you blithering idiots. That comes later, in the fight over the debt limit. ¶ The President has already declared that the debt limit is off the table, but of course, we all know that **he is posturing. Nothing is off the table**, and the fact of the matter is that Republicans need to come up with substantial spending cuts if they are to gain the respect of their political base. ¶ After the fight on the debt limit will come a fight on sequester. After the fight on the sequester will come a fight on the 2013 Appropriations bills. ¶ All of these fights will take the time and attention of the President himself. All of these fights will take political capital and energy and promises. By focusing on the budget issues, Republicans make it harder for the President to focus on other things, like immigration and gun control, and whatever crazy left-wing agenda items he might want to add to the list. ¶ Imagine if last night, the grand bargain came together, and Republicans and Democrats cleared up everything in one vote. The President wouldn’t have high-fived the Speaker and said, “my job is done here.” ¶ He would have moved on to gun control. He can’t do that now. Now he has to talk exclusively about the debt limit. He has to burn up political capital on an issue that dove-tails quite nicely with out-of-control spending. ¶ The clock is running out on the Obama White House, and the more time we talk about fiscal issues, the less time he has to get his left-wing agenda through the Congress.

#### Plan drains PC

Whatley 10/30 Michael is the executive VP of the Consumer Energy Alliance. “Energy in the Next Four (Political) Years,” 2012, http://rigzone.com/iphone/article.asp?a\_id=121729

Should Republicans hold the House, and Democrats hold the Senate, **it will make it** exceedingly difficult **for any meaningful energy legislation to pass** in the next two years, regardless of who wins the Presidency. Smaller legislative measures, including requisite funding for federal agencies, are likely, but a bipartisan movement to pass a comprehensive energy package is unlikely.¶ For the Obama administration, partisan gridlock in Congress **would require the President to push his energy agenda through** regulation. Potential items of his docket include efforts to expand federal regulation over hydraulic fracturing and to create new incentives or mandates for alternative fuel consumption, such as a low carbon fuel standard.¶ For a Romney administration, any substantive changes to our current regulatory structure, especially as it relates to public lands, would require Congressional approval, something that a **bitterly divided Congress will be loath to provide**. Similarly, incentives for renewable energy programs and tax credits would be up to the discretion of the Congress and its budgeting process. However, a Romney administration would likely expand leasing opportunities in the federal offshore and public lands for oil and natural gas development.

#### Global economic crisis causes nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

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

#### Economic methodology is good --- it’s key to making accurate and progressive predictions in policy debates --- any alt fails

Gregory R. Beabout 8 is an adjunct fellow of the Center for Economic Personalism and Associate Professor of Philosophy at Saint Louis University Challenges to Using the Principle of Subsidiarity for Environmental Policy; 5 U. St. Thomas L.J. 210 (2008)

Economics offers many insights into how the world around us works, much more than would be possible to summarize even in a full-length law review article with many footnotes.5 From among those many insights, I have selected three "propositions" that demonstrate the fundamental points that economics is necessary, but not sufficient, to address environmental issues and that economics is necessary, but not sufficient, to reconcile the obligations of faith toward the poor and the need to protect the environment.

By "propositions" I mean fundamental truths about human behavior and the natural world that we ignore at our peril, truths as basic as the laws of gravity or humanity's susceptibility to sin. We can write statutes or regulations that ignore these-and Congress, legislatures, and regulators the world over frequently do-but such measures risk the same fatal results as bridges built without accounting for gravity. These propositions I will offer are economic "theory," but they are theory in the sense that the laws of gravity are a theory and are founded upon economic insights spanning hundreds of years of careful analyses, testing of hypotheses, and rigorous debates. That does not mean all economists agree on all policy implications or that every prediction by an economist comes true. It does mean that the core principles of the discipline are not mere matters of opinion and that economics is not a "point of view" to be accorded equal weight with folk tales or political preferences. All theories of how the world works are not equal -some work better than others and the ones that work deserve greater weight in policy debates than the ones that do not. Economics' great strength is that it is a concise and powerful theory that explains the world remarkably well. Those who ignore its insights are doomed to fail.

Science fiction author Robert Heinlein coined the phrase "TANSTAAFL" as a shorthand way of saying "There Ain't No Such Thing As A Free Lunch" in his classic 1966 science fiction novel The Moon is a Harsh Mistress, in which he described a revolution by residents of lunar colonies against oppressive governments on Earth in 2076.6 Heinlein had the revolutionaries emblazon TANSTAAFL on their flag and wove the principle through the free lunar society he imagined-a place where even air cost people money.

"No free lunch" means that everything costs something. Everything. No exceptions. At a minimum, if I spend my time doing one activity, I cannot spend that time doing something else. Economists refer to the idea that resources devoted to one activity are unavailable for other activities as "opportunity cost." If we do X, we cannot use those resources to do Y. The failure to recognize that there is an opportunity cost to committing resources to any given use can have disastrous consequences because when we do not recognize that our actions have costs we cannot intelligently consider our alternatives. And if we cannot assess the costs and benefits of our alternatives, we cannot make reasoned choices among them.7 In short, tradeoffs matter, and we need to pay attention to them.

## 1NR

### AT: No Obama Leverage

#### He’s still got leverage---their ev’s just GOP rhetoric

Miller 1/2 Emily is a writer for The Washington Times. “MILLER: Obama’s checkmate,” 2013, http://www.washingtontimes.com/news/2013/jan/2/obamas-checkmate/

President Obama’s objective in the “fiscal cliff” battle was make Republicans break their pledge not to raise taxes. The GOP entered the game with the goal of winning real spending cuts and no higher tax rates. They lost on both counts as the lame-duck session of Congress came to a close minutes before the stroke of midnight on New Year's Day. Over the next 10 years, the deal they approved will hike taxes and spending, adding nearly $4 trillion in red ink. Mr. Obama gloated over his victory just before walking across the South Lawn to return to his vacation in Hawaii. “A central promise of my campaign for president was to change the tax code that was too skewed toward the wealthy at the expense of working middle-class Americans,” he said. “Tonight we’ve done that.”¶ The measure, which raises taxes on small businesses and individuals who make over $400,000 a year, passed on a bipartisan vote in both chambers. Republicans were split. In all, 151 rank-and-file House Republicans declined to go along with Speaker John A. Boehner in supporting the bill with Majority Leader Eric Cantor and Majority Whip Kevin McCarthy among the highest profile “no” votes. In the Senate, Minority Leader Mitch McConnell lost five of his members: Sens. Chuck Grassley of Iowa, Mike Lee of Utah, Rand Paul of Kentucky, Marco Rubio of Florida and Richard Shelby of Alabama. Mr. Paul explained his position before the Senate voted in the wee hours Tuesday morning by saying, “We’re going to raise taxes. We’re going to raise spending. Tell me what’s good about that.”¶ Spending goes up by $300 billion over 10 years in the final deal, and the $110 billion sequestration is punted for another two months. Congress is once again delaying the spending cuts it had agreed to in August 2011 in exchange for lifting the country’s borrowing limit by more than $2 trillion. As is standard operating procedure in Washington, the borrowing was immediate, while the “cuts” were phased in over 10 years. Predictably, the cuts effectively won’t happen as net spending will surely rise this year.¶ While Grover Norquist said Republicans didn’t break their pledge not to raise taxes, he’s offering an escape based on a technicality. Republican leaders strategically scheduled votes in both chambers after going over the cliff at midnight on Dec. 31 so they could say they only voted to cut taxes while the upper levels reverted to the Clinton-era rates. Lawmakers who signed the pledge to their constituents to not raise taxes or cut deductions and credits without lowering rates are not showing much integrity by accepting this excuse.¶ On a positive note, the GOP did make the tax rates permanent, limiting the Democratic ability to use this tactic again. The death tax threshold stays at $5 million, indexed for inflation, and the alternative minimum tax is fixed for good.¶ Republican leaders insist their strategy is to leverage this deal to fight for spending restraint when the sequestration returns, the current continuing resolution runs out and the debt ceiling is hit. Mr. Obama pre-empted the GOP Tuesday night by declaring, “We can’t simply cut our way to prosperity.” Actually, we can, but this deal showed Mr. Obama has what it takes to win the endgame. It’s a bad move for the nation’s economic recovery.

#### Fiscal cliff deal preserved leverage---big win for Obama

Politico 1/2 By JOHN BRESNAHAN, CARRIE BUDOFF BROWN, MANU RAJU and JAKE SHERMAN. “The fiscal cliff deal that almost wasn't,” 2013, http://www.politico.com/story/2013/01/the-fiscal-cliff-deal-that-almost-wasnt-85663.html

But Obama decided not to walk away from negotiations, despite earlier claims by his aides that he would be willing to go over the cliff. Biden emerged as a key voice in encouraging the president to stay on track with a deal.¶ The president did not believe the dynamic would suddenly shift in his favor after Jan. 1, rejecting the conventional wisdom in Washington that all sides would have more flexibility after higher tax rates took effect. Republicans were no more likely to compromise after the deadline than before it, the White House concluded. And there was a very real fear that a resolution wouldn’t come for weeks, perhaps not before the country hit the debt limit in late February — a nightmare scenario that the president believed would destroy not only his leverage but also the still-fragile economy.¶ The chaos on New Year’s Day in the House validated the president’s strategy to find a solution now, White House aides said.¶ Despite the ugly process and bruised relations, the West Wing thinks it won big.¶ “Today’s agreement enshrines, I think, a principle into law that will remain in place for as long as I am president,” Obama said after the House voted. “The deficit needs to be reduced in a way that is balanced. Everyone pays their fair share. Everyone does their part. That is how our economy works best. That is how we grow.”¶ The bipartisan package allows taxes to rise on American households for the first time in a generation, marking a 180-degree Republican shift from the 2011 debt limit showdown when the GOP balked at closing corporate jet loopholes worth a couple billion dollars. The bill is a wild swing: It raises revenue by $620 billion and cuts spending by only $12 billion

### AT: Gun Control

#### Debt ceiling’s before gun control

LA Times 12/31 Kathleen Hennessey and David Lauter. “Obama wins 'fiscal cliff' victory, but at high cost,” 2012, http://articles.latimes.com/2012/dec/31/nation/la-na-fiscal-cliff-analysis-20130101

The agreement to freeze income tax rates for most Americans while allowing them to rise for the wealthiest dealt only with the most pressing elements of the fiscal storm Congress and the president created last year. A newly elected Congress will begin work in a few days and immediately will need to start negotiating yet another deal. That next fight will be aimed at further reducing the long-term deficit and raising the debt ceiling before the government runs out of money to pay its bills — a deadline that will hit sometime in late February or March.¶ The persistent battle over spending, which already has consumed Washington for two years, threatens to block Obama's other major legislative priorities, including immigration reform and gun control.

### AT: No Link

#### Obama gets blame

Wallison 3 Resident Fellow @ A.E.I. “A Power Shift No One Noticed”, AEI Online, 1-1, http://www.aei.org/publications/pubID.15652/pub\_detail.asp

To be sure, the president had appointed the chairman and the other members of the SEC, but that in itself would not make him blameworthy unless one assumed that he was also directly responsible for how the SEC acted before, and after, the scandals erupted. That is the nub of the important but largely unnoticed change that has occurred: the unchallenged assumption on the part of **all parties**--in Congress, in the media, among the public, and even in the White House itself--that the president was **fully accountable for an agency** that has always been viewed as independent.¶ The significance of this change in the grand government scheme of things can **hardly be overstated**. Without legislation or judicial decision, the president has suddenly become **electorally responsible** for the decisions of bodies that were considered to be within the special purview of Congress, susceptible only to congressional policy direction. Of course, this functional revolution did not give the president any new powers with respect to the independent regulatory agencies. But the **die is now cast**. The way the American people look at the president's responsibilities apparently is changing, and that will affect the **attitude of Congress**. If the American people believe that the president should be responsible for the actions of the SEC, it will be **difficult to convince them otherwise**. Significantly, since Harvey Pitt's resignation as SEC chairman in November, the media have routinely referred to the president's choice to head the SEC, investment banker William H. Donaldson, as a member of the Bush "economic team."

### AT: Don’t Spend Money

#### No turns---every energy policy is polarizing

Whitman 12 Christine Todd is a CASEnergy Co-Chair, Former EPA Administrator and New Jersey Governor, “Nuclear Power Garners Bipartisan Support,” August 13, http://energy.nationaljournal.com/2012/08/finding-the-sweet-spot-biparti.php?rss=1&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+njgroup-energy+%28Energy+%26+Environment+Experts--Q+with+Answer+Previews%29#2237728

It’s clear from the debate around the merits and drawbacks of various electricity and fuel sources that energy policy can be a **highly polarizing topic.** In fact, it’s arguable that there is no energy option that holds a truly bipartisan appeal: Every form of energy faces pockets of dissent. This makes crafting universally accepted energy policy particularly **challenging.**

#### Plan causes a firestorm

Las Vegas Sun 11-11 --- Will Republicans play ball on Obama’s lofty second-term agenda?http://www.lasvegassun.com/news/2012/nov/11/will-republicans-play-ball-obamas-lofty-second-ter/ (NOTE: \*\*Damore = UNLV professor David Damore )

But the phrase “cap-and-trade” makes conservatives see almost as much red as the name Nancy Pelosi. Plus, large swaths of the country — including some longtime Democrats — are beginning to doubt that there’s any real payoff to renewable energy investments. “It’s a lot of hocus-pocus,” said Nick Taylor, 42, a lifelong Las Vegas Democrat and single father of seven who voted for Romney. He used to have a job constructing solar panels with Bombard Electric. “We all made a lot of money doing it, but now the systems don’t work. ... Those are garbage now.” That’s left many lawmakers thinking the status quo may be better than the compromise. “Energy — that just divides the parties so much, and it’s something that the public isn’t really sold on,” Damore said, explaining that despite the arched rhetoric on both sides, **the feeling of urgency is still too weak to push the parties to work something out. “**Clean energy was sold as job creation, and now that doesn’t seem to have happened .. and it's not like the oil and gas industry is going anywhere.”

### AT: GOP Link Turn

#### The GOP will raise hell over the plan---link turns don’t assume partisanship

Leone 12 Steve is the Associate Editor of Renewable Energy World. “Part 2: Political Reality and the Way Forward for Renewable Energy,” April 3, http://www.renewableenergyworld.com/rea/news/article/2012/04/part-2-political-reality-and-the-way-forward-for-renewable-energy

In Washington, it’s hard enough to craft legislation even in relatively amicable times. In the tense atmosphere on the Hill today, meaningful legislation takes a ringside seat, and **the game becomes theater.**¶ That’s where we are now. In one corner is the House budget, essentially the Republican Party’s line in the sand that’s been drawn over the size of the federal government. A key component of this is the federal government’s more limited role in supporting a clean energy future. In the other corner is the White House and the Democrat-controlled Senate, which has vowed to stonewall any legislation that it says caters to the super-wealthy and the entrenched fossil fuels industry.¶ Like two tired boxers in the ring, they’re content to leave it in the hands of the judges — in this case the voters, who will in many ways determine the force with which our federal government pursues a national policy built on clean energy. But the real prospects for any meaningful legislation is likely to come after the election, when the rhetoric cools and when political capital comes due. Until then, most industry observers don’t expect much chance of any real federal renewable energy legislation passing through a divided Congress. That means no Clean Energy Standard, no revival of the 1603 Treasury grant program, no extension of the Production Tax Credit until the end of the year at the earliest.¶ There are just too few vehicles that can be used to pass any of the measures, and **too little trust** between key negotiators to find find common ground. One of the last best hopes — the transportation bill — included an amendment that addressed some of these concerns. Ultimately, the amendment went nowhere, and the renewable industry was left looking months down the road to when something could get resolved.¶ The question now is will it be too late. For 1603 to be brought back to life, it would require a major shift in thinking, especially in the House. The PTC has a better shot, but international players in the wind industry are already indicating that they’ll get out of the market if the credit tied to energy produced expires. Will they wait around until the end of the year to see if it can be revived**? It’s increasingly looking like the answer may be no.**

#### Their internal lnk concludes PC is key, NOT Corker – next paragraph

Jack McElroy, ed. News Sentinel, 10-21-2012, “Maybe we should jump off fiscal cliff,” Knox News, http://www.knoxnews.com/news/2012/oct/21/jack-mcelroy-maybe-we-should-jump-off-fiscal/?print=1

Entitlements, not discretionary spending, are the problem, the senators agree. "We've got 30 percent of the budget under control," said Alexander. But spending on programs such as Medicare is outstripping the rate of inflation. Correcting that will take presidential leadership, they say. Naturally, as Republicans, they think that leadership would be more likely to come from Mitt Romney. But they don't rule out the possibility of reaching a solution with Barack Obama still in the White House. Corker says it would be in Obama's "self-interest" to tackle the problem, and he wouldn't be worrying about re-election any longer, either. The two also agree that revenue will have to increase. That, Corker says, can result from sweeping tax reform that does away with many of the tax code's $1.2 trillion in exemptions in exchange for lower marginal tax rates overall. In any case, the senators believe the United States is just one solid reform package away from returning to fiscal integrity and global economic leadership.

#### Corker’s opposed to renewables

SolarServer, 2-24-2011, “U.S. Senators introduce bill to limit re-allocation of transmission costs,” http://www.solarserver.com/solar-magazine/solar-news/current/2011/kw08/us-senators-introduce-bill-to-limit-re-allocation-of-transmission-costs.html

On February 17th, 2011, five U.S. Senators introduced a bill that would prevent the U.S. Federal Energy Regulatory Commission (FERC) from spreading the costs of interstate transmission for renewable energy projects to utility customers over a larger area. The bill's authors contend that such a move would present an unfair cost to utility customers in areas not served by the projects for which new transmission is needed. “We need federal policies that promote viable domestic energy production and innovation in the fairest, most cost-effective manner possible,” said U.S. Senator Bob Corker (R-TN). “Governors and utilities from across the country have spoken out against FERC’s attempt to shift transmission costs from states that benefit to those that don’t.” Bill to block pending FERC rule The bill would block a proposed FERC rule, due to be issued in final form this Spring, that the Congressional Quarterly estimates would re-allocate billions of dollars in transmission line construction and upgrade costs from wind and solar projects among a wider area of utility customers.

### AT: PC Not Key---Top Level

#### PC is key and zero sum---best scholarship proves

Matthew N. Beckmann and Vimal Kumar 11, Profs Department of Political Science, @ University of California Irvine "How Presidents Push, When Presidents Win" Journal of Theoretical Politics 2011 23: 3 SAGE

Before developing presidents’ lobbying options for building winning coalitions on Capitol Hill, it is instructive to consider **cases where the president has no political capital** and no viable lobbying options. In such circumstances of **imposed passivity** (beyond offering a proposal), **a president’s fate is clear**: his proposals are subject to pivotal voters’ preferences. So if a president lacking political capital proposes to change some far-off status quo, that is, one on the opposite side of the median or otherwise pivotal voter, a (Condorcet) winner always exists, and it coincides with the pivot’s predisposition (Brady and Volden, 1998; Krehbiel, 1998) (see also Black (1948) and Downs (1957)). Considering that there tends to be substantial ideological distance between presidents and pivotal voters, positive presidential inﬂuence without lobbying, then, is not much inﬂuence at all.¶ As with all lobbyists, presidents looking to push legislation must do so indirectly by **push**ing the **lawmakers whom they need to pass it**. Or, as Richard Nesustadt artfully explained:¶ The essence of a President’s persuasive task, with congressmen and everybody else, is to induce them to believe that what he wants of them is what their own appraisal of their own responsibilities requires them to do in their interest, not his…Persuasion deals in the coin of self-interest with men who have some freedom to reject what they ﬁnd counterfeit. (Neustadt, 1990: 40) ¶ Fortunately for contemporary presidents, today’s White House affords its occupants an unrivaled supply of **persuasive carrots and sticks**. Beyond the ofﬁce’s unique visibility and prestige, among both citizens and their representatives in Congress, presidents may also **sway lawmakers** by using their discretion in budgeting and/or rulemaking, unique fundraising and campaigning capacity, control over executive and judicial nominations, veto power, or numerous other options under the chief executive’s control. Plainly, when it comes to the arm-twisting, brow-beating, and horse-trading that so often characterizes legislative battles, modern presidents are uniquely well equipped for the ﬁght. In the following we employ the omnibus concept of ‘presidential political capital’ to capture this conception of presidents’ positive power as persuasive bargaining.¶ Speciﬁ- cally, we deﬁne presidents’ political capital as the **class of tactics White House ofﬁcials employ to induce changes in lawmakers’ behavior.**¶Importantly, this conception of presidents’ positive power as persuasive bargaining not only **meshes with previous scholarship** on lobbying (see, e.g., Austen-Smith and Wright (1994), Groseclose and Snyder (1996), Krehbiel (1998: ch. 7), and Snyder (1991)), but also **presidential practice.** For example, Goodwin recounts how President Lyndon Johnson routinely allocated ‘rewards’ to ‘cooperative’ members:¶ The rewards themselves (and the withholding of rewards) . . . might be something as unobtrusive as receiving an invitation to join the President in a walk around the White House grounds, knowing that pictures of the event would be sent to hometown newspapers . . . [or something as pointed as] public works projects, military bases, educational research grants, poverty projects, appointments of local men to national commissions, the granting of pardons, and more. (Goodwin, 1991: 237) Of course, **presidential political capital is a scarce commodity with a ﬂoating value**. Even a favorably situated president enjoys only a **ﬁnite supply of political capital**; **he can only promise or pressure so much**. What is more, this capital **ebbs and ﬂows as realities and/or perceptions change**. So, similarly to Edwards (1989), we believe presidents’ bargaining resources cannot fundamentally alter legislators’ predispositions, but rather operate ‘at the margins’ of US lawmaking, **however important those margins may be** (see also Bond and Fleisher (1990), Peterson (1990), Kingdon (1989), Jones (1994), and Rudalevige (2002)). Indeed, our aim is to explicate those margins and show how **presidents may systematically inﬂuence them.**

### Yes Impact to Economy

**We have strong statistical support---their defense doesn’t account for global crises**

**Royal 10** Jedediah, Director of Cooperative Threat Reduction at the U.S. Department of Defense, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

Less intuitive is how **periods of economic decline** may **increase the likelihood of external conflict**. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin, 1981) that leads to **uncertainty about power balances, increasing the risk of miscalculation** (Fearon, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner, 1999). Separately, Pollins (1996) **also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers**, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that ‘future expectation of trade’ is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However**, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases**, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, **others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict**, particularly during periods of economic downturn. They write, **The linkages between internal and external conflict and prosperity are strong and mutually reinforcing.** Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002, p. 89)Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. ‘Diversionary theory’ suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a ‘rally around the flag’ effect. Wang (1996), DeRouen (1995), and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, **recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels**.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention. This observation is not contradictory to other perspectives that link economic interdependence with a decrease in the likelihood of external conflict, such as those mentioned in the first paragraph of this chapter. Those studies tend to focus on dyadic interdependence instead of global interdependence and do not specifically consider the occurrence of and conditions created by economic crises. As such, the view presented here should be considered ancillary to those views.

### AT: Winners Win---Top Level

#### Obama’s Velcro---only blame sticks to him---means winners lose---healthcare proves

Nicholas & Hook 10 Peter and Janet, Staff Writers---LA Times, “Obama the Velcro president”, LA Times, 7-30, http://articles.latimes.com/2010/jul/30/nation/la-na-velcro-presidency-20100730/3

If Ronald Reagan was the classic Teflon president, Barack **Obama is made of Velcro**.¶ Through two terms, Reagan eluded much of the responsibility for recession and foreign policy scandal. In less than two years, Obama has become **ensnared in blame**.¶ Hoping to better insulate Obama, White House aides have sought to give other Cabinet officials a higher profile and additional public exposure. They are also crafting new ways to explain the president's policies to a skeptical public.¶ But Obama remains **the colossus of his administration** — to a point where trouble anywhere in the world is often his to solve.¶ The president is on the hook to repair the Gulf Coast oil spill disaster, stabilize Afghanistan, help fix Greece's ailing economy and do right by Shirley Sherrod, the Agriculture Department official fired as a result of a misleading fragment of videotape.¶ **What's not sticking to Obama is a legislative track record that his recent predecessors might envy. Political dividends from passage of a healthcare overhaul or a financial regulatory bill have been fleeting.¶** Instead, voters are measuring his presidency by a more immediate yardstick: Is he creating enough jobs? So far the verdict is no, and that has taken a toll on Obama's approval ratings. Only 46% approve of Obama's job performance, compared with 47% who disapprove, according to Gallup's daily tracking poll.¶ "I think the accomplishments are very significant, but I think most people would look at this and say, 'What was the plan for jobs?' " said Sen. Byron L. Dorgan (D-N.D.). "The agenda he's pushed here has been a very important agenda, but it hasn't translated into dinner table conversations."

#### Can’t win on energy

Eisler 12 Matthew is a Researcher @ the Chemical Heritage Foundation. “Science, Silver Buckshot, and ‘All of The Above’” April 2, http://scienceprogress.org/2012/04/science-silver-buckshot-and-%E2%80%9Call-of-the-above%E2%80%9D/

Conservatives take President Obama’s rhetoric at face value. Progressives see the president as disingenuous. No doubt White House planners regard delaying the trans-border section of the Keystone XL pipeline and approving the Gulf of Mexico portion as a stroke of savvy realpolitik, but one has to wonder whether Democratic-leaning voters really are as gullible as this scheme implies. And as for the president’s claims that gasoline prices are determined by forces beyond the government’s control (speculation and unrest in the Middle East), it is probably not beyond the capacity of even the mildly educated to understand that the administration has shown little appetite to reregulate Wall Street and has done its part to inflate the fear premium through confrontational policies in the Persian Gulf. Committed both to alternative energy (but not in a rational, comprehensive way) and cheap fossil fuels (but not in ways benefiting American motorists in an election year), President **Obama has accrued** no political capital **from his energy policy from either the left or the right** by the end of his first term.¶ The president long ago lost the legislative capacity for bold action in practically every field, including energy, but because the GOP’s slate of presidential candidates is so extraordinarily weak in 2012, he may not need it to get re-elected. At least, that is the conventional wisdom in Democratic circles. Should President Obama win a second term, Congress is likely to be **even more hostile** than in his first term, as in the Clinton years. And as in the Clinton years, that will probably mean four more years of inaction and increased resort to cant.

# Case

## 1NC

#### Ethical policymaking requires calculation of consequences

**Gvosdev 5** – Rhodes scholar, PhD from St. Antony’s College, executive editor of The National Interest (Nikolas, The Value(s) of Realism, SAIS Review 25.1, pmuse)

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

#### Deontology collapses into util

Schuck 8 – PROFESSOR OF LAW AT YALE --- Peter H. Schuck, the Simeon E. Baldwin Professor of Law at Yale University, Fall 2008, “The Morality of Immigration Policy,” San Diego Law Review, 45 San Diego L. Rev. 865, p. lexis

That said, I believe that any deontological claim in the realm of practical or applied ethics, the subject of this Article, must ultimately devolve for its proof on some set of consequentialist claims. n4 If the content of what is right-in-itself is, say, some notion of human flourishing, then in assessing a policy alternative in light of that norm, it becomes necessary at some point to defend that alternative in consequentialist terms by showing that certain conduct does, or does not, in fact conduce to human flourishing, however defined. If one seeks to justify a law permitting gay marriage, for example, as moral action on deontological grounds because it instantiates the value of, say, dignity or equality, then at some pivotal point in the argument one must show that the law's effects will in fact promote the dignity or equality of the couple - perhaps by giving them as much pleasure or self-respect as other couples receive from marriage. The deontological claim may constrain the kinds of consequences that are relevant to its justification, but once the claim is elaborated conceptually and normatively as deeply as the analysis permits, the claim's validity must ultimately rest on propositions about its actual effects in the real world. n5

[\*869] By adopting a consequentialist approach, I emphatically do not dismiss the importance of deontological approaches. Indeed, consequentialism would be less attractive without an underlying, perhaps deontological, conception of the good. n6 Deontological approaches help us to decide which ends we wish to pursue a priori. I do not, therefore, subscribe to consequentialism monistically. I simply argue that as a descriptive matter, consequentialism can shed much light on which among the competing ends we should choose. As Shelly Kagan notes, "the goodness of an act's consequences is at least one morally relevant factor in determining the moral status of that act," but the goodness of consequences requires a theory of the good to ground the comparison. n7

#### Moral absolutism undermines political effectiveness and causes political paralysis

Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University, Spring 2002, Dissent, Vol. 49, No. 2

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### AT: Racism

#### Voting on racism is counterproductive—policymakers and citizens have obligations to the greater good

Bradley, PhD in philosophy, 9**—**Research fellow, Acton Institute. Visiting professor of theology at The King's College. His dissertation explores the intersection of black liberation theology and economics. Bachelor of Science in biological sciences from Clemson University, a Master of Divinity from Covenant Theological Seminary, and a Doctor of Philosophy degree from Westminster Theological Seminary (Anthony, The Enduring Foolishness of Racial Politics, 15 October 2008, http://www.acton.org/commentary/480\_foolishness\_of\_racial\_politics.php)

With only a few weeks to Election Day, racial politics has reared its pathetic head as pundits attempt to decipher poll numbers and audience comments at political rallies. It seems silly to imagine that adults in America may vote along racial lines but it should come as no surprise. Many people on the ideological margins of society vote irrationally. In fact, voting along racial lines says less about racism than it does about the lack of mature civic responsibility among voters who are indifferent to the nation’s common good.

While using race as an ultimate criterion for supporting or rejecting a candidate is equally unjustifiable and shallow, the possibility of doing exactly that is one of the trade-offs of being free. Positively, freedom permits us to choose a candidate according to important issues such as his or her positions on abortion, the role of government in meeting the needs of the poor, foreign policy, and education. I am happy to live in a country with this type of liberty rather than a regime where I have no role in choosing leaders to represent me.

When I hear African Americans, Latinos, and Asians lament, “It’s 2008 and racism still exists in America,” I want to shout, “What fairytale were you reading that said racism would ever cease?” One of the historic tenets of Judeo-Christianity, along with many other religions, is that evil exists in the world. As long as people lack the moral formation to escape it, there will always be racism.

What is most alarming about the media’s recent displays of racial politics is that many American voters do not have the civic virtue to put their personal racial views aside for the sake of what is best for the nation. Race does not determine a person’s position on issues. Do Maxine Waters and Condoleezza Rice think alike simply because they are both black women? Shallow voting is the art of the imperceptive.

In light of the gargantuan issues facing the nation—the conflicts in the Middle East, the nationalization of American banking, transitions in our use of energy, new international partnerships among socialist regimes in Europe, Latin America, and Asia, and the multi-layered issues in Africa—we should be embarrassed as a nation for the world to see people downgrade the presidential election to gene preferences.

What Americans must embrace is their responsibility as virtuous citizens concerned about the common good. This means that we put non-essential issues like race aside, to choose a candidate with the character and competence necessary to offer leadership on the pressing issues of our times.

#### War is the root cause of racism

Mertus, ethics prof, 99 – Professor and co-director of the Ethics and Peace program, American University's School of International Service (Julie, The Role of Racism as a Cause or Factor in Wars and Civil Conflict, International Council on Human Rights Policy, http://www.ichrp.org/paper\_files/112\_w\_01.pdf)

The war impacted on national identity in three ways. First, it accomplished the complete demonization of other nations and national groups. Initially, state-controlled propaganda machines broadcast stories of the “other’s” inhumanity. Overtime many witnesses and victims of acts of great cruelty began to tell their story – and their neighbours listened. Second, war hastened physical national segregation. People who had been forced to leave their villages and cities because of their national background now crowded into new cities, creating new enclaves of “their own people.” Segregation exploited and reinforced otherness. Finally, war closed the ranks. People throughout the former Yugoslavia were forced to decide who they were among three narrow choices: Serb, Croat, or Muslim. This left four categories of people without an identity: those of mixed parentage or marriage; those who were of another national identity, such as Albanian or Hungarian; those who wanted to identify themselves as something else, either above the nation, such as European, or below the nation, such as a member of a particular neighbourhood or organisation; and those who wanted out of the labelling process altogether. Those who failed to make a choice usually left the country (if they could) or fell silent; a few stubbornly fought back, despite the extreme backlash against anything different and potentially challenging to the nation. II. Characteristics of Conflicts with Racial Dimension: Roles of Racism The above discussion demonstrates a primary characteristic of conflicts with a racial dimension. Political mobilisation linked to real and imagined group differences arises where the state’s administrative structures and legal institutions distribute scarce resources based on ethnic/national differences. The problem is particularly acute where, as in Rwanda and Yugoslavia, lead positions in military and police forces are distributed based on group identity.20 Yugoslavia and Rwanda are textbook examples of cases in which the controlling entity (the state, the party, the colonial entity) “for its own administrative convenience and in order to improve control over local élites, may select certain ethnic élites and organisations as collaborators or channels for the transmission of 7 government patronage.”21 This favouritism based on group identity serves to polarise societies and, additionally, to institutionalise and make acceptable intra-group suspicion and hatred. In Rwanda and Kosovo, polarisation and racism played a role, not as the root cause of conflict, but as a tool of élites. In both Rwanda and Kosovo, many of those who participated in the propaganda inciting racism, were intellectuals.22 It is characteristic of conflicts with a racist dimension that élites have the ability to manipulate racism because of other conditions in-country, such as: structural poverty, unmet human development needs, comparative deprivation of one group to another, media manipulation of misunderstandings among the general populace, and the absence of human rights, the rule of law and civil and political institutions encouraging citizen participation. Where a group perceives a threat to its interests and values, rising counter-élites find playing the racist/nationalist/ chauvinist card a particularly useful tool to assert a right to rule to protect the “true” national or ethnic interest. In Rwanda and Kosovo, extremist élites played upon the deep fears and frustrations of the populace.

### Grid Turn

#### Renewables in the US are low now--- a massive expansion collapses the utility industry--- causes price spike and turns case

King 12/21 Byron King - studied geology @ Harvard, JD Pittsburgh, advanced degree from U.S. Naval War College, Advised DoD on national energy policy. December 21, 2012 "Byron King's Shocking 2013 Predictions," seekingalpha.com/article/1077281-byron-king-s-shocking-2013-predictions?source=intbrokers\_regular<http://seekingalpha.com/article/1077281-byron-king-s-shocking-2013-predictions?source=intbrokers_regular>

TER: The green energy sector is in the midst of hard times. It's had more downs than ups during the past few years. How would you characterize alternative energies right now?

BK: The renewable energy space has been very frustrating for most investors. It's not to say that you can't produce energy using solar, wind or geothermal. Of course you can. But it gets back to that well-known critique about how, when the wind doesn't blow, you have no power. When the sun doesn't shine, you have no power. What's the answer?

Europe has a lot of wind and solar power. It creates so much power during windy and sunny times that it actually disrupts the fossil fuel baseload within Europe. Yet, for every windmill and solar field, Europe still needs fossil fuel backups to kick on if the alternative source goes down. This kind of overdevelopment of so-called renewables may feel good to the green side, but it has completely disrupted the economics of a lot of utilities across Europe. Many European utilities have ceased being investment-grade assets.

We haven't built renewables to that scale in the U.S. If we do, we would have a similar problem. Rapid overbuilding of green power will degrade the investment quality of many public utilities, which are among the few things that pension funds and institutions can still count on. It's something that investors need to keep an eye on. We blew up the stock market in 2008 with a housing meltdown. Do we want to risk blowing up the market again with a utility meltdown? We're not there yet, but we could be on that track.

### Death First

#### Preventing death is the first ethical priority – it’s the only impact you can’t recover from.

Zygmunt **Bauman,** University of Leeds Professor Emeritus of Sociology, 1995, Life In Fragments: Essays In Postmodern Morality, p. 66-71

The being‑for is like living towards‑the‑future: a being filled with anticipation, a being aware of the abyss between future foretold and future that will eventually be; it is this gap which, like a magnet, draws the self towards the Other,as it draws life towards the future, making life into an activity of overcoming, transcending, leaving behind. The self stretches towards the Other, as life stretches towards the future; neither can grasp what it stretches toward, but it is in this hopeful and desperate, never conclusive and never abandoned stretching‑toward that the self is ever anew created and life ever anew lived. In the words of M. M. Bakhtin, it is only in this not‑yet accomplished world of anticipation and trial, leaning toward stubbornly an‑other Other, that life can be lived ‑ not in the world of the `events that occurred'; in the latter world, `it is impossible to live, to act responsibly; in it, I am not needed, in principle I am not there at all." Art, the Other, the future: what unites them, what makes them into three words vainly trying to grasp the same mystery, is the modality of possibility. A curious modality, at home neither in ontology nor epistemology; itself, like that which it tries to catch in its net, `always outside', forever `otherwise than being'. The possibility we are talking about here is not the all‑too‑familiar unsure‑of‑itself, and through that uncertainty flawed, inferior and incomplete being, disdainfully dismissed by triumphant existence as `mere possibility', `just a possibility'; possibility is instead `plus que la reahte' ‑ both the origin and the foundation of being. The hope, says Blanchot, proclaims the possibility of that which evades the possible; `in its limit, this is the hope of the bond recaptured where it is now lost."' The hope is always the hope of *being fu filled,* but what keeps the hope alive and so keeps the being open and on the move is precisely its *unfu filment.* One may say that the paradox *of hope* (and the paradox of possibility founded in hope) is that it may pursue its destination solely through betraying its nature; the most exuberant of energies expends itself in the urge towards rest. Possibility uses up its openness in search of closure. Its image of the better being is its own impoverishment . . . The togetherness of the being‑for is cut out of the same block; it shares in the paradoxical lot of all possibility. It lasts as long as it is unfulfilled, yet it uses itself up in never ending effort of fulfilment, of recapturing the bond, making it tight and immune to all future temptations. In an important, perhaps decisive sense, it is selfdestructive and self‑defeating: its triumph is its death. The Other, like restless and unpredictable art, like the future itself, is a *mystery.* And being‑for‑the‑Other, going towards the Other through the twisted and rocky gorge of affection, brings that mystery into view ‑ makes it into a challenge. That mystery is what has triggered the sentiment in the first place ‑ but cracking that mystery is what the resulting movement is about. The mystery must be unpacked so that the being‑for may focus on the Other: one needs to know what to focus on. (The `demand' is *unspoken,* the responsibility undertaken is *unconditional;* it is up to him or her who follows the demand and takes up the responsibility to decide what the following of that demand and carrying out of that responsibility means in practical terms.) Mystery ‑ noted Max Frisch ‑ (and the Other is a mystery), is an exciting puzzle, but one tends to get tired of that excitement. `And so one creates for oneself an image. This is a loveless act, the betrayal." Creating an image of the Other leads to the substitution of the image for the Other; the Other is now fixed ‑ soothingly and comfortingly. There is nothing to be excited about anymore. I know what the Other needs, I know where my responsibility starts and ends. Whatever the Other may now do will be taken down and used against him. What used to be received as an exciting surprise now looks more like perversion; what used to be adored as exhilarating creativity now feels like wicked levity. Thanatos has taken over from Eros, and the excitement of the ungraspable turned into the dullness and tedium of the grasped. But, as Gyorgy Lukacs observed, `everything one person may know about another is only expectation, only potentiality, only wish or fear, acquiring reality only as a result of what happens later, and this reality, too, dissolves straightaway into potentialities'. Only death, with its finality and irreversibility, puts an end to the musical‑chairs game of the real and the potential ‑ it once and for all closes the embrace of togetherness which was before invitingly open and tempted the lonely self." `Creating an image' is the dress rehearsal of that death. But creating an image is the inner urge, the constant temptation, the *must* of all affection . . . It is the loneliness of being abandoned to an unresolvable ambivalence and an unanchored and formless sentiment which sets in motion the togetherness of being‑for. But what loneliness seeks in togetherness is an end to its present condition ‑ an end to itself. Without knowing ‑ without being capable of knowing ‑ that the hope to replace the vexing loneliness with togetherness is founded solely on its own unfulfilment, and that once loneliness is no more, the togetherness ( the being‑for togetherness) must also collapse, as it cannot survive its own completion. What the loneliness seeks in togetherness (suicidally for its own cravings) is the foreclosing and pre‑empting of the future, cancelling the future before it comes, robbing it of mystery but also of the possibility with which it is pregnant. Unknowingly yet necessarily, it seeks it all to its own detriment, since the success (if there is a success) may only bring it back to where it started and to the condition which prompted it to start on the journey in the first place. The togetherness of being‑for is always in the future, and nowhere else. It is no more once the self proclaims: `I have arrived', `I have done it', `I fulfilled my duty.' The being‑for starts from the realization of the bottomlessness of the task, and ends with the declaration that the infinity has been exhausted. This is the tragedy of being‑for ‑ the reason why it cannot but be death‑bound while simultaneously remaining an undying attraction. In this tragedy, there are many happy moments, but no happy end. Death is always the foreclosure of possibilities, and it comes eventually in its own time, even if not brought forward by the impatience of love. The catch is to direct the affection to staving off the end, and to do this against the affection's nature. What follows is that, if moral relationship is grounded in the being-for togetherness (as it is), then it can exist as a project, and guide the self's conduct only as long as its nature of a project (a not yet-completed project) is not denied. Morality, like the future itself, is forever not‑yet. (And this is why the ethical code, any ethical code, the more so the more perfect it is by its own standards, supports morality the way the rope supports the hanged man.) It is because of our loneliness that we crave togetherness. It is because of our loneliness that we open up to the Other and allow the Other to open up to us. It is because of our loneliness (which is only belied, not overcome, by the hubbub of the being‑with) that we turn into moral selves. And it is only through allowing the togetherness its possibilities which only the future can disclose that we stand a chance of acting morally, and sometimes even of being good, in the present.

### AT: SVio

#### All forms of structural violence are decreasing

Goklany 9**—**Worked with federal and state governments, think tanks, and the private sector for over 35 years. Worked with IPCC before its inception as an author, delegate and reviewer. Negotiated UN Framework Convention on Climate Change. Managed the emissions trading program for the EPA. Julian Simon Fellow at the Property and Environment Research Center, visiting fellow at AEI, winner of the Julian Simon Prize and Award. PhD, MS, electrical engineering, MSU. B.Tech in electrical engineering, Indian Institute of Tech. (Indur, “Have increases in population, affluence and technology worsened human and environmental well-being?” 2009, http://www.ejsd.org/docs/HAVE\_INCREASES\_IN\_POPULATION\_AFFLUENCE\_AND\_TECHNOLOGY\_WORSENED\_HUMAN\_AND\_ENVIRONMENTAL\_WELL-BEING.pdf)

Although global population is no longer growing exponentially, it has quadrupled since 1900. Concurrently, affluence (or GDP per capita) has sextupled, global economic product (a measure of aggregate consumption) has increased 23-fold and carbon dioxide has increased over 15-fold (Maddison 2003; GGDC 2008; World Bank 2008a; Marland et al. 2007).4 But contrary to Neo- Malthusian fears, average **human well-being,** measured by any objective indicator, **has never been higher**. Food supplies, Malthus’ original concern, are up worldwide. Global food supplies per capita increased from 2,254 Cals/day in 1961 to 2,810 in 2003 (FAOSTAT 2008). This helped reduce hunger and malnutrition worldwide. The proportion of the population in the developing world, suffering from chronic hunger declined from 37 percent to 17 percent between 1969–71 and 2001–2003 despite an 87 percent population increase (Goklany 2007a; FAO 2006). The reduction in hunger and malnutrition, along with improvements in basic hygiene, improved access to safer water and sanitation, broad adoption of vaccinations, antibiotics, pasteurization and other public health measures, helped reduce mortality and increase life expectancies. These improvements first became evident in today’s developed countries in the mid- to late-1800s and started to spread in earnest to developing countries from the 1950s. The infant mortality rate in developing countries was 180 per 1,000 live births in the early 1950s; today it is 57. Consequently, global life expectancy, perhaps the single most important measure of human well-being, increased from 31 years in 1900 to 47 years in the early 1950s to 67 years today (Goklany 2007a). Globally, average **annual per capita incomes tripled** since 1950. The proportion of the world’s population outside of high-income OECD countries living in absolute poverty (average consumption of less than $1 per day in 1985 International dollars adjusted for purchasing power parity), fell from 84 percent in 1820 to 40 percent in 1981 to 20 percent in 2007 (Goklany 2007a; WRI 2008; World Bank 2007). Equally important, the world is more literate and better educated. Child labor in low income countries declined from 30 to 18 percent between 1960 and 2003. In most countries, people are freer politically, economically and socially to pursue their goals as they see fit. More people choose their own rulers, and have freedom of expression. They are more likely to live under rule of law, and less likely to be arbitrarily deprived of life, limb and property. Social and professional mobility has never been greater. It is easier to transcend the bonds of caste, place, gender, and other accidents of birth in the lottery of life. People work fewer hours, and have more money and better health to enjoy their leisure time (Goklany 2007a). Figure 3 summarizes the U.S. experience over the 20th century with respect to growth of population, affluence, material, fossil fuel energy and chemical consumption, and life expectancy. It indicates that population has multiplied 3.7-fold; income, 6.9-fold; carbon dioxide emissions, 8.5-fold; material use, 26.5-fold; and organic chemical use, 101-fold. Yet its life expectancy increased from 47 years to 77 years and infant mortality (not shown) declined from over 100 per 1,000 live births to 7 per 1,000. It is also important to note that not only are people living longer, they are healthier. The disability rate for seniors declined 28 percent between 1982 and 2004/2005 and, despite better diagnostic tools, major diseases (e.g., cancer, and heart and respiratory diseases) occur 8–11 years later now than a century ago (Fogel 2003; Manton et al. 2006). If similar figures could be constructed for other countries, most would indicate qualitatively similar trends, especially after 1950, except Sub-Saharan Africa and the erstwhile members of the Soviet Union. In the latter two cases, life expectancy, which had increased following World War II, declined after the late 1980s to the early 2000s, possibly due poor economic performance compounded, especially in Sub-Saharan Africa, by AIDS, resurgence of malaria, and tuberculosis due mainly to poor governance (breakdown of public health services) and other manmade causes (Goklany 2007a, pp.66–69, pp.178–181, and references therein). However, there are signs of a turnaround, perhaps related to increased economic growth since the early 2000s, although this could, of course, be a temporary blip (Goklany 2007a; World Bank 2008a). Notably, in most areas of the world, the healthadjusted life expectancy (HALE), that is, life expectancy adjusted downward for the severity and length of time spent by the average individual in a less-than-healthy condition, is greater now than the unadjusted life expectancy was 30 years ago. HALE for the China and India in 2002, for instance, were 64.1 and 53.5 years, which exceeded their unadjusted life expectancy of 63.2 and 50.7 years in 1970–1975 (WRI 2008). Figure 4, based on cross country data, indicates that contrary to Neo-Malthusian fears, both life expectancy and infant mortality improve with the level of affluence (economic development) and time, a surrogate for technological change (Goklany 2007a). Other indicators of human well-being that improve over time and as affluence rises are: access to safe water and sanitation (see below), literacy, level of education, food supplies per capita, and the prevalence of malnutrition (Goklany 2007a, 2007b).

#### Nuke war threat is real and o/w structural and invisible violence

Ken Boulding 78 is professor of economics and director, Center for Research on Conflict Resolution, University of Michigan, “Future Directions in Conflict and Peace Studies,” The Journal of Conflict Resolution, Vol. 22, No. 2 (Jun., 1978), pp. 342-354

Galtung is very legitimately interested in problems of world poverty and the failure of development of the really poor. He tried to amalga- mate this interest with the peace research interest in the more narrow sense. Unfortunately, he did this by downgrading the study of inter- national peace, labeling it "negative peace" (it should really have been labeled "negative war") and then developing the concept of "structural violence," which initially meant all those social structures and histories which produced an expectation of life less than that of the richest and longest-lived societies. He argued by analogy that if people died before the age, say, of 70 from avoidable causes, that this was a death in "war"' which could only be remedied by something called "positive peace." Unfortunately, the concept of structural violence was broadened, in the word of one slightly unfriendly critic, to include anything that Galtung did not like. Another factor in this situation was the feeling, certainly in the 1960s and early 1970s, that nuclear deterrence was actually succeeding as deterrence and that the problem of nuclear war had receded into the background. This it seems to me is a most danger- ous illusion and diverted conflict and peace research for ten years or more away from problems of disarmament and stable peace toward a grand, vague study of world developments, for which most of the peace researchers are not particularly well qualified. To my mind, at least, the quality of the research has suffered severely as a result.' The complex nature of the split within the peace research community is reflected in two international peace research organizations. The official one, the International Peace Research Association (IPRA), tends to be dominated by Europeans somewhat to the political left, is rather, hostile to the United States and to the multinational cor- porations, sympathetic to the New International Economic Order and thinks of itself as being interested in justice rather than in peace. The Peace Science Society (International), which used to be called the Peace Research Society (International), is mainly the creation of Walter Isard of the University of Pennsylvania. It conducts meetings all around the world and represents a more peace-oriented, quantitative, science- based enterprise, without much interest in ideology. COPRED, while officially the North American representative of IPRA, has very little active connection with it and contains within itself the same ideological split which, divides the peace research community in general. It has, however, been able to hold together and at least promote a certain amount of interaction between the two points of view. Again representing the "scientific" rather than the "ideological" point of view, we have SIPRI, the Stockholm International Peace Research Institute, very generously (by the usual peace research stand- ards) financed by the Swedish government, which has performed an enormously useful service in the collection and publishing of data on such things as the war industry, technological developments, arma- ments, and the arms trade. The Institute is very largely the creation of Alva Myrdal. In spite of the remarkable work which it has done, how- ever, her last book on disarmament (1976) is almost a cry of despair over the folly and hypocrisy of international policies, the overwhelming power of the military, and the inability of mere information, however good, go change the course of events as we head toward ultimate ca- tastrophe. I do not wholly share her pessimism, but it is hard not to be a little disappointed with the results of this first generation of the peace research movement. Myrdal called attention very dramatically to the appalling danger in which Europe stands, as the major battleground between Europe, the United States, and the Soviet Union if war ever should break out. It may perhaps be a subconscious recognition-and psychological denial-of the sword of Damocles hanging over Europe that has made the European peace research movement retreat from the realities of the international system into what I must unkindly describe as fantasies of justice. But the American peace research community, likewise, has retreated into a somewhat niggling scientism, with sophisticated meth- odologies and not very many new ideas. I must confess that when I first became involved with the peace research enterprise 25 years ago I had hopes that it might produce some- thing like the Keynesian revolution in economics, which was the result of some rather simple ideas that had never really been thought out clearly before (though they had been anticipated by Malthus and others), coupled with a substantial improvement in the information system with the development of national income statistics which rein- forced this new theoretical framework. As a result, we have had in a single generation a very massive change in what might be called the "conventional wisdom" of economic policy, and even though this conventional wisdom is not wholly wise, there is a world of difference between Herbert Hoover and his total failure to deal with the Great Depression, simply because of everybody's ignorance, and the moder- ately skillful handling of the depression which followed the change in oil prices in 1-974, which, compared with the period 1929 to 1932, was little more than a bad cold compared with a galloping pneumonia. In the international system, however, there has been only glacial change in the conventional wisdom. There has been some improvement. Kissinger was an improvement on John Foster Dulles. We have had the beginnings of detente, and at least the possibility on the horizon of stable peace between the United States and the Soviet Union, indeed in the whole temperate zone-even though the tropics still remain uneasy and beset with arms races, wars, and revolutions which we cannot really afford. Nor can we pretend that peace around the temper- ate zone is stable enough so that we do not have to worry about it. The qualitative arms race goes on and could easily take us over the cliff. The record of peace research in the last generation, therefore, is one of very partial success. It has created a discipline and that is something of long-run consequence, most certainly for the good. It has made very little dent on the conventional wisdom of the policy makers anywhere in the world. It has not been able to prevent an arms race, any more, I suppose we might say, than the Keynesian economics has been able to prevent inflation. But whereas inflation is an inconvenience, the arms race may well be another catastrophe. Where, then, do we go from here? Can we see new horizons for peace and conflict research to get it out of the doldrums in which it has been now for almost ten years? The challenge is surely great enough. It still remains true that war, the breakdown of Galtung's "negative peace," remains the greatest clear and present danger to the human race, a danger to human survival far greater than poverty, or injustice, or oppression, desirable and necessary as it is to eliminate these things. Up to the present generation, war has been a cost and an inconven- ience to the human race, but it has rarely been fatal to the process of evolutionary development as a whole. It has probably not absorbed more than 5% of human time, effort, and resources. Even in the twenti- eth century, with its two world wars and innumerable smaller ones, it has probably not acounted for more than 5% of deaths, though of course a larger proportion of premature deaths. Now, however, ad- vancing technology is creating a situation where in the first place we are developing a single world system that does not have the redundancy of the many isolated systems of the past and in which therefore if any- thing goes wrong everything goes wrong. The Mayan civilization could collapse in 900 A.D., and collapse almost irretrievably without Europe or China even being aware of the fact. When we had a number of iso- lated systems, the catastrophe in one was ultimately recoverable by migration from the surviving systems. The one-world system, therefore, which science, transportation, and communication are rapidly giving us, is inherently more precarious than the many-world system of the past. It is all the more important, therefore, to make it internally robust and capable only of recoverable catastrophes. The necessity for stable peace, therefore, increases with every improvement in technology, either of war or of peacex

### AT: Securitization Bad/Predictions Bad

#### Conditional forecasting of specific events are effective

Cochrane 11 John H. Cochrane is a Professor of finance at the University of Chicago Booth School of Business and a contributor to Business Class "IN DEFENSE OF THE HEDGEHOGS" July 15 www.cato-unbound.org/2011/07/15/john-h-cochrane/in-defense-of-the-hedgehogs/

Gardner and Tetlock admire the “foxes” who “used a wide assortment of analytical tools, sought out information from diverse sources, were comfortable with complexity and uncertainty, and were much less sure of themselves… they frequently shifted intellectual gears.” By contrast, “hedgehogs” “tended to use one analytical tool in many different domains, … preferred keeping their analysis simple and elegant by minimizing “distractions” and zeroing in on only essential information.”

There is another very important kind of “forecast” however, and here I think some “hedgehog” traits have an advantage.

Gardner and Tetlock have in mind what economists call “unconditional” forecasting. In this, they are content to use historical correlations to guess what comes next, with no need of structural understanding. We often do this in economic forecasting, and rightly. For example, the slope of the yield curve gives a good signal of whether recessions are coming. But this does not mean that if the government changes that slope it will change the recession. Forcing the weather forecaster to lie will not produce a sunny weekend. Leading indicators, confidence surveys, and more formal regression-based and statistical forecasts all operate this way.

But economics is really concerned with conditional forecasting; predicting the answers to questions such as “if we pass a trillion dollar stimulus, how much more GDP will we get next year?” “If we raise taxes on ‘the rich’, how much less will they work, and how much revenue will we actually raise?” “If the Fed monetizes $600 billion dollars of long-term debt, how much will GDP increase, and much inflation will we get, and how soon?” “If you tell insurance companies they have to take everyone at the same price no matter how sick, how many will sign up for insurance?”

Here we are trying to “predict” the effect of a policy, how much the future will change if a policy is enacted. Despite popular impression, the vast majority of economists spend the vast majority of their time on these sorts of questions, not on unconditional forecasts. Asking the average economist whether unemployment will go down next quarter is about as useless as asking a meteorological researcher who studies the physics of tornadoes whether it will rain over the weekend. He probably doesn’t even have a window in his office.

It was once hoped that really understanding the structure of the economy would also help in the sort of unconditional forecasting that Gardner and Tetlock are more interested in. Alas, that turned out not to be true. Big “structural” macroeconomic models predict no better than simple correlations. Even if you understand many structural linkages from policy to events, there are so many other unpredictable shocks that imposing “structure” just doesn’t help with unconditional forecasting.

But economics can be pretty good at such structural forecasting. We really do know what happens if you put in minimum wages, taxes, tariffs, and so on. We have a lot of experience with regulatory capture. At least we know the signs and general effects. Assigning numbers is a lot harder. But those are useful predictions, even if they typically dash youthful liberal hopes and dreams.

# States CP

#### Text: The fifty states of the United States should subsidize solar construction in Section 8 housing and offer to fill out and permit solar in Section 8 housing at no cost. The fifty states of the United States should offer funding for all families demonstrating an inability to keep their home warm at an “affordable cost” as defined by the Smith evidence.

#### Solves case---empirically proven by multiple states

Salkin 12 (Patricia, Raymond & Ella Smith Distinguished Professor of Law, Associate Dean and Director of the Government Law Center of Albany Law School, “The Key to Unlocking the Power of Small Scale Renewable Energy: Local Land Use Regulation”, 4/1, http://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1564&context=scholarlyworks)

Through their land use control authority, local governments are adopting a variety of ordinances and regulations to ensure that solar, wind, and geothermal energy sources can all be appropriately utilized in a community. 85 Recently scholars have described the potential for local land energy rules as the key to ensuring the successful implementation of a national renewable energy policy. 86 However, this potential must be balanced with the realization that some localities have ordinances that have the effect of inhibiting the installation of renewable energy facilities. 87 As a result, some **states have enacted laws that preserve the right to install and use solar panels despite the local regulatory regime.** For example, the Solar Rights Acts in Florida88 and Arizona89 provide the right to install solar panels, regardless of any local ordinances or community covenants that would otherwise prohibit the installation, and Maryland’s Solar Protection laws require that restrictions not impose an “unreasonable limitation” on the installation of solar collection systems. 90 What follows is a description of a variety of planning and zoning techniques that can be used to advance local policies to encourage the siting of small-scale residential and commercial renewable energy systems.

# Courts CP

## 1NC

#### The United States Supreme Court should rule restrictions on passive solar construction in Section 8 housing unconstitutional on the grounds that it violates the tenth amendment

#### Courts can effectively rule to invalidate restrictions on all forms of energy production

Simon 7 [Christopher A. Simon - Director, Master of Public Administration, Political Science Department, University of Utah, Professor, Political Science, “Alternative Energy: Political, Economic, and Social Feasibility”]

**THE COURTS**

The institutional power of the federal courts regarding energy policy is not ex- plicit in Article III. The role of energy and the intra- and interstate transporta- tion of fuels and electricity in the United States is, for the most part, a late nine- teenth- and early twentieth-century phenomenon. Early energy policy-related cases were argued within the confines of the judiciary’s narrowly defined enu- merated powers. In the late nineteenth century, the court system remained timid in terms of taking energy and material related cases. Post-Loehner (1905). the judiciary showed itself more willing to enter into disputes between state government and citizens. Although the case had nothing to do with en- ergy policy**, the Supreme Court—**by taking the case—opened the doors to the expansion of one of its enumerated Article III powers in a way that more **di- rectly scrunitized policymaking** at the state and local levels and de facto ex- panded the notion that federal court decisions were linked to the national gov- ernment’s supremacy. The 1937 case West Coast Hotel u Parrish confirmed the judiciary’s interest in scrutinizing public policy at all levels of government. Constitutionally, legal theory was now open to an enlarged analysis of the in- terchange between national regulatory powers and policymaking authority and state and local powers. In essence, the Court more fully disclosed acceptance of judicial positivism in method and decision making rather than a strict con- structionist approach.

Over the years, **the courts have had a significant role in energy policy.** The Court has been particularly interested in regulation of safety with regard to energy policy, as safety issues are central to the public good aspect of energy. While not directly related to energy policy. New Jersey Steam Navigation Company v. Merchants' Bank of Boston 47 U.S. 344 (1848) does illustrate the Court's particular and early interest in issues related to energy safety. The case involved the destruction by fire of a steam-operated commercial boat. In the end, the Court sided with the plaintiffs and the decision of a lower court to award damages. The case ultimately turned on the issue of fuel safety as the boat was fitted for wood-burning energy production, but was burning a much hotter “modem” fuel for boats of the time—anthracite coal. Although other deficiencies had been noted in terms of safety equipment that ultimately tied to the issue of the federal court's “admirality jurisdiction,” the case provides early evidence that the Court saw a role for itself in re- viewing aspects of energy safety, particularly in terms of transportation safety—albeit tangentially and quite possibly with little emphasis beyond the nature of the case.

The Court, however, tightened its level of scrutiny in term of energy- related safety issues in Champlin Refining Co. v. Corporation Commission of Oklahoma et al. 286 U.S. 210 (1932). In this case, one of the earliest cases involving the regulation of safety issues **related to petroleum refinement**, the Court dismissed broadly defined environmental restrictions on the extraction and refining of petroleum. In essence, the Court demonstrated that an early state-level effort to protect the environment from the impact of oil drilling and processing could only occur if statutes were written narrowly and were essentially based on scientific principles related to environmental safety. One could argue that by taking the case and deciding it, the Court opened further the door to national regulation of environmental policy as is most di- rectly **related to the issue of energy resource development, processing, and distribution.**

The 1970s, a decade in which the petroleum-based energy paradigm expe- rienced a major shock, saw the Court dealing with two prominent cases re- lated to energy safety issues. In Vermont Yankee Nuclear Power Corp. v. Nat- ural Resources Defense Council, Inc., et alia 435 U.S. 519 (1978), the Court dealt with questions related to “the proper scope of judicial review of the Atomic Energy Commission’s procedures with regards to the licensing of nu- clear power plants.” In lower court decisions, **the commission's rule-making procedures related to nuclear energy fuel management and safety issues were overturned through court decision**. In essence, this would have **opened the door to further court scrutiny of the nuclear energy process** in terms of safety. In a unanimous decision, the late William Rehnquist wrote that the Court of Appeals has improperly developed its own conception of safe reactor process and remanded the case to a lower court to scrutinize the commission’s regu- latory clarity. The case is significant because it effectively maintained nuclear energy policy as viable as long as rule making and regulatory processes gov- erning this form of alternative energy were rationally constructed and com- plete. The Court looked to administrative solutions to any lack of clarity or completeness first but was fairly definitive in removing the judicial system from the process or filling in areas of vagueness or rewriting significant por- tions of regulation and process-related nuclear energy policy.

In the same year, **the Court decided the so-called trans-Alaska pipeline** rate **case**s. The Court sought to clarify rate change **policies related to the shipment of crudc oil and natural gas**. In essence, the Court solidified the authority of Interstate Commerce Commission (ICC) in its efforts to manage the pipeline. The commission’s ability to adjust rates for rational economic reasons and to require pipeline operators to refund excess rate charges to customers was rec- ognized by the Court. The pipeline cases were critical to the legitimacy of the commission’s authority over the transportation of petroleum from Alaska**. In a broader sense, the Court established precedence** of the ICC **to regulate pe- troleum transportation.** Appellate court decision has further solidified its po- sition on pipeline rates in BP West Coast Products, LLC v. Federal Energy Regulatory Commission 376 F. 3d 1223 (2004). The Court was careful to bal- ance this decision in relation to the states’ power to regulate intrastate energy policy issues.

In Exxon Corp. et alia v. Governor of Maryland et alia 437 U.S. 117 (1978), the Court recognized the power of state government to regulate gaso- line markets within its borders. The Court found that neither the interstate commerce clause nor the due process clause of the Fourteenth Amendment were violated by Maryland's regulations on petroleum producers’ ability to establish gas stations and policy efforts to ensure equity within the gasoline market across various corporate concerns operating fueling station in-state. In essence, the Court established a balance between the interests of the national government in regulating energy transportation and use and the interests of the state in advancing goals not inconsistent with national constitutional in- terpretation and national policy priorities.

#### It’s competitive --- doesn’t reduce restrictions, just rules them unenforceable

Treanor & Sperling 93 William - Prof Law at Fordham. Gene - Deputy Assistant to President for Economic Policy. “PROSPECTIVE OVERRULING AND THE REVIVAL OF "UNCONSTITUTIONAL" STATUTES,” Columbia Law Review, Dec 93, lexis

Unlike the Supreme Court, several state courts have explicitly addressed the revival issue. The relevant state court cases have concerned the specific issue of whether a statute that has been held unconstitutional is revived when the invalidating decision is overturned. n42 With one exception, they have concluded that such **statutes are immediately enforceable.**

The most noted instance in which **the revival issue was resolved** by a court involved the District of Columbia minimum wage statute pronounced unconstitutional in Adkins. After the Court reversed Adkins in West Coast Hotel, President Roosevelt asked Attorney General Homer [\*1913] Cummings for an opinion on the status of the District of Columbia's statute. The Attorney General responded,

The decisions are practically in accord in holding that the courts have no power to repeal or abolish a statute, and that notwithstanding a decision holding it unconstitutional a statute continues to remain on the statute books; and that if a statute be declared unconstitutional and the decision so declaring it be subsequently overruled the statute will then be held valid from the date it became effective. n43

Enforcement of the statute followed without congressional action. n44

When this enforcement was challenged, the Municipal Court of Appeals for the District of Columbia in Jawish v. Morlet n45 held that the decision in West Coast Hotel had had the effect of making the statute enforceable. The court observed that previous opinions addressing the revival issue proceed on the principle that **a statute declared unconstitutional is void in the sense that it is inoperative or unenforceable,** but not void in the sense that it is repealed or abolished; that so long as the decision stands the statute is dormant but not dead; and that **if the decision is reversed the statute is valid from its first effective date**. n46

The court declared this precedent sound since the cases were "in accord with the principle "that a decision of a court of appellate jurisdiction overruling a former decision is retrospective in its operation, and the effect is not that the former decision is bad law but that it never was the law.' " n47 Adkins was thus, and had always been, a nullity. The court acknowledged that, after Adkins, it had been thought that the District of Columbia's minimum wage statute was unconstitutional. As the court put it, " "Just about everybody was fooled.' " n48 Nonetheless, the court's view was that since **the** minimum wage **law had always been valid,** although for a period judicially unenforceable, **there was no need to reenact it. n49**

Almost **all other courts that have addressed the issue of whether a statute that has been found unconstitutional can be revived have reached the same result** as the Jawish court, using a similar formalistic [\*1914] analysis. n50 The sole decision in which a court adopted the nonrevival position is Jefferson v. Jefferson, n51 a poorly reasoned decision of the Louisiana Supreme Court. The plaintiff in Jefferson sought child support and maintenance from her husband. She prevailed at the trial level; he filed his notice of appeal one day after the end of the filing period established by the Louisiana Uniform Rules of the Court of Appeals. The Court of Appeals rejected his appeal as untimely, even though the Louisiana Supreme Court had previously found that the applicable section of the Uniform Rules violated the state constitution. One of Ms. Jefferson's arguments before the state Supreme Court was that that court's previous ruling had been erroneous and that the rules should therefore be revived. In rejecting this claim and in finding for the husband, the Court stated:

Since we have declared the uniform court rule partially unconstitutional, it appears to be somewhat dubious that we have the right to reconsider this ruling in the instant case as counsel for the respondent judges urges us to do. For a rule of court, like a statute, has the force and effect of law and, when a law is stricken as void, it no longer has existence as law; the law cannot be resurrected thereafter by a judicial decree changing the final judgment of unconstitutionality to constitutionality as this would constitute a reenactment of the law by the Court - an assumption of legislative power not delegated to it by the Constitution. n52

The Louisiana Court thus took a mechanical approach to the revival question. According to its rationale, when a statute is found unconstitutional, it is judicially determined never to have existed. Revival therefore entails judicial legislation and thereby violates constitutionally mandated separation of powers: because the initial legislative passage [\*1915] of the bill has no legitimacy, the bill's force is considered to be purely a creature of judicial decision-making.

**Jefferson has little analytic appeal**. Its view of the separation of powers doctrine is too simplistic. Contrary to the Jefferson rationale, a "revived" law is not the pure product of judicial decision-making. It is, instead, a law that once gained the support of a legislature and that has never been legislatively repealed. Its legitimacy rests on its initial legislative authorization. Moreover, the view that a statute that has been found unconstitutional should be treated as if it never existed may have had some support in the early case law, but it has been clearly rejected by the Supreme Court. Instead of treating all statutes that it has found unconstitutional as if they had never existed, the Court has recognized a range of circumstances in which people who rely on an overturned decision are protected. Indeed, as will be developed, the doctrine of prospective overruling evolved to shield from harm those who relied on subsequently overruled judicial decisions. n53 In short, the one case in which there was a holding that a statute did not revive does not offer a convincing rationale for nonrevival.

## 2NC

### AT Perm Do Both---Politics

#### And, it doesn’t solve politics

#### 1. Justices will stay one step behind legislatures---cooperative action doesn’t let Congress tie their hands

Helmke & Rosenbluth 9 Gretchen Helmke is Associate Professor of Political Science at the University of Rochester, AND Frances Rosenbluth is professor of political science, Yale University, “Regimes and the Rule of Law: Judicial Independence in Comparative Perspective,” Annual Review of Political ScienceVol. 12: 345-366 (Volume publication date June 2009, EBSCO

A second set of explanations for judicial independence assumes that legislators make a deliberate choice to delegate judicial authority to courts, building intentional institutional walls against political intervention in judicial decisions. For these models, legislatures can create judicial independence by means of a supermajority-protected set of rules ensuring long judicial tenure, wide jurisdiction, budgetary autonomy, and the like. Delegative models supply a range of possible motivations for why politicians may want to restrict themselves in this way. Landes & Posner (1975) suggest that legislators have an interest to create an independent judiciary that can enforce the deals struck by enacting legislatures, thereby increasing the value of campaign contributions that legislators can extract from contributors on whose behalf they made those deals. The judiciary solves politicians' time inconsistency problem, namely that their short-run interest to sell new deals to the highest bidder undermines the price they are able to get for these deals in the longer run. This model implausibly denies the possibility that courts, like legislators, are strategic actors. Unless we can be sure that courts will rule in support of (their understanding of) the enacting legislation rather than in strategic anticipation of the preferences of the incumbent legislature, this argument breaks down. Judges may instead try to achieve outcomes as close as possible to their own preferences by taking into account the possibility that the incumbent legislature can write new legislation if it is sufficiently unhappy with the court's ruling. If this is true, and we see no reason why it should not be, the court's value in prolonging the life of legislation—and hence its value for legislators extracting rents—is significantly hampered. Another delegative account of judicial insulation points to politicians' desire to duck blame for unpopular policies. Graber (1993), Salzberger (1993), Holmes (1996), and Wittington (1999) argue that a legislative majority might want to delegate politically divisive issues to the court, echoing Fiorina's (1981) blame-avoidance explanation for why politicians might want to delegate to bureaucrats. But it is not clear that it is possible for legislatures to tie their hands in this way, both because of the problem with cooperative delegation arguments we have already discussed and because politically strategic courts may have an interest in throwing the matter back rather provoking public wrath themselves. [Stephenson (2004) articulates an alternative critique of the blame-avoidance argument.] In Hungary, for example, the courts deliberately dodge issues such as abortion that they consider to be “political questions” (Pogany 1993). U.S. courts also display a tendency to keep one or two steps behind state and federal legislatures on contentious issues such as abortion or gay rights. Harvey & Friedman (2006) argue that the Supreme Court is systematically more likely to deny certiorari to cases on which the political branches are likely to have the votes to oppose the court. In addition, we expect, courts protect their future range of maneuver by staying within the broad bands of public support.

#### 2. The perm eliminates position taking opportunities---

#### A) Politically unpopular court decisions allow politicians to posture in opposition to the Court’s ruling—the perm fiats away this ability to politically profit from the CP---means only the CP boosts PC

Keith E. Whittington, politics at Princeton University, 2007 (Political Foundations of Judicial Supremacy, p. 137-39)

Independent and active judicial review generates **position-taking opportunities** by **reducing the policy responsibility** of the elected officials. They may vote in favor of a bill that they personally dislike secure in the knowledge that it will never be implemented. State statutes regulating abortion after the *Roe* decision, for example, were often pure symbolism, though they could also play a more productive role in pressing the Court to refine its doctrine or in filling in the lacuna left by judicial decisions. More subtly, the judicial backstop allows legislators to focus on some dimensions of the proposed policy (the most optimistic and politically popular) while downplaying others (the constitutionally subversive and treacherous). Legislators even **gain a political windfall** when the courts actually act to strike down the popular law. The visibility of the exercise of judicial review creates another opportunity for legislators to publicize their position on the issue, this time by **bewailing the Court’s actions**.

[continues]

On the other hand, by allowing elected politicians to **shift political blame to judges** for unpopular actions judicial review may also **stiffen the spine of politicians** to act on their central ideological commitments. As we saw in chapter 2, for example, the Court’s decisions on abortion allowed some politicians, such as Jimmy Carter, to try to have it both ways with voters, by simultaneously proclaiming their pro-life private opinions and their judicially imposed pro-choice public responsibilities. Similarly, as the first Catholic president, John F. Kennedy was acutely conscious of the need to demonstrate his independence from the church while still holding the political support of his fellow Catholics. Before and during his campaign for the presidency, Kennedy emphasized how the Constitution, and the Court’s interpretation of it, tied the hands of individual officeholders---to the consternation of religious critics who found him “spiritually rootless and politically almost disturbingly secular.” The Constitution and all its parts---including the First Amendment and the strict separation of church and state,” he avowed, necessarily trumped “one’s religion in private life.” For example, “the First Amendment as interpreted by the Supreme Court” left no question of federal funds being used for support of parochial or private schools.” In office he bristled at criticism fro Catholic officials of his proposal for federal aid to public schools but not private schools, criticisms that he did not recall being made during the Eisenhower administration. Though he was “extremely sympathetic” to the financial burdens borne by families sending children to parochial school, a close “reading [of] the cases” raised “serious constitution questions” that the president could not be expected to ignore. “It is prohibited by the Constitution, and the Supreme Court has made that very clear.”

Regardless of whether legislators would be more constitutionally responsible if judicial review did not exist, they can certainly recognize the political opportunities created by the empirical reality of judicial review. The consequence is that the actual exercise of judicial review may not be as unwelcome and hostile to congressional interests as is often assumed, and affiliated leaders have further reason to support the judicial authority to determine congressional meaning. Some legislative votes are “politically compelling,” in that “legislators feel compelled to support certain policy options because their intended effects are popular, irrespective of whether the proposed means will really achieve those ends” or are even necessary. Once a bill that professes to stop violence against women, keep guns out of schools, protect the flag from desecration, or prevent child pornography reaches the floor, legislatures are “practically forced to support it.” Although legislators may harbor doubts about the policy and constitutional wisdom of such proposals, clear electoral imperatives are likely to drive legislative decision-making. Enhancing the judicial authority to define and enforce constitutional meaning can ease the legislative policy conscience, while allowing legislators to reap the electoral gains of position taking**.**

### Perm do CP

#### AND Reduce means to make less in amount

Merriam-Webster Online Dictionary, 9 (“reduce”, http://www.merriam-webster.com/dictionary/reduce, accessed 9-9-9)

\* Main Entry: re·duce \* Pronunciation: \ri-?dus, -?dyus\ \* Function: verb \* Inflected Form(s): re・duced; re・duc・ing \* Etymology: Middle English, to lead back, from Latin reducere, from re- + ducere to lead — more at tow \* Date: 14th century transitive verb 1 a : to draw together or cause to converge : consolidate <reduce all the questions to one> b (1) : to diminish in size, amount, extent, or number <reduce taxes> <reduce the likelihood of war**> (**2) : to decrease the volume and concentrate the flavor of by boiling <add the wine and reduce the sauce for two minutes> c : to narrow down : restrict <the Indians were reduced to small reservations> d : to make shorter :abridge

### 2NC Solvency

#### Courts have authority over every central energy question

Simon 7 [Christopher A. Simon - Director, Master of Public Administration, Political Science Department, University of Utah, Professor, Political Science, “Alternative Energy: Political, Economic, and Social Feasibility”]

**The federal courts have** also recently scrutinized federal rule-making and **rule enforcement policies** in the following representative cases: • Village of Bethany, Illinois, et alia v. Federal Energy Regulator}' Commis- sion 276 F. 3d 93\*4 (2002) The Court found in favor of FERC’s method of regulating natural gas rate- making. The court argued that while citizens of Bethany, Illinois, were “captive customers,” they could ask for renegotiated prices during periods of product price decline; they have the opportunity to negotiate when the provider’s next rate-making case occurs. • Grover v. U.S. 73 Fed. Apprx. 401 (2003) The Court affirmed the oil shale mining moratorium imposed in 1991 and in the EPAct of 1992. **Restricting a claimant’s ability to access and sell shale oil** did not constitute a takings. • Shell Petroleum, Inc. v. U.S. 319 F. 3d 1334 (2003) **The Court** effectively defined tar sands (oil sands) as not being crude oil; therefore, the court affirmed that Shell Petroleum, Inc. **was not entitled to crude oil-related tax refunds** provided under the Crude Oil Windfall Profits Tax Act of 1980. • B & J Oil and Gas v. Federal Energy Regulatory Commission 359 U.S. App. D.C. 214 (2004) The Court found that FERC’s allowance for a natural gas firm to expand its operations onto the petitioner’s property was acceptable, but that it was ac-ceptable because FERC was able to provide compelling evidence that the commission’s decision is the least invasive method of violating property rights and that the decision was based in objective information and rational decision making. • Commonwealth of Massachusetts et alia v. Environmental Protection Agency 415 F. 3d 50 (2005) The EPA has the authority to decline to use rule-making power to regulate “greenhouse gases from motor vehicles” as long as the decision to regulate or not to regulate was based on information on the “frontiers of scientific knowledge.” • PS/ Energy, Inc. & Cincinnati Gas & Electric Co. v. U.S. 411 F. 3d 1347 (2005) A purchaser did not have to pay the enrichment-related processing fees to the U.S. Department of Energy if they sold the material without having used it. As might be noted, the judiciary largely focuses on issues related to exist- ing large-scale commercial energy systems. Early cases tended to focus on the rules governing private sector interaction, whereas twentieth- and twenty- first-century cases increasingly involve **the regulatory power of government** in relation to private-sector actors and the management of **the energy market.** The lack of a clear linkage between energy policy and the environment is evident in the cases above. However, the courts have shown an interest in the relationship between energy policy and a very broad understanding of social and economic justice. Grossman (2003) made this point fairly well in his de- lineation of the “three-pronged" test the Court has established to weigh envi- ronmental justice cases related to energy policy, outlined in Friends of the Earth v. Laidlaw Envtl. Services (TOC) 528 U.S. 167 (2000): The Court reiterated that “to satisfy Article Ill’s standing requirements, a plain- tiff must show (1) it has suffered an injury in fact that is (a) concrete and par- ticularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.”

### AT Court Stripping

#### No solvency deficit, opponents behave as though the statute is eliminated

\*also in AT Certainty

Treanor & Sperling 93 William - Prof Law at Fordham. Gene - Deputy Assistant to President for Economic Policy. “PROSPECTIVE OVERRULING AND THE REVIVAL OF "UNCONSTITUTIONAL" STATUTES,” Columbia Law Review, Dec 93, lexis

First, full examination of the revival issue demonstrates the interactive nature of the relationship between judicial invalidation of statutes and majoritarian decision-making. Judicial review is not purely external to the legislative process: **the very act of judicial invalidation powerfully shapes subsequent legislative deliberations**. Belief in the finality of judicial judgments is so pervasive that, when a statute is struck down or when a judicial decision establishes a rule of law under which a statute is unconstitutional, its opponents **frequently act as if the statute were gone for all time.** At the very least, **even if political actors realize the potential for reversal**, the finding of unconstitutionality alters the way in which they spend their political capital. As a result, rather than seek to repeal a statute that appears to be, for all practical purposes, a nullity, **they devote their political resources to other** - more clearly consequential - **matters**. Revival in such circumstances can produce a result contrary to what the political process would have produced in the absence of the initial judicial decision.

#### CP solves the case, will be implemented, and avoids politics and court stripping

Lawrence Baum 3 Professor of Political Science @ Ohio State Annual Review of Political Science, Vol. 6: 161-180 Volume publication date June 2003

Yet both this impression and what it suggests about the Court are misleading in two respects. First, the early research overstated the Court’s implementation failures. For one thing, scholars emphasized failures more than successes. Was it more remarkable that so many schools maintained religious exercises prohibited by the Court or that so many others eliminated exercises that had strong public support? The absence of desegregation in the Deep South in the decade after Brown was noteworthy, but so was the gradual elimination of school segregation in the border states. Moreover, this research reﬂected a strong selection bias in that scholars were attracted to the study of decisions that had run into visible implementation problems. Later research that avoided this bias indicates that, at least at the federal level, judges and administrators respond more favorably to Supreme Court decisions in general than the early research suggested (Johnson 1987, Songer et al. 1994, Stidham & Carp 1982, Songer 1987, Songer & Sheehan 1990, Spriggs 1997; see Canon & Johnson 1999).

Second, the early research typically treated implementation of Supreme Court decisions as a unique phenomenon. Scholarship on imperfect hierarchy elsewhere in government (e.g., Kaufman 1960, Pressman & Wildavsky 1973) and in work organizations (e.g., Mechanic 1962, Crozier 1964) had little impact on the judicial research. As a consequence, judicial scholars seldom considered whether noncompliance with Supreme Court decisions resulted chieﬂy from universal imperfections in implementation rather than special weaknesses of courts. The ﬁrst possibility has become even more credible with the accumulation of research on policy implementation (e.g., Lipsky 1980, Wilson 1989, Brehm & Gates 1997). In recent years, some scholars with a strategic perspective have analyzed relationships between the Supreme Court and lower courts in formal terms, terms that facilitate comparison between implementation processes in the judiciary and hierarchical relationships in other settings (Kornhauser 1995, Hammond et al. 2001; see Brehm & Gates 1997, pp. 13–20). Especially important is collaborative work by Segal, Songer, and Cameron (Songer et al. 1994, 1995; Cameron et al. 2000), who have employed principal-agent theory to guide empirical studies of the relationship between the Supreme Court and federal courts of appeals.

Even in this new wave of research, however, there has been little systematic comparison between courts and other policy enactors. The natural comparison is between the Supreme Court and Congress, each of which acts to shape administrative policy. It is reasonable to posit that Congress does better in getting what it wants from administrators, because its powers (especially ﬁscal) and its capacity to monitor the bureaucracy are appreciably stronger. The sequences of events that overcame school segregation and racial barriers to voting in the Deep South support that hypothesis. But it remains essentially untested, in part because good tests are difﬁcult to design. Thus, we still know little about the relative success of implementation for legislative and judicial policies.

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

It is also worth asking why the Court fares so well in Congress. As noted above, few of the Court’s most controversial interventions in the past half century have been directly reversed. Nor has Congress enacted any of the numerous bills to remove the Court’s jurisdiction over areas in which the Court has aroused congressional anger.

A large part of the explanation lies in the difﬁculty of enacting legislation in a process with so many veto points. That difﬁculty is especially great in an era like the current one, which lacks a strong or stable law-making majority. In such an era, interventions are likely to have signiﬁcant support in government regardless of their ideological direction, and even decisions that strike down federal laws may enjoy majority support. The line of decisions since 1995 that has limited the regulatory power of the federal government (e.g., Alden v. Maine 1999, United States v. Morrison 2000) constitutes the most signiﬁcant judicial attack on federal policy since the 1930s. But since 1995, Congress has had Republican majorities except for the bare Democratic Senate majority in 2001–2002. In that situation, any signiﬁcant action to counter the Court’s policies has been exceedingly unlikely.

Beyond the difﬁculty of enacting legislation, two other factors may come into play. First, Congress often adopts measures that limit the impact of a Court policy or that attack the policy symbolically, actions that sufﬁce for members who want to vent their unhappiness with the Court or to claim credit with constituents who oppose the decision (see Keynes & Miller 1989). In response to Roe v. Wade (1973), for instance, Congress (often with presidential encouragement) has mandated various limits on federal funding of abortion. Two years after Miranda v. Arizona (1966), it enacted a statutory provision purportedly to supersede the Miranda rules in federal cases, a provision that federal prosecutors ignored and that the Court ultimately struck down in Dickerson v. United States (2000).

Second, the Court may enjoy a degree of institutional deference in Congress, similar to that found in other relationships among the three branches but buttressed by the symbolic status of the Constitution itself. This deference tinges certain courses of action, such as restrictions on court jurisdiction, with illegitimacy. The failure of proposals to overturn the ﬂag-burning decisions with a constitutional amendment, despite broad and deep public opposition to those decisions, reﬂects the symbolic power of the First Amendment. Congressional deference to the Court is not limitless, but in combination with other factors it may help to explain why the Court’s recent interventions and the Court itself have survived congressional scrutiny so well.

# ASPEC

#### Agency discussions are essential to education about energy policy

Valentine 10 Scott Victor Valentine - Lee Kuan Yew School of Public Policy, National University of Singapore, Singapore, “Canada’s constitutional separation of (wind) power” Energy Policy, Volume 38, Issue 4, April 2010,

http://www.sciencedirect.com/science/article/pii/S0301421509009227

Should policymakers facilitate renewable energy capacity development **through distributive policies (i.e. subsidies), regulatory policies** (i.e. CO2 emission caps), redistributive policies (i.e. carbon taxes) or constituent policies (i.e. green energy campaigns) (Lowi, 1972)? A preponderance of research has gone into addressing this question from **various conceptual perspectives**, which include popular themes such as comparing the efficacy of various policy instruments (cf. Blakeway and White, 2005; EWEA, 2005; Menza and Vachona, 2006; cf. Lipp, 2007), championing the efficacy of one specific instrument (cf. Sorrell and Sijm, 2003; cf. Mathews, 2008), assessing the impact that socio-economic dynamics have on the selection or design of policy instruments (cf. Maruyama et al., 2007; cf. Huang and Wu, 2009), investigating policy instrument selection in stakeholder networks (cf. Rowlands, 2007; cf. Mander, 2008), investigating hurdles to effective policy instruments implementation (cf. Alvarez-Farizo and Hanley, 2002), and examining challenges associated with evaluating policy instrument efficacy (cf. Mallon, 2006; cf. Vine, 2008).

**Despite the proliferation of studies on policy instruments in the** renewable **energy policy field**, there are no prominent examples of studies which investigate the impact that the federal form of government has on strategic selection of policy instruments. Federal government systems are characterized by power-sharing between the central authority and the regions comprising the federation. For federal policymakers, the manner in which power is divided can pose significant policy-making problems (Thorlakson, 2003). Specifically, federal attempts to apply coercive policy instruments in policy areas of regional or concurrent (shared) authority can generate political, legal or operational resistance by regional authorities. Even when developing policy for areas under federal jurisdiction, regional authorities have to avail their various “thrust and riposte” tactics to undermine the efficacy of disagreeable federal policies (Braun et al., 2002). Given that there are 24 nations with a federal government structure (including the major economies of the United States, Germany, Canada, Australia, Russia, India, Spain, Brazil and Mexico), a **formal enquiry into the impact that federal structure has on renewable energy policy instrument development is merited.**

# Silver DA

## 1NC

#### Silver supply is tight – new manufacturing demands won’t be met

Scully 1/27, Mike, mechanical engineer and product designer, January 27, 2012, The Silver Singularity Is Near, <http://community.nasdaq.com/News/2012-01/the-silver-singularity-is-near.aspx?storyid=117209>

The main way the futures market keeps down the spot price of silver is by greatly adding to the supply of silver for investment. Take the example of the COMEX which currently has 102,516 open interest contracts (512 million ounces) promised for future delivery. This compares to roughly 117 million ounces of physical silver available for investment in 2010 (Mine supplies 736 + recycling 215 + gov't. sales 45 - fabrication 879 = 117Moz.) Shorts have promised to deliver over four times the amount of physical silver available per year. In other words, **demand for silver investment at today's price is much higher than physical supply**. **This works fine as long as futures investors don't take physical delivery.** Shorts can simply settle the contract for the cash value and everybody's happy. If a small amount of investors stand for delivery, the shorts can transfer silver from their accounts at the COMEX or buy silver on the open market. **However, as more investors stand for physical delivery, things can get dicey.**¶ Kyle Bass of Hayman Capital was clearly concerned about this leverage risk in the COMEX when he said the following:¶ "My opinion is very simple as a fiduciary... to the extent that you own gold and you are going to own it a long time --it's not a trade. It costs us about 90 basis points a year to roll it through financial futures contracts," he said.¶ "And then we went and looked at the COMEX. The COMEX at the time they had about $80 billion in open interest between futures and futures options. In the warehouse they had $2.7 billion of deliverables. So $80 billion in open interest -- $2.7 billion in deliverables. We're gonna own it a long time. You're on the board, as a fiduciary, what do you do? That's an easy one. You go get it. So you go take a billion of $2.7 billion and you let them worry about the rest."¶ "When I talked to the head of deliveries at COMEX NYMEX, I was like, 'What if 4% of the people want deliveries?' He said, 'Oh Kyle, that never happens. We rarely ever get a 1% delivery.' And I asked, 'Well what if it does happen?' And he said,'Price will solve everything' And I said, 'Thanks, give me the gold.'"¶ Mr. Bass was discussing the gold futures market, but the same dynamics apply to the silver market. With silver at $33 one big fish like Bass (pun intended) could take down 30 million ounces with his billion dollars, which is 80% the entire amount of registered silver at the COMEX.¶ Thanks, give me the silver!¶ **To date, there hasn't been a failure to deliver on a futures contract at the COMEX. But that's not to say it can't happen.** **Already there are cracks appearing in the silver derivatives dam.** The silver derivatives market requires some amount of physical silver to back it up. As the physical silver available in the market decreases, the paper market becomes more and more leveraged. Many **trends are converging to remove physical silver from the market**. Here are a few industrial trends:¶ For the past decades, governments have been selling their silver stockpiles into the markets, thus adding to supply. These stockpiles are basically depleted and **governments are likely to become net buyers of silver.**¶ Photographic demand, which has been decreasing for the past decade is becoming a less significant part of demand and will soon cease to be a driver of silver demand trends. Also, as most photographic silver is recycled, photographic use approaching zero means less recycling supply moving forward.¶ Similarly, A steady decline in silverware demand is also reaching its lower bounds and at some point will cease to be a negative driver of silver demand trends.¶ According to the Silver Institute, during silver's bull market from 2001 to 2010, mine supply increased by an average of 2.2% per year, from 606 to 736 million ounces. However, **demand from industrial uses** (from which the majority of silver cannot be recycled at anywhere near today's price) **increased 3.7% per year** from 350 to 487 million ounces.¶ The trends discussed above are enough to show that we will reach a point at some time in the future where fabrication demand exceeds supply. But it is the investment trends discussed below that I believe will bring us to a supply/demand crunch much sooner than (almost) anyone expects.¶ Silver coin sales are skyrocketing.¶ During the early 2000s, global coin sales were stable at around 35-40 million ounces. Then from 2007 to 2010 coin sales increased 38% per year to 101Moz. and show no signs of having slowed for 2011. Physical coin sale could soon eat up the entire bullion supply. Silver coins are not recycled because the coin value is higher than the melt value. In case you are wondering if this trend can continue, keep in mind that 100Moz. equates to 1/68th of a coin for each person on the planet.¶ Chinese investment demand is "going parabolic" and the Chinese people seem to prefer physical.¶ In the COMEX futures markets, the multiple margin hikes by the CME in 2011 shook out a bunch of weak longs which drove down the price but decreased leverage and formed a stronger foundation for future price advances.¶ Eric Sprott's fund (PSLV) recently completed a secondary offering deal which will remove 10.6 million ounces of physical silver worth about $350k from the market. This is part of what could eventually become a $1.5B offering, so it looks like he's determined to break the paper market's back.¶ And perhaps the beginning of the end for the futures market was the bankruptcy of MF Global. From that we learned that the regulators will twist bankruptcy rules to put big banks such as J.P. Morgan ahead of regular investors. We learned new buzzwords like rehypothecation and co-mingling. We learned that leveraged accounts aren't safe, and we learned that even investors who own allocated physical bars of gold with listed serial numbers can see those bars confiscated and chopped up for distribution by a bankruptcy judge. These were valuable lessons which caused many futures investors to decrease their leverage, increase their due diligence regarding their broker, or get out of the futures markets all together and get in to physical.¶ As physical silver is removed from the foundation of the paper market, leverage will increase until a leveraged short can't get the silver and defaults on his contract. That's when promises are broken, confidence turns to panic, and the leveraged derivatives house of cards comes toppling down.¶ To continue my multiple metaphors, that's when the derivatives dam breaks. That's the 101st Elmo buyer entering Walmart with a thousand determined shoppers close behind him. That's what folks like Ray Kurzweil might call "the singularity". It's the point when all hell breaks loose and things go hyperbolic. The stampede for physical silver will begin.¶ Paper futures contract holders will increasingly stand for physical delivery, creating the ultimate short squeeze as paper shorts frantically try to acquire physical metal that is nowhere to be found to cover their positions.¶ **Manufacturers who use silver in their products will scramble to secure physical silver supply lines to prevent their manufacturing lines from grinding to a halt, buying up anything and everything they can get their hands on.**¶ **Governments who have been net sellers of silver for the past 30 years and now have virtually no silver stocks, will be competing to increase their sovereign stockpiles of this strategically critical element at any price.**¶ The general investing public will become fully aware of the incredible supply and demand story for silver that had been hidden under the surface by the murky layer of paper scum, and dive in to get a piece of the action.¶ In the words of that COMEX manager, "price will solve everything." Indeed. **A much, much higher price**.

#### Solar projects use 11% of the world’s silver

Goossens 11, Ehren, Jun 23, 2011, Silver Surge Makes ‘Headwind’ For Solar/Fossil Fuel Rivalry, <http://www.bloomberg.com/news/2011-06-22/silver-surge-makes-headwind-for-solar-in-fossil-fuel-rivalry.html>

Soaring silver prices are hampering the solar industry’s ability to compete with fossil fuels.¶ **Panel makers consume about 11 percent of the world’s supply of silver, the material in solar cells that conducts electricity.** The metal has appreciated 74 percent to $35.30 a troy ounce on average so far this year from $20.24 last year.¶ **The surge in silver prices is squeezing margins for most solar companies**, according to research by Barclays Capital. ¶ **A typical solar cell uses 0.10 grams of silver for each watt of generating capacity. That amounts to about 20 grams in a 200-watt panel**, adding $23.52 to the cost of each panel, according to New Energy Finance. ¶ Prices for solar cells have dropped about 27 percent this year and would be even lower if each panel didn’t require about 20 grams of silver, according to Bloomberg New Energy Finance. **That’s pushing back the date when companies** such as Solarworld AG (SWV) and LDK Solar Co. **can deliver solar power at prices that are competitive with traditional energy.**¶“Global silver prices have gone up a lot, and solar cells use silver paste as the front-side contact material,” Shawn Qu, chief executive of Canadian Solar Inc. (CSIQ), which is based in China, said in an interview. “The increase of the silver costs will give us a challenge in efforts to reduce solar cell costs.”¶ Prices for photovoltaic solar panels were $1.49 a watt in June, compared with about $1.80 in January, New Energy Finance estimates, as manufacturers especially in China raised production and incentives were trimmed in Europe.¶ ‘Headwind’¶ “Some companies are implementing measures to reduce silver consumption, but we believe rising silver prices could still act as a headwind,” Barclays Capital wrote in a note to clients.¶ The price of the silver paste that Canadian Solar uses to print circuits on the front of its solar cells more than tripled in the past year, Qu said. That adds about 3 cents to 4 cents a watt, or 2 percent, to the cost of the panels.¶ The company’s gross margins narrowed to about 15 percent in the first quarter from 17 percent in the prior quarter as the price of cells fell faster than the cost of production, the company based in Suzhou New District, China, reported in May.¶ A typical solar cell uses 0.10 grams of silver for each watt of generating capacity. That amounts to about 20 grams in a 200-watt panel, adding $23.52 to the cost of each panel, according to New Energy Finance. The cost for metal in each panel totals about 11 cents a watt, up from 5 cents a year ago, the London-based industry researcher estimates.

#### Silver is key to the US military

Savoie 4, Charles, independent researcher and author of “The Silver Stealers” chronology; masters from ISU, November 2004, WAR & SILVER, http://www.silver-investor.com/charlessavoie/cs\_nov04.htm

Let's take a look at the need for silver as a vital resource material necessary to warfare. We won't be able to examine any detailed weapons breakdown of specific items by exact silver content from one defense contractor to another on a current basis, because that information isn't readily available. I can tell you that as of January 2, 1980---nearly a quarter century past---some **84,000 military parts (aircraft, submarines, etc.) contained precious metal, mostly silver** (Wall Street Journal, January 2, 1980, page 10). American Superconductor and Intermagnetics General won't openly discuss how much silver they will need for superconducting cables. That's probably an understanding with the COMEX shorts---anything to suppress projected silver demand statistics! As you probably know, **America has been without a silver stockpile for strategic defense applications for several years.** We aren't swimming in silver as we were going into World War II. **One of the implications could be a limitation on our ability to wage war overseas; and also spell inadequacy as to our ability to defend our shores**. **Silver is the most versatile metal there is, and a strategic shortage will hurt us more so than shortages of other strategic metals** such as tantalum, platinum, chromium, vanadium and cobalt. America cannot produce enough silver to meet our internal needs, that hasn't happened in most of a century; therefore, silver imports are vital. Over 153 years ago, Merchants Magazine & Commercial Review (March 1851), page 280 spoke of--- "…the numerous uses to which we apply silver, beyond the uses to which we apply gold."

#### Hegemony solves extinction

Barnett 11, Thomas P.M. Barnett, Former Senior Strategic Researcher and Professor in the Warfare Analysis & Research Department, Center for Naval Warfare Studies, U.S. Naval War College American military geostrategist and Chief Analyst at Wikistrat., worked as the Assistant for Strategic Futures in the Office of Force Transformation in the Department of Defense, “The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,” March 7 <http://www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads>

It is worth first examining the larger picture: We live in a time of arguably **the greatest structural change in the global order yet endured**, with thishistorical moment's most amazing feature being its relative and absolute **lack of mass violence**. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our **stunningly successful stewardship of global order** since World War II.  Let me be more blunt: As the **guardian of globalization**, the U.S. military has been the**greatest force for peace the world has ever known**. Had America been removed from the global dynamics that governed the 20th century, the **mass murder never would have ended**. Indeed, it's entirely conceivable **there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation.** But the world did not keep sliding down that **path of perpetual war**. Instead, America stepped up andchanged everything by **ushering in our now-perpetual great-power peace**. We introduced the **international liberal trade order known asglobalization** and played loyal Leviathan over its spread. What resulted wasthe collapse of empires, **an explosion of democracy**, the **persistent spread of human rights**, the liberation of women, **the doubling of life expectancy**, a roughly **10-fold increase in adjusted global GDP** and a**profound and persistent reduction in** battle deaths from **state-basedconflicts.**That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of  global disorder instead of its cure.  With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force.

As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw **a death toll of about 100 million across two world wars**. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude,these calculations suggest a 90 percent absolute drop and a **99 percent relative drop in deaths due to war**.  We are **clearly headed for a worldorder characterized by multipolarity**, something the American-birthed system was designed to both encourage and accommodate. But given how things turned out the last time we collectively faced such a fluid structure, **we would do well to keep U.S. power**, in all of its forms, deeply embedded in the geometry to come.

To continue the historical survey, after salvaging Western Europe from its half-century of civil war, the U.S. emerged as the progenitor of a new, far **more just form of globalization** -- one **based on actual free trade rather than colonialism**. America then successfully replicated globalizationfurther in East Asia over the second half of the 20th century, **setting the stage for the Pacific Century now unfolding.**

## 2NC

#### Solar power is only power directly collected from the sun using photovoltaics

Bradford 6 (Travis--Associate Professor of Practice in International and Public Affairs at Columbia University, “Solar Revolution: The Economic Transformation of the Global Energy Industry” MIT Press, Print.)

Typically, an **informed discussion** about solar energy is limited by various and confusing notions of what the term solar energy actually describes. Broadly speaking, solar energy **could** be used to describe any phenomenon that is created by solar sources

and harnessed in the form of energy, directly or indirectly-from photosynthesis to photovoltaics. Many of today's environmentalists use the term solar energy in its most comprehensive sense to include certain new renewable-energy technologies such as wind power and biomass, arguing that these sources derive energy from the sun, however indirectly. More conservative uses of the term, such as the one that this book employs, discuss direct-only solar sources, whether active, passive, thermal, or electric-that is, sources of energy that can be directly attributed to the light of the sun or the heat that sunlight generates. ¶ This more restrictive classification is useful because a more general characterization of solar energy that includes wind and other technologies tends to obscure various isolated trends within the broader renewable-energy industry. Many renewable-energy technologies sometimes lumped under solar energy have **very different** economic characteristics, **making it difficult to draw meaningful conclusions about them**. Since the economic drivers discussed in the second half of this hook do not apply to all technologies equally, it is helpful to **be precise** when analyzing specific industrial transformations and the markets in which they will occur