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**Advantage 1 is the Environment ---**

**Scenario one is Warming ---**

**Its real and anthropogenic.**

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Summary. **Global** surface **temperature in 2012** was +0.56°C (1°F) warmer than the 1951-1980 base period average, **despite** much of the year being affected by a strong **La Nina**. Global temperature thus continues at a high level that is sufficient to cause a substantial increase in the frequency of extreme warm anomalies. The 5-year mean global temperature has been flat for a decade, which we interpret as a combination of natural variability and a slowdown in the growth rate of the net climate forcing. **An update through 2012** of our global analysis1 (Fig. 1) reveals 2012 as having practically the same temperature as 2011, significantly lower than the maximum reached in 2010. These short-term global fluctuations are associated principally with natural oscillations of tropical Pacific sea surface temperatures summarized in the Nino index in the lower part of the figure. 2012 is nominally the 9th warmest year, but it is indistinguishable in rank with several other years, as shown by the error estimate for comparing nearby years. Note that **the 10 warmest years in the record all occurred since 1998.** The long-term warming trend, including continual warming since the mid-1970s, has been conclusively associated with the predominant global climate forcing, human-made greenhouse gases2, which began to grow substantially early in the 20th century. The approximate stand-still of global temperature during 1940-1975 is generally attributed to an approximate balance of aerosol cooling and greenhouse gas warming during a period of rapid growth of fossil fuel use with little control on particulate air pollution, but satisfactory quantitative interpretation has been impossible because of the absence of adequate aerosol measurements3,4. Below we discuss the contributions to temperature change in the past decade from stochastic (unforced) climate variability and from climate forcings. Fig. 1. Global surface temperature anomalies relative to 1951-1980. The Nino index is based on the detrended temperature in the Nino 3.4 area in the eastern tropical Pacific5. Green triangles mark the times of volcanic eruptions that produced an extensive stratospheric aerosol layer. Blue vertical bars are estimates of the 95% confidence interval for comparisons of nearby years. 2 Fig. 2. Annual and seasonal temperature anomalies relative to 1951-1980 base period. Dec-Jan-Feb map employs December 2011 data, while the annual map is for calendar year 2012. The most extreme temperature anomalies in 2012, exceeding 2.5°C (4.5°F) on annual mean, occurred in the Arctic and in the middle of North America (Fig. 2). The large springtime heat anomaly in North America dried out the soil in a large part of the United States, thus leaving little soil moisture to provide evaporative cooling in the summer. The summer temperature anomaly was smaller than in the prior two seasons, but summer temperature variability is smaller than in the other seasons, so the 2012 summer anomaly was also unusually large as described in NOAA reports6. 3 Fig. 3. Frequency of occurrence of local June-July-August temperature anomalies (relative to 1951-1980 mean) for Northern Hemisphere land in units of local standard deviation (horizontal axis). Temperature anomalies in 1951-1980 match closely the normal distribution (green curve), which is used to define cold (blue), typical (white) and hot (red) seasons, each with probability 33.3%. Lower graphs use only a subset of stations (1886 of 6147) that were present throughout recent decades as well as the base period. The New Climate Dice. The high current global temperature is sufficient to have a noticeable effect on the frequency of occurrence of extreme warm anomalies. The left-most "bell curve" in Fig. 3 is the frequency distribution of summer-average temperature anomalies during the base period 1951-1980, in units of the local standard deviation1 of seasonal-average temperature. The **observational data** show that the frequency of unusually warm anomalies has been increasing decade by decade over the past three decades. Perhaps the most important change is the emergence of **extreme**ly hot **outliers**, defined as anomalies exceeding 3 standard deviations. Such extreme summer heat anomalies occurred in 2010 over a large region in Eastern Europe including Moscow, in 2011 in Oklahoma, Texas and Northern Mexico, and in 2012 in the United States in part of the central Rockies and Great Plains. The location of these extreme anomalies is dependent upon variable meteorological patterns, but the decade-by-decade movement of the bell curve to the right, and the emergence of an increased number of extreme warm anomalies, is an expression of increasing global warming. Some seasons continue to be unusually cool even by the standard of average 1951-1980 climate, but the "climate dice" are now sufficiently loaded that an observant person should notice that unusually warm seasons are occurring much more frequently than they did a few decades earlier. 1 The standard deviation is a measure of typical variability about the average. About two-thirds of the cases fall within 1 standard deviation of the average and about 95 percent fall within 2 standard deviations. 4 Fig. 4. Top: Solar irradiance from composite of several satellite-measured time series. Data through 2 February 2011 is from Frohlich and Lean (1998 and Physikalisch Meteorologisches Observatorium Davos, World Radiation Center). Update is from University of Colorado Solar Radiation & Climate Experiment normalized to match means over the final 12 months of the Frohlich and Lean data. Sunspot data from http://sidc.oma.be/sunspot-data/ Global Warming Standstill. The 5-year running mean of global temperature has been flat for the past decade. It should be noted that the "standstill" temperature is at a much higher level than existed at any year in the prior decade except for the single year 1998, which had the strongest El Nino of the century. However, the standstill has led to a widespread assertion that "global warming has stopped". Examination of this matter requires consideration of the principal climate forcing mechanisms that can drive climate change and the effects of stochastic (unforced) climate variability. The climate forcing most often cited as a likely natural cause of global temperature change is solar variability. The sun's irradiance began to be measured precisely from satellites in the late 1970s, thus quantifying well the variation of solar energy reaching Earth (Fig. 4). The irradiance change associated with the 10-13 year sunspot cycle is about 0.1%. Given the ~240 W/m2 of solar energy absorbed by Earth, this solar cycle variation is about 1/4 W/m2 averaged over the planet. Although it is too early to know whether the maximum of the present solar cycle has been reached, the recent prolonged solar minimum assures that there is a recent downward trend in decadal solar irradiance, which may be a decrease of the order of 0.1 W/m2. Although several hypotheses have been made for how the solar irradiance variations could be magnified by indirect effects, no convincing confirmation of indirect forcings has been found except for a very small amplifying effect via changes of stratospheric ozone. 2 A climate forcing is an imposed perturbation of the planet's energy balance that would tend to alter global temperature. 5 Fig. 5. Update7 of 5-year mean of the growth rate of climate forcing by well-mixed greenhouse gases; ozone and stratospheric water vapor, neither well-mixed nor well-measured, are not included. The largest climate forcing is caused by increasing greenhouse gases, principally CO2 (Fig. 5). The annual increment in the greenhouse gas forcing (Fig. 5) has declined from about 0.05 W/m2 in the 1980s to about 0.035 W/m2 in recent years8. The decline is primarily a consequence of successful phase-out of ozone-depleting gases and reduction of the growth rate of methane. Also, the airborne fraction of fossil fuel CO2 emissions has declined and the forcing per CO2 increment declines slowly as CO2 increases due to partial saturation of absorption bands, so the CO2 forcing growth rate has been steady despite the rapid growth of fossil fuel emissions. The second largest human-made forcing is probably atmospheric aerosols, although the aerosol forcing is extremely uncertain3,4. Our comparison of the various forcings (Fig. 6a) shows the aerosol forcing estimated by Hansen et al.9 up to 1990; for later dates it assumes that the aerosol forcing increment is half as large as the greenhouse gas forcing but opposite in sign. This aerosol forcing can be described as an educated guess. If the aerosol forcing has thusly become more negative in the past decade, the sum of the known climate forcings has little net change in the past few decades (Fig. 6b). The increased (negative) aerosol forcing is plausible, given the increased global use of coal during this period, but the indicated quantification is arbitrary, given the absence of aerosol measurements of the needed accuracy. Even if the aerosol forcing has remained unchanged in the past decade, the dashed line in Fig. 6b shows that the total climate forcing increased at a slower rate in the past decade than in the prior three decades. The slight growth in the past decade is due to a combination of factors: solar irradiance decline, slight increase of stratospheric aerosols, and the lower growth rate of greenhouse gas forcing compared with the 1970s and 1980s. A slower growth rate of the net climate forcing may have contributed to the standstill of global temperature in the past decade, but it cannot explain the standstill, because it is known that the planet has been out of energy balance, more energy coming in from the sun than energy being radiated to space.10 The planetary energy imbalance is due largely to the increase of climate forcings in prior decades and the great thermal inertia of the ocean. The more important factor in the standstill is probably unforced dynamical variability, essentially climatic "noise". 6 Fig. 6. Estimated climate forcings, with uncertainties that vary from small for well-mixed greenhouse gases to large for unmeasured tropsopheric aerosols. Forcings through 2003 (vertical line) are the same as used by Hansen et al. (2007), except the tropospheric aerosol forcing after 1990 is approximated as -0.5 times the GHG forcing. Aerosol forcing includes all aerosol effects, including indirect effects on clouds and snow albedo. GHGs include O3 and stratospheric H2O, in addition to well-mixed GHGs. Indeed, the current stand-still of the 5-year running mean global temperature may be largely a consequence of the fact that the first half of the past 10 years had predominately El Nino conditions, while the second half had predominately La Nina conditions (Nino index in Fig. 1). Comparing the global temperature at the time of the most recent three La Ninas (1999-2000, 2008, and 2011-2012), it is apparent that global temperature has continued to rise between recent years of comparable tropical temperature, indeed, at a rate of warming similar to that of the previous three decades. We conclude that background global warming is continuing, consistent with the known planetary energy imbalance, even though it is likely that the slowdown in climate forcing growth rate contributed to the recent apparent standstill in global temperature. Climate Change Expectations. It is relevant to comment on expectations about near-term climate change, especially because it seems likely that solar irradiance observations are in the process of confirming that solar irradiance has weakened modestly over the latest solar cycle. If solar irradiance were the dominant drive of climate change that most global warming contrarians believe, then a global cooling trend might be expected. On the contrary, however, the continuing planetary energy imbalance and the rapid increase of CO2 emissions from fossil fuel use assure that global warming will continue on decadal time scales. Moreover, our interpretation of the larger role of unforced variability in temperature change of the past decade, suggests that global temperature will rise significantly in the next few years as the tropics moves inevitably into the next El Nino phase.

**But action now can reverse it.**

Peters 12/2/12 [Glen P. Peters, Robbie M. Andrew, Tom Boden, Josep G. Canadell, Philippe Ciais, Corinne Le Quéré, Peer Reviewed Journal, Glen, Center for International Climate and Environmental Research – Oslo (CICERO) The challenge to keep global warming below 2 [deg]C, Nature Climate Change, <http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html>]

On-going climate negotiations have recognized a “significant gap” between the current trajectory of global greenhouse-gas emissions and the “likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels”[1](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref1). Here we compare recent trends in carbon dioxide (CO2) emissions from fossil-fuel combustion, cement production and gas flaring with the primary emission scenarios used by the Intergovernmental Panel on Climate Change (IPCC). Carbon dioxide emissions are the largest contributor to long-term climate change and thus provide a good baseline to assess progress and examine consequences. We find that current emission trends continue to track scenarios that lead to the highest temperature increases. Further delay in global mitigation makes it increasingly difficult to stay below 2 °C. Long-term emissions scenarios are designed to represent a range of plausible emission trajectories as input for climate change research[2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref2), [3](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref3). The IPCC process has resulted in four generations of emissions scenarios[2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref2): Scientific Assessment 1990 (SA90)[4](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref4), IPCC Scenarios 1992 (IS92)[5](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref5), Special Report on Emissions Scenarios (SRES)[6](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref6), and the evolving Representative Concentration Pathways (RCPs)[7](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref7) to be used in the upcoming IPCC Fifth Assessment Report. The RCPs were developed by the research community as a new, parallel process of scenario development, whereby climate models are run using the RCPs while simultaneously socioeconomic and emission scenarios are developed that span the range of the RCPs and beyond[2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref2). It is important to regularly re-assess the relevance of emissions scenarios in light of changing global circumstances[3](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref3), [8](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref8). In the past, decadal trends in CO2 emissions have responded slowly to changes in the underlying emission drivers because of inertia and path dependence in technical, social and political systems[9](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref9). Inertia and path dependence are unlikely to be affected by short-term fluctuations[2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref2), [3](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref3), [9](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref9) — such as financial crises[10](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref10) — and it is probable that emissions will continue to rise for a period even after global mitigation has started[11](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref11). Thermal inertia and vertical mixing in the ocean, also delay the temperature response to CO2 emissions[12](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref12). Because of inertia, path dependence and changing global circumstances, there is value in comparing observed decadal emission trends with emission scenarios to help inform the prospect of different futures being realized, explore the feasibility of desired changes in the current emission trajectory and help to identify whether new scenarios may be needed. Global CO2 emissions have increased from 6.1±0.3 Pg C in 1990 to 9.5±0.5 Pg C in 2011 (3% over 2010), with average annual growth rates of 1.9% per year in the 1980s, 1.0% per year in the 1990s, and 3.1% per year since 2000. We estimate that emissions in 2012 will be 9.7±0.5 Pg C or 2.6% above 2011 (range of 1.9–3.5%) and 58% greater than 1990 ([Supplementary Information](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#supplementary-information) and ref. [13](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref13)). The observed growth rates are at the top end of all four generations of emissions scenarios ([Figs 1](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f1) and [2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f2)). Of the previous illustrative IPCC scenarios, only IS92-E, IS92-F and SRES A1B exceed the observed emissions ([Fig. 1](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f1)) or their rates of growth ([Fig. 2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f2)), with RCP8.5 lower but within uncertainty bounds of observed emissions. Figure 1: Estimated CO2 emissions over the past three decades compared with the IS92, SRES and the RCPs. The SA90 data are not shown, but the most relevant (SA90-A) is similar to IS92-A and IS92-F. The uncertainty in historical emissions is ±5% (one standard deviation). Scenario data is generally reported at decadal intervals and we use linear interpolation for intermediate years. [Full size image (386 KB)](http://www.nature.com/nclimate/journal/v3/n1/fig_tab/nclimate1783_F1.html) [Figures index](http://www.nature.com/nclimate/journal/v3/n1/fig_tab/nclimate1783_ft.html) [Next](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f2) Figure 2: Growth rates of historical and scenario CO2 emissions. The average annual growth rates of the historical emission estimates (black crosses) and the emission scenarios for the time periods of overlaps (shown on the horizontal axis). The growth rates are more comparable for the longer time intervals considered (in order: SA90, 27 years; IS92, 22 years; SRES, 12 years; and RCPs, 7 years). The short-term growth rates of the scenarios do not necessarily reflect the long-term emission pathway (for example, A1B has a high initial growth rate compared with its long-term behaviour and RCP3PD has a higher growth rate until 2010 compared with RCP4.5 and RCP6). For the SRES, we represent the illustrative scenario for each family (filled circles) and each of the contributing model scenarios (open circles). The scenarios generally report emissions at intervals of 10 years or more and we interpolated linearly to 2012; a sensitivity analysis shows a linear interpolation is robust ([Supplementary Fig. S14](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#supplementary-information)). [Full size image (112 KB)](http://www.nature.com/nclimate/journal/v3/n1/fig_tab/nclimate1783_F2.html) [Previous](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f1) [Figures index](http://www.nature.com/nclimate/journal/v3/n1/fig_tab/nclimate1783_ft.html) Observed emission trends are in line with SA90-A, IS92-E and IS92-F, SRES A1FI, A1B and A2, and RCP8.5 ([Fig. 2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f2)). The SRES scenarios A1FI and A2 and RCP8.5 lead to the highest temperature projections among the scenarios, with a mean temperature increase of 4.2–5.0 °C in 2100 (range of 3.5–6.2 °C)[14](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref14), whereas the SRES A1B scenario has decreasing emissions after 2050 leading to a lower temperature increase of 3.5 °C (range 2.9–4.4°C)[14](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref14). Earlier research has noted that observed emissions have tracked the upper SRES scenarios[15](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref15), [16](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref16) and [Fig. 1](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f1) confirms this for all four scenario generations. This indicates that the space of possible pathways could be extended above the top-end scenarios to accommodate the possibility of even higher emission rates in the future. The new RCPs are particularly relevant because, in contrast to the earlier scenarios, mitigation efforts consistent with long-term policy objectives are included among the pathways[2](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref2). RCP3-PD (peak and decline in concentration) leads to a mean temperature increase of 1.5 °C in 2100 (range of 1.3–1.9 °C)[14](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref14). RCP3–PD requires net negative emissions (for example, bioenergy with carbon capture and storage) from 2070, but some scenarios suggest it is possible to stay below 2 °C without negative emissions[17](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref17), [18](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref18), [19](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref19). RCP4.5 and RCP6 — which lie between RCP3–PD and RCP8.5 in the longer term — lead to a mean temperature increase of 2.4 °C (range of 1.0–3.0 °C) and 3.0 °C (range of 2.6–3.7 °C) in 2100, respectively[14](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref14). For RCP4.5, RCP6 and RCP8.5, temperatures will continue to increase after 2100 due to on-going emissions[14](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref14) and inertia in the climate system[12](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref12). Current emissions are tracking slightly above RCP8.5, and given the growing gap between the other RCPs ([Fig. 1](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#f1)), significant emission reductions are needed by 2020 to keep 2 °C as a feasible goal[18](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref18), [19](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref19), [20](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref20). To follow an emission trend that can keep the temperature increase below 2 °C (RCP3-PD) requires sustained global CO2 mitigation rates of around 3% per year, if global emissions peak before 2020[11](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref11), [19](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref19). A delay in starting mitigation activities will lead to higher mitigation rates[11](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref11), higher costs[21](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref21), [22](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref22), and the target of remaining below 2 °C may become unfeasible[18](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref18), [20](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref20). If participation is low, then higher rates of mitigation are needed in individual countries, and this may even increase mitigation costs for all countries[22](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref22). Many of these rates assume that negative emissions will be possible and affordable later this century[11](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref11), [17](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref17), [18](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref18), [20](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref20). Reliance on negative emissions has high risks because of potential delays or failure in the development and large-scale deployment of emerging technologies such as carbon capture and storage, particularly those connected to bioenergy[17](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref17), [18](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref18). Although current emissions are tracking the higher scenarios, it is still possible to transition towards pathways consistent with keeping temperatures below 2 °C (refs [17](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref17),[19](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref19),[20](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref20)). The historical record shows that some countries have reduced CO2 emissions over 10-year periods, through a combination of (non-climate) policy intervention and economic adjustments to changing resource availability. The oil crisis of 1973 led to new policies on energy supply and energy savings, which produced a decrease in the share of fossil fuels (oil shifted to nuclear) in the energy supply of Belgium, France and Sweden, with emission reductions of 4–5% per year sustained over 10 or more years ([Supplementary Figs S17–19](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#supplementary-information)).A continuous shift to natural gas — partially substituting coal and oil — led to sustained mitigation rates of 1–2% per year in the UK in the 1970s and again in the 2000s, 2% per year in Denmark in the 1990–2000s, and 1.4% per year since 2005 in the USA ([Supplementary Figs S10–12](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#supplementary-information)). These examples highlight the practical feasibility of emission reductions through fuel substitution and efficiency improvements, but additional factors such as carbon leakage[23](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref23) need to be considered. These types of emission reduction can help initiate a transition towards trajectories consistent with keeping temperatures below 2 °C, but further mitigation measures are needed to complete and sustain the reductions. Similar energy transitions could be encouraged and co-ordinated across countries in the next 10 years using available technologies[19](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref19), but well-targeted technological innovations[24](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref24) are required to sustain the mitigation rates for longer periods[17](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref17). To move below the RCP8.5 scenario — avoiding the worst climate impacts — requires early action[17](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref17), [18](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref18), [21](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref21) and sustained mitigation from the largest emitters[22](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref22) such as China, the United States, the European Union and India. These four regions together account for over half of global CO2 emissions, and have strong and centralized governing bodies capable of co-ordinating such actions. If similar energy transitions are repeated over many decades in a broader range of developed and emerging economies, the current emission trend could be pulled down to make RCP3-PD, RCP4.5 and RCP6 all feasible futures. A shift to a pathway with the highest likelihood to remain below 2 °C above pre-industrial levels (for example, RCP3-PD), requires high levels of technological, social and political innovations, and an increasing need to rely on net negative emissions in the future[11](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref11), [17](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref17), [18](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref18). The timing of mitigation efforts needs to account for delayed responses in both CO2 emissions[9](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref9) (because of inertia in technical, social and political systems) and also in global temperature[12](http://www.nature.com/nclimate/journal/v3/n1/full/nclimate1783.html#ref12) (because of inertia in the climate system). Unless large and concerted global mitigation efforts are initiated soon, the goal of remaining below 2 °C will very soon become unachievable.

**Eliminating federal laws that chill offshore wind is necessary and sufficient to mitigate its worst impacts.**

Thaler 9/17/12 [Jeff Thaler, FIDDLING AS THE WORLD BURNS: HOW CLIMATE CHANGE URGENTLY REQUIRES A PARADIGM SHIFT IN THE PERMITTING OF RENEWABLE ENERGY PROJECTS,University of Maine School of Law September 17, 2012 Environmental Law, Volume 42, Issue 4, Forthcoming, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2148122]

This is not an Article debating whether twenty first century climate change is likely, very likely, or primarily caused by human emissions of greenhouse gases; how much global temperatures will rise by various dates; or whether to choose a carbon tax or cap-and-trade system. This Article also will not debate whether and how much to decrease subsidies of fossil fuel energy sources or increase those for renewable energy sources. This Article instead will start with the oft-stated goal of increasing domestic and international reliance upon carbon-emission-free renewable energy sources3 while decreasing use of fossil fuel energy sources,4 and ask the question few have addressed concretely: how can we more quickly achieve that goal to slow the devastating effects of increasing greenhouse gases, if we do not first tackle the significant barriers posed by the outdated and often self-defeating maze of regulatory requirements? The need to act is urgent if we are to make sufficient and timely progress toward reduced fossil fuel reliance.

To best understand the urgency, Part II begins with a look at our current fossil and renewable energy mix in the generation of electricity,5 and then reviews the current and predicted climate change impacts on our energy choices. At stake are several hundred billion dollars of climate change–related damages each year just in the United States—from farming, fishing, and forestry industries increasingly harmed by changing temperature and precipitation patterns,6 to coastlines and cities progressively more threatened by rising sea levels.7 The business and insurance sectors have been hit by a growing number of extreme weather events (most recently Hurricane Sandy),8 public health is increasingly threatened by disease and mortality from our over-reliance on fossil fuels and from their resulting emissions,9 and U.S. national security is increasingly at risk from having to protect more foreign sources of fossil fuels and from resource-related conflicts resulting in more violence and displaced persons.10

Unfortunately, as the economic and health costs from fossil fuel emissions have grown so too has the byzantine labyrinth of laws and regulations to be navigated before a renewable energy project can be approved, let alone financed and developed. 6 The root cause goes back to the 1970s when some of our fundamental environmental laws were enacted, before we were aware of climate change threats, to slow down the review of proposed projects by requiring more studies of potential project impacts before approval.7 But in our increasingly carbon-based 21st century, we need a paradigm shift. While achieving important goals, those federal laws and regulations, and similar ones at the state and local levels, have become so unduly burdensome, slow, and expensive that they will chill investment in, and kill any significant growth of, renewable carbon-free energy sources and projects, thereby imposing huge economic, environmental and social costs upon both our country and the world8 unless they are substantially changed. Indeed, by 2050 the U.S. must reduce its greenhouse gas emissions by 80% to even stabilize atmospheric levels of carbon, and can do so by increasing generated electricity from renewable sources from the current thirteen percent up to eighty percent9-- but only if there are targeted new policy efforts to accelerate, fifty times faster than since 1990, implementation of clean, renewable energy sources.10 Thus, Part II focuses on one promising technology to demonstrate the flaws in its current licensing permitting regimes, and makes concrete recommendations for reform.11 Wind power generation from onshore installations is proven, generates no GHGs and consumes no water,12 is increasingly cost-competitive with most fossil fuel sources, and can be employed relatively quickly in many parts of the United States and world. Offshore wind power is a relatively newer technology, especially deep-water floating projects, and presently less cost-competitive than onshore wind. However, because wind speeds are on average about ninety percent stronger and more consistent over water than over land, with higher power densities and lower shear and turbulence,13 America’s offshore resources can provide more than our current electricity use.14 Moreover, these resources are near many majorcities that are home to much of the population and electricity demand thereby “reducing the need for new high-voltage transmission from the Midwest and Great Plains to serve coastal lands…”15 Therefore, in light Part II’s spotlight on literally dozens of different federal (yet alone state and local) statutes and their hundreds of regulations standing between an offshore wind project applicant and construction, Part III makes concrete statutory and regulatory recommendations to much more quickly enable the full potential of offshore wind energy to become a reality before it is too late. Greenhouse gases (GHGs) trap heat in the atmosphere; the primary GHG emitted by human activities is carbon dioxide (CO2), which in 2012 represented 84 percent of all human-sourced U.S. GHG emissions.16 “The combustion of fossil fuels to generate electricity is the largest single source of CO2 emissions in the nation, accounting for about 40% of total U.S. CO2 emissions and 33% of total U.S. greenhouse gas emissions in 2009.”17 The significant increased concentrations of GHGs into our atmosphere since the 1750 Industrial Revolution began greater use of fossil fuel sources have caused our world to warm and climate to change.18 Climate change may be the single greatest threat to human society and wildlife, as well as to the ecosystems upon which each depends for survival.19 In 1992, the U.S. signed and ratified the United Nations Framework Convention on Climate Change (UNFCC), whose stated objective was: “[s]tabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”20 In 2007, the Intergovernmental Panel on Climate Change (IPCC) concluded that it is “very likely,” at least ninety percent certain, that humans are responsible for most of the “unequivocal” increases in globally averaged temperatures of the previous fifty years. 21 Yet in the twenty years since the UNFCCC, it also is unequivocal that GHG levels have not stabilized but continue to grow, ecosystems and food production have not been able to adapt, and our heavy reliance on fossil-fueled energy continues “dangerous anthropogenic interference with the climate system.”22 Equally unequivocal is that 2011 global temperatures were “the tenth highest on record and [were] higher than any previous year with a La Nina event, which [normally] has a relative cooling influence”; “the warmest 13 years of average global temperatures [also] have all occurred in the 15 years since 1997.”23 Global emissions of carbon dioxide also jumped 5.9% in 2010 by the largest amount on record -- 500 million extra tons of carbon was pumped into the air, “the largest absolute jump in any year since the Industrial Revolution [began in 1750], and the largest percentage increase since 2003.”24 In order to even have a fifty-fifty chance that the average global temperature will not rise more than 2° C25 beyond the temperature of 1750,26 our cumulative emissions of CO2 after 1750 must not exceed one trillion tons; but by mid-July 2012 we had already emitted over 559 billion tons and rising, and at current rates will emit the trillionth ton in July 2043.27 The consequence is that “the current generation are uniquely placed in human history: the choices we make now—in the next 10-20 years—will alter the destiny of our species (let alone every other species) unalterably, and forever.”28 Unfortunately, by the end of 2011 the more than 10,000 government and U.N. officials from all over the world attending the Durban climate change conference29 agreed that there is a “significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels.”30 What are some of the growing economic, public health, and environmental costs to our country proximately31 caused by our daily burning of fossil fuels? The National Research Council (NRC) analyzed the "hidden" costs of energy production and use not reflected in market prices of coal, oil, other energy sources, or the electricity and gasoline produced from them. For the year 2005 alone, the NRC estimated $120 billion of damages to the U.S. from fossil fuel energy, reflecting primarily health damages from air pollution associated with electricity generation and motor vehicle transportation. Of that total, $62 billion was due to coal-fired electricity generation; $56 billion from ground transportation (oil-petroleum); and over $2.1 billion from electricity from and heating with natural gas. The $120 billion figure did not include damages from climate change, harm to ecosystems and infrastructure, insurance costs, effects of some air pollutants, and risks to national security, which the NRC examined but did not specifically monetize. 32 The NRC did, however, suggest that under some scenarios climate damages from energy use could equal $120 billion.33 Thus, adding natural resource damages from harm to ecosystems, infrastructure damages, insurance costs, air pollutant costs, and fossil-fueled national security costs to $240 billion, our burning of fossil fuels appears to be costing Americans about $300 billion each year—a “hidden” number likely to be larger in the future. What does the future hold for a carbon-stressed world? Most scientific analyses presently predict that by 2050 the Earth may warm by 2 to 2.5° C due to the rising level of greenhouse gases in the atmosphere; at the high-end of projections, the 2050 warming could exceed 4.5° C.34 But those increases are not consistent globally; rather, “[i]n all possible [predicted] outcomes, the warming over land would be roughly twice the global average, and the warming in the Arctic greater still.”35 For example, the NRC expects that each degree Celsius increase will produce in the U.S. double to quadruple the area burned by wildfires in the western U.S.; a 5-15 percent reduction in crop yields; more destructive power from hurricanes; greater risk of very hot summers; and more changes in precipitation frequency and amounts.36 Globally, a summary of studies predicts that a 1°C global average temperature rise will reduce Arctic sea ice by an annual average of fifteen percent and by twenty-five percent in Septembers 37; at 2°C Europe suffers greater heat waves, the Greenland Ice Sheet significantly melts, and many land and marine species are driven to extinction; at 3°C the Amazon suffers severe drought and resultant firestorms that will release significantly more carbon into the atmosphere38; at 4°C hundreds of billions of tons of carbon in permafrost melt, releasing methane in immense quantities, while the Arctic Ocean ice cap disappears and Europe suffers greater droughts.39 To presently assess what a 5°C rise will mean, we must look back into geological time, 55 million years ago, when the Earth abruptly experienced dramatic global warming due to the release of methane hydrates--a substance presently found on subsea continental shelves. Fossils demonstrate that crocodiles were in the Canadian high Arctic, breadfruit trees were growing on the coast of Greenland, and the Arctic Ocean saw water temperatures of 20 °C within 200km of the North Pole itself.40 And a 6°C average rise takes us even further back, to the end of the Permian period, 251 million years ago, when up to 95% of species relatively abruptly became extinct.41 This may sound extreme, but the International Energy Administration warned this year that the 6°C mark is in reach by 2050 at current rates of fossil fuel usage.42 However, even given the severity of these forecasts, many still question the extent that our climate is changing,43 and thus reject moving away from our largely fossil-fueled electricity, transportation and heating sources. Therefore, in this next subsection I provide the latest scientific data documenting specific climate impacts to multiple parts of U.S. and global daily lives, and the costly consequences that establish the urgency for undertaking the major regulatory reforms I recommend in Part III of this Article. B. Specific Climate Threats and Consequences 1. When Weather Extremes Increase A 2011 IPCC Special Report predicted that it is virtually certain [99-100% probability] that increases in the frequency of warm daily temperature extremes and decreases in cold extremes will occur throughout the 21st century on a global scale. It is very likely [90% to 100% probability] that heat waves will increase in length, frequency, and/or intensity over most land areas…. It is very likely that average sea level rise will contribute to upward trends in extreme sea levels and extreme coastal high water levels. 44 Similarly, a House of Representatives Committee report (ACESA Report) found that “[t]here is a broad scientific consensus that the United States is vulnerable to weather hazards that will be exacerbated by climate change.”45 It also found that the “cost of damages from weather disasters has increased markedly from the 1980s, rising to more than $100 billion in 2007. In addition to a rise in total cost, the frequency of weather disasters costing more than one billion dollars has increased."46 In 2011, the U.S. faced the most billion-dollar climate disasters ever, with fourteen distinct disasters alone costing at least $53 billion to our economy.47 In the first six months of 2012 in the U.S., there were more than 40,000 hot temperature records, horrendous wildfires, major droughts, oppressive heat waves, major flooding, and a powerful derecho wind storm.48 The IPCC Fourth Assessment Report identified impacts from growing weather hazards upon public health to include: more frequent and more intense heat waves; more people suffering death, disease and injury from floods, storms, fires, and droughts; increased cardio-respiratory morbidity and mortality associated with ground-level ozone pollution; changes in the range of some infectious disease carriers spreading, for example, malaria and the West Nile virus; and increased malnutrition and consequent disorders.49 As noted above, $120 billion per year of the NRC’s Hidden Energy report’s damage assessment were based on health damages,50 including an additional 10,000-20,000 deaths per year.51 And by 2050, cumulative heat-related deaths from unabated climate change are predicted to be an additional 33,000 in the forty largest U.S. cities, with more than 150,000 additional deaths by 2100.52 Weather extremes also threaten our national security, whose policy is premised on stability. In 2007 the CNA Corporation’s report National Security and the Threat of Climate Change described climate change as a “threat multiplier for instability” and warned that p]rojected climate change poses a serious threat to America's national security. The predicted effects of climate change over the coming decades include extreme weather events, drought, flooding, sea level rise, retreating glaciers, habitat shifts, and the increased spread of life-threatening diseases. These conditions have the potential to disrupt our way of life and to force changes in the way we keep ourselves safe and secure.53 The following year, in the first-ever U.S. government analysis of climate change security threats, the National Intelligence Council issued an assessment warning, in part, that climate change could threaten U.S. security by leading to political instability, mass movements of refugees, terrorism, and conflicts over water and other resources.54 2. When Frozen Water Melts In 2007 the IPCC predicted that sea levels would rise by 8 to 24 inches above current levels by 2100; since then, however, numerous scientists and studies have suggested that the 2007 prediction is already out-of-date and that sea levels will likely rise up to 1.4 meters (55 inches) given upwardly trending CO2 emissions.55 The 2009 ACESA Report found that rising sea levels are already causing inundation of low-lying lands, corrosion of wetlands and beaches, exacerbation of storm surges and flooding, and increases in the salinity of coastal estuaries and aquifers…. Further, about one billion people live in areas within 75 feet elevation of today's sea level, including many US cities on the East Coast and Gulf of Mexico, almost all of Bangladesh, and areas occupied by more than 250 million people in China.56 This year NASA’s Chief Scientist testified to Congress that two-thirds of sea level rise from the last three decades is derived from the Greenland and Antarctic ice sheets and the melting Arctic region, then warned: [t]he West Antarctic ice sheet (WAIS), an area about the size of the states of Texas and Oklahoma combined….contains the equivalent of 3.3 m of sea level, and all that ice rests on a soft-bed that lies below sea level. In this configuration, as warm seawater melts the floating ice shelves, causing them to retreat and the glaciers that feed them to speed up, there is no mechanism to stop the retreat and associated discharge, if warming continues. Thus the WAIS exhibits great potential for substantial and relatively rapid contributions to sea level rise. … In Greenland, the situation is not as dramatic, since the bed that underlies most of the ice is not below sea level, and the potential for unabated retreat is limited to a few outlet glaciers. In Greenland, however, summer air temperatures are warmer and closer to ice’s melting point, and we have observed widespread accumulation of meltwater in melt ponds on the ice sheet surface..57 In the West Antarctic ice sheet region, glacier retreat appears to be widespread, as the air has “warmed by nearly 6°F since 1950.”58 As for Greenland’s Ice Sheet, it also is at greater risk than the IPCC had thought. Recent studies with more complete modeling suggest that the warming threshold leading to an essentially ice-free state is not the previous estimate of an additional 3.1°C, but only 1.6°C. Thus, the 2°C target may be insufficient to prevent loss of much of the Ice Sheet and resultant significant sea level rise.59 The ACESA Report also identified the Arctic as “one of the hotspots of global warming”60 because “[o]ver the past 50 years average temperatures in the Arctic have increased as much as 7 °F, five times the global average.”61 Moreover, in “2007, a record 386,000 square miles of Arctic sea ice melted away, an area larger than Texas and Arizona combined and as big a decline in one year as had occurred over the previous decade”.62 “Arctic sea ice is melting faster than climate models [had] predict[ed], and is about thirty years ahead” of the 2007 IPCC predictions, thus heading toward the Arctic Ocean being ice-free in the late summer beginning sometime between 2020 and 2037.63 How is the Arctic’s plight linked to non-Arctic impacts? “The Arctic region arguably has the greatest concentration of potential tipping elements in the Earth system, including Arctic sea ice, the Greenland ice sheet, North Atlantic deep-water formation regions, boreal forests, permafrost and marine methane hydrates.”64 Additionally: Warming of the Arctic region is proceeding at three times the global average….Loss of Arctic sea ice has been tentatively linked to extreme cold winters in Europe… Near complete loss of the summer sea ice, as forecast for the middle of this century, if not before, will probably have knock-on effects for the northern mid-latitudes, shifting jet streams and storm tracks.65 Since 1980, sea levels have been rising three to four times faster than the global average between Cape Hatteras, N.C. and Boston.66 “[P]ast and future global warming more than doubles the estimated odds of ‘century’ or worse floods occurring within the next 18 years” for most coastal U.S. locations.67 Although land-based glacier melts are not major contributors to sea level rise, they do impact peoples’ food and water supplies. Virtually all of the world's glaciers, which store seventy-five percent of the world’s freshwater, are receding in direct response to global warming, aggravating already severe water scarcity--both in the United States and abroad.68 While over fifteen percent of the world population currently relies on melt water from glaciers and snow cover for drinking water and irrigation for agriculture, the IPCC projects a sixty percent volume loss in glaciers in various regions and widespread reductions in snow cover throughout the twenty-first century.69 Likewise, snowpack has been decreasing, and it is expected that snow cover duration will significantly decrease in eastern and western North America and Scandinavia by 2020, and globally by 2080.70 Climate change thus increases food insecurity by reducing yields of grains, such as corn and wheat, from increased water scarcity and intensification of severe hot conditions, thereby causing corn price volatility to sharply increase.71 Globally, the number of people living in "severely stressed" river basins will increase “by one to two billion people in the 2050s”…About two-thirds of the global land area is expected to experience increased water stress”.72 3. When Liquid Water Warms Over the past century, oceans, which cover seventy percent of the Earth’s surface, are warming. Global sea-surface temperature has increased about 1.3°F, while the heat has also penetrated almost two miles into the deep ocean.73 This increased warming is contributing to the destruction of seagrass meadows, causing an annual release back into the environment of 299 million tons of carbon.74 Elevated atmospheric carbon dioxide concentrations also are leading to higher absorption of CO2 into the upper ocean, making the surface waters more acidic (lower Ph).75 “[O]cean chemistry currently is changing at least 100 times more rapidly than it has changed during the 650,000 years preceding our [fossil-fueled] industrial era.”76 The acidification has serious implications for the calcification rates of organisms and plants living at all levels within the global ocean. Coral reefs, the habitat for about a quarter of (over a million ) of marine species, are collapsing, endangering more than a third of all coral species77; indeed, temperature thresholds for the majority of coral reefs worldwide are expected to be exceeded, causing mass bleaching and complete coral mortality.78 “[T]he productivity of plankton, krill, and marine snails, which compose the base of the ocean food-chain, [also] declines as the ocean acidifies,”79 adversely impacting populations of everything from whales to salmon80-- who also are being harmed by the oceans’ warming up. 81 **Extinctions** from climate change also are expected to be significant and widespread. The IPCC Fourth Assessment found that “approximately 20-30% of plant and animal species assessed so far are likely to be at increased risk of extinction if increases in global average temperature exceed 1.5-2.5°C82—a range likely to be exceeded in the coming decades. “[R]ecent studies have linked global warming to declines in such [] species as [] blue crabs, penguins, gray whales, salmon, walruses, and ringed seals[; b]ird extinction rates are predicted to be as high as 38 percent in Europe and 72 percent in northeastern Australia, if global warming exceeds 2°C above pre-industrial levels.”83 Between now and 2050, Conservation International estimates one species will face extinction every twenty minutes; the current extinction rate is one thousand times faster than the average during Earth's history, 84 in part because the climate is changing more than 100 times faster than the rate at which many species can adapt.85 4. When Land Dries Out The warming trends toward the Earth’s poles and higher latitudes are threatening people not just from melting ice and sea level rise, but also from the predicted thawing of permafrost of thirty to fifty percent by 2050, and as much or more of it by 2100.86 “The term permafrost refers to soil or rock that has been below 0°C (32°F) and frozen for at least two years.”87 Permafrost underlies about twenty-five percent of the land area in the northern hemisphere, and is “estimated to hold 30 percent or more of all carbon stored in soils worldwide”—which equates to four times more than all the carbon humans have emitted in modern times.88 Given the increasing average air temperatures in Eastern Siberia, Alaska and northwestern Canada, thawing of the Northern permafrost would release massive amounts of carbon dioxide (doubling current atmospheric levels) and methane89 into the atmosphere. Indeed, there are about 1.7 trillion tons of carbon in northern soils (roughly twice the amount in the atmosphere), about eighty-eight percent of it in thawing permafrost.90 Permafrost thus may become an annual source of carbon equal to fifteen to thirty-five percent of today's annual human emissions.91 But like seagrass meadows and unlike power plant emissions, we cannot trap or prevent permafrost carbon emissions at the source. Similarly, forests, which “cover about 30 percent of the Earth's land surface and hold almost half of the world's terrestrial carbon…act both as a source of carbon emissions to the atmosphere when cut, burned, or otherwise degraded and as a sink when they grow...”92 A combination of droughts, fires, and spreading pests, though, are causing economic and environmental havoc:. “In 2003, [] forest fires in Europe, the United States, Australia, and Canada accounted for more global [carbon] emissions than any other source...”93 There have been significant increases in both the number of major wildfires and the area of forests burned in the U.S. and Canada.94 Fires fed by hot, dry weather have killed enormous stretches forest in Siberia and in the Amazon, “which recently suffered two ‘once a century’ droughts just five years apart”.95 Climate change also is exacerbating the geographic spread and intensity of insect infestations. For example, in British Columbia “the mountain pine beetle extended its range north and has destroyed an area of soft-wood forest three times the size of Maryland, killing 411 million cubic feet of trees—double the annual take by all the loggers in Canada. Alaska has also lost up to three million acres of old growth forest to the pine beetle.”96 Over the past fifteen years the spruce bark beetle extended its range into Alaska, where it has killed about 40 million trees, “more than any other insect in North America's recorded history”.97 The drying and burning forests, and other increasingly dry landscapes, also are causing “flora and fauna”[ to move] to higher latitudes or to higher altitudes in the mountains”. 98 The human and environmental costs from failing to promptly reduce dependence on carbon-dioxide emitting sources for electricity, heating and transportation are dire and indisputable. Rather than being the leader among major countries in per capita GHG emissions, our country urgently needs to lead the world in cutting eighty percent our emissions by 2050, and using our renewable energy resources and technological advances to help other major emitting countries do the same. However, significantly increasing our use of carbon-free renewable sources to protect current and future generations of all species—human and non-human—requires concrete changes in how our legal system regulates and permits renewable energy sources. One of those sources with the potential for significant energy production and comparable elimination of fossil fueled greenhouse gases near major American and global population sources is offshore wind. II. THE OFFSHORE WIND POWER PERMITTING AND LEASING OBSTACLE COURSE A. Overview of Technology and Attributes As noted in the Introduction, offshore wind energy projects have the potential to generate large quantities of pollutant-free electricity near many of the world’s major population centers, and thus to help reduce the ongoing and projected economic, health, and environmental damages from climate change.99 Wind speeds over water are stronger and more consistent than over land, and “have a gross potential generating capacity four times greater than the nation’s present electric capacity.”100 The net capacity factor101 for offshore turbines is greater than standard land-based turbines, and their blade-tip speeds are higher than their land-based counterparts.102 Offshore wind turbine substructure designs mainly fall into three depth categories: shallow (30 m or less), transitional (>30 m to 60 m), and deep water (>60 m).103 All of the grid-scale offshore wind farms in Europe have monopole foundations embedded into the seabed in water depths ranging from 5m to 30m; the proposed American projects such as Cape Wind in Massachusetts and Block Island in Rhode Island would likewise be shallow-water installations.

In deeper water, it is not economically feasible to affix a rigid structure to the sea floor, and floating platforms are envisioned. The three concepts shown below have been developed for floating platform designs, each of which is tethered but not built into the seabed.125

Each design uses a different method for achieving static stability, and some small pilot efforts are underway to demonstrate the performance of different turbines.126 Greater wind speeds and thus available energy capture are found further from shore, particularly at ocean depths greater than 60 m.127 These attributes, combined with their proximity to major coastal cities and energy consumers,128 are why, in our carbon-stressed world, offshore wind requires serious consideration and prompt implementation. As demonstrated in the following pages, however, the maze of federal and state regulatory requirements facing renewable energy projects in general and offshore wind in particular, is especially burdensome.129 These requirements undermine the fundamental goal of significantly increasing reliance on emission-free renewable energy sources130 and, unless substantially revised, will effectively preclude any meaningful efforts to mitigate the many damaging human and economic impacts of climate change.

B. Federal and State Jurisdiction

U.S. jurisdiction over the ocean and seafloor extends from the coast 200 nautical miles seaward.131 Within the umbrella of U.S. jurisdiction, ocean governance is divided between the federal government and individual states.132 Individual state governments retain title to submerged land within three nautical miles of shore,133 and may regulate activities within that area, subject to federal law.134 The federal government retains title and authority over all remaining waters out to 200 nautical miles from shore—the Outer Continental Shelf (OCS).135

**Disease outbreaks cause extinction.**

**Keating 9** (Joshua, Foreign Policy Web Editor, The End of the World, Foreign Policy, www.foreignpolicy.com/articles/2009/11/13/the\_end\_of\_the\_world?page=full)

How it could happen: Throughout history, plagues have brought civilizations to their knees. The Black Death killed more off more than half of Europe's population in the Middle Ages. In 1918, a flu pandemic killed an estimated 50 million people, nearly 3 percent of the world's population, a far greater impact than the just-concluded World War I. Because of globalization, diseases today spread even faster - witness the rapid worldwide spread of H1N1 currently unfolding. A global outbreak of a disease such as ebola virus -- which has had a 90 percent fatality rate during its flare-ups in rural Africa -- or a mutated drug-resistant form of the flu virus on a global scale could have a devastating, even civilization-ending impact. How likely is it? Treatment of deadly diseases has improved since 1918, but so have the diseases. Modern industrial farming techniques have been blamed for the outbreak of diseases, such as swine flu, and as the world’s population grows and humans move into previously unoccupied areas, the risk of exposure to previously unknown pathogens increases. More than 40 new viruses have emerged since the 1970s, including ebola and HIV. Biological weapons experimentation has added a new and just as troubling complication.

**So does hydrogen sulfide poisoning.**

**Ward 10** (Peter, Professor of Biology and Earth and Space Sciences at the University of Washington, Paleontologist and NASA Astrobiologist, Fellow at the California Academy of Sciences, The Flooded Earth: Our Future in a World Without Ice Caps, June 29, 2010)

In the rest of this chapter I will support a contention that within several millennia (or less) the planet will see a changeover of the oceans from their current “mixed” states to something much different and dire. Oceans will become stratified by their oxygen content and temperature, with warm, oxygen-free water lining the ocean basins. Stratified oceans like this in the past (and they were present for most of Earth’s history) have always been preludes to biotic catastrophe. Because the continents were in such different positions at that time, models we use today to understand ocean current systems are still crude when it comes to analyzing the ancient oceans, such as those of the **Devonian** or **Permian** Periods. Both times witnessed major mass extinctions, and these extinctions were somehow tied to events in the sea. Yet catastrophic as it was, the event that turned the Canning Coral Reef of Devonian age into the Canning Microbial Reef featured at the start of this chapter was tame compared to that ending the 300 million- to 251 million-year-old Permian Period, and for this reason alone the Permian ocean and its fate have been far more studied than the Devonian. But there is another reason to concentrate on the Permian mass extinction: it took place on a world with a climate more similar to that of today than anytime in the Devonian. Even more important, it was a world with ice sheets at the poles, something the more tropical Devonian Period may never have witnessed. For much of the Permian Period, the Earth, as it does today, had abundant ice caps at both poles, and there were large-scale continental glaciations up until at least 270 million years ago, and perhaps even later.4 But from then until the end of the Permian, the planet rapidly warmed, the ice caps disappeared, and the deep ocean bottoms filled with great volumes of warm, virtually oxygen-free seawater. The trigger for disaster was a short-term but massive infusion of carbon dioxide and other greenhouse gases into the atmosphere at the end of the Permian from the spectacular lava outpourings over an appreciable portion of what would become northern Asia. The lava, now ancient but still in place, is called the “Siberian Traps,” the latter term coming from the Scandinavian for lava flows. The great volcanic event was but the start of things, and led to changes in oceanography. The ultimate kill mechanism seems to have been a lethal combination of rising temperature, diminishing oxygen, and influx into water and air of the highly poisonous compound hydrogen sulfide. The cruel irony is that this latter poison was itself produced by life, not by the volcanoes. The bottom line is that life produced the ultimate killer in this and surely other ancient mass extinctions. This finding was one that spurred me to propose the Medea Hypothesis, and a book of the same name.5 Hydrogen sulfide poisoning might indeed be the worst biological effect of global warming. There is no reason that such an event cannot happen again, given short-term global warming. And because of the way the sun ages, it may be that such events will be ever easier to start than during the deep past. How does the sun get involved in such nasty business as mass extinction? Unlike a campfire that burns down to embers, any star gets ever hotter when it is on the “main sequence,” which is simply a term used to described the normal aging of a star—something like the progression we all go through as we age. But new work by Jeff Kiehl of the University of Colorado shows that because the sun keeps getting brighter, amounts of CO2 that in the past would not have triggered the process result in stagnant oceans filled with H2S-producing microbes. His novel approach was to estimate the global temperature rise to be expected from carbon dioxide levels added to the energy hitting the earth from the sun. Too often we refer to the greenhouse effect as simply a product of the gases. But it is sunlight that actually produces the heat, and that amount of energy hitting the earth keeps increasing. He then compared those to past times of mass extinctions. The surprise is that a CO2 level of 1,000 ppm would—with our current solar radiation—make our world the second hottest in Earth history—when the five hottest were each associated with mass extinction. In the deep history of our planet, there have been at least five short intervals in which the majority of living species suddenly went extinct. Biologists are used to thinking about how environmental pressures slowly choose the organisms most fit for survival through natural selection, shaping life on Earth like an artist sculpting clay. However, mass extinctions are drastic examples of natural selection at its most ruthless, killing vast numbers of species at one time in a way hardly typical of evolution. In the 1980s, Nobel Prize-winning physicist Luis Alvarez, and his son Walter Alvarez, first hypothesized that the impact of comets or asteroids caused the mass extinctions of the past.6 Most scientists slowly come to accept this theory of extinction, further supported by the discovery of a great scar in the earth—an impact crater—off the coast of Mexico that dates to around the time the dinosaurs went extinct. An asteroid probably did kill off the dinosaurs, but the causes of the remaining four mass extinctions are still obscured beneath the accumulated effects of hundreds of millions of years, and no one has found any credible evidence of impact craters. Rather than comets and asteroids, it now appears that short-term global warming was the culprit for the **four** other mass extinctions. I detailed the workings of these extinctions first in a 1996 Discover magazine article,7 then in an October 2006 Scientific American article, and finally in my 2007 book, Under a Green Sky.8 In each I considered whether such events could happen again. In my mind, such extinctions constitute the worst that could happen to life and the earth as a result of short-term global warming. But before we get to that, let us look at the workings of these past events. The evidence at hand links the mass extinctions with a changeover in the ocean from oxygenated to anoxic bottom waters. The source of this was a change in where bottom waters are formed. It appears that in such events, the source of our earth’s deep water shifted from the high latitudes to lower latitudes, and the kind of water making it to the ocean bottoms was different as well: it changed from cold, oxygenated water to warm water containing less oxygen. The result was the extinction of deep-water organisms. Thus a greenhouse extinction is a product of a changeover of the conveyor-belt current systems found on Earth any time there is a marked difference in temperatures between the tropics and the polar regions. Let us summarize the steps that make greenhouse extinction happen. First, the world warms over short intervals due to a sudden increase in carbon dioxide and methane, caused initially by the formation of vast volcanic provinces called flood basalts. The warmer world affects the ocean circulation systems and disrupts the position of the conveyor currents. Bottom waters begin to have warm, low-oxygen water dumped into them. The warming continues, and the decrease of equator-to-pole temperature differences brings ocean winds and surface currents to a near standstill. The mixing of oxygenated surface waters with the deeper and volumetrically increasing low-oxygen bottom waters lessens, causing ever-shallower water to change from oxygenated to anoxic. Finally, the bottom water exists in depths where light can penetrate, and the combination of low oxygen and light allows green sulfur bacteria to expand in numbers, filling the low-oxygen shallows. The bacteria produce toxic amounts of H2S, with the flux of this gas into the atmosphere occurring at as much as 2,000 times today’s rates. The gas rises into the high atmosphere, where it breaks down the ozone layer. The subsequent increase in ultraviolet radiation from the sun kills much of the photosynthetic green plant phytoplankton. On its way up into the sky, the hydrogen sulfide also kills some plant and animal life, and the combination of high heat and hydrogen sulfide creates a **mass extinction** on land.9 Could this happen again? No, says one of the experts who write the RealClimate.org Web site, Gavin Schmidt, who, it turns out, works under Jim Hansen at the NASA Goddard Space Flight Center near Washington, DC. I disagreed and challenged him to an online debate. He refused, saying that the environmental situation is going to be bad enough without resorting to creating a scenario for mass extinction. But special pleading has no place in science. Could it be that global warming could lead to the extinction of humanity? That prospect cannot be discounted. To pursue this question, let us look at what might be the most crucial of all systems maintaining habitability on Planet Earth: the thermohaline current systems, sometimes called the conveyor currents.

**Scenario two is Oceans ---**

**Offshore wind is critical to marine ecology since it creates reefs and eliminates trawling.**

Casey 12/4/12 [Zoë Casey, EWEA Staff Writer, Citing International and Swedish funded studies**,** Offshore wind farms benefit sealife, says study, http://www.ewea.org/blog/2012/12/offshore-wind-farms-benefit-sealife-says-study/]

Offshore wind farms can create a host of benefits for the local marine environment, as well as combatting climate change, a new study by the Marine Institute at Plymouth University has found.

The Marine Institute found that wind farms provide shelter to fish species since sea bottom trawling is often forbidden inside a wind farm, and it found that turbine support structures can create artificial reefs for some species.

A separate study at the Nysted offshore wind farm in Denmark confirmed this finding by saying that artificial reefs provided favourable growth conditions for blue mussels and crab species. A study on the Thanet offshore wind farm in the UK found that some species like cod shelter inside the wind farm.

One high-profile issue covered by the Marine Institute study was that of organisms colliding with offshore wind turbines. The study, backed-up by a number of previous studies, found that many bird species fly low over the water, avoiding collision with wind turbine blades. It also found that some species, such as Eider ducks, do modify their courses slightly to avoid offshore turbines.

When it comes to noise, the study found “no significant impact on behaviour or populations.” It noted that a separate study in the Netherlands found more porpoise clicks inside a Dutch wind farm than outside it “perhaps exploiting the higher fish densities found”.

The study also said that offshore wind power and other marine renewable energies should be rolled out rapidly in order to combat the threats to marine biodiversity, food production and economies posed by climate change.

“It is necessary to rapidly deploy large quantities of marine renewable energy to reduce the carbon emissions from fossil fuel burning which are leading to ocean acidification, global warming and climatic changes,” the study published said.

EWEA forecasts that 40 GW of offshore wind capacity will be online in European seas by 2020 which will offset 102 million tonnes of CO2 every year. By 2030, the expected 150 GW of offshore capacity will offset 315 million tonnes of CO2 annually – that’s a significant contribution to the effort to cut carbon.

“It is clear that the marine environment is already being damaged by the increasingly apparent impacts of climate change; however it is not too late to make a difference to avoid more extreme impacts,” the study said.

“If you bring all these studies together they all point to a similar conclusion: offshore wind farms have a positive impact on the marine environment in several ways,” said Angeliki Koulouri, Research Officer at EWEA. “First they contribute to a reduction in CO2 emissions, the major threat to biodiversity, second, they provide regeneration areas for fish and benthic populations,” she added.

**Trawling destroys critical ecosystems.**

Vinson 6 [Anna, JD Candidate, Georgetown University**,** “Deep Sea Bottom Trawling and the Eastern Tropical Pacific Seascape: A Test Case for Global Action,” Georgetown International Environmental Law Review, Winter, 18 Geo. Int'l Envtl. L. Rev. 355]

Every year an area of the ocean floor twice the size of the United States is decimated by trawling, a fishing practice whereby powerful vessels drag enormous nets on heavy metal frames. Modern technology has enabled trawlers to operate in the deep sea where bottom trawling has become the greatest threat to deep sea ecology. Covering more than half of the earth's surface, the deep sea supports millions of terrestrial and aquatic organisms. As a result, it assists breeding and feeding of organisms in shallower waters that support marine fisheries worldwide. The deep sea also contains biologically rich submerged mountains called seamounts that serve as an oasis of biological productivity in the open ocean. Bottom trawling scrapes these seamounts and other deep sea structures clean, easily devastating entire ecosystems.

Recently, the United Nations declined to adopt a global moratorium to prohibit deep sea bottom trawling. Though advocates for the moratorium still urge the United Nations to consider the proposed resolution, they also seek alternate methods to terminate the bottom trawl **fish**ery. One option is to restrict **fish**ing methods through cooperative management agreements among neighboring countries. Though the effectiveness of such agreements is limited by the jurisdiction of the individual signatories, a cooperative management agreement, such as the emerging regional marine reserve in the tropical Pacific, could serve as a good trial ground for a moratorium on deep sea bottom trawling. The Eastern Tropical Pacific Seascape, a product of the cooperation and combined oceanic jurisdictions of Costa Rica, Panama, Colombia, and Ecuador, encompasses an atypically large and biodiverse area of the deep sea. Banning deep sea bottom trawling in the Eastern Tropical Pacific Seascape will protect the vital environment and resources of that region while providing an unparalleled opportunity to illustrate the benefits of a moratorium for the global community. Accordingly, this note argues that such a ban in the Eastern Tropical Pacific Seascape should be adopted.

II. DEEP SEA BOTTOM TRAWLING

The unique characteristics of the deep sea, including remarkable habitats such as seamounts, make the deep sea ecologically invaluable. Unfortunately, anthropogenic activities threaten the health of the deep sea. One of the greatest threats is deep sea bottom trawling, the global significance of which is tremendous. The ecological impact of deep sea bottom trawling is so grave that the minimal economic benefit in no way justifies the practice.

**Artificial reef creation saves ecosystems.**

**Harris 9** (L.E., Consulting Coastal and Oceanographic Engineer and Associate Professor of Ocean Engineering Dept. of Marine and Environmental Systems Florida Institute of Technology, Artificial Reefs for Ecosystem Restoration and Coastal Erosion Protection with Aquaculture and Recreational Amenities, http://www.thereefjournal.com/files/18.\_Harris.pdf)

This paper presents artificial reefs used for ecosystem restoration and coastal erosion protection, with the added amenities of aquaculture and recreation. These projects include post-tsunami and post-hurricane reef restoration with coral rescue and propagation techniques, and artificial reef submerged breakwaters for beach restoration and stabilization. Project sites include Florida, Thailand, and the Caribbean, where recreational and ecotourism amenities are essential design elements. Wide crested submerged breakwaters can provide shoreline stabilization by mimicking the functionality of natural reefs. Recent submerged breakwater projects constructed using artificial reefs in shallow water reduce wave energy reaching the shore, while also providing the environmental and recreational benefits associated with artificial reefs. These benefits include marine habitat, mitigation of damages, and recreational benefits such as swimming, snorkeling, diving, fishing and surfing.

**Oceans are on the brink.**

**Levitt 3/22**/13 [Tom, Writer for CNN, Overfished and under-protected: Oceans on the brink of catastrophic collapse, http://www.cnn.com/2013/03/22/world/oceans-overfishing-climate-change/index.html?iid=article\_sidebar]

As the human footprint has spread, the remaining wildernesses on our planet have retreated. However, dive just a few meters below the ocean surface and you will enter a world where humans very rarely venture.

In many ways, it is the forgotten world on Earth. A ridiculous thought when you consider that oceans make up 90% of the living volume of the planet and are home to more than one million species, ranging from the largest animal on the planet -- the blue whale -- to one of the weirdest -- the blobfish.

Remoteness, however, has not left the oceans and their inhabitants unaffected by humans, with overfishing, climate change and pollution destabilizing marine environments across the world.

Many marine scientists consider overfishing to be the greatest of these threats. The Census of Marine Life, a decade-long international survey of ocean life completed in 2010, estimated that 90% of the big fish had disappeared from the world's oceans, victims primarily of overfishing.

Tens of thousands of bluefin tuna were caught every year in the North Sea in the 1930s and 1940s. Today, they have disappeared across the seas of Northern Europe. Halibut has suffered a similar fate, largely vanishing from the North Atlantic in the 19th century.

In some cases, the collapse has spread to entire fisheries. The remaining fishing trawlers in the Irish Sea, for example, bring back nothing more than prawns and scallops, says marine biologist Callum Roberts, from the UK's York University.

"Is a smear of protein the sort of marine environment we want or need? No, we need one with a variety of species, that is going to be more resistant to the conditions we can expect from climate change," Roberts said.

The situation is even worse in south-east Asia. In Indonesia, people are now fishing for juvenile fish and protein that they can grind into fishmeal and use as feed for coastal prawn farms. "It's heading towards an end game," laments Roberts.

Trawling towards disaster

One particualar type of fishing, bottom-trawling, is blamed for some of the worst and unnecessary damage. It involves dropping a large net, around 60 meters-wide in some cases, into the sea and dragging it along with heavy weights from a trawler.

Marine conservationists compare it to a bulldozer, with the nets pulled for as far as 20km, picking up turtles, coral and anything else in their path. The bycatch, unwanted fish and other ocean life thrown back into the sea, can amount to as much as 90% of a trawl's total catch.

Upwards of one million sea turtles were estimated to have been killed as bycatch during the period 1990-2008, according to a report published in Conservation Letters in 2010, and many of the species are on the IUCN's list of threatened species.

Campaigners, with the support of marine scientists, have repeatedly tried to persuade countries to agree to an international ban, arguing that the indiscriminate nature of bottom-trawling is causing irreversible damage to coral reefs and slow-growing fish species, which can take decades to reach maturity and are therefore slow to replenish their numbers.

Opinion: Deep sea fishing is 'oceanocide'

"It's akin to someone plowing up a wildflower meadow, just because they can," says Roberts. Others have compared it to the deforestation of tropical rainforests.

Bottom-trawling's knock-on impacts are best illustrated by the plight of the deep-sea fish, the orange roughy (also known as slimeheads) whose populations have been reduced by more than 90%, according to marine scientists.

Orange roughys are found on, or around, mineral-rich seamounts that often form coral and act as feeding and spawning hubs for a variety of marine life.

"Anywhere you go and try to harvest fish with a trawl you are going to destroy any coral that lives there, and there is example after example of the damage that is done by trawlers," says Ron O'Dor, a senior scientist on the Census of Marine Life.

"If I ruled the world, they would be banned, they're just such a destructive method of catching fish. Fishermen have other methods, such as long-line, that cause far less damage.

"The disturbing truth is that humans are having unrecognized impacts on every part of the ocean, and there is much we have not seen that will disappear before we ever get a chance," says O'Dor, who is also a professor of marine biology at Dalhousie University in Halifax, Canada.

Acid test for marine species

At the same time fisheries and vital marine ecosystems like coral are being decimated, the oceans continue to provide vital services, absorbing up to one third of human carbon dioxide emissions while producing 50% of all the oxygen we breathe.

But absorbing increasing quantities of carbon dioxide (CO2) has come at a cost, increasing the acidity of the water.

"The two worst things in my mind happening to oceans are global warming and ocean acidification," says O'Dor, "They're going to have terrible effects on coral reefs. Because of acidification essentially, the coral can't grow and it's going to dissolve away."

The ocean has become 30% more acidic since the start of The Industrial Revolution in the 18th century and is predicted to be 150% more acidic by the end of this century, according to a UNESCO report published last year.

"There's a coral reef off Norway that was discovered in 2007 and it's likely to be dead by 2020," says O'Dor.

"The problem is that the acidification is worse near the Poles because low temperature water dissolves more acid. Starting from the Pole and working south these reefs are going to suffer extensively."

Currents estimates suggest 30% of coral reefs will be endangered by 2050, says O'Dor, because of the effects of ocean acidification and global warming.

Higher acidity also disrupts marine organisms' ability to grow, reproduce and respire. The Census of Marine Life reported that phytoplankton, the microscopic plants producing most of the oxygen from the oceans, have been declining by around 1% a year since 1900.

The falling numbers of smaller, but lesser known species and plant life has significant impact further up the marine food chain. For example, seabirds which used to visit and breed on Spitsbergen -- a Norwegian island near the Arctic -- are being wiped out because of changes in their previously abundant food sources.

Bringing law and order to ocean protection

"There's a real lack of public and political awareness of these issues," says Alex Rogers, professor of conservation biology at the UK's Oxford University.

"They're too big to understand in economic terms. We can put a value on the loss of fishing, but how can we put a value on oxygen production or the absorption of carbon dioxide?" he says.

The problem is that most of the world's ocean is located outside of international law and legal control. Any attempts to implement rules and regulation come with the problem of enforcement, says Rogers, who is also scientific director of the International Program on State of the Ocean (IPSO).

Marine conservationists estimate that at least 30% of the oceans need to be covered by marine protected areas, where fishing and the newly emerging deep-sea mining of valuable minerals on the seabed, is banned or restricted.

**Extinction.**

Craig 3 [Robin Kundis Craig, Associate Dean for Environmental Programs @ Florida State University, “ARTICLE: Taking Steps Toward Marine Wilderness Protection? Fishing and Coral Reef Marine Reserves in Florida and Hawaii,” McGeorge Law Review, Winter 2003, 34 McGeorge L. Rev. 155

Biodiversity and ecosystem function arguments for conserving marine ecosystems also exist, just as they do for terrestrial ecosystems, but these arguments have thus far rarely been raised in political debates. For example, besides significant tourism values - the most economically valuable ecosystem service coral reefs provide, worldwide - coral reefs protect against storms and dampen other environmental fluctuations, services worth more than ten times the reefs' value for food production. n856 Waste treatment is another significant, non-extractive ecosystem function that intact coral reef ecosystems provide. n857 More generally, "ocean ecosystems play a major role in the global geochemical cycling of all the elements that represent the basic building blocks of living organisms, carbon, nitrogen, oxygen, phosphorus, and sulfur, as well as other less abundant but necessary elements." n858 In a very real and direct sense, therefore, human degradation of marine ecosystems impairs the planet's ability to support life.

Maintaining biodiversity is often critical to maintaining the functions of marine ecosystems. Current evidence shows that, in general, an ecosystem's ability to keep functioning in the face of disturbance is strongly dependent on its biodiversity, "indicating that more diverse ecosystems are more stable." n859 Coral reef ecosystems are particularly dependent on their biodiversity. [\*265]   
Most ecologists agree that the complexity of interactions and degree of interrelatedness among component species is higher on coral reefs than in any other marine environment. This implies that the ecosystem functioning that produces the most highly valued components is also complex and that many otherwise insignificant species have strong effects on sustaining the rest of the reef system. n860  
Thus, maintaining and restoring the biodiversity of marine ecosystems is critical to maintaining and restoring the ecosystem services that they provide. Non-use biodiversity values for marine ecosystems have been calculated in the wake of marine disasters, like the Exxon Valdez oil spill in Alaska. n861 Similar calculations could derive preservation values for marine wilderness.

However, economic value, or economic value equivalents, should not be "the sole or even primary justification for conservation of ocean ecosystems. Ethical arguments also have considerable force and merit." n862 At the forefront of such arguments should be a recognition of how little we know about the sea - and about the actual effect of human activities on marine ecosystems. The United States has traditionally failed to protect marine ecosystems because it was difficult to detect anthropogenic harm to the oceans, but we now know that such harm is occurring - even though we are not completely sure about causation or about how to fix every problem. Ecosystems like the NWHI coral reef ecosystem should inspire lawmakers and policymakers to admit that most of the time we really do not know what we are doing to the sea and hence should be preserving marine wilderness whenever we can - especially when the United States has within its territory relatively pristine marine ecosystems that may be unique in the world.

### 2

**Advantage 2 is Federalism ---**

**Offshore wind is the critical test case for federalism.**

**Russell 3** [Robert H. Russell, J.D., Harvard Law School. Mr. Russell teaches environmental law in the graduate program at Tufts University. “NEITHER OUT FAR NOR IN DEEP: THE PROSPECTS FOR UTILITY-SCALE WIND POWER IN THE COASTAL ZONE”. http://www.bc.edu/dam/files/schools/law/lawreviews/journals/bcealr/31\_2/02\_TXT.htm]

[\*PG232]II. Coastal Management: A Regulatory Collage

Expansive near-shore wind development is likely to attract controversy and opposition.59 But whether the outcry is loud or muted, the controversy will be examined through the lens of the nation’s coastal zone management program. The coastal zone program is the primary means by which federal, state, and local agencies and political units attempt to balance and harmonize intensive and contradictory patterns of use along the expansive American shore. To fully appreciate the challenges wind power faces, it is necessary to consider the values, policy objectives, and legal framework of this unusual program.60

A. The Fault Line of Coastal Policy

Over the centuries, the American coastline has become a conflict waiting to happen. From colonial times, public trust concepts have accorded to private citizens the right to engage in a variety of commercial activities along the coast and in coastal waters.61 During that early period, the states generally took the lead in regulating offshore fishing.62 Not long after, the federal government developed an interest in maintaining shoreline integrity.63 American federalism, augmented by a long tradition of local land use control, continues to ensure that coastal oversight is a relatively decentralized, and therefore complex, task.

In the twentieth century, particularly in recent decades, the potential for conflict has been realized. The 1990 U.S. population living in coastal counties stood at more than 133 million. That population is increasing nearly fifteen percent faster than in inland areas.64 By 2025, [\*PG233]nearly three-quarters of the nation is expected to live along the coast65—even though its 672 coastal counties account for only fourteen percent of the total land area of the contiguous states.66

New understanding of the enormous biological productivity of the coastal ocean—the area stretching 200 nautical miles from the shoreline to the far edge of the Exclusive Economic Zone67—has served to intensify the conflict. Today, the coastal ocean is a vital and unique ecological resource. It also is the source of fossil fuel and mineral wealth, and significant recreational opportunities.68 Offshore wind power is one of the most recent arrivals in a complicated, congested, and contentious arena. At the most general level, the challenges that confront wind development arise from the two faces of federalism: (1) state exercise of power to defend territorial waters from locally undesirable coastal uses;69 and (2) a persistent federal aversion to addressing or even identifying the most pressing of the myriad demands for coordination that test coastal management.70

B. The CZMA: A Harbinger of Devolution

The Coastal Zone Management Act (CZMA)71 establishes the structure whereby competing demands and conflicts along the coast and in state waters are mediated among federal, state, and local agen[\*PG234]cies.72 When it was enacted more than thirty years ago, the CZMA presaged a shift in regulatory authority from the federal government to the states—a trend that has accelerated over the past two decades.73 The Act and state programs it promotes mark a period of intensifying and sometimes incompatible public and private interest in coastal resources, both on land and in water. Unlike other legislation affecting the coast and ocean,74 the CZMA is designed to be general and integrative in its application. Unlike many other major environmental laws, it openly embraces a devolutionary federalism.75 It encourages states to take charge of their own coastal problems, often with little federal oversight and even less interference.

The CZMA, in fact, remains one of the few major examples of a federal statute that envisions a fully cooperative relationship among the levels of government. It is said to be both the federal government’s “first major experiment with an integrated environmental program,”76 and “the oldest national-level coastal management program in the [\*PG235]world . . . .”77 And, from a state perspective, the CZMA appears to have weathered relatively well.78 But for others, particularly those seeking to site utility-scale wind farms near populated shorelines, the early signs point to choppy waters ahead.

1. The General Approach

The Coastal Zone Management Act addresses a wide spectrum of potentially conflicting activities and uses, yet it does this in an indirect manner.79 Rather than attempting to command specific substantive results, Congress established a procedural matrix that, in its view, would achieve those results in practice.80 Its central premise is that effective coastal management can arise from comprehensive state-level planning, provided background authority is properly allocated among federal, state, and local officials.

The CZMA is intended to further the protection and development of each state’s coastal zone,81 including the coastal zone’s “natu[\*PG236]ral, commercial, recreational, ecological, industrial and esthetic resources . . . .”82 Each one of these goals is broad and vague. In the aggregate, they serve to sharpen conflict among uses and users.83

Reflecting the breadth and flexibility of these findings is the “great flexibility”84 of the Act itself. States enjoy enormous leeway in crafting customized coastal zone plans. These plans can and do address a diverse range of issues.85 Like coastal ecology itself, those issues may vary widely from jurisdiction to jurisdiction.86 The CZMA’s focus on process means that each coastal management program tends to operate like a “black box”—it can generate decisions, while failing to enunciate the clear principles and performance standards that many believe are a necessary prerequisite to coherent coastal-zone management over the long term.87

It is ironic that, at the time of its passage, the CZMA’s main legislative competitor was a more comprehensive national land-use bill that would have subsumed coastal protection. Many in the environmental community favored this broader approach because the program would have been under the control of the Department of the Interior rather than the Department of Commerce, and because it promised a stronger federal hand in state decisionmaking.88 But an influential [\*PG237]commission89 that had been clearing the path for national shoreline legislation concluded that coastal management should be largely the responsibility of the individual states. The result was a separate measure—the CZMA—guided by the principle of “cooperative federalism.”90 The more comprehensive initiative notwithstanding, coastal policy has remained a matter of state and local supervision for the past three decades. Like land-use planning and zoning,91 it has been driven by distrust of centralized federal direction.92

2. The Planning Process

The cooperative coastal zone management blueprint is not difficult to read. The CZMA program is voluntary, yet it has attracted almost unanimous participation. This has been achieved by offering participating states two benefits: money and a conditional power to block federal decisionmaking.93 To receive them, states must submit—then implement and maintain—a qualifying coastal management plan. Funding has never been generous. For all CZMA programs combined, it has averaged about $40 million a year, or a mere $1.2 million for each participating jurisdiction.94 As a result, the second inducement, so-[\*PG238]called “consistency review,”95 has come to serve as the more effective carrot.96

Once a state’s plan has been approved, federal coastal officials periodically review its implementation.97 Enforcement, however, is limited. Funds may be withheld only if implementation has failed, and then only after a process that can take more than three years to complete.98 States, of course, may update their approved coastal zone management plans to meet new challenges, but they are under no obligation to do so. Federal authorities may not manipulate or withhold grants or other funding as a means of pressuring a state to revise its coastal plan.99

A key feature of this process is the generality that is allowed, and indeed expected of,100 state coastal zone management plans.101 This is enhanced by the significant discretion the CZMA accords states to freely interpret those plans when specific conflicts arise. Typically, the burden is on a project developer to demonstrate that its activities conform to the coastal zone plan.102 But it is seldom possible to ensure con[\*PG239]formity based on review of the plan document itself. To apply coastal program standards, more process—particularly interaction with state agency staff—is required.103 But if that miscarries or fails, essentially no enforcement mechanism exists to set matters aright. The federal government exercises only limited control over how states conduct their review, and neither the CZMA nor the typical state coastal zone program makes provision for aggrieved private citizens to seek judicial relief from private developers, local governments, or the state itself.104 Although coastal zone programs vary in their priorities as well as their effectiveness, they all tend to operate in a zone of discretion lying between the federal government and shoreline municipalities.105

For wind energy, the most potentially accommodating areas of the overall statutory design are provisions for federal aid to the states, and the requirement that, to be approved, a plan must consider the “national interest,” including “the siting of . . . energy facilities which are of greater than local significance.”106 But each offers less than it appears.

Federal aid would seem to be a way to stimulate the state innovation that will be needed in many cases to accommodate wind power. But, beyond a modest baseline, the prospects are poor, given the historically low level of federal support for coastal zone management and renewable energy development.107

Moreover, when federal agencies comment on a proposed state plan or an amendment to an existing one, the CZMA has been read to assume that a state’s program addresses the national interest, including interest in energy security.108 Even if conditions change later, the plan as written remains in effect—largely, if not wholly, immune from attack.

[\*PG240] From the perspective of wind power development, the manner in which coastal plans are created, approved, implemented, and administered creates significant regulatory uncertainty.109 The plans themselves typically do not offer specific guidelines or even basic guidance—for example, guidance to help identify areas in which offshore wind generation might be favorably considered. Instead, plans elaborate upon the broad array of principles enunciated in the CZMA. Typically, they demand a complex balancing of related but often conflicting standards, while suggesting few criteria that would aid in discerning priorities among them. Finally, as will be discussed, the sheer generality of the program document makes it easier for an individual state to argue that a federally-permitted project is inconsistent with some aspect of its plan, thus blocking the siting of the project.110

Although the CZMA’s one undisputed effect has been to encourage states to view the coastal zone as a unified ecological area, this new understanding has not always inspired new modes of action.

3. Program Structure

a. Basic Design

State coastal zone programs vary widely in scope,111 as well as structure.112 Some, like North Carolina’s and California’s, are comprehensive and centralized.113 A single state agency implements the program, although some authority may be delegated to municipali[\*PG241]ties.114 The majority, however, are “networked” among the potentially numerous state and local agencies that share some say over coastal affairs. Often, a single state agency coordinates all or most of the others. The Massachusetts, Maine, New Hampshire, Virginia, Florida, and Texas coastal zone programs are of the networked variety.115 Through executive orders, policy directives, or memoranda of understanding, networked coastal programs attempt to amalgamate and shape the preexisting activities and agendas of parallel agencies.116

b. Spillover Effects

For the development of offshore wind power, the structure of the state coastal zone management system creates a potentially serious boundary, or spillover, problem.

Wind energy provides significant benefits well beyond the borders of a given jurisdiction—for example, by addressing climate change and global security issues. But a relatively small percentage of those benefits are captured locally. Moreover, in at least some cases, the local benefits of wind energy will not outweigh the locally perceived detriment to coastal “character,” aesthetics, other environmental values, and other uses of coastal resources.117

Although this spillover, or externality, problem is not unique to wind development,118 it presents itself here in an unusual posture,119 given the continuing debate over the nature and significance of the local impacts of wind, and the equity issues that a shoreline headcount cannot adequately resolve.120

[\*PG242]c. Massachusetts: A Case in Point

To understand why state territorial waters might be an unfriendly environment for wind development, it may be useful to examine a specific, representative coastal zone management program. The Massachusetts program has received high marks,121 and, like the majority, is a networked program. In addition, the state has a fairly typical range of environmental statutes, including those that address environmental impacts, the siting of power plants, ocean protection, and public trust resources.

The commonwealth’s coastal program is based on at least seven memoranda of understanding between the Massachusetts Office of Coastal Zone Management and the other state agencies that exercise supervisory authority over use and development of the coastline.122 These include the state Energy Facilities Siting Board, the Executive Office of Transportation and Construction, the Massachusetts Envi[\*PG243]ronmental Policy Act Office, the Department of Agricultural Resources, and the Department of Conservation and Recreation.123

State law does not provide the public with the means to challenge action or inaction by coastal officials, or to require the coastal office to enforce its agreements with other agencies—although two review processes might help. First, in many cases (especially those involving sizable coastal incursions), a factual record detailing environmental harms and benefits must be developed, largely through the commonwealth’s environmental impact review process.124 Second, the Energy Facilities Siting Board has the authority, but not the obligation, to facilitate the siting of for power generation projects by waiving local and state permitting requirements.125

Nonetheless, the Massachusetts regulatory system poses a number of challenges to offshore wind development. The first is its sheer complexity.126 Multiple sets of regulations address similar activities in similar language, yet they do so in seemingly uncoordinated and sometimes inconsistent ways.127 As a result, wind development may be diverted to [\*PG244]federal waters, if any shallow enough can be found.128 The second challenge is the generality of the standards.129 They demand a great deal of interpretation, which increases transaction costs. Third, the coastal zone itself is a “generalized” space, creating further uncertainty. Most, if not all, of the values that its varied resources support may require assessment each time a significant project triggers the commonwealth’s coastal protection apparatus. Although the process this necessitates may be adept at identifying discrete interests and values, it may be far less effective in translating those findings into specific conditions that apply to designated activities in specified locations. Fourth, a high degree of generality may be favored as a way to conserve agency resources, if not ocean resources. The more precise a given policy or decision, the clearer it acts as directive or precedent. Agencies may seek to avoid such precision, since one of its by-products is the assignment of priority to values and uses—and in consequence intensifying the demand for hands-on, and often controversial, resource management. [\*PG245]Finally, the commonwealth’s coastal program appears to be ambivalent about whether wind power should be encouraged or not.130 Some coastal zone management provisions seem to treat the resource as a potentially water-dependent activity that should be favored. Others lean in the opposite direction.131 This adds to the regulatory uncertainty.

Whether wind generation will be sited off the Massachusetts coast remains an open question. But the regulatory pathway that will determine the fate of each proposal has more twists than necessary.132 This does not mean the Massachusetts program is particularly weak. In fact, survey results tabulated in Appendix A suggest that the commonwealth is considerably farther along than most other eastern seaboard states in reconsidering its coastal program in light of the evident potential for utility-scale wind power in or near state waters.133

But the bottom line is the same: near-shore wind power’s potential is being dissipated by a decentralized system ill-suited to this new regulatory challenge. One unintended consequence is that developers will propose more massive projects, on the assumption that the ensuing negotiation will demand broader concessions, and that—given a basic lack of structure—the negotiation will impose additional costs that can be offset only by the extra revenue generated by more or larger turbines. Yet, this dynamic could easily heighten regulatory scrutiny, with the consequence that the entire project ultimately is [\*PG246]rejected. That outcome, however, is not consistent with existing policy in any coastal state.

C. (In)Consistency

The most unusual feature of the CZMA and the one that has drawn the most attention from courts and commentators is consistency review, its single, clear enforcement mechanism.134 In brief, consistency review permits a state whose coastal zone is affected by a federal or federally-permitted project135 to file an objection, and thereby either halt the project or force its modification—if the project is found to be incompatible with an enforceable component of that state’s federally-approved coastal zone management plan.136

Consistency has attracted wide commentary.137 Whether it hands states “veto” power over activities that may harm the coastal zone, or [\*PG247]whether its effects are more subtle and less predictable, is a matter of continuing discussion.138 Nonetheless, when adopted in 1972, the consistency provision represented “a significant innovation.”139 More than three decades later, it continues to carry symbolic, and potentially real, force.140 Indeed, responding to a 1984 Supreme Court decision limiting its scope,141 Congress in 1990 amended the CZMA to allow states to review the coastal impact of federal actions in federal waters.142

Consistency is important here because it gives states the power to reject an offshore143 wind power facility, even one to be built outside the state’s three-mile territorial limit. Although disagreement continues regarding the scope of the power and its overall utility,144 in state hands consistency review operates like a one-way ratchet. If a state does not want to encourage offshore wind, or wants to discourage a particular proposal, consistency review potentially serves to deflect both the developer’s request for federal approvals and a federal government—or at least a federal agency—that is supportive of renewable energy.145 On [\*PG248]the other hand, if state policy seeks to encourage near-shore wind, consistency review is irrelevant; it cannot be used to force a federal agency to license a project. As for the federal agency itself, consistency is not an option. The ratchet turns only one way. Thus, the CZMA is more than simply non-preemptive; it engages in a form of reverse preemption.146 Of course, if a project is opposed by both state and federal officials, the mechanism is not relevant.

But even if most agree that the consistency doctrine is more than a hobgoblin, is it in fact a barrier to projects like an offshore wind farm? No formal analysis has addressed this question.147 Yet, the way in which the process plays out suggests that it might not be a substantial barrier. State consistency objections to federal license and permit applications are reviewed by the Secretary of Commerce.148 The Secretary may override an objection if the proposal is found to be consistent with the objectives of the CZMA, or if it is otherwise essential to national security.149 In the first instance, the Secretary must base a consistency finding on each of three criteria, one of which also requires the presence of a strong national interest.150 As the discussion [\*PG249]below suggests, if review by the Secretary has had any impact at all, it has helped to stimulate oil and gas exploration on the Outer Continental Shelf.151 Whether it also might be of assistance to offshore wind power projects is questionable, given long-standing federal energy policy.

Indeed, initial data suggest that the consistency doctrine has had minimal impact. The simple truth is that most states go along with most federal licensing decisions almost all of the time. The federal Office of Ocean and Coastal Resource Management estimates that states have consented to approximately ninety-five percent of all reviewable federal actions.152 Nonetheless, of the forty cases decided on petition to the Secretary of Commerce since the early 1980s, more than a third have involved energy exploration.153 The Secretary upheld the state’s objection in half of them.154 Although one cannot confidently declare this a trend, it underscores a tendency that may be of importance to near-shore wind generation: states scrutinize big projects closely.155 Even though such proposals have been relatively infrequent, such consistently searching scrutiny, over time, may create a powerful preference for the status quo.156

By deterring or forcing the revision157 of unsound projects, the consistency provisions also may exercise a more influence in situations that do not result in a negative determination by the state. Although no [\*PG250]formal study has quantified this effect,158 most projects not initially deemed consistent are modified through negotiation.159 A recent amendment to the CZMA regulations underscores the role of negotiation, particularly between states and project proponents.160

When Congress enacted the CZMA, it accorded exceptional authority to states rather than to municipalities in the belief that the former would better reflect the national interest and thus could achieve broader consensus around any given coastal issue.161 Although controversial to some, offshore wind generation has the capacity to deliver significant environmental benefits to constituencies far larger and more dispersed than those who live within eyeshot. Nonetheless, any proposed development that lacks strong local political support is likely to run into difficulty if it is to be sited in state territorial waters.162

Nearly three decades of experience supports the conclusion that the coastal zone management program is not sufficiently well-coordinated to manage significant challenges unanticipated in 1972 or at the time of any of the Act’s later amendments. One of these challenges is offshore wind.

D. The Deceptive Authority of the Oil and Gas Meta-Narrative

The CZMA and fossil fuel exploration share a turbulent history. The Act, often to good effect, maintains a tension between state policy and federal prerogative. During the Reagan Administration’s campaign in the early 1980s to promote the development of offshore oil and gas deposits, some states took advantage of the consistency review process to try to block exploration, while others flatly refused to draft coastal [\*PG251]zone management plans that identified areas suitable for energy exploitation.163

Since then, power has alternately tilted toward and away from the states, while at the same time the policy pendulum has moved from environmental protection to energy development, and then back again. Responding to the gasoline price spike of the early 1970s,164 the 1976 CZMA amendments165 underscored an intensified federal interest in fossil fuel supplies by directing states with approved coastal management plans to address the need for, and the siting and operational impacts of, energy extraction in the coastal zone.166

The 1976 amendments included a program to compensate states affected by oil and gas development on the Outer Continental Shelf. Fourteen years later, the fund was repealed by another set of amendments,167 the most important of which was to extend state consistency review to activities that, although conducted outside the coastal zone, might have impacts within it.168. The amendments also established a smaller fund to advance environmental objectives, and to promote “procedures and enforceable policies to help facilitate the siting of energy facilities and . . . energy-related activities . . . which may be of greater than local significance.”169 Overall, the 1990 amendments have realigned the coastal zone program with what is widely viewed to be its primary purpose: environmental protection.170 The most recent set of regulatory changes, promulgated in 2000, make slight adjustments in consistency review. Their preamble identifies energy facility [\*PG252]siting as an activity that “significantly” advances the national interest.171 The pendulum may be swinging back again.172

Wind power sits on a ridge between environmental protection and economic development. Offshore, it constantly risks being perceived as the new century’s version of big oil—a corporate behemoth seeking to expropriate the Outer Continental Shelf. The issue is not whether wind energy and fossil fuel combustion have vastly different impacts on the environment.173 Clearly they do. Rather, wind power proponents will have to reject the simplistic analogy to oil and gas exploration and avoid being characterized by the narrative that has emerged from it.174 To the extent this fails, regulators will be more likely to conclude that offshore wind projects negatively affect the coastal environment and coastal uses.175 Given past patterns, the fed[\*PG253]eral government is unlikely to shore up organized wind power so it can do battle with the states.176

III. Coastal Zone Management: the Line and the Sand

The Coastal Zone Management Act (CZMA), standing alone, is often depicted as a moderately successful—albeit unusual—example of legislation that attempts to integrate environmental protection with resource management and development,177 while simultaneously enhancing principles of federalism.178 But when the inquiry is recast as a general assessment of U.S. coastal policy, the prevalent view is sharply critical.179

A. The Fickle Foundations of Federalism

More than seventy years ago Justice Brandeis set down his now-famous observation that a “single courageous State may . . . serve as a laboratory” for “novel social and economic experiments . . . .”180 Although he was writing in dissent, there is general agreement that the “happy incident” of federalism can provide the necessary space for states to test promising policy innovations.181 Indeed, state activism may help dissolve federal impasse, while checking the wider spread of misguided public programs.

Justice Brandeis may not have been considering the challenge of modern environmental protection when he suggested that states experiment with economic and social policy. Indeed, when the problems those policies seek to address have significant extra-jurisdictional impacts, state experimentation may fail. In addition, the rigorous [\*PG254]practice of federalism can obstruct or delay the realization of national goals and implementation of national norms.182 By exacerbating the spillover effect, it also may generate significant external costs.183

Though proposed as an environmental improvement rather than a problem, utility-scale offshore wind generation runs the risk of becoming a victim of federalism. To avoid this result, while providing review procedures that properly balance local, regional, and national interests, administrative coordination and broader consideration of social costs and benefits are needed. Otherwise, the final irony will be harsh: offshore wind turbines could become harder to site than oil platforms.184

B. Observations & Recommendations

The current coastal zone management regime may represent both the best prospect for the coordinated siting of wind generation and the biggest impediment to any siting at all.185 When conflicts arise in the coastal zone—often the result of a specific development challenge—the solutions suggested frequently are systemic in nature. These include assigning responsibility to the agency believed to be the most expert,186 and placing greater reliance on other branches of government.187

[\*PG255] But given the probability that change, if it is to happen at all, is more likely to happen incrementally,188 here is a short list of incremental and potentially achievable adjustments that could responsibly balance the needs of offshore wind power with other important coastal values.

1. Feasible Recommendations

Integrate Programs Even Further. The dominant program, the CZMA, offers a highly integrative structure. The Act and its regulations ought to take advantage of this. The coastal program should encompass additional terrestrial values and uses. Ultimately, this approach would permit (or perhaps even require) individual states to account for that portion of wind power’s utility not fully valued by the existing coastal review process.189 Movement in this direction could be initiated by federal policy guidance or relatively minor regulatory adjustment.190

Selectively Alter the Consistency Doctrine. Federal agencies might be given the option to preempt the states in certain limited circumstances. This approach—dubbed “reverse consistency”—has been suggested as a means of exercising a tighter regulatory grip on aquaculture.191 It is not clear, however, whether the scope of reverse consistency could be limited in a principled way,192 or if not, how it would win the necessary acceptance among state and local officials. Nonetheless, this raises the right question: shouldn’t expert federal agencies have at their disposal more reliable means of ensuring that state activities—which can easily halt a project under the weight of permitting—do not directly undermine broader environmental objectives?

[\*PG256] “Apportion” the Ocean by Priority. Siting renewables of any scale is difficult at best.193 Here, the idea would be to adopt multi-layered “zones” in which certain activities are given preference, and others discouraged. This would build on the concept of coastally-dependent uses, while offering several advantages along all dimensions—vertical, horizontal, and temporal—including: (1) potentially many more categories; (2) development of a common means of comparison or aggregation; and (3) further categorical division within the coastal geography. While not able to achieve perfect numerical clarity or resolve all hard cases, it could provide clear answers in many situations that now lack them.194 Although the regulatory change needed to fully accomplish this is beyond the present scope, it should avoid a full-scale zoning scheme modeled on the terrestrial systems that have been in place for more than eighty years.195

Enhance Local Options. Conversely, states could create incentives for shoreline communities to encourage near-shore wind development. This might include a requirement that wind projects share revenue or profits with their nearest neighbors.196 Much of the spillover problem would remain, however, so a firm state-level presence would be necessary to encourage inter-community coordination and externality (cost and benefit) sharing.

Encourage Coastal Plan Revision. Although the CZMA itself would have to be amended to require that states respond specifically to the potential for offshore wind development, the Commerce Department and its agencies might find ways to induce states to plan for such development. The CZMA in the past has been amended to encourage such activities as aquaculture, and it is likely that encouragement could be offered by regulatory change or by administrative adjust[\*PG257]ment of existing benefit programs. The obstacles here would be: (1) mismatch between the historical lack of federal commitment to significant wind energy development and an effective level of incentive; and (2) a history of approving coastal zone management plans that are overly general.

Embark on a Policy Experiment. Oregon is the poster child of land use planning,197 and the Oregon coastal program is integral to that state’s planning tableau. It is considered by some to be one of the best programs in the nation.198 Advance planning is expressly required by the Oregon program, and pilot projects are permitted where the effects of large changes are uncertain.199 A coastal state, with or without federal support, might structure wind energy planning around a suitable pilot program. Given the need to demonstrate feasibility and impact at a commercial scale, the pilot might be substantial. Nonetheless, it would be the type of state-level experiment that would “serve as a laboratory” for more general program design and coastal policy. The data generated could be studied concurrently with commercial operation. One of the current proposals might even be selected to serve as such a pilot.200

2. Less Promising Recommendations

Public Trust Doctrine. This state-based doctrine, often fashioned by judges, suffers from many of the same ills that beset coastal policy. Moreover, extensive court involvement in day-to-day resource management can be unwieldy and time-consuming. Because of the institutional limitations of the courts—particularly state courts—public trust adjudication is likely to be inexpert and ad hoc. The better question is [\*PG258]whether state public trust principles inhibit offshore wind in ways that courts—and in some states, legislators—could hardly have intended.201 If so, those principles may need to be reconsidered.

Major Legislative or Programmatic Changes. Proposed solutions that rely on large-scale amendment of the CZMA202 may not be desirable. Those that assume major federal initiatives to jump-start the production of wind energy and other renewables are unlikely to occur. Given that a number of offshore proposals are now under discussion, or several steps toward realization, solutions that can be implemented in the near term are the ones that deserve priority.

3. Other Questions

Larger issues remain. A major one is how we think about the environment, especially our physical landscape.203 The notion of untamed wilderness lives deep in the American consciousness.204 Whether the time is ripe to accommodate a more domestic vision, one that is less dichotomized, is an open question. Yet wind power and other soft energy paths will quickly become dead ends if we are not able to countenance human action amid our “natural” backdrop.205 Indeed, if the human and the wild cannot be joined in a middle landscape, we may never resolve some of the most pressing environmental problems. Albeit flawed, the deep structure of the coastal zone management program seems designed to advance this important task.

[\*PG259]Conclusion

The state territorial sea and its coastal zone represent an important but untapped renewable energy resource. Wind power is the technology best positioned to take advantage of what this narrow but accessible band offers. After sixty years, we can draw on some hard lessons.206 Offshore wind power is poised to test our federalism—to test whether a dispersed government presence can sufficiently protect a precariously connected environment. But without far greater commitment to coordinated regulatory oversight at all levels of government, any significance may go the way of the lone turbine atop Grandpa’s Knob.207

**Energy policy is the key federalism dispute.**

**Ofosky 12** [Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. “Dynamic Energy Federalism”. Minnesota Legal Studies Research Paper No. 12-44 . http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2138127&download=yes]

II. FEDERALISM CHALLENGES TO ENERGY TRANSFORMATION

The production and movement of energy presents one of the **greatest governance challenge**s of our time. The physical processes that underlie much of our modern energy system—including electricity generation, transportation, and distribution9—are necessary to sustain human life as we know it and yet are unusually complex and difficult to manage. Because energy is at the core of every human necessity, from enabling the provision of food, shelter, and clothing to driving economic growth and essential interpersonal communications, it is inextricably intertwined with fundamental societal values of fairness, justice, economic opportunity, and environmental protection. As humans demand energy transformation in the form of cleaner, more affordable, and more accessible energy, and as technology introduces new opportunities into an already complex system, these developments run up against the boundaries of traditional governance structures and call for rapid regulatory innovation. This innovation, in turn, requires new theoretical approaches to governance, and particularly to federalism—the guiding force behind decisions about interactions of governmental and nongovernmental actors across levels of government.

This Part provides three maps of energy governance and its challenges. First, it delineates the complex grid of physical, market, and regulatory interactions that comprise the current U.S. energy system. Next, it brings together energy federalism with dynamic federalism to introduce a model of the spatial and cross-cutting dynamics that this complex grid produces. Finally, it analyzes four energy-specific governance challenges that add an additional layer of complexity to this map. These factors, which are unique to energy due to its tripartite structure, interact with already complex federalist dimensions to further concentrate barriers to effective and dynamic governance.

**Use of the preemption doctrine solves.**

Young 8 [Ernest A. Young, Professor of Law, Duke Law School, SYMPOSIUM: ORDERING STATE-FEDERAL RELATIONS THROUGH FEDERAL PREEMPTION DOCTRINE: EXECUTIVE PREEMPTION, Special Issue 2008, Northwestern University Law Review, 102 Nw. U.L. Rev. 869]

Preemption of state regulatory authority by national law is the central federalism issue of our time. Most analysis of this issue has focused on the preemptive effects of federal statutes. But as Justice White observed in INS v. Chadha, n1 "for some time, the sheer amount of law ... made by the [administrative] agencies has far outnumbered the lawmaking engaged in by Congress through the traditional process." n2 Whether one views this development as a "bloodless constitutional revolution" n3 or as a necessary "renovation" of the constitutional structure in response to the complexity of modern society, n4 the advent of the administrative state has profound implications for the Constitution's core commitments to federalism and separation of powers in general and for preemption doctrine in particular. Specifically, preemption doctrine has yet to resolve the extent to which executive action should be treated differently from legislation, or to grapple with the considerable range of diverse governmental activities that march under the banner of executive agency action.

Federal administrative action is, in important ways, considerably more threatening to state autonomy than legislation is. As the constitutional limits on national action fade into history, the primary remaining safeguards for state autonomy are political, stemming from the representation of the states in Congress, and procedural, arising from the sheer difficulty of navigating the federal legislative process. These safeguards have little purchase on executive action. The states have no direct role in the "composition and [\*870] selection" of federal administrative agencies, n5 and much of the point of such agencies is to be more efficient lawmakers than Congress. n6 Agency action thus evades both the political and the procedural safeguards of federalism.

**Now is the key time.**

Ryan 13 [Erin Ryan, Associate Professor, Lewis & Clark Law School, Portland, Oregon, U.S.A; Fulbright Professor of Law, Zhongguo Haiyang Daxue (Ocean University), Qingdao, CHINA [. "The Once and Future Challenges of American Federalism: The Tug of War Within" The Ways of Federalism in Western Countries and the Horizons of Territorial Autonomy In Spain. Ed. Alberto López Basaguren & Leire San-Epifanio. Springer]

The dilemmas of American federalism have become especially palpable in recent years, reflecting the progressing demands on all levels of government to meet the inexorably more complicated challenges of governance in an increasingly interconnected world.2 Some reflect similar dilemmas in other federalist societies, while others are unique to our own particular constellation of national, state, and municipal governance.3 Some federalism dilemmas are of genuine constitutional import, others more sound and fury—signifying little beyond the substantive political agenda of one interest group or another.4 Each heralds the potential for real consequences in the political arena—and indeed, these consequences are what receive the most sustained public attention.

The political consequences of federalism dilemmas are apparent throughout the policy spectrum. They are visible in the litigation over health care reform efforts that has now reached the United States Supreme Court5 and in similar battles over environmental governance and climate policy,6 banking and financial services regulation,7 immigration policy,8 and gay marriage.9 Consequences are also visible in the emergence of popular constitutional political movements, such as the “Tea Party” 10 and even the “Tenthers.”11 The latter are named for the Tenth Amendment to the U.S. Constitution that affirms our system of dual sovereignty, which divides sovereign authority between local and national government at the state and federal levels.12 After decades of playing a merely supporting role in U.S. federalism theory,13 the Tenth Amendment has emerged as a passionate site of political contest, rallying advocates for state right-to-die legislation,14 home schooling,15 and sectarian education,16 and among opponents of Medicaid and Medicare,17 federal gun laws,18 tax collection,19 drivers’ license requirements,20 and the deployment of National Guard troops abroad.21

**Undermining environmental federalism is key to disaster mitigation.**

**Griffin 7**[Stephen M. Griffin, Rutledge C. Clement, Jr. Professor in Constitutional Law, Tulane Law School, Stop Federalism Before It Kills Again: Reflections on Hurricane Katrina, Journal of Civil Rights and Economic Development, Volume 21, Issue 2 Volume 21, Spring 2007, Issue 2 Article 6]

And so it is still the case that when natural disasters strike, the divided power of the federal structure presents a coordination problem. The kind of coordination that had to occur to avoid the Katrina disaster requires long-term planning before the event. The American constitutional system makes taking intergovernmental action difficult and complex. The process of coordinating governments can take years. In many ways, the government was just at the beginning of that process at the time of Katrina,48 although we are now four years distant from the terrorist attacks of September 11, 2001 that set the latest round of disaster coordination in motion.

Suppose, however, that we don't have the luxury of taking the time to satisfy every official with a veto. This is the key point of tension between what contemporary governance demands and what the Constitution permits. The kind of limited change that occurred in 1927 can take us only so far. What Hurricane Katrina showed was that even after decades of experience with natural disasters, the federal and state governments were still uncoordinated and unprepared. The reasons they were unprepared go to the heart of the constitutional order.

III. FEDERAL LESSONS

Unless we learn some lessons, Katrina will happen again. It may be a massive earthquake, an influenza pandemic, a terrorist attack, or even another hurricane, but the same ill-coordinated response will indeed happen again unless some attention is paid to the constitutional and institutional lessons of Katrina. We need to "stop federalism" before it kills again. That is, we need to stop our customary thinking about what federalism requires in order to prevent another horrific loss of life and property. First, let's approach the difficult questions left by the legacy of decades of informal constitutional change not reflected in the text of the Constitution. These changes mean that there is no real sense in which we can act to preserve and extend eighteenth century federal values. Much of the formal institutional structure is there (but not all - see the Fourteenth and Seventeenth Amendments), but its meaning has been altered by informal constitutional change, most of which occurred in the twentieth century. So if we sound the call, as the House Committee did, for remaining faithful to the values of eighteenth century federalism, we become unthinking believers in an ideology that does not relate to contemporary reality. Moreover, the formal structure that does carry over from the eighteenth century is misleading because it has been supplemented and subtly altered by continuous institutional change.

The federal system as it exists today is our system, not that of the founding generation. "We" - generations still alive - created it and we are continuing to change it. The best example during the Bush administration was the No Child Left Behind Act,49 legislation that involved an unprecedented intrusion into a subject, education, that everyone used to agree should be left to the states - at least left to the states for most of American history. 50 In any event, if this system is ours, we are responsible for its successful operation and we can decide to change it for good and sufficient reasons.

There is nothing in the Constitution to prevent us from doing better the next time. We can stop traditional federalist ways of thinking in order to prevent disasters and aid disaster victims when the worst occurs. An obvious place to start, one that has occurred to both the White House and the House Select Committee, is with the assumption that the initiative should lie with state and local governments and that the federal government should wait until their help is requested. The federal government already had installations, resources and personnel in the New Orleans area prior to Katrina and could have moved far more aggressively on its own to render assistance. Only previous national policy, based not on the Constitution itself, but on a sense of constitutional protocol, stood in the way.

Unfortunately, more than protocol stands in the way of preventing future disasters. Whether the policy is flood control, communications, or (perhaps in a future disaster) a massive need for medical care, the separated layers of government make coordination inherently difficult and time-consuming. Here the federal government will have to be far more directive than it has been in order to avoid future Katrinas. It will have to condition federal aid in these areas on timetables, the use of specific technology, and review by independent experts such as the National Academy of Sciences.

**Unmitigated disasters cause extinction.**

**Sid-Ahmed 5** [Mohamed, Political analyst for the Al-Ahram Newspaper, *The post-earthquake world*, http://weekly.ahram.org.eg/2005/724/op3.htm]

The contradiction between Man and Nature has reached unprecedented heights, forcing us to re-examine our understanding of the existing world system. US President George W Bush has announced the creation of an international alliance between the US, Japan, India, Australia and any other nation wishing to join that will work to help the stricken region overcome the huge problems it is facing in the wake of the tsunamis. Actually, the implications of the disaster are not only regional but global, not to say cosmic. Is it possible to mobilise all the inhabitants of our planet to the extent and at the speed necessary to avert similar disasters in future? How to engender the required state of emergency, that is, a different type of inter-human relations which rise to the level of the challenge before contradictions between the various sections of the world community make that collective effort unrealisable?

The human species has never been exposed to a natural upheaval of this magnitude within living memory. What happened in South Asia is the ecological equivalent of 9/11. Ecological problems like global warming and climatic disturbances in general threaten to make our natural habitat unfit for human life. The extinction of the species has become a very real possibility, whether by our own hand or as a result of natural disasters of a much greater magnitude than the Indian Ocean earthquake and the killer waves it spawned. Human civilisation has developed in the hope that Man will be able to reach welfare and prosperity on earth for everybody. But now things seem to be moving in the opposite direction, exposing planet Earth to the end of its role as a nurturing place for human life.

Today, human conflicts have become less of a threat than the confrontation between Man and Nature. At least they are less likely to bring about the end of the human species. The reactions of nature as a result of its exposure to the onslaughts of human societies have become more important in determining the fate of the human species than any harm it can inflict on itself.

Until recently, the threat Nature represented was perceived as likely to arise only in the long run, related for instance to how global warming would affect life on our planet. Such a threat could take decades, even centuries, to reach a critical level. This perception has changed following the devastating earthquake and tsunamis that hit the coastal regions of South Asia and, less violently, of East Africa, on 26 December.

This cataclysmic event has underscored the vulnerability of our world before the wrath of Nature and shaken the sanguine belief that the end of the world is a long way away. Gone are the days when we could comfort ourselves with the notion that the extinction of the human race will not occur before a long-term future that will only materialise after millions of years and not affect us directly in any way. We are now forced to live with the possibility of an imminent demise of humankind.

**And it’s key to biodiversity protection.**

**Tarlock 95** [A. Dan Tarlock, Associate Dean for Faculty at the Chicago-Kent College of Law, Biodiversity Federalism, 54 MD. L. RE.. 1315 (1995)]

Biodiversity protection programs reflect the tension between the universality of the abstract justifications for the exercise of national power to promote this objective, and the inherently local or site-specific nature of the problems. Universal biodiversity protection goals may be easily articulated, but they cannot be applied across the board. The chief threat to biodiversity protection is habitat loss." Thus, the objective of any protection program is habitat conservation and restoration,"' rather than the regulation of industrial activities through the application of standard technology. As Edward 0. Wilson has written, "[t] he primary tactic in conservation must be to locate the world's hot spots and to protect the entire environment they contain." 2 In short, biodiversity protection requires strong land-use regulation and incentive schemes to induce the dedication of protected habitat, both of which are among the most difficult natural resources management or environmental objectives to achieve in a federal system.

**None of the dominant models of federalism are suited to protect biodiversity** or to describe the protection experiments underway. In fact, federalism principles are as likely to frustrate biodiversity protection as to promote it for three principal reasons. **First**, federalism is premised on the search for the optimum exclusive regulatory balance, and this can often frustrate necessary intergovernmental cooperation. **Second**, the maintenance of national protection floors supplemented by states is unworkable because in contrast to air and water pollution control,1 3 there are no uniform standards that one can realistically apply to biodiversity in states as different as Alaska, Arizona and Florida. **Third**, the national government must rely on powers, primarily land-use controls and water-rights administration, that are traditionally and firmly lodged within state and local governments.

This misfit is critically important to biodiversity protection because the main threat to achieving this objective is local resistance that may undermine national efforts.' 4 This statement simply reflects the long standing tension between national articulation of resource management goals and local efforts to promote unrestricted access to natural resources for economic exploitation. Although the tradition of local resistance to national conservation is well into its second century, the current manifestation of this tension is the wise-use movement which seeks to tie all regulation to statutory compensation in excess of that required under federal or state constitutional law. 5 Innovative state and local attempts to promote biodiversity are driven by the need to comply with federal mandates, primarily the Endangered Species Act. But, despite the constitutional power of the national government to achieve this objective, 6 federal mandates are perceived as intrusions on state and local sovereignty.17

Federalism exacerbates the tension between local and national "prerogatives" because the essence of a federal system is the division of power between the national sovereign and lesser sovereign units. This division either is based on a constitutional scheme of power fragmentation or is justified as a means to match problems with competent jurisdictions. 8 In our constitutional system, the emphasis has been on the establishment of negative liberties and on the location of regulatory competence. The quasi-constitutional jurisprudence of the European Court ofJustice,"9 for example, focuses only on the former, but the two ideas have been joined in our constitutional system. Supreme Court federalism jurisprudence is an attempt to balance the constitutional plan of competing centers of power within a single nation, by developing principles to mediate conflicting assertions of regulatory authority.

The net result is that, whatever its general merits, the Supreme Court's federalism jurisprudence is problematic from a biodiversity perspective for three reasons. **First**, biodiversity protection is at best an indirect goal of a federal system, and thus the Supreme Court's decisions are often irrelevant. **Second**, Supreme Court federalism jurisprudence is an abstract and backward-looking doctrine that seeks an ideal diffusion of power without a clear articulation of the values sought to be advanced by this objective, which makes it difficult to develop functional doctrines.2 ° **Third**, judicial federalism is problematic for biodiversity protection, which seeks permanent, scientifically driven solutions, because the balance of power between the national and state governments can change in response to shifts in political opinion.

**Habitat protection avoids extinction.**

**Taylor 8** [Graeme Taylor is a social activist committed to constructive global transformation and the coordinator of BEST Futures, a project supporting sustainable solutions through researching how societies change and evolve, Evolution's Edge: The Coming Collapse and Transformation of Our World, Pomegranate Press, pg. 120-1]

Biophysical systems are made up of many interacting and interdependent components. Because ecosystems continually process energy and information from their surrounding environments, they must constantly adjust (equilibrate) in response to changing conditions. Individual species risk extinction when they lose critical habitat and genetic diversity, and with these the ability to adapt to environmental stressors. Not only are healthy species genetically diverse, but healthy ecosystems are composed of a wide variety of interdependent species. Diversity increases a system’s resilience, which is its ability to absorb shocks and adapt to changes. Larger and more complex ecosystems that are not tightly entwined are more resilient than smaller and simpler systems. If the existence of an entire system is dependent on the health of a few species, it may easily collapse when those species are stressed. Systemic resilience is lost with the destruction of ecosystem biodiversity, increasing the likelihood of widespread biophysical collapse. Human-induced stresses are threatening to degrade many major ecosystems beyond threshold points — the points at which additional degradation will trigger irreversible collapse. Because the long-term viability of human societies is utterly dependent on the long-term viability of the biophysical systems that support them, the long-term sustainability of human systems requires the maintenance and restoration of ecosystem integrity, biodiversity and resilience.

### 3

**Plan --- The United States federal government should determine federal law precludes relevant state and local restrictions on offshore wind energy.**

### 4

**Contention 3 is Solvency ---**

**The federal government can preempt state restrictions.**

Eberhardt 6 [Robert W. Eberhardt, B.A., 1998, Swarthmore (Biology); M.F.S., 2001, Harvard; J.D. Candidate, 2006, New York University School of Law. Senior Notes Editor, 2005-2006, New York University Environmental Law Journal, FEDERALISM AND THE SITING OF OFFSHORE WIND ENERGY FACILITIES, New York University Environmental Law Journal, 14 N.Y.U. Envtl. L.J. 374]

Changes to regulatory regimes that govern the use of submerged lands likely will play a central role in state policy development on offshore wind energy. Apart from withholding approval of proposed amendments to a state's coastal management program, the federal government has limited recourse under current law to prevent states from adopting overly restrictive siting policies that provide for inadequate consideration of positive interstate spillovers such as air quality improvements or greenhouse gas emissions reductions. The coordination problems and international dimensions of climate change present particularly acute theoretical concerns about the ability of states to implement welfare-maximizing policies. n185 Accordingly, federal legislation may be required to insure full consideration of the environmental benefits promised by would-be developers of offshore wind energy facilities.

States generally have demonstrated an ability to consider horizontal spillovers in their policies towards offshore wind energy that cuts against calls for federal legislative action at this time. New York has taken the particularly aggressive step of actively participating in the development process of the Long Island Offshore Wind Farm, and notwithstanding the controversy surrounding Cape Wind, legislative proposals in Massachusetts leave open the possibility of development of offshore wind energy [\*418] facilities in state waters. n186 New Jersey's approach, which has included a temporary moratorium on development, raises concerns, but final judgment must be reserved until the state's Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters has issued its final recommendations and the political branches have responded. n187 Furthermore, the general posture of state and federal climate change policies does not indicate that coordination problems dissuade state action on climate change generally. n188 On the contrary, if anything the states poised to host offshore wind energy facilities in the near future have been more aggressive than the federal government in attempts to reduce greenhouse gas emissions. n189

In the future, if states definitively show inattention to positive horizontal spillovers, then Congress should consider legislation on offshore wind energy facilities that preempts state regulation of submerged lands. Section 311 of the EPAct of 2005, which addresses siting of liquefied natural gas ("LNG") terminals, represents one model for future legislation that has garnered recent congressional support. Section 311 provides that the Federal Energy Regulatory Commission ("FERC") "shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." n190 This language likely preempts more restrictive state health, safety, or welfare laws that regulate siting or construction of LNG facilities, although Section 311 explicitly reserves the rights afforded to states under several federal environmental laws (including the CZMA) and provides states with opportunities to consult with FERC on safety concerns related to pending applications. n191

Section 311 clearly illustrates the ability for federal legislation to strip states of regulatory authority given sufficient political support at the national level. The uniform regulatory regimes that result from such federal action provide for less geographic [\*419] variation in environmental preferences, but they have a theoretical basis if they address failures by states to consider positive horizontal spillovers. If states fail to adequately consider positive spillovers that potentially result from offshore wind energy facilities, federal legislation akin to Section 311 would be justified.

Conclusion

The growing general interest in wind energy development and the dispute surrounding Cape Wind has spurred considerable commentary and legislative activity that stands to shape the extent and direction of offshore wind energy development in the United States. There will be additional opportunities to evaluate theoretical assumptions underlying the environmental regulation of this promising clean energy technology as policies continue to mature through future legislative and administrative activity and as sponsors seek approval to develop additional projects. In this dynamic context, this Note attempts to begin a discussion about how issues of federalism will influence and should inform the environmental regulation of offshore wind energy development. As a descriptive matter, states in the short term will continue to play a central role in determining which projects ultimately obtain the necessary regulatory approvals. As a normative matter, a prominent state role is theoretically justified (at least for near-shore projects), on the basis of a generalized analysis of the environmental impacts expected to result from offshore wind energy projects. However, important environmental impacts - reductions in air pollution and greenhouse gas emissions, in particular - that may result from offshore wind energy projects provide strong justifications for federal oversight, particularly in the event that states fail to consider out-of-state environmental benefits as they design regulatory regimes and make siting decisions. In light of these claims, the federal government should adopt policies that encourage siting decisions that consider interstate spillovers while at the same time reflect individual coastal states' particular environmental priorities. Federal agencies can implement such policies in the context of the Department of the Interior's imminent rulemaking pursuant to Section 388 of the EPAct of 2005, although future federal legislation with preemptive effects ultimately may be necessary in the event that the state regulatory regimes develop that fail to consider positive interstate spillovers.

That leads to rapid expansion of offshore wind.

Schroeder 10 [Erica Schroeder, J.D., University of California, Berkeley, School of Law, 2010. M.E.M., Yale School of Forestry & Environmental Studies, 2004; B.A., Yale University, COMMENT: Turning Offshore Wind On, October, 2010, California Law Review, 98 Calif. L. Rev. 1631]

In spite of the impressive growth in the U.S. wind industry, the United States has not kept pace with other countries in developing offshore wind facilities. Though offshore wind has been used in other countries for nearly twenty years, n11 none of the United States' current wind capacity comes from offshore wind. n12 An estimated 900,000 MW of potential wind energy capacity exists off the coasts of the United States n13 - an estimated 98,000 MW of it in [\*1633] shallow waters. n14 This shallow-water capacity could power between 22 and 29 million homes, n15 or between 20 and 26 percent of all U.S. homes. n16 The nation has failed to take advantage of this promising resource.

This failure can be ascribed in part to the unevenly balanced distribution of the costs and benefits of offshore wind technology, as well as to the incoherent regulatory framework in the United States for managing coastal resources. n17 While the most compelling benefits of offshore wind are frequently regional, national, or even global, the costs are almost exclusively local. The U.S. regulatory framework is not set up to handle this cost-benefit gap. As a result, local opposition has stalled offshore wind power development, and inadequate attention has been paid to its wide-ranging benefits.

The Cape Wind project in Massachusetts is a stark example of how local forces have hindered offshore wind power development. The project is expected to have a maximum production of 450 MW and an average daily production of 170 MW, or 75 percent of the 230-MW average demand of Cape Cod and neighboring islands. n18 In addition to this electricity boon to energy-constrained Massachusetts, n19 Cape Wind will reduce regional air pollution and global carbon dioxide emissions. n20 Nonetheless, local opponents to Cape Wind protest its effect on the surrounding environment, including its aesthetic impacts. n21 Without an effective way to champion the regional, national, and [\*1634] global benefits of offshore wind, policymakers have been unable to keep local interests from controlling the process through protest and litigation. After about ten years of waiting and fighting, Cape Wind developers have still not begun construction. Although the failure of offshore wind power in the United States is discouraging, the Coastal Zone Management Act (CZMA) offers a potential solution. With specific revisions, the CZMA could serve as the impetus that offshore wind power needs for success in the United States.

**Solving regulatory confusion is necessary and sufficient.**

**Powell 12** [Timothy H. Powell, J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, REVISITING FEDERALISM CONCERNS IN THE OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF CONTINUED LOCAL OPPOSITION TO THE CAPE WIND PROJECT, Boston University Law Review, December, 2012, 92 B.U.L. Rev. 2023]

IV. The Problem and a Proposed Solution

A. The Problem: Failure in the Current Federal-State Balance of Powers

Interest in developing offshore wind energy projects in the United States has increased dramatically in the last few years. n150 Yet the complex and changing regulatory scheme, coupled with the high cost and delay associated with private litigation from citizen groups challenging every step of the approval process, will likely discourage future development of wind energy projects in the United States without reform. The problem can be traced to a failure in the current federal-state balance of powers: a disconnect between the federal approval process and the inherently local nature of offshore wind energy.

Both the opposition by the Wampanoag Tribe and the overruling of the FAA's approval further illustrate this disconnect between the interests of the [\*2046] federal government on the one hand, and state and local interests on the other hand. In both instances the federal government has pursued a hard line in favor of the Cape Wind project. The DOI fully approved the project despite a warning from the Advisory Council on Historic Preservation that the project would have significant adverse effects on historic properties. The FAA similarly issued a Determination of No Hazard presumably based only on a cursory application of its regulations, and possibly under political pressure from the Obama Administration. In both instances more localized entities - Native American tribes, local citizen groups, towns, and even state agencies - have expended considerable resources to express their various views in opposition to the Cape Wind project. n151

To date, the overruling of the FAA's approval is the only legal victory on the part of the project's opposition. n152 But whatever the merits of the opposition's legal claims, the process has demonstrated the inefficiency of the current regulatory scheme. The decision of whether the Cape Wind project should go forward has now dragged on more than a decade. The saga has been an incredible waste of resources and time, as the federal government attempts to fit a square peg in a round hole, with local opposition mounting complaints with all levels federal and state agencies and courts to confuse and delay the process. There must be a more effective way to efficiently and optimally allocate the harvesting of coastal wind energy throughout the United States.

**Cape Wind proves the effectiveness of the plan.**

**Zeller 13** A senior writer covering a variety of topics, including poverty, energy policy and the environment. Before joining The Huffington Post, Tom spent more than 10 years as a reporter and editor at The New York Times, where he covered numerous beats, including technology culture and policy, cybercrime, clean energy and the politics of climate change (Tom, “Cape Wind: Regulation, Litigation And The Struggle To Develop Offshore Wind Power In The U.S.” 2-23-13, http://www.huffingtonpost.com/2013/02/23/cape-wind-regulation-liti\_n\_2736008.html)

Acquiring the full array of government permits and sign-offs -- a **byzantine process** involving dozens of sometimes **overlapping**, often **contradictory** agencies, hundreds of officials and thousands of pages of impact statements -- took over a decade. And more than a dozen lawsuits, citing everything from potential disruption of whale and bird migrations to interference with airplane and shipping traffic, the wrecking of commercial fishing grounds and the desecration of sacred Native American sites, have thrown **sand** in the project's gears at every turn.¶ Virtually all of the opposition suits over the years have been rejected ultimately by the courts, but at least four more are still pending, and opponents promise to keep fighting.¶ To be sure, as the first proposed offshore wind project in the United States, Cape Wind, as it is called, was bound to encounter unique scrutiny, and like any undertaking of its size, it is not without environmental impacts. But the long-thwarted wind farm also highlights what some critics say has become a **bloated** and **overly complicated regulatory maze** through which fewer and fewer project developers of any kind have the wherewithal to navigate.

### 5

**Contention 4 is No War ---**

**Great power war is obsolete.**

**Ikenberry 9** [\*Professor of Political Science at Johns Hopkins AND \*\*Albert G. Milbank Professor of Politics and International Affairs at Princeton University, Jan/Feb, 2009, Daniel Deudney and John Ikenberry, “The Myth of the Autocratic Revival: Why Liberal Democracy Will Prevail,” *Foreign Affairs*]

This bleak outlook is based on an exaggeration of recent developments and ignores powerful countervailing factors and forces. Indeed, contrary to what the revivalists describe, the most striking features of the contemporary international landscape are the intensification of economic globalization, thickening institutions, and shared problems of interdependence. The overall structure of the international system today is quite unlike that of the nineteenth century. Compared to older orders, the contemporary liberal-centered international order provides a set of constraints and opportunities-of pushes and pulls-that reduce the likelihood of severe conflict while creating strong imperatives for cooperative problem solving. Those invoking the nineteenth century as a model for the twenty-first also fail to acknowledge the extent to which war as a path to conflict resolution and great-power expansion has become largely obsolete. Most important, **nuclear weapons** have transformed great-power war from a routine feature of international politics into an exercise in national suicide. With all of the great powers possessing nuclear weapons and ample means to rapidly expand their deterrent forces, warfare among these states has truly become an option of last resort. The prospect of such great losses has instilled in the great powers a level of caution and restraint that effectively precludes major revisionist efforts. Furthermore, the **diffusion of small arms** and the near **universality of nationalism** have severely limited the ability of great powers to conquer and occupy territory inhabited by resisting populations (as Algeria, Vietnam, Afghanistan, and now Iraq have demonstrated). Unlike during the days of empire building in the nineteenth century, states today cannot translate great asymmetries of power into effective territorial control; at most, they can hope for loose hegemonic relationships that require them to give something in return. Also unlike in the nineteenth century, today the **density of trade**, investment, and production networks across international borders raises even more the costs of war. A Chinese invasion of Taiwan, to take one of the most plausible cases of a future interstate war, would pose for the Chinese communist regime daunting economic costs, both domestic and international. Taken together, these changes in the economy of violence mean that the international system is far more primed for peace than the autocratic revivalists acknowledge.

**Best empirical data proves.**

**Fettweis 10**—Christopher J. Fettweis, Assistant Professor of National Security Affairs in the National Security Decision Making Department at the U.S. Naval War College, holds a Ph.D. in International Relations and Comparative Politics from the University of Maryland-College Park, October 27, 2010 (D*angerous Times?: The International Politics of Great Power Peace*, Georgetown University Press, ISBN 978-1-58901-710-8, Chapter 4: Evaluating the Crystal Balls, p. 83-85)

The obsolescence-of-major-war vision of the future differs most drastically from all the others, including the neorealist, in its expectations of the future of conflict in the international system. If the post– Cold War world conformed to neorealist and other pessimistic predictions, warfare ought to continue to be present at all levels of the system, appearing with increasing regularity once the stabilizing influence of bipolarity was removed. If the liberal-constructivist vision is correct, then the world ought to have seen not only no major wars, but also a decrease in the volume and intensity of all kinds of conflict in every region as well.

The evidence supports the latter. Major wars tend to be rather memorable, so there is little need to demonstrate that there has been no such conflict since the end of the Cold War. But the data seem to support the “trickledown” theory of stability as well. Empirical analyses of warfare have consistently shown that the number of all types of wars—interstate, civil, ethnic, revolutionary, and so forth— declined throughout the 1990s and into the new century, after a brief surge of postcolonial conflicts in the first few years of that decade. 2 Overall levels of conflict tell only part of the story, however. Many other aspects of international behavior, including some that might be considered secondary effects of warfare, are on the decline as well. Some of the more important, if perhaps under reported, aggregate global trends include the following:

*Ethnic conflict*. Ethnonational wars for independence have declined to their lowest level since 1960, the first year for which we have data. 3

*Repression and political discrimination against ethnic minorities*. The Minorities at Risk project at the University of Maryland has tracked a decline in the number of minority groups around the world that experience **discrimination** at the hands of states, from seventy-five in 1991 to forty-one in 2003. 4

*War termination versus outbreak*. War termination settlements have proven to be more stable over time, and the number of new conflicts is lower than ever before. 5

*Magnitude of conflict/battle deaths*. The average number of **battle deaths per conflict** per year has been steadily declining. 6 The risk for the average person of dying in battle has been plummeting since World War II— and rather drastically so since the end of the Cold War. 7

*Genocide*. Since war is usually a necessary condition for genocide, 8 perhaps it should be unsurprising that the incidence of **genocide** and other mass slaughters declined by 90 percent between 1989 and 2005, memorable tragedies notwithstanding. 9

*Coups*. **Armed overthrow** of government is becoming increasingly rare, even as the number of national governments is expanding along with the number of states. 10 Would be coup plotters no longer garner the kind of automatic outside support that they could have expected during the Cold War, or at virtually any time of great power tension.

*Third party intervention*. Those conflicts that do persist have less **support from outside actors**, just as the constructivists expected. When the great powers have intervened in local conflicts, it has usually been in the attempt to bring a conflict to an end or, in the case of Iraq’s invasion of Kuwait, to punish aggression. 11

*Human rights abuses*. Though not completely gone, the number of largescale **abuses of human rights** is also declining. Overall, there has been a clear, if uneven, decrease in what the Human Security Centre calls “one-sided violence against civilians” since 1989. 12

*Global military spending*. World **military spending** declined by one third in the first decade after the fall of the Berlin Wall. 13 Today that spending is less than 2.5 percent of global GDP, which is about two-thirds of what it was during the Cold War.

*Terrorist attacks*. In perhaps the most counterintuitive trend, the number of worldwide terrorist incidents is far smaller than it was during the Cold War. If Iraq and South Asia were to be removed from the data, a clear, steady downward trend would become apparent. There were 300 terrorist incidents worldwide in 1991, for instance, and 58 in 2005. 14

International conflict and crises have steadily declined in number and intensity since the end of the Cold War. By virtually all measures, the world is a far more peaceful place than it has been at any time in recorded history. Taken together, these trends seem to suggest that the rules by which international politics are run may indeed be changing.

**Deterrence checks escelation.**

**Tepperman 9**—Jonathan Tepperman, Deputy Editor of *Newsweek*, Member of the Council on Foreign Relations, now Managing Editor of *Foreign Affairs*, holds a B.A. in English Literature from Yale University, an M.A. in Jurisprudence from Oxford University, and an LL.M. in International Law from New York University, 2009 (“Why Obama Should Learn to Love the Bomb,” *The Daily Beast*, August 28, http://www.thedailybeast.com/newsweek/2009/08/28/why-obama-should-learn-to-love-the-bomb.print.html)

A growing and compelling body of research suggests that nuclear weapons may not, in fact, make the world more dangerous, as Obama and most people assume. The bomb **may actually make us safer**. In this era of rogue states and transnational terrorists, that idea sounds so obviously wrongheaded that few politicians or policymakers are willing to entertain it. But that's a mistake. Knowing the truth about nukes would have a profound impact on government policy. Obama's idealistic campaign, so out of character for a pragmatic administration, may be unlikely to get far (past presidents have tried and failed). But it's not even clear he should make the effort. There are more important measures the U.S. government can and should take to make the real world safer, and these mustn't be ignored in the name of a dreamy ideal (a nuke-free planet) that's both unrealistic and possibly undesirable.

The argument that nuclear weapons can be agents of peace as well as destruction rests on two deceptively simple observations. First, nuclear weapons **have not been used** since 1945. Second, there's **never** been a nuclear, or even a nonnuclear, war between two states that possess them. Just stop for a second and think about that: it's hard to overstate how remarkable it is, especially given the singular viciousness of the 20th century. As Kenneth Waltz, the leading "nuclear optimist" and a professor emeritus of political science at UC Berkeley puts it, "We now have 64 years of experience since Hiroshima. It's striking and against all historical precedent that for that substantial period, there has not been any war among nuclear states."

To understand why—and why the next 64 years are likely to play out the same way—you need to start by recognizing that all states are **rational on some basic level**. Their leaders may be stupid, petty, venal, even evil, but they tend to do things only when they're pretty sure they can get away with them. Take war: a country will start a fight only when it's almost certain it can get what it wants at an acceptable price. **Not even Hitler or Saddam waged wars they didn't think they could win**. The problem historically has been that leaders often make the wrong gamble and underestimate the other side—and millions of innocents pay the price.

Nuclear weapons change all that by making the costs of war obvious, inevitable, and unacceptable. Suddenly, when both sides have the ability to turn the other to ashes with the push of a button—and everybody knows it—**the basic math shifts**. Even the craziest tin-pot dictator is **forced to accept that war with a nuclear state is unwinnable** and thus **not worth the effort**. As Waltz puts it, "Why fight if you can't win and might lose everything?"

Why indeed? The **iron logic of deterrence and mutually assured destruction** is **so compelling**, it's led to what's known as **the nuclear peace**: the virtually unprecedented stretch since the end of World War II in which **all the world's major powers have avoided coming to blows**. They did fight proxy wars, ranging from Korea to Vietnam to Angola to Latin America. But these never matched the furious destruction of full-on, great-power war (World War II alone was responsible for some 50 million to 70 million deaths). And since the end of the Cold War, such bloodshed has declined precipitously. Meanwhile, the nuclear powers have scrupulously avoided direct combat, and there's very good reason to think they always will. There have been some near misses, but a close look at these cases is **fundamentally reassuring**—because in each instance, **very different leaders all came to the same safe conclusion**.

Take the mother of all nuclear standoffs: the Cuban missile crisis. For 13 days in October 1962, the United States and the Soviet Union each threatened the other with destruction. But both countries soon stepped back from the brink when they recognized that a war would have meant curtains for everyone. As important as the fact that they did is the reason why: Soviet leader Nikita Khrushchev's aide Fyodor Burlatsky said later on, "It is impossible to win a nuclear war, and both sides realized that, maybe for the first time."

The record since then shows the same pattern repeating: nuclear-armed enemies **slide toward war**, then **pull back**, always for the same reasons. The best recent example is India and Pakistan, which fought three bloody wars after independence before acquiring their own nukes in 1998. Getting their hands on weapons of mass destruction didn't do anything to lessen their animosity. But it did dramatically mellow their behavior. Since acquiring atomic weapons, the two sides have never fought another war, despite severe provocations (like Pakistani-based terrorist attacks on India in 2001 and 2008). They have skirmished once. But during that flare-up, in Kashmir in 1999, both countries were careful to keep the fighting limited and to avoid threatening the other's vital interests. Sumit Ganguly, an Indiana University professor and coauthor of the forthcoming India, Pakistan, and the Bomb, has found that on both sides, officials' thinking was strikingly similar to that of the Russians and Americans in 1962. The prospect of war brought Delhi and Islamabad face to face with a nuclear holocaust, and leaders in each country did what they had to do to avoid it.

Nuclear pessimists—and there are many—insist that even if this pattern has held in the past, it's crazy to rely on it in the future, for several reasons. The first is that today's nuclear wannabes are so completely unhinged, you'd be mad to trust them with a bomb. Take the sybaritic Kim Jong Il, who's never missed a chance to demonstrate his battiness, or Mahmoud Ahmadinejad, who has denied the Holocaust and promised the destruction of Israel, and who, according to some respected Middle East scholars, runs a messianic martyrdom cult that would welcome nuclear obliteration. These regimes are the ultimate rogues, the thinking goes—and there's no deterring rogues.

But are Kim and Ahmadinejad really scarier and crazier than were Stalin and Mao? It might look that way from Seoul or Tel Aviv, but history says otherwise. Khrushchev, remember, threatened to "bury" the United States, and in 1957, Mao blithely declared that a nuclear war with America wouldn't be so bad because even "if half of mankind died … the whole world would become socialist." Pyongyang and Tehran support terrorism—but so did Moscow and Beijing. And as for seeming suicidal, Michael Desch of the University of Notre Dame points out that Stalin and Mao are the real record holders here: both were responsible for the deaths of some 20 million of their own citizens.

Yet when push came to shove, their regimes **balked at nuclear suicide**, and **so would today's international bogeymen**. For all of Ahmadinejad's antics, his power is limited, and the clerical regime has always proved rational and pragmatic when its life is on the line. Revolutionary Iran has never started a war, has done deals with both Washington and Jerusalem, and sued for peace in its war with Iraq (which Saddam started) once it realized it couldn't win. North Korea, meanwhile, is a tiny, impoverished, family-run country with a history of being invaded; its overwhelming preoccupation is survival, and every time it becomes more belligerent it reverses itself a few months later (witness last week, when Pyongyang told Seoul and Washington it was ready to return to the bargaining table). These countries may be brutally oppressive, but **nothing in their behavior suggests they have a death wish**.

# 2AC

**2AC—ASPEC (S)**

**CX solves. We are not conditional**

**We still solve – plan would be DOI – stuff gets don't that does not include USFG.**

**No resolutional basis – justifies making us specify senators or funding.**

**Counter-interpretation – you can read normal means evidence to get DA links.**

**Agent CPs bad –**

**a. Topic education – generic process CPs encourage generic debates – analytic education is inevitable and topic education prevents stale debate.**

**b. AFF ground – its not an effective test of our whole plan and allows the negative to moot our best offense --- DAs solve.**

**We solve – if any part of USFG should do the plan, vote AFF.**

**Not a voting issue – worst case they earn CP competition.**

**2AC—T Restrict**

**We meet --- it's a restriction.**

**Pool 11** [Mike Pool Deputy Director¶ Bureau of Land Management¶ U.S. Department of the Interior¶ Before the¶ House Natural Resources Committee¶ Energy and Mineral Resources Subcommittee¶ June 23, 2011, <http://www.doi.gov/ocl/hearings/112/HR2170HR2171andHR2172_062311.cfm>]

H.R. 2170 would **narrow the scope of environmental review** for renewable **energy projects**, defined as wind, solar power, geothermal power, biomass or tidal or kinetic forces used to generate energy. Under the bill, NEPA analysis would be limited to a “proposed action” and the “no-action alternative” – rather than the range of alternatives that are generally evaluated during NEPA review. Members of the public would be limited to 30 days after the publication of a draft NEPA document to conduct their review and send comments to the federal agency. ¶ The Department of the Interior opposes the legislation, as it unnecessarily restricts the scope of analysis in the NEPA process. **This restriction on** the **development** and consideration of alternatives to a proposed agency action would reduce the analysis of complex, challenging issues to a limited “yes-or-no” choice. It would impair the federal government’s ability to accurately assess the likely impacts of a federal action and to employ the **consideration of alternative means** to avoid, minimize and/or mitigate adverse impacts. Furthermore, reducing the timeframe available for review and public comment to 30 days, especially for complicated, multi-state, utility-scale environmental impact statements, could significantly reduce the public’s ability to weigh-in on critical matters affecting them. The BLM relies on this public participation to improve the analysis of actions on public lands.

**Plus the plan text uses the word restriction**.

**Restrictions include limiting conditions.**

**Plummer 29** J., Court Justice, MAX ZLOZOWER, Respondent, v. SAM LINDENBAUM et al., Appellants Civ. No. 3724COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT100 Cal. App. 766; 281 P. 102; 1929 Cal. App. LEXIS 404September 26, 1929, Decided, lexis

**The word "restriction**," when used in connection with the grant of interest in real property, is construed as being **the legal equivalent of "condition**." **Either term** may be **used to denote a limitation** upon the full and unqualified enjoyment of the right or estate granted. The words "terms" and "conditions" are often used synonymously when relating to legal rights. "Conditions and restrictions" are that which limits or modifies the existence or character of something; a restriction or qualification. It is a restriction or limitation modifying or destroying the original act with which it is connected, or defeating, terminating or enlarging an estate granted; something which defeats or qualifies an estate; a modus or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate may be either defeated, enlarged, or created upon an uncertain event; a quality annexed to land whereby an estate may be defeated; a qualification or restriction annexed to a deed or device, by virtue of which an estate is made to vest, to be enlarged or defeated upon the happening or not happening of a particular event, or the performance or nonperformance of a particular act.

**Prefer it ---**

**Aff flex --- massive neg side bias --- poor mechanism defenses, fed key warrants, and slanted lit base means we need leeway. Err towards a broader use of restriction.**

**Topic expertise --- our AFF identifies the energy restriction on offshore wind. Ignoring it ignores the core question.**

**Over limits --- no restrictions on energy are total prohibitions.**

**No limits explosion ---**

**On production checks.**

**Dictionary.com**, http://dictionary.reference.com/browse/on

**On**

preposition

1.so as to be or remain supported by or suspended from: Put your package down on the table; Hang your coat on the hook.

2.**so as to be attached** to or unified with: Hang the picture on the wall. Paste the label on the package.

**So does substantially.**   
**SSAS 12** (Social Security Advisory Service, *Summary of the Social Security Rulings*, http://www.ssas.com/rulings/summary-of-social-security-rulings/)

83-10 Definition of Terms – Grids – Sedentary Requires Hands and Fingers

This is a detailed explanation of the terms used within these grids. It sets the stage for later rulings (infra) discussing the grids in particular types of cases. It contains an important Glossary defining terms from the regulations and the rulings, such as “full range” and “substantially all,” which means **nearly all** (essentially all) of the activities required in an exertional range of work. Some new information on the requirements of work at each exertional level is provided: “Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger action.”

**Functional limits solve.**

**Anell and Sinha conclude AFF.**

**Good is good enough --- the alternative is judge intervention.**

**2AC—No War**

**No War --- the institutions ensure conflict resolution, nuclear weapons deter aggression, nationalism limits great power aspirations, and density of trade makes war a social and economic looser -- that's Ikenberry.**

**Empirically proven by decline in warfare of all types --- Fettweis cites the best datasets.**

**Plus escalation could never occur --- Tipperman says nuclear weapons trigger de-escalation.**

**Discount their studies.**

**Fettweis 10**—Christopher J. Fettweis, Assistant Professor of National Security Affairs in the National Security Decision Making Department at the U.S. Naval War College, holds a Ph.D. in International Relations and Comparative Politics from the University of Maryland-College Park, October 27, 2010 (D*angerous Times?: The International Politics of Great Power Peace*, Georgetown University Press, ISBN 978-1-58901-710-8, Chapter 6: Theory and Great Power Peace, p. 144-146)

**Certain subfields of i**nternational **r**elations **sometimes seem to have institutional interests in denying that major war could ever become obsolete.** Scholars who approach the study of warfare using a behavioralist approach, such as those who work with the various databases housed at the University of Michigan and elsewhere, would at the very least have to adjust their conclusions if the “correlates of war” that they are attempting to identify no longer apply to relations between the strongest states. 36 Studies from this literature rarely suggest that correlates of wars in some regions, or in certain eras, could be completely different from those in others. This literature as a whole is particularly egregious in its insistence upon considering state behavior as a constant in the attempt to identify the variables that lead to war. Indeed what may be its most basic implicit assumption is that fundamental state behavior does not change from era to era. The Correlates of War (COW) database, upon which so much of this research is based, includes all wars from 1816 through the recent past, and the vast majority of the scholars who mine its riches assume that the wars of the nineteenth century vary little in their basic characteristics from those of the twenty-first. All wars, it seems, are created equal, or are at least equally created. It is an assumption rarely examined and even more rarely challenged.

Extraterrestrial readers of behavioralist outlets such as the Journal of Conflict Resolution, International Interactions, or the Journal of Peace Research would come away convinced that the earth is a place of logical, utility-maximizing states in a system marked by the constant risk of warfare at all levels. They would think that all states behave in a uniform, predictable manner that has not, and indeed cannot, change. In other words, **they would come away with an image that may well have little relation to international politics of the twenty-first century.**

This research could be updated to describe more accurately international security behavior in two ways. The first route, which is something the sub-field has typically refused to do, would be to make the findings time-specific. Research based on the COW and the other major databases typically employs data that span the nineteenth and twentieth centuries, but conclusions that arise from its studies are expressed in sweeping, all-encompassing language. Results are almost always reported as eternal constants without potential time limitations. For example, Vasquez will report that “territorial disputes increase the probability of war” rather than what the data literally tell him, which would be that between 1816 and 1992 territorial disputes increased the probability of war. 37 **By not making their conclusions time-specific, behavioralists implicitly assume that the fundamental nature of warfare does not change from era to era, which may well prove to be empirically and theoretically problematic**. Reporting findings in a more accurate way would allow for comparison across historical periods and may keep a strain of COW research relevant to the coming century.

It is perhaps worth noting that it is not just behavioralists who draw much of their evidence from nineteenth-century Europe, the era when assumptions of uniform motivation and goals best fit the evidence. Kissinger’s dissertation examined the Concert of Europe era, which had a profound impact upon his thinking. 38 Gilpin drew his conclusions from seven hegemonic wars, the last of which was World War II. 39 **Assumptions about the permanent, immutable nature of the fundamental rules of international interaction underlie much of the scholarship in the field**, not just that of the behavioralists. Scholars of warfare tend to have little to say about post– Cold War international relations, and for good reason: Many of the concepts under consideration no longer seem to have descriptive utility for the strongest states in the system.

It should come as no surprise that constructivists in general have never placed much faith in the behavioralist approach to international relations. By virtue of its methods, behavioralist international relations minimizes human agency or eliminates it entirely, taking the personification of the state (or at least antireductionism) to an extreme. 40 Many traditional correlates of war that constructivists consider crucial, such as honor, fear, prestige, humiliation— indeed ideas themselves— are frustratingly unquantifiable and, therefore, uncaptured by behavioralist models. As a result, the research program has generated a tremendous amount of knowledge about extant mathematical patterns in conflict variables, but precious little wisdom about the actual causes of war. The program marches on, however, seemingly unconcerned.

The work of Evan Luard provides a good example of a more useful approach to the empirical study of war, one from which behavioralists could benefit. In his War in International Society, Luard examined the issues, motives, decisions, profitability, and beliefs about war through time, looking for commonalities within, not across, eras. 41 He argued that the **conventions regulating war do indeed change dramatically over time**, a crucial finding that is not captured by most COW based research. In other words, Luard used a framework to understand war that did not necessitate immutable rules governing state behavior, and that could take into account at least the possibility for evolution in the international system.

The second alteration that could save quantitative studies of war from irrelevance in the twenty-first century would be for those scholars to drop the increasingly problematic cross-regional assumptions of uniformity in state behavior. In other words, what is needed is the widespread recognition that there are significant and important behavioral differences among states in the zone of peace as opposed to those in the zone of conflict. The factors that have increased the likelihood of war in the past— proximity, alliances, rivalries, territorial disputes, regime types, arms races, waxing and / or waning power, and so forth— would have no effect on those dyads that lie inside a zone of peace, but may still be important to understanding the behavior of those states unlucky enough to lie outside. If indeed there are some kinds of warfare that have become obsolete, then there will be correlates of war that apply to some states but not to others.

For example, one of the most robust (if unsurprising) findings of this literature is that states in close proximity to each other are more likely to go to war than states chosen at random— or, as Vasquez puts it, “wars are much more likely to occur between neighbors.” 42 What would be more accurate to say in a post– major war era would be that wars are much more likely to occur between neighbors in the zone of turmoil, and that proximity has no impact whatsoever on the likelihood of war in the zone of peace.

The current era may be free of major war between the great powers, but quantitative studies of war are built to proceed as if no fundamental changes can take place, and as if all states across all eras were motivated by the same forces and make similar decisions regarding their basic security. Ironically, **without adjustments for either time specificity or regional heterogeneity, the empirical approach to warfare may be at risk of losing touch with international empirical realities**. Peace research may have missed the widespread outbreak of peace.

### 2AC—Case

**Cape wind doesn’t solve.**

**Roek 11** Partner at Lindquist & Vennum, PLLP, Minneapolis [Offshore Wind Energy in the United States: A Legal and Policy Patchwork. By: Roek, Katherine A., Natural Resources & Environment, 08823812, Spring2011, Vol. 25, Issue 4]

Interest developing offshore wind in the United States has increased dramatically over the past few years. The "Cape Wind" project off the coast of Nantucket, Massachusetts, often regarded as the "poster child" of domestic offshore wind, has now, after ten years, received all federal, state, and local regulatory and development approvals and, in August 2010, the dismissal of the remaining legal challenges to the state permitting process by the Massachusetts Supreme Judicial Court. The publicity over Cape Wind has showcased a number of advantages of offshore wind generation in the U.S.: it enables coastal states to supply electricity needs from sources off their own coasts and allows utilities to meet their obligations under increasingly stringent state renewable portfolio standards from a consistent, superior resource. And it offers the economic development opportunity of a new high-technology industry.

But Cape Wind has also highlighted the complexity of the development, permitting, and operating regimes confronting any offshore wind project. While the project development process that the Cape Wind developer and the state of Massachusetts have gone through is instructive for other projects and states, it is by no means the template for a successful, streamlined offshore wind project. Project sponsors and permitting agencies alike will need to "tailor" each proposal within a patchwork of local or state property or development constraints, federal or state jurisdictional boundaries, and an array of policies or incentives reflecting the particular states individual resources and needs.

**Doesn’t matter.**

**Wheeler 13** (Timothy B., “Legislation encourages wind farm, but hurdles remain,” March 19th, 2013, <http://www.baltimoresun.com/news/maryland/politics/bs-md-offshore-wind-passage-20130319,0,5430305.story?page=1>)

After three years of trying, Gov. Martin O'Malley has won approval of legislation that aims to spur construction of towering wind turbines off Maryland's Atlantic coast.¶ Now comes **the hard part.**¶ Daunting regulatory, political and financial hurdles remain before a wind-driven power plant could be built in the water 10 to 20 miles from Ocean City. Even if **all goes right,** construction could be four to seven years away, industry and government experts say — long after O'Malley has left the State House.

**Complete transition could be completed by 2020.**

**Sovacool 9** (Benjamin K., Assistant Professor at the Lee Kuan Yew School of Public Policy, part of the National University of Singapore. He is also a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization. He has worked in advisory and research capacities at the U.S. National Science Foundation’s Electric Power Networks Efficiency and Security Program, Virginia Tech Consortium on Energy Restructuring, Virginia Center for Coal and Energy Research, New York State Energy Research and Development Authority, Oak Ridge National Laboratory, Semiconductor Materials and Equipment International, and U.S. Department of Energy’s Climate Change Technology Program. He is the co-editor with Marilyn A. Brown of Energy and American Society: Thirteen Myths (2007) and the author of The Dirty Energy Dilemma: What’s Blocking Clean Power in the United States (2008). He is also a frequent contributor to such journals as Electricity Journal, Energy & Environment, and Energy Policy, Going Completely Renewable: Is It Possible (Let Alone Desirable)?, The Electricity Journal, Volume 22, Issue 4, May 2009, Pages 95–111)

Thankfully, when it comes to something else “bad enough”—pollution-belching conventional forms of electricity supply that degrade the land, foul the world's climate, and impoverish the environment—readily available alternatives do exist. This article argues that a completely renewable electric utility sector where wind farms, solar systems, bioelectric power stations, hydroelectric facilities, and geothermal power plants generate **100 percent** of electricity **is possible** using today's technology. This would include not just large and centralized power plants but also to a significant degree small-scale decentralized technology. The article demonstrates that the benefit of shifting to such an industry far outweighs potential cost. It finally argues that at least two countries, New Zealand and the United States, could achieve a renewable power sector **by 2020** and outlines the policy mechanisms needed to do it.

The importance of such an exploration, perhaps obviously, is that the world desperately needs alternatives to fossil-fueled and nuclear power generation. The costs from these conventional sources, even when the risks of climate change are excluded, remain immense. Looking at just the United States, in 2007 oil-, coal-, gas-fired, and nuclear power plants produced $420 billion in negative externalities but only $277 billion in revenues.2 In the short term, finding ways to transition away from them in all countries will yield notable social and environmental benefits.

In the long term, a transition to renewable forms of energy and electricity supply will have to occur. M. King Hubbert, the famous geophysicist who correctly predicted that American oil production would peak about 1970, often remarked that it would be difficult for people living now, accustomed to exponential growth in energy consumption, to assess the transitory nature of fossil fuels. Hubbert argued that proper reflection could happen only if one looked at a time scale of 3,000 years. On such a scale, Hubbert thought that the complete cycle of the world's exploitation of fossil fuels would encompass perhaps 1,100 years, with the principal segment of this cycle covering about 300 years.3 Indeed, some are already projecting that, at current rates of consumption, the world has less than 200 years of fossil fuel supply and 65 years of natural gas, 70 years of uranium, and 164 years of coal left.4 As German Parliamentarian Hermann Scheer put it, “Our dependence on fossil fuels amounts to global pyromania, and the only fire extinguisher we have at our disposal is renewable energy.”5

**Does not assume oceans.  
Coyne 7** [Professor in the Department of Ecology and Evolution at University of Chicago, AND \*\*Hoekstra, John L. Loeb Associate Professor in the Department of Organismic and Evolutionary Biology @ at Harvard, ( Jerry Coyne, and Hopi E, 9/24 “The Greatest Dying”]

Aside from the Great Dying, there have been four other mass extinctions, all of which severely pruned life's diversity. Scientists agree that we're now in the midst of a sixth such episode. This new one, however, is different - and, in many ways, much worse. For, unlike earlier extinctions, this one results from the work of a single species, Homo sapiens. We are relentlessly taking over the planet, laying it to waste and eliminating most of our fellow species. Moreover, we're doing it **much faster** than the mass extinctions that came before. Every year, up to 30,000 species disappear due to human activity alone. At this rate, we could lose half of Earth's species in this century. And, unlike with previous extinctions, there's no hope that biodiversity will ever recover, since the cause of the decimation - us - is here to stay.     To scientists, this is an unparalleled calamity, far more severe than global warming, which is, after all, only one of many threats to biodiversity. Yet global warming gets far more press. Why? One reason is that, while the increase in temperature is easy to document, the decrease of species is not. Biologists don't know, for example, exactly how many species exist on Earth. Estimates range widely, from three million to more than 50 million, and that doesn't count microbes, critical (albeit invisible) components of ecosystems. We're not certain about the rate of extinction, either; how could we be, since the vast majority of species have yet to be described? We're even less sure how the loss of some species will affect the ecosystems in which they're embedded, since the intricate connection between organisms means that the loss of a single species can ramify unpredictably.     But we do know some things. Tropical rainforests are disappearing at a rate of 2 percent per year. Populations of most large fish are down to only 10 percent of what they were in 1950. Many primates and all the great apes - our closest relatives - are nearly gone from the wild.     And we know that extinction and global warming act synergistically. Extinction exacerbates global warming: By burning rainforests, we're not only polluting the atmosphere with carbon dioxide (a major greenhouse gas) but destroying the very plants that can remove this gas from the air. Conversely, global warming increases extinction, both directly (killing corals) and indirectly (destroying the habitats of Arctic and Antarctic animals). As extinction increases, then, so does global warming, which in turn causes more extinction - and so on, into a downward spiral of destruction.     Why, exactly, should we care? Let's start with the most celebrated case: the rainforests. Their loss will worsen global warming - raising temperatures, melting icecaps, and flooding coastal cities. And, as the forest habitat shrinks, so begins the inevitable contact between organisms that have not evolved together, a scenario played out many times, and one that is never good. Dreadful diseases have successfully jumped species boundaries, with humans as prime recipients. We have gotten aids from apes, sars from civets, and Ebola from fruit bats. Additional worldwide plagues from unknown microbes are a very real possibility.     But it isn't just the destruction of the rainforests that should trouble us. Healthy ecosystems the world over provide hidden services like waste disposal, nutrient cycling, soil formation, water purification, and oxygen production. Such services are best rendered by ecosystems that are diverse. Yet, through both intention and accident, humans have introduced exotic species that turn biodiversity into monoculture. Fast-growing zebra mussels, for example, have outcompeted more than 15 species of native mussels in North America's Great Lakes and have damaged harbors and water-treatment plants. Native prairies are becoming dominated by single species (often genetically homogenous) of corn or wheat. Thanks to these developments, soils will erode and become unproductive - which, along with temperature change, will diminish agricultural yields. Meanwhile, with increased pollution and runoff, as well as reduced forest cover, ecosystems will no longer be able to purify water; and a shortage of clean water spells disaster.     In many ways, oceans are the **most vulnerable areas** of all. As overfishing eliminates major predators, while polluted and warming waters kill off phytoplankton, the intricate aquatic food web could collapse from **both sides**. Fish, on which so many humans depend, will be a fond memory. As phytoplankton vanish, so does the ability of the oceans to absorb carbon dioxide and produce oxygen. (Half of the oxygen we breathe is made by phytoplankton, with the rest coming from land plants.) Species extinction is also imperiling coral reefs - a major problem since these reefs have far more than recreational value: They provide tremendous amounts of food for human populations and buffer coastlines against erosion.

**2AC—MOU CP**

**Perm – do both.**

**Links to politics – agency action.**

**Does not solve ---**

**Federalism**

**Restrictions**

**Timeframe**

**2AC—States CP**

**Presumption goes AFF --- the CP is more change than the AFF --- the tie goes to the best policy.**

**Perm --- do both --- shields the link.**

**Overby 3** A. Brooke, Professor of Law, Tulane University School of Law, “Our New Commercial Law Federalism.” Temple University of the Commonwealth System of Higher Education Temple Law Review, Summer, 2003 76 Temp. L. Rev. 297 Lexis

We held in New York that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.n65 The concerns articulated in New York and echoed again in Printz addressed the erosion of the lines of political accountability that could result from federal commandeering.n66 Federal authority to compel implementation of a national legislative agenda through the state legislatures or officers would blur or launder the federal provenance of the legislation and **shift political** consequences and **costs** thereof to the state legislators. Left unchecked, **Congress could foist upon the states expensive or unpopular programs yet shield itself from accountability to citizens.** While drawing the line between constitutionally permissible optional implementation and impermissible mandatory implementation does not erase these concerns with accountability, it does ameliorate them slightly.

**50 state fiat is a VI for deterrence --- no single actor controls both federal and state policies, no literature for uniform 50 state action makes AFF offense impossible and kills effective research skills.**

**Illegitimate against this AFF: the restrictions are the state restrictions, which makes it the object of the resolution. That form of fiat kills AFF ground.**

**Perm – do the CP: states action moots the AFF, it avoids the links to all the DAs because the perm includes a plan that does nothing.**

**Does not solve ---**

**Does not solve federalism.**

**Federal waters.**

**NREL 10** [National Renewable Energy Laboratory, “Large-Scale Offshore Wind Power in the United States ASSESSMENT OF OPPORTUNITIES AND BARRIERS September 2010 <http://www.nrel.gov/wind/pdfs/40745.pdf>]

Implementing an actual project will be important to assessing how the regulation works in practice, because several uncertainties remain. One uncertainty is estimating the time it takes from the initial bidding process to securing a permit for constructing a project. As noted previously, sequential NEPA analyses will take significantly longer to complete than combined analyses. Also, regulatory steps such as combining the lease sale and site assessment activities into one review will reduce potential timelines (MMS 2009b). Another uncertainty remains in how current projects under development, especially those with a limited lease, will be able to convert their lease to a commercial lease, and how the data they gather, such as resource assessments, will be handled, because of privacy concerns. Additionally, **states** have begun to hold competitive bids to preselect preferred developers for offshore wind, and the **relationship to the federal process is still unclear**. Finally, questions remain as to how developers will fulfill the needs of various reporting requirements. Although **most utility-scale developments will** probably take place in **federal waters** in the long term, to expedite initiation of offshore wind and the benefits to local and regional economies, projects may be developed first in state waters (Dhanju and Firestone 2009). On the other hand, state projects will also face unexpected hurdles such as PPA approvals and legal gaps such as provisions for conveying state submerged lands. Examples include Deepwater Wind’s Block Island project,

**Investor certainty.**

**Sovacool 8** [Benjamin K., Assistant Professor at the Lee Kuan Yew School of Public Policy, part of the National University of Singapore. He is also a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization. He has worked in advisory and research capacities at the U.S. National Science Foundation’s Electric Power Networks Efficiency and Security Program, Virginia Tech Consortium on Energy Restructuring, Virginia Center for Coal and Energy Research, New York State Energy Research and Development Authority, Oak Ridge National Laboratory, Semiconductor Materials and Equipment International, and U.S. Department of Energy’s Climate Change Technology Program. He is the co-editor with Marilyn A. Brown of Energy and American Society: Thirteen Myths (2007) and the author of The Dirty Energy Dilemma: What’s Blocking Clean Power in the United States (2008). He is also a frequent contributor to such journals as Electricity Journal, Energy & Environment, and Energy Policy, The Best of Both Worlds: Environmental Federalism and the Need for Federal Action on Renewable Energy and Climate Change, Stanford Environmental Law Journal, 27 Stan. Envtl. L.J. 397]

B. State Climate Change Policies Similarly, the states have taken the initiative in addressing climate change under a devolved federalist paradigm, implementing comprehensive and crosscutting programs as well as those narrowly focused on agriculture, transportation, education, and energy. As of 2006, more than forty states have developed comprehensive greenhouse gas inventories, twenty-eight have completed climate change action plans, and fourteen have mandated greenhouse gas emissions targets. n279 The most aggressive is New York, aiming for five percent below 1990 carbon dioxide emissions levels by 2010, followed by Connecticut, Illinois, Massachusetts, Maine, New Hampshire, New Jersey, Rhode Island, and Vermont, aiming for 1990 levels by 2010. n280 Motivated to encompass a broader geographic area, eliminate duplication of work, and create more uniform regulatory environments, many states have also established regional initiatives to fight climate change such as the Western Climate Initiative on the West Coast [\*461] and the Regional Greenhouse Gas Initiative (RGGI) on the East Coast. n281 California has also tried to forge ahead in adopting greenhouse gas standards for new cars, trucks, and vans. Effective for the 2009 model year and later, rules proposed by the California Air Resources Board (CARB) will require manufacturers to reduce emissions of carbon dioxide and other greenhouse gases by 30 percent. The standards will apply to [\*463] automakers' fleet averages, rather than each individual vehicle, and automobile manufacturers are given the option of qualifying for credits through the use of alternative compliance strategies - such as the increased use of a [sic] less greenhouse gas intensive fuels ... in certain vehicles. n284 Under increased pressure from automobile manufacturers, the EPA is currently attempting to thwart California's effort on the grounds that the Clean Air Act already establishes stringent enough regulations. n285 Furthermore, Oregon, New Hampshire, Massachusetts, and Washington, call for regulation of carbon dioxide from electric power generators. Under the ... Washington law ... new power plants must offset twenty percent of their carbon dioxide emissions by planting trees, buying natural gas-powered buses or taking other steps to cure such emissions. n286 New Hampshire and Massachusetts laws apply to existing power plants, capping emissions and allowing plants to meet the standard through energy efficiency and credit trading. n287 In their assessment of worldwide action on climate change, David G. Victor, Joshua C. House, and Sarah Joy concluded that that the "fragmented "bottom-up' approach to carbon-trading ... is pragmatic and effective." n288 Despite these impressive strides and the claims put forth from Victor and his colleagues, however, local and regional efforts to combat climate change suffer from difficulties relating to design, fairness, and legality. 1. Design. Like RPS programs, state climate change policies lack consistency and harmony. Most states attempt to promote research, ensure economic stability, and encourage public and private cooperation. However, they tend to place very little [\*464] emphasis on mandatory standards, and they fail to create **predictable regulatory environments**. In other words, United States policy has so far provided "lots of carrots but without any sticks." n289 True to the devolved federalism thesis that states will act as laboratories of democracy, states have demonstrated great variability in addressing climate change. The states have, in short, created a "flurry of sub-federal activity" on climate change. n290 Thomas D. Peterson identified "over 200 specific policy actions with [greenhouse gas] objectives [that] are under development or have been implemented by the states... ." n291 These actions range from appliance standards to alternative fuel mandates for the transportation sector, industrial process regulations, and farm conservation programs. n292 They "use a variety of voluntary and mandatory approaches," such as codes and standards, permits, technical assistance, procurement, information, and education. n293 They also span different greenhouse-gas-emitting sources. Some focus on power supply, while others focus on transportation, land use, and waste management. n294 Even those that focus solely on particular greenhouse-gas-emitting sources such as electricity generators differ greatly. Some state standards are input-based, enabling allowances to be "auctioned to individual generators based on historical emissions or fuel input." n295 Some are load-based, allowing utilities to achieve carbon credits not from historical emissions or projections, but from real-time generation. Others are offset-based, enabling carbon-reducing actions such as the planting of trees to count. n296 Still others are set-aside-based, counting allowances retired by customers in the voluntary market through green power programs. n297 Such variability and experimentation, however, is becoming a weakness. The multitude of state greenhouse gas policies is more costly than a single, federal standard because it **creates complexity for investors**. State-by-state standards significantly increase the cost [\*465] for those attempting to conduct business in multi-state regions. n298 Statewide implementation programs also require separate inventory, monitoring, and implementation mechanisms to check progress against goals and provide feedback, adding to their cost. n299 And state programs provide incentives for local and regional actors to duplicate their research-and-development efforts on carbon-saving building technologies and energy systems, compromising efficiency. n300 Lack of a "**meaningful federal policy** on greenhouse gas emissions [also means that] investors in long-term energy assets such as power plants (the single greatest emitters of carbon dioxide) must make multibillion-dollar commitments without knowing what regulatory regime may exist in the future." n301 2. Free-riding and leakage. State-by-state action on climate change is prone to the "free rider" phenomenon. A very high "political hurdle" exists for state-level action on climate change, mainly "because [greenhouse gases] mix globally and have global impacts, local abatement actions pose local costs, yet deliver essentially no local climate benefits." n302 Utilities operating in a region that includes states with mandatory emissions regulations and those without have an extra incentive to build new power plants only in those without. For example, PacifiCorp, a utility serving customers in the Pacific Northwest, has repeatedly attempted to build coal-fired power plants in Wyoming and Utah, states without mandatory greenhouse gas reduction targets, but not in Oregon (which has mandated a stabilization of greenhouse gas emissions by 2010) and Washington (which has mandated 1990 levels by 2020). n303 The state-by-state patchwork of climate change policies, in other words, allows stakeholders to manipulate the existing market to their advantage. This is exactly what is happening in RGGI. RGGI is a carbon cap-and-trade program where fossil fuel plants are allotted a [\*466] certain number of allowances that permit emission of greenhouse gases. These allowances are based on the plant's historical emissions or the input of fuel needed to generate every unit of electricity, making it an "input-or generator-based" scheme. n304 Power plants that need more allowances than they are given must purchase them from another plant that has an excess number, retrofit old equipment, sequester carbon geologically or in algae, or purchase offsets. Offsets come in five categories: landfill methane capture, reductions of sulfur hexafluoride emissions, carbon sequestration due to reforestation or afforestation, reduction of fossil fuel use due to improved energy efficiency, and avoidance of methane emissions from agricultural manure management. n305 Over time, the total number of allowances is decreased, making it harder for generators to pollute. The design of the program, however, creates perverse incentives for generators to lower emissions by purchasing energy from fossil fuel plants in neighboring states that do not have carbon restrictions. Estimates for RGGI have shown leakage rates as high as sixty to ninety percent due to the importation of electricity alone, as power plants in adjacent states have increased their output to sell into the higher-priced electricity markets in RGGI states. n306 Since carbon emitted into the atmosphere has the same warming potential regardless of its geographic source, such gaming of the system does not result in meaningful carbon reductions. Localized climate action also sends **distorted price signals**. By lowering demand for carbon-intense products, state standards reduce the regional (and even global) price for carbon-intense fuels. But in doing so, they provide further incentives for nearby states without climate regulation to do nothing because of lowered prices. n307 Put another way, states acting on climate change depress the cost of fossil fuels and other carbon-intense commodities by lowering demand for them, and thus lowering their price. Yet reduced prices encourage over-consumption in areas without [\*467] carbon caps, decrease the incentive to enact energy efficiency and conservation measures, and discourage the adoption of alternative fuels for vehicles and renewable energy technologies. After assessing state and local climate change programs, for example, Robert B. McKinstry, Jr. noted that without coordinated action, "reduction in demand for fossil fuel in the industrial sector may keep prices down and encourage growth in the transportation sector. Similarly, in the short run, reductions required in one state may benefit competitors operating in states that do not require reductions." n308 The danger of this free riding and leakage is threefold. Most obviously, it undermines the environmental effectiveness of any restrictions on greenhouse gas emissions, and if leakage exceeds 100 percent (something possible given the experiences with RGGI), net emissions of greenhouse gases could hypothetically **increase**. n309 Even if physical leakage does not occur, the fear of leakage and its adverse effects on economic competitiveness may create political obstacles to meaningful climate change action. n310 Finally, leakage has a tendency to lock in asymmetries between carbon-intensive and climate-friendly regions and commit nonparticipants to a path of future emissions. As leakage proceeds over time, it shifts greenhouse gas emissions from regulated regions to unregulated ones. It thereby renders the unregulated region's economy more emissions-intensive than it otherwise would have been, making it more difficult to persuade communities that initially decided to avoid participation ever to commit to greenhouse gas reductions. n311 3. Legality. As is the case with state RPSs, state action on climate change risks constitutional challenge under the Compacts Clause of the constitution (states are not permitted to form compacts with each other) and the Supremacy Clause (federal regulation preempts contradicting state law). n312 The Clean Air Act expressly prohibits [\*468] state regulation of vehicle emissions standards. n313 Likewise, by mandating national corporate fuel economy standards, the federal government preempts state regulations related to the efficiency of automobiles. This means that most states are unable to legally address carbon emissions from the transportation sector (thus the current battle between California and the EPA). n314 4. Insufficiency. Finally, even the most aggressive climate statutes will make only a negligible contribution to offsetting greenhouse gas emissions. In the Northeast, states with mandatory greenhouse gas regulations all rank relatively low in greenhouse gas emissions, with the exceptions of New York and New Jersey (which rank ninth and seventeenth respectively). According to the EIA, by 2030, total energy-related carbon dioxide emissions in the United States will equal approximately 8.115 billion metric tons per year, equal to a sixty-two percent increase from 1990 levels with an average increase of 1.2 percent per year. n315 "Yet those states that had committed to achieving time-bounded, quantitative reduction targets for greenhouse gas emissions as of 2006 accounted for only around twenty percent of nationwide emissions in 2001." n316 Even if all attained their targets, which is not certain, state policies would result in a reduction of around just 460 million metric tons of carbon dioxide by 2020, or a reduction of 6.38 percent compared to business as usual. Furthermore, the other states would not just offset these gains; the overall growth rate still would increase at 1.06 percent each year. n317 [\*469] A few examples help prove this point. If Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee were considered a country, it would rank fifth in the world for greenhouse gas emissions, ahead of even India and Germany - yet none of these states have mandatory greenhouse gas targets. n318 Similarly, on the West Coast, most states emit more greenhouse gases than a majority of countries on the planet: California exceeds the emissions of 211 nations; Arizona and Colorado, 174 nations each; Oregon, 151 nations; and Idaho, 129 nations. n319 The scale of the challenge is enormous, and as Scott Segal from the Electric Reliability Coordinating Council put it, "the notion that any one state or group of states could make a material contribution to solving the problem [of global climate change] is **farcical**." n320 Local and state efforts to address climate change are also inadequate in a second sense: they do nothing to significantly reduce ambient levels of carbon dioxide. Jonathan B. Wiener argues that no single city, state, or region can effectively control ambient levels of carbon dioxide and other greenhouse gases on its own. n321 Ambient concentrations of carbon dioxide are determined only by worldwide concentrations in the atmosphere. Wiener concludes that the nature of greenhouse gas emissions demonstrates why attempts to regulate carbon dioxide as a pollutant under the National Ambient Air Quality Standards and State Implementation Plans of sections 109 and 110 of the Clean Air Act will face immense challenges. **No state mechanism**, in isolation, could attain serious reductions in the ambient level of CO2 without significant international cooperation. n322 As a result, state-by-state reductions do not lower emissions quickly enough nor do they reduce ambient levels of carbon dioxide. They "are nowhere near the magnitude of reductions needed to bring the United States into compliance with the Kyoto Protocol's call for reductions of five percent below 1990 levels from 2008 to 2012 - much less the reductions needed to avert [\*470] "dangerous anthropogenic interference with the climate system.'" n323 V. Part Four: The Case for Federal Interaction The above examples with state-based RPS and climate change policies demonstrate that there are situations in which federal interaction is desirable, or even essential, to avoid many of the shortcomings presented by centralized, devolved, and dual federalist attempts to protect the environment. As a rule of environmental policy, such examples seem to suggest that the prevalence of four distinct conditions warrant federal interaction. First, general agreement must exist on the magnitude of the environmental problem, and existing state actions must be insufficient to prevent it. n324 Unless the worst offenders can be persuaded to join them, state and regional attempts to improve the environment, particularly when they are voluntary, will do little to substantially enhance environmental quality. As the previous section on renewable energy and climate change demonstrates, this is **especially the case** concerning renewable energy (which will grow to only four percent of national capacity by 2030 under state initiatives) and greenhouse gases (where state action will do nothing to slow, let alone equalize or reverse, emissions). Second, the states must face constitutional challenges to dealing with the problem individually. Innovative state programs dealing with interstate spillovers will always face challenges alleging that they interfere with interstate commerce under the dormant commerce clause. Moreover, attempts to forge interstate and international cooperation face legal questions based upon the Compacts Clause and the Supremacy Clause of the Constitution. For these reasons, federal interaction is needed to remove the underlying tensions between state-by-state environmental action and the United States Constitution. Third, the existing state regulatory environment must impose additional costs on businesses and consumers. Differing state statutes can complicate efforts to conduct business in multiple states. They risk creating incentives for multiple firms to duplicate costly research and development. And they can significantly increase transaction costs associated with enforcing and [\*471] monitoring a plethora of distinct individual programs. Federal interaction can provide investors with a level of **simplicity and clarity** needed to facilitate sound decisions. n325 Redundant and overlapping state regulation can **lead to confusion**, high compliance costs, and a drag on otherwise beneficial activities. A multiplicity of regulators that do not match well with an underlying social ill can lead to a regulatory commons problem, where neither potential regulators nor those desiring regulation know where to turn. n326 Fourth, the matching principle must illustrate that the proper scale in addressing the problem is national or international, not local. When problems are national or international in scale, the matching principle in environmental law suggests that the level of jurisdictional authority should best "match" the geographic scale of that very problem. n327 The current state-by-state approach ensures that the distribution of the costs and benefits of providing public goods remains **uneven and asymmetrical**. n328 Generally, it is more efficient and effective to address national or international environmental problems through **institutions of equivalent scope** of the problem in question. The matching principle ensures that "ecologies of scale" are created so that environmental degradation or pollution extending beyond individual state borders can be addressed. n329 When interstate spillovers or public goods are involved, federal intervention is needed to equalize disparities between upstream and downstream communities. n330 [\*472] The **historical support** for federal interaction based on these four conditions seems strong. Examples of areas where state action made the way for an eventual federal statute include air quality, low emissions vehicles, hazardous waste, water quality, land reclamation, energy efficiency, acid rain, mercury emissions, and wetlands development. When Congress wants uniformity but still wants to enable the states to experiment, it can allow for the development of a single standard met by all of the states themselves, but should set a "floor" instead of a "ceiling." Federal floors allow for greater state stringency, as well as diversity and creativity in implementing federal regulatory standards. Especially in the setting of environmental regulation, with its developed delegated program structure, the process of setting federal floors can achieve many of the benefits of both devolution and centralization at once. n331 Congress did something similar with the Clean Air Act of 1965, which allowed California to establish air pollution emission standards for vehicles. All other states were given the opportunity to adopt California's standards or remain subject to the federal standards developed by the Environmental Protection Agency. n332 Similarly, California implemented its Low Emission Vehicle Standards (Cal LEV) in the 1990s, well before a national standard. n333 California mandated that the state phase in four categories of progressively lower-emitting vehicles. The automobile industry reacted negatively, fearing the spread of California's stringent standards. The federal government brokered a compromise in which the industry produced automobiles meeting nationally uniform standards that were less stringent than California's but more stringent than the existing ones. The states were free to adopt nationally low emission vehicles (NLEV) or Cal LEV, but not both. n334

**FIT irrelevant. Perm do both solves NB.**

**2AC—Pltx Impact**

**Immigration doesn’t resolve global aging**

a) Workflows it creates are unsustainable

b) There is a disconnect between internal link and impact – the bill TAKES AWAY WORKERS from the regions aging destabilizes

**There is now aging crisis** – current immigration rates and high fertility solve

**Howe and Jackson 9** - Researchers at the Center for Strategic and International Studies and co-authors of "The Graying of the Great Powers: Demography and Geopolitics in the 21st Century.", “ (Neil and Richard, The World Won't Be Aging Gracefully. Just the Opposite.”, Washington Post, Jan 4, <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/02/AR2009010202231.html>)

An important but limited exception to hyperaging is the United States. Yes, America is also graying, but to a lesser extent. We are the only developed nation with replacement-rate fertility (2.1 children per couple). By 2030, our median age, now 36, will rise to only 39. Our working-age population, according to both U.N. and census projections, will continue to grow throughout the 21st century because of our higher fertility rate and substantial immigration -- which we assimilate better than most other developed countries. By 2015, for the first time ever, the majority of developed-world citizens will live in English-speaking countries.

**Haas says other factors are more important.**

**Hass 7** Assistant Professor of Political Science at Duquesne University [Geriatric Peace? The Future of U.S. Power in a World of Aging Populations, International Security, Vol. 32, No. 1 (Summer 2007), pp. 112–147]

Conclusion

The world is entering an unprecedented demographic era. Never before has social aging been as pervasive and extensive an issue as it will be in coming decades. Both the opportunities and challenges for U.S. security in an aging world are substantial. The United States’ aging crisis is less acute than in the other great powers, and its ability to pay the costs associated with this phenomenon is significantly better than most of these states. These facts, however, should not disguise the magnitude of these costs for the United States nor lull U.S. leaders into inaction on this critical issue. The more the United States maintains its enviable demographic position (compared with the other great powers) and rela- tively superior ability to pay for the costs of its elderly population, the more it will be able both to preserve its own position of international power dominance and to help other states address their aging (and other) problems when it is in U.S. interests to do so. A critical implication of these facts is that such domestic policies as means-testing Social Security and Medicare payments, raising the retirement age to reflect increases in life expectancies, maintaining largely open immigration policies to help keep the United States’ median age relatively low, encouraging individual behaviors that result in better personal health, and perhaps **above all** restraining the rising costs of its health-care system are critical international security concerns.116 A defining political question of the twenty-ªrst century for U.S. international interests is whether U.S. leaders have sufªcient political will and wisdom to implement these and related policies. The more proactive U.S. leaders are in minimizing the scope of its aging population and the costs associated with it, the more protected U.S. international interests will be. To ignore these costs, or even to delay implementing various reforms designed to limit their size, will jeopardize the level of global influence and security that the United States enjoys today.

**No economic impact.**

**Khimm, 13** (Suzy, “How much will immigration reform cost?,” February 1st, 2013, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/02/01/how-much-will-immigration-reform-cost/>)

There’s a lot of evidence pointing to the economic benefits of adding more legal immigrants to the economy. What’s less clear is how much a comprehensive immigration overhaul would affect the federal budget.¶ While more legal immigrants could cost taxpayers more in health care, education, and other social services, they would also contribute more tax revenues. Ultimately, there will be a lot of political pressure to produce a reform that costs as little as possible, possibly even reducing the deficit in the long term.¶ In 2007, the Congressional Budget Office concluded that the Senate’s proposed bipartisan immigration reform would increase the deficit by about $18 billion over 10 years, but would have “a relatively small net effect” on the deficit over 20 years.¶ Here’s how that number breaks down: Direct federal spending on immigrants would cost $23 billion over 10 years, mostly because of Medicaid and refundable tax credits. At the same time, the overhaul would generate $48 billion in new revenue, mostly through increased Social Security taxes.¶ So under the 2007 overhaul, newly legal immigrants would have generated far more revenue than they take in from the government. It’s partly because most undocumented immigrants are working age and wouldn’t immediately incur major Social Security and Medicare costs. It’s also because the 2007 bill required immigrants to pay back taxes and forced them to wait for years before receiving federal benefits.¶ However, the process of implementing reform itself — setting up a legalization process, new enforcement measures, and so forth — carries its own price tag, of $43 billion over 10 years. So ultimately, CBO estimated that the total cost of the 2007 immigration overhaul was $18 billion.¶ How would the math work out now? Since neither Congress nor the White House has actually put out a bill, **it’s not clear**. But there are a few things that we do know: Obamacare expanded federal health insurance, and an estimated 7 million undocumented immigrants might theoretically qualify for coverage under its provisions, as my colleague Sarah Kliff explains.¶ That could add to the cost of immigration reform, depending on how many ultimately became legal citizens and how long they would have to wait to receive benefits. (Both the White House and the Senate gang agree that undocumented immigrants with provisional legal status wouldn’t qualify for benefits.) At the same time, it could also introduce a large number of younger, healthier people into insurance pools, which could potentially reduce overall insurance costs, says Michael Fix, senior vice-president of the Migration Policy Institute. ”The jury is still really out.”¶ It’s also unclear what the cost of implementation will be: As I’ve reported earlier, we’ve already hit most of the 2007 targets for border security, at the cost of hundreds of millions of dollars. And the Senate Gang of Eight’s plan is vague about what “securing our border” will really mean this time around. Most of the security reforms involve more use of technology, rather than personnel, but the government already has a track record of investing into tech-driven boondoggles in the name of border security.¶ So the price tag of immigration reform will really depend on legislative debate that Congress has begun to wade into. There will be a lot of pressure on Congress to produce a bill that’s either revenue-neutral or will actually reduce the deficit, both by restricting any federal spending on immigrants and limiting the upfront appropriations on implementation.

**2AC—Pltx DA**

**Won’t pass.**

**HAMILTON 2/28**/13Lamron Staff Writer—SUNY Geneso [Bella Hamilton, On immigration reform, Obama and Congress must compromise, http://www.thelamron.com/opinion/on-immigration-reform-obama-and-congress-must-compromise-1.3001746]

It is impossible to ignore the extent of America’s political disunity. In the current political climate, any show of bipartisanship, no matter how disingenuous, is praised. Recent immigration reform proposals are no exception.

The original plan, devised by a bipartisan group of senators, proposes an overhaul of the existing system. It aims to create a path to residency and citizenship for 11 million undocumented immigrants and to secure the southern border. It would seem that both parties are prepared to face the issue of illegal immigration head on. In President Barack Obama’s words “The good news is that for the first time in many years Republicans and Democrats seem ready to tackle this problem together.”

Similar attempts began with a bill under former President George W. Bush in 2006, ending with Obama’s Dream Act in 2010. As legislation has flared and died upon entering the Republican-controlled House, one might predict Obama’s submission. And, after securing approximately 70 percent of the Hispanic vote last election, it is in his party’s interest to pursue this issue.

Although Obama’s show of support seems sincere, given such unprecedented cooperation, **Congress’ sudden willingness to cross party lines seems suspicious.** Once one looks past the bill’s apparent progressiveness, its tenets are deceiving.

There are a few hurdles to the law passing, however. Key congressional players have voiced their opposition to the bill already. As Sen. Mitch McConnell stated, “This effort is too important to be written in a backroom and sent to the floor with a take-it-or-leave-it approach.” **Republican dismissal jeopardizes the bill’s survival.**

Obama’s scheme deviates from the GOP’s in one vital aspect: border control. Republicans suggest a hold until security is ensured. Obama considers the delay, as E.G. Austin puts it in The Economist, a “troubling form of legal limbo.”

Without implementation of an enforcement system, the influx of new, undocumented people is likely. If Obama has immigrants’ interests in mind, it is unwise to alienate conservative approval. Without agreement, efforts will come to a standstill.

U.S. Rep. Lamar Smith said, “When you legalize those who are in the country illegally, it costs taxpayers millions of dollars.” Illegal immigrants, however, already cost taxpayers $113 billion annually according to the National Research Council. Should the bill fail to pass, this situation remains stagnant. Both scenarios are undesirable.

If augmented border security is the only path to consensus, **it’s improbable the bill will be passed**, let alone considered.

**Congress’ supposed bipartisanship is a smokescreen**. In this period of dissent, the public clings to anything remotely positive. It’s a win-win situation: Both parties, in hedging a flimsy compromise, strengthen their constituencies. The president has already benefited; his approval rating is the highest it has been since 2009.

**Vote no – plan is the debate in congress – costs PC to vote against it.**

**PC irrelevant.**

**AP 3/27**/13 http://www.google.com/hostednews/ap/article/ALeqM5iro-yOddbr4F\_vTzZD1xgFv9KNJQ?docId=ef575ceb4bce4bc2a8e706f72dda1718

While overhauling the nation's patchwork immigration laws is a top second term priority for the president, he has ceded the negotiations almost entirely to Congress. He and his advisers have calculated that a bill crafted by Capitol Hill stands a better chance of winning Republican support than one overtly influenced by the president.

In his interviews Wednesday, **Obama tried to stay out of the prickly** policy **issues** that remain unfinished in the Senate talks, though he said a split between business and labor on wages for new low-skilled workers was unlikely to "doom" the legislation.

"This is a resolvable issue," he said.

The president also spoke Wednesday with Univision. His interviews followed a citizenship ceremony conducted Monday at the White House where he pressed Congress to "finish the job" on immigration, an issue that has vexed Washington for years.

The president made little progress in overhauling the nation's fractured immigration laws in his first term, but he redoubled his efforts after winning re-election. The November contest also spurred some Republicans to drop their opposition to immigration reform, given that Hispanics overwhelmingly backed Obama.

In an effort to keep Republicans at the negotiation table, Obama has stayed relatively quiet on immigration over the last month. He rolled out his immigration principles during a January rally in Las Vegas and made an impassioned call for overhauling the nation's laws during his early February State of the Union address, then purposely handed off the effort to lawmakers.

**NO PC now.**

**Hill 3/20**/13 [Amie Parnes and Justin Sink, Obama honeymoon may be over, http://thehill.com/homenews/administration/289179-obama-honeymoon-may-be-over]

The second-term honeymoon for President Obama is beginning to look like it is over.¶ Obama, who was riding high after his reelection win in November, has seen his poll numbers take a precipitous fall in recent weeks. ¶ A CNN poll released Tuesday showed Obama’s favorability rating underwater, with 47 percent approving and 50 percent disapproving of Obama’s handling of his job. ¶ Much of the president’s agenda is stuck, with climate change regulations delayed, immigration reform mired in committee negotiations and prospects for a grand bargain budget deal in limbo at best. ¶ On Tuesday, in a decision that underscored Obama’s depleting political capital, the White House watched as Senate Majority Leader Harry Reid (D-Nev.) announced only a watered-down version of Obama’s gun control proposals would be considered on the Senate floor. ¶ Republicans, sensing the sea change, are licking their chops. They point to the lack of movement on Obama’s signature issues, noting the contrast to the ambitious plans outlined in the early weeks of his second term.¶ “The president set very high goals for himself during his State of the Union, but the reality is very little of his agenda is actually moving,” Republican strategist Ron Bonjean said. “He allowed himself to get caught up in the legislative quicksand, [and] the cement is beginning to harden. “¶ History isn’t on Obama’s side. ¶ The last four presidents who won a second term all saw their poll numbers slide by mid-March with the exception of Bill Clinton, whose numbers improved in the four months following his reelection.¶ Clinton may have only been delaying the inevitable. His numbers dropped 5 points in April 1994. Even Ronald Reagan, buoyed by a dominant performance over Walter Mondale in the 1984 election, saw a double-digit erosion by this point in his second term.¶ Obama has yet to complete the first 100 days of his second term. But **without a signature achievement since his reelection, he faces a crossroads that could define the remainder of his presidency**. ¶ White House aides maintain that the 24-hour news cycle makes comparisons to previous presidents difficult.¶ “I think the nature of our politics now is different than Ronald Reagan’s honeymoon,” one senior administration official said. “The ebb and flow of politics doesn’t follow that model anymore.”¶ But observers say a drop in popularity is typical for second-termers.¶ “There may be some typical second-term honeymoon fade happening,” said Martin Sweet, an assistant visiting professor of political science at Northwestern University. “Honeymoon periods for incumbents are a bit more ephemeral.”¶ But like most other presidents, Sweet added, “Obama’s fate is tied to the economy.”¶ “Continuing economic progress would ultimately strengthen the president but if we are hit with a double-dip recession, then Obama’s numbers will crater,” he said.¶ The White House disputes any notion that Obama has lost any political capital in recent weeks.¶ “The president set out an ambitious agenda and he’s doing big things that are not easy, from immigration to gun control,” the senior administration official said. “Those are policies you can’t rack up easily, and no one here is naive about that.”¶ **The White House is aware that the clock is ticking** to push its hefty agenda, but the official added, “The clock is not ticking because of president’s political capital. The clock is ticking because there’s a timetable in achieving all of this. [Lawmakers] are not going to sign on because the president’s popular.” ¶ And administration officials believe they still have the leverage.¶ “There’s a decent amount of momentum behind all of this,” the official said. “It looks like immigration is closer [to passage] than ever before.”¶ Republican strategist Ken Lundberg argued that current budget fights “have cut short the president’s second-term honeymoon.” ¶ He said this could also hurt the president’s party, warning “the lower the president’s approval rating, the bigger the consequence for vulnerable Democrats.”¶ “Voters want solutions, and if they see the president headed down the wrong path, lockstep lawmakers will be punished in 2014,” he said.¶ Democratic strategist Chris Kofinis maintained that as long as he’s president, Obama still has the leverage.¶ “Immigration reform doesn’t get impacted by whether Obama’s poll numbers are 55 or 45,” Kofinis said. “Does it make certain things a little more difficult? Possibly. But while his numbers may have fallen, he’s still more likeable than the Republicans are on their best day.”¶ Kofinis said the real question for Obama is what kind of emphasis he’s going to place on his second term because the public will have less patience than they did during his first.¶ “The challenge in a second term is the American people look at certain things and have a higher tolerance in a second term,” he said. “When they know you’re not running for reelection again, they hold you to a higher standard.” ¶ Bonjean and other Republicans are aware that Obama could potentially bounce back from his latest slip in the polls and regain his footing.¶ “He has the opportunity to **take minor legislative victories and blow them up** into major accomplishments—meaning if he got something on gun control, he can tout that that was part of his agenda and the work isn’t over. If he were able to strike a grand bargain with Republicans, that’d be a legacy issue.”¶ Still, Bonjean added, “It’s not looking so good right now.”

**Intrinsicness – a rational actor could pass the plan and pass immigration.**

**Announcing the AFF today means it is ignored.**

**NYT 8** [Days When News Can Go Unnoticed, http://thelede.blogs.nytimes.com/2008/11/04/days-when-news-can-go-unnoticed/]

Though the press aides and public relations officers of the world may be powerless to prevent some things about their clients from getting out at all, they may nonetheless have some control over when they get out. Reporters have long noticed a pattern of bad-news announcements happening at just the time when the story would be least likely to make an impact. They call it the news dump, and the conventional wisdom is that **prime dumping times are Friday nights**, the evenings before big holiday weekends, and days when events are occurring that are so momentous and captivating that the public will pay scant attention to anything else.¶ A day, that is, like today.¶ Which raises a question: Might someone choose to release some significant but unflattering news in the hope that the TV cameras and a distracted public will overlook it?¶ Call it a conspiracy theory, but reporters have complained about the suspiciously convenient timing of several news dumps in this election cycle. Senator John McCain, the Republican nominee, released his voluminous and long-awaited medical records on the Friday before Memorial Day weekend in May, to the infuriation of reporters. And just last month, his wife, Cindy McCain, irked reporters when she released her tax returns — documents that reporters had been requesting for months — on a Friday evening.¶ Jim Popkin, an exasperated NBC correspondent, even made a note of it in his coverage:¶ “It’s become a tired Washington ritual for politicians to deliver potentially embarrassing news just before the weekend, when coverage typically slows. This campaign season, both the Obama and McCain campaigns have dumped documents on news organizations late on Fridays.”

**Winners win and PC not key.**

**Hirsh 2/7**/13 (Michael, Chief correspondent for National Journal, Previously served as the senior editor and national economics correspondent for Newsweek, Overseas Press Club award for best magazine reporting from abroad in 2001 and for Newsweek’s coverage of the war on terror which also won a National Magazine Award, There’s No Such Thing as Political Capital, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

But the abrupt emergence of the immigration and gun control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is **kindergarten simple**: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “**Winning wins**.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.

Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully **quantifies or even defines it**. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a **bandwagon effect**.”

**Controversial fights ensure agenda success.**

**Dickerson 1/18**/13 (John, Chief Political Correspondent at the Slate, Political Director of CBS News, Covered Politics for Time Magazine for 12 Years, Previous White House Correspondent, Go for the Throat!, http://tinyurl.com/b7zvv4d)

On Monday, President Obama will preside over the grand reopening of his administration. It would be altogether fitting if he stepped to the microphone, looked down the mall, and let out a sigh: so many people expecting so much from a government that appears capable of so little. A second inaugural suggests new beginnings, but this one is being bookended by dead-end debates. Gridlock over the fiscal cliff preceded it and gridlock over the debt limit, sequester, and budget will follow. After the election, the same people are in power in all the branches of government and they don't get along. There's no indication that the president's clashes with House Republicans will end soon.

Inaugural speeches are supposed to be huge and stirring. Presidents haul our heroes onstage, from George Washington to Martin Luther King Jr. George W. Bush brought the Liberty Bell. They use history to make greatness and achievements seem like something you can just take down from the shelf. Americans are not stuck in the rut of the day.

But this might be too much for Obama’s second inaugural address: After the last four years, how do you call the nation and its elected representatives to common action while standing on the steps of a building where collective action goes to die? That **bipartisan** bag of tricks has been tried and it didn’t work. People don’t believe it. Congress' approval rating is 14 percent, the lowest in history. In a December Gallup poll, 77 percent of those asked said the way Washington works is doing “serious harm” to the country.

The challenge for President Obama’s speech is the challenge of his second term: how to be great when the **environment stinks**. Enhancing the president’s legacy requires something more than simply the clever application of predictable stratagems. Washington’s **partisan rancor**, the size of the problems facing government, and the limited amount of **time** before Obama is a lame duck all point to a single conclusion: The president who came into office speaking in lofty terms about **bipartisanship** and cooperation can only cement his legacy if he **destroys the GOP**. If he wants to transform American politics, he must **go for the throat**.

President Obama could, of course, resign himself to tending to the achievements of his first term. He'd make sure health care reform is implemented, nurse the economy back to health, and put the military on a new footing after two wars. But he's more ambitious than that. He ran for president as a one-term senator with no executive experience. In his first term, he pushed for the biggest overhaul of health care possible because, as he told his aides, he wanted to make history. He may already have made it. There's no question that he is already a president of consequence. But there's no sign he's content to ride out the second half of the game in the Barcalounger. He is approaching gun control, climate change, and immigration with wide and excited eyes. He's not going for caretaker.

How should the president proceed then, if he wants to be bold? The Barack Obama of the first administration might have approached the task by finding some Republicans to deal with and then start agreeing to some of their demands in hope that he would win some of their votes. It's the traditional approach. Perhaps he could add a good deal more schmoozing with lawmakers, too.

That's the old way. **He has abandoned that**. He doesn't think it will work and he doesn't have the time. As Obama explained in his last press conference, he thinks the Republicans are dead set on opposing him. They cannot be unchained by schmoozing. Even if Obama were wrong about Republican intransigence, other constraints will limit the chance for cooperation. Republican lawmakers worried about primary challenges in 2014 are not going to be willing partners. He probably has at most 18 months before people start dropping the lame-duck label in close proximity to his name.

Obama’s **only remaining option is to pulverize**. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of **clarifying fights over controversial issues**, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

This theory of political transformation rests on the weaponization (and slight bastardization) of the work by Yale political scientist Stephen Skowronek. Skowronek has written extensively about what distinguishes transformational presidents from caretaker presidents. In order for a president to be transformational, the old order has to fall as the orthodoxies that kept it in power exhaust themselves. Obama's gambit in 2009 was to build a new post-partisan consensus. That didn't work, but by exploiting the weaknesses of today’s Republican Party, Obama has an opportunity to hasten the demise of the old order by increasing the political cost of having the GOP coalition defined by Second Amendment absolutists, **climate science deniers**, supporters of “self-deportation” and the pure no-tax wing.

**Gun vote first—derails the agenda.**

**PBS NEWS 3/28** http://www.pbs.org/newshour/rundown/2013/03/gay-marriage-cases-now-in-justices-hands.html

While Mr. Obama pressures Congress to adopt gun control **legislation when it returns** from recess, Roll Call reports that "a little-noticed Senate vote" in the wee hours of Saturday's vote-a-rama on the non-binding budget resolution may not bode well for Mr. Obama's hopes of passing tougher gun legislation. An amendment from Sen. Mike Lee, R-Utah, requiring two-thirds approval of any gun legislation didn't garner enough votes to pass, but six Democrats from gun-friendly states backed it, which should tell Mr. Obama something about the Senate's support for gun rights.

If Majority Leader Harry Reid, D-Nev., can't round up the 60 votes needed to pass Democrats' legislation, Sen. Chuck Grassley, R-Iowa, may be ready with what one GOP aide called "a break-the-glass kit." Grassley, the only Republican on the Judiciary Committee to support tougher penalties for straw purchases, is drafting an alternative gun control bill, presumably without the expanded background checks that he has opposed and which are central to the Democrats' bill.

**DOI deflects blame.**

**Mendelson 10** Professor of Law – University of Michigan Law School [Nina A. Mendelson, “Disclosing “Political” Oversight of Agency Decision Making,” Michigan Law Review, Vol. 108, p.1127-1175, <http://www.michiganlawreview.org/assets/pdfs/108/7/mendelson.pdf>]

Even if presidential supervision of agency decisions is well known to the voting population, holding a President accountable for particular agency decisions is hard enough, given the infrequency of elections, the number of issues typically on the agenda at the time of a presidential election, presidencies that only last two terms, and presidential candidates who are vague about how the administrative state would run. 175 It is all the more difficult if the public does not know what influence the President may have had or may end up having on particular agency decisions. “To the extent that presidential supervision of agencies remains **hidden from public scrutiny**, the President will have greater freedom to [assist] parochial interests.” 176 Calling for greater disclosure to the electorate is not to say that majoritarian preferences should dictate agency decision making. Increasing transparency regarding presidential influence on a particular agency decision may or may not make agency decision making simply a “handmaiden of majoritarianism,” as Bressman suggests. 177 Instead, it could facilitate a public dialogue where citizens are persuaded that the decision made, though not the first-cut “majoritarian preference,” is still the correct decision for the country. By comparison, submerging presidential preferences undermines electoral accountability for agency decisions and reduces the chances of a public dialogue on policy. One might respond that the public already knows that the President appoints agency heads and can remove them, and that White House offices review significant agency rules before they are issued. And the public knows the content of the agency’s decision. Shouldn’t that be sufficient to ensure democratic accountability through the electoral process? 178 That level of knowledge might suffice, but only if the public perceives federal agencies as indistinguishable from the President. Voters are sophisticated enough to know, however, that agencies represent large and sometimes unresponsive bureaucracies, a view sometimes promoted by Presidents themselves. Presidents certainly do not consistently foster the view that executive branch agencies are under their complete control. Instead, they have been known to **blame the agencies for unpopular decisions** and to try to distance themselves. 179 Bressman gives the example of the second Bush Administration distancing itself from the IRS, while at the same time quietly pressuring the agency to revise a proposed rule requiring domestic banks to reveal the identity of all depositors, including foreign ones. 180 Administrators may also “take the fall” for an unpopular decision that is influenced by the White House, as EPA Administrator Johnson appeared to do in denying the California greenhouse gas waiver. 181 And as mentioned earlier, President Obama has **selectively taken credit for federal agency actions** relating to automotive greenhouse gas emissions, with his OMB only grudgingly backing an EPA proposed rule in response to political controversy. 182 Similarly, President George W. Bush distanced himself from an EPA report concluding that global warming was anthropogenic, even though that report had been reviewed by White House offices prior to its release. In answer to questions from reporters, President Bush commented, “I read the report put out by the bureaucracy.” 183 More recently, when news reports suggested that the White House was pressing the EPA to “edit” its climate change findings, the White House spokesman stated that the agency alone “ ‘determines what analysis it wants to make available’ in its documents.” 184 Finally, take the rash of resignations at the EPA in the mid-1980s, including Administrator Gorsuch and Assistant Administrator Lavelle, arising out of allegations of serious misconduct and conflicts of interest within the agency. President Reagan succeeded in distancing himself from the agency’s problems by presenting the agency as acting more or less independently. 185 Despite issuing directives, 186 Presidents certainly have a significant incentive to keep **influence on agency decisions low-key** and to **maintain “deniability”** with respect to agency actions. This minimizes the risk that influence can be characterized later as improperly motivated, that debate within the executive branch can fuel litigation over the ultimate decision, or that the President will have a political price to pay for guessing wrong about what option best serves the public interest. And, of course, keeping a low profile for presidential influence also allows more successful presidential pressure that is the result of presidential capture. 187 All this amounts to **reduced electoral accountability** for actions taken by administrative agencies. 188

**2AC—Coal DA**

**Coal prices and demand are low.**

**Lazenby 3-28** [Henry, Mining Weekly, North America becoming big coal exporter as domestic consumption declines, http://www.miningweekly.com/article/north-america-becoming-big-coal-exporter-as-domestic-consumption-declines-2013-03-28]

The domestic US coal market has seen a whirlwind decline in recent years as low-cost natural gas from recently embraced hydraulic fracturing has flooded the market, sending the coal market spiralling downward as US coal-fired power generators, which traditionally used about 90% of the local coal production, switched to burning cheaper natural gas.¶ This has had a devastating effect on coal producers in the US, forcing a number of significant US coal producers, including Arch Coal, Alpha Natural Resources and Peabody Energy, to scale back production or shutter operations in recent months.¶ The poor market conditions also resulted in a flurry of bankruptcy filings, including Patriot Coal and the reorganisation of junior Cline Mining.

**Wind now.**

**Ballenger 3/13**

**Solar now.**

**Pentland 3/15**

**OWS causes price suppression.**

**Conathan 11** [Michael, Director of Ocean Policy at the Center for American Progress, Permitting and Financing Challenges to the U.S. Offshore Wind Industry, <http://www.americanprogress.org/issues/green/report/2011/06/01/9720/clean-energy-from-americas-oceans/>]

Costs will come down. Future offshore wind projects will cost less than current ones. But we can’t skip ahead in time. We have to invest in learning how to lower the cost of power. For onshore wind the costs decline by between 9 and 17 percent every time the cumulative installed capacity doubles. To see how this lowers costs, let’s assume that the same relationship for offshore wind is 10 percent and work through a simplified example. Say the first installed project is 400 megawatts and costs $2 billion. Just by incorporating lessons learned from that project—which would be substantial, since developers will learn so much from seeing something done for the first time—the next 400 megawatt project would cost $1.8 billion. Then, when the installed capacity doubled again (from 800 megawatts to 1,600 megawatts) the cost would decline to $1.62 billion. The costs will quickly come down as we build the first round of offshore projects.

Offshore wind power can put downward pressure on power prices. In competitive markets, generators always offer to sell electricity at the marginal cost of generating power, which is roughly fuel costs plus operating costs. Wind turbines have zero fuel costs and minimal operating costs, so they bid all of their power at essentially zero. Nuclear power tends to have the next lowest bids, followed by coal power, and natural gas (though today’s low gas prices have put gas ahead of coal in some places). The key insight here is that when more wind is bid into the market it reduces the need for the most expensive power. In effect, a kilowatt hour of wind—which costs zero cents—replaces a kilowatt hour from natural gas—which may cost as much as 30 cents—depending on the type of plant. This is variously known as “price suppression” or the “merit-order effect,” which can already be observed in power markets in Texas. This ultimately means that consumers will pay less for power.

Charles River Associates, an energy consulting firm, studied this effect for Cape Wind. They found that, “With Cape Wind in service, over the 2013-2037 time period, the price of power in the New England wholesale market would be $1.22/MWh lower on average.” Sure, this translates to just one-tenth of a cent per kilowatt-hour—the unit most consumers are familiar with paying—which sounds like a pretty small amount. But the scale is tremendous. Charles River found that these tenths of a cent added up to $4.6 billion over the life of the project and over the entire New England region.

**Fixed-price contracts solve**

TES 2-26 [Today's Energy Solutions, "US Electric Utilities Flock to Lower-Priced Wind Power," http://www.onlinetes.com/electric-utilities-wind-power-22613.aspx]

U.S. electric utilities are locking in fixed-price contracts for wind power, now more cost-competitive than ever, illustrating the success of a key federal tax policy in holding down rates for consumers. A total of 66 U.S. utilities bought or owned wind power by the start of this year – nearly half for large amounts over 100MW – up from 42 a year before. Utilities have continued to sign up for more since Congress and President Obama extended the Production Tax Credit for wind energy in the fiscal cliff bill signed at the beginning of January. "AWEA applauds these utilities for maximizing the PTC opportunity to continue bringing low-cost, fixed price wind power to their customers," says Rob Gramlich, interim CEO of the American Wind Energy Association (AWEA). "From Xcel Energy in Minnesota to OG&E in Arkansas, electric consumers are racking up the savings as a result. The wind energy industry looks forward to our continued partnerships with utilities across the country to lock in the economic development, rate stabilizing and environmental benefits of more wind power."

# 1AR

## \*\*\* T

### 1AR—Overview

#### The distinction between regulations and restriction is impossible to uphold

**Borowski 3** Martin, Faculty at Birmingham Law School, Vice-President of the British Section of the International Association for Philosophy of Law and Social Philosophy, “Religious Freedom as a Fundamental Human Right, a Rawlsian Perspective” in Pluralism and Law, Conference Proceedings” p. 58

Despite the problems that arise in distinguishing restrictions and regulations, noted above, one might introduce different criteria to justify both types of diminutions. One can distinguish formal and material criteria of justification. Rawls does not mention any formal criterion. Materially, a regulation has to respect the central range of applications of a basic liberty. But this applies to restrictions, too, and cannot give rise to any difference. Every diminution of a basic right or freedom, whether or not it is based on the content or the modality of a citizen’s action, is a restriction and, as such, has to be justified. The distinction between restrictions and regulations is expendable.

### 1AR—Over Limits

#### No OCS restrictions

**Gramp 12** Kathleen Jeff, CBO Budget Analysis Division, August, http://www.cbo.gov/sites/default/files/cbofiles/attachments/08-09-12\_Oil-and-Gas\_Leasing.pdf

Other than the temporary ban on leasing in the eastern Gulf of Mexico, **there currently are no statutory restrictions on OCS leasing**. Decisions about leasing are made administratively—in consultation with industry and the states—for five-year periods. Leases cannot be offered for areas that are not included in a five-year plan, but the available regions may change whenever a new plan is adopted. The next plan is expected to go into effect in August 2012 and will extend for five years unless a future Administration chooses to restart the process before that plan expires.

### 1AR—Anell

#### Canada voted AFF --- the core point is that restrictions lowered production levels --- that is our interpretation.

**FTIS 89** Foreign Trade Information System, Canada: Import Restrictions On Ice Cream and Yogurt, Report of the Panel adopted at the Forty-fifth Session, Contracting Priorities, L/6568 - 36S/68, http://www.sice.oas.org/dispute/gatt/88icecrm.asp

25. Canada maintained that it effectively managed the supply of all domestically produced milk, through the provincial controls on fluid milk and the joint federal provincial market share quota system for industrial milk. It was an agreed interpretation of the General Agreement that "in interpreting the term "restrict" for the purposes of paragraph 2(c), **the essential point** was that the measures of domestic restrictions effectively keep **output below the level** which it would have attained in the absence of restrictions" (Havana reports, page 89). The Canadian programs restricted production to a level less than would be the case without the governmental controls. Farmers' participation in the supply management programmes was mandatory. Production quotas were ultimately established at the individual farm level, and the imposition of severe financial disincentives for overproduction assured the effectiveness of the system. The level of return received by producers for over-quota industrial milk was lower than the cash cost of production. The over-quota levy thus effectively restricted production above the quantitative level established by the quotas. Over the last decade there had been under-production of milk in some years, and over production in others. In the most recent six years, over-quota production of milk averaged only one per cent of total milk production. While it could not be directly demonstrated that production would be higher in the absence of the programmes, there was considerable indirect evidence that it would be. Each province fully utilized its Market Share Quota (MSQ) and applications for increased MSQs indicated that farmers had the capacity and willingness to produce more milk at the current prices if not restricted by the over-quota levy. Canada further cited recent econometric analyses, which indicated that milk production would be 31 to 39 per cent higher in the absence of restrictions.

### 1AR—Sinha

#### Says a restriction isn’t a prohibition.

**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/

There would seem to be no occasion to discuss whether or not the Railroad Commissioners had the power and authority to make the order, requiring the three specified railroads running into the City of Tampa to erect a union passenger station in such city, which is set out in the declaration in the instant case and which we have copied above. [\*\*\*29] It is sufficient to say that under the reasoning and the authorities cited in State v. Atlantic Coast Line R. Co., 67 Fla. 441, 458, 63 South. Rep. 729, 65 South. Rep. 654, and State v. Jacksonville Terminal [\*631] Co., supra, it would seem that HN14the Commissioners had power and authority. The point which we are required to determine is whether or not the Commissioners were given the authority to impose the fine or penalty upon the three railroads for the recovery of which this action is brought. In order to decide this question we must examine Section 2908 of the General Statutes of 1906, which we have copied above, in the light of the authorities which we have cited and from some of which we have quoted. It will be observed that the declaration alleges that the penalty imposed upon the three railroads was for the violation of what is designated as "Order No. 282," which is set out and which required such railroads to erect and complete a union depot at Tampa within a certain specified time. If the Commissioners had the authority to make such order, it necessarily follows that they could enforce a compliance with the same by appropriate proceedings in the courts, but [\*\*\*30] it does not necessarily follow that they had the power and authority to penalize the roads for a failure to comply therewith. That is a different matter. HN15Section 2908 of the General Statutes of 1906, which originally formed Section 12 of Chapter 4700 of the Laws of Florida, (Acts of 1899, p. 86), expressly authorizes the imposition of a penalty by the Commissioners upon "any railroad, railroad company or other common carrier doing business in this State," for "a violation or disregard of any rate, schedule, rule or regulation, provided or prescribed by said commission," or for failure "to make any report required to be made under the provisions of this Chapter," or for the violation of "any provision of this Chapter." It will be observed that the word "Order" is not mentioned in such section. Are the other words used therein sufficiently comprehensive to embrace an order made by the Commissioners, such as the one now under consideration? [\*632] It could not successfully be contended, nor is such contention attempted, that this order is covered by or embraced within the words "rate," "schedule" or "any report,' therefore we may dismiss these terms from our consideration and [\*\*\*31] direct our attention to the words "rule or regulation." As is frankly stated in the brief filed by the defendant in error: "It is admitted that an order for the erection of a depot is not a 'rate' or 'schedule' and if it is not a 'rule' or 'regulation' then there is no power in the Commissioners to enforce it by the imposition of a penalty." It is earnestly insisted that the words "rule or regulation" are sufficiently comprehensive to embrace such an order and to authorize the penalty imposed, and in support of this contention the following authorities are cited: Black's Law Dictionary, defining regulation and order; Rapalje & Lawrence's Law Dictionary, defining rule; Abbott's Law Dictionary, defining rule; Bouvier's Law Dictionary, defining order and rule [\*\*602] of court; Webster's New International Dictionary, defining regulation; Curry v. Marvin, 2 Fla. 411, text 515; In re Leasing of State Lands, 18 Colo. 359, 32 Pac. Rep. 986; Betts v. Commissioners of the Land Office, 27 Okl. 64, 110 Pac. Rep. 766; Carter V. Louisiana Purchase Exposition Co., 124 Mo. App. 530, 102 S.W. Rep. 6, text 9; 34 Cyc. 1031. We have examined all of these authorities, as well as those cited by the [\*\*\*32] plaintiffs in error and a number of others, but shall not undertake an analysis and discussion of all of them. The Central Government announced its Foreign Trade Policy in exercise of its power conferred upon it under Section 5 of the 1992 Act by a notification dated 7th April, 2006. The said policy was issued in public interest. Chapter 1A of the said policy also provides for legal framework. Clause 1.5 thereof reads as under: "1.5 In case an export or import that is permitted freely under this Policy is subsequently subjected to any **restriction or regulation**, such export or import will ordinarily be permitted notwithstanding such restriction or regulation, unless otherwise stipulated, provided that the shipment of the export or import is made within the original validity of an irrevocable letter of credit established before the date of imposition of such restriction." Clause 2.4 of the policy empowers the Director General of Foreign Trade to specify the procedures required to be followed by an exporter in any case or class of cases for the purpose of implementing the provisions of the 1992 Act, the Rules and the Orders made thereunder and the said policy. Such procedures were to be included in the Handbook which would be published by means of a public notice and such procedures may in the like manner be amended from time to time. It was stated: "The Handbook (Vol.1) is a supplement to the Foreign Trade Policy and contains relevant procedures and other details. The procedure of availing benefits under various schemes of the Policy are given in the Handbook (Vol.1)" The Handbook of Procedures which inter alia supplements the Foreign Trade Policy was also issued on 7th April, 2006 upon giving a public notice therefor. It contains nine chapters. Chapter 9 comprises of miscellaneous matters. Paragraph 9.12 lays down the manner in which date of shipment/ dispatch of exports would be reckoned. It inter alia provides: "However, wherever the Policy provisions have been modified to the disadvantage of the exporters, the same shall not be applicable to theconsignments already handed over to the Customs for examination and subsequent exports upto the date of the Public Notice. Similarly, in such cases where the goods are handed over to the customs authorities before the expiry of the export obligation period but actual Exports take place after expiry of the export obligation period, such exports shall be considered within the export obligation period and taken towards fulfillment of export obligation." HIGH COURT JUDGMENTS Whereas the Gujarat High Court invoking Paragraph 9.12 of the Handbook and having regard to the fact that the customs authorities cleared and permitted the loading of the goods and moreover the bill of lading had also been filed, opined that the respondents were entitled to export the goods in terms of the policy decision despite the said notification dated 27.06.2006, the Delhi High Court declared the notification dated 4.07.2006 as ultra vires. SUBMISSIONS Mr. Vikas Singh, learned Additional Solicitor General for Union of India, has raised the following contentions: (i) Clause 1.5 of the Foreign Trade Policy would not apply to a case where the export of goods are totally being **prohibited and not merely regulated or restricted**. (ii) Having regard to the definition of export and in particular the provision of Section 51 of the 1962 Act, the procedures laid down thereunder as envisaged under Sections 16 and 39 must be complied and they having not been complied with, the impugned judgment of Gujarat High Court cannot be sustained. (iii) Although the notification dated 4.07.2006 was wrongly worded but as thereby benefit was sought to be conferred on those who were not aware of the ban before 22.06.2006 and had opened letters of credit prior thereto were exempted from operation of the said notification, the order of prohibition shall be effective even if a concluded contract had been arrived at for export of goods. The learned counsel for the respondents, on the other hand, submitted: (i) In view of the Foreign Trade Policy issued by the Central Government under Section 5 of the 1992 Act, the amendments carried out therein shall only have a prospective effect and not a retrospective effect. (ii) As the Handbook of Procedures lays down supplemental provisions to the Foreign Trade Policy issued by the Director General of Foreign Trade in exercise of its power under the 1992 Act, the purported prohibition issued under the notification dated 27.06.2006 would not apply to a case where the formalities contained in Section 51 of the 1962 Act had been complied with. (iii) Clause 1.5 of the Foreign Trade Policy having provided for protection to those who were holders of letter of credit, the retrospective effect purported to have been given in terms of the notification dated 4.07.2006 was unconstitutional being hit by Article 14 of the Constitution of India. Would the terms 'restriction' and 'regulation' used in Clause 1.5 of the Foreign Trade Policy include prohibition also, is one of the principal questions involved herein. **A citizen of India** has a fundamental right to carry out the business of export, subject, of course to the reasonable restrictions which may be imposed by law. Such a reasonable restriction was imposed in terms of the 1992 Act. The purport and object for which the 1992 Act was enacted was to make provision for the development and regulation of foreign trade inter alia by augmenting exports from India. While laying down a policy therefor, the Central Government, however, had been empowered to make provision for prohibiting, restricting or otherwise regulating export of goods. Section 11 of the 1962 Act also provides for prohibition. When an order is issued under Sub-section (3) of Section 3 of the 1992 Act, the export of goods would be deemed to be prohibited also under Section 11 of the 1962 Act and in relation thereto the provisions thereof shall also apply. Indisputably, the power under Section 3 of the 1992 Act is required to be exercised in the manner provided for under Section 5 of the 1992 Act. The Central Government in exercise of the said power announced its Foreign Trade Policy for the years 2004-2009. It also exercised its power of amendment by issuing the notification dated 27.06.2006. Export of all commodities which were not earlier prohibited, therefore, was permissible till the said date. The implementation of the said policy was to be made in terms of the procedures laid down in the Handbook. The provisions of the 1992 Act, the Foreign Trade Policy and the procedures laid down thereunder, thus, provide for a composite scheme. In implementing the said provisions of the scheme, in the event an order of prohibition, restriction or regulation is passed, the provisions of the 1962 Act mutatis mutandis would apply. Section 50 of the 1962 Act provides for entry of goods for exportation. It enjoins a duty upon an exporter to make entry thereof by presenting a shipping bill to the proper officer in a vessel or aircraft. On receipt of the shipping bill, the proper officer has to arrive at its satisfaction that (i) the export of goods is not prohibited; (ii) the exporter has paid the duty assessed thereon and charges payable thereunder in respect of the said goods. Once he arrives at the said satisfaction, he will make an order permitting clearance and loading of the goods for exportation. The scheme of the Foreign Trade Policy postulates that when the policy provisions are amended which are disadvantageous to the exporters, the modification would not be attracted. It furthermore lays down that although actual export had not taken place but in the event goods are handed over to the custom authorities before expiry of the export obligation period but actual export takes place after expiry thereof, the same shall be considered within the export obligation and taken towards fulfillment of such obligation. Section 51 of the 1962 Act, therefore, does not say that unless and until the shipment crosses the international border, the notification imposing prohibition shall be attracted. Different stages for the purpose of the said Act would, therefore, be different. For interpretation of the provisions of the 1992 Act and the policy laid down as also the procedures framed thereunder vis-`-vis the provisions of the 1962 Act, the rate of custom duty has no relevance. What would be relevant for the said purpose would be actual permission of the proper officer granting clearance and loading of the goods for exportation. As soon as such permission is granted, the procedures laid down for export must be held to have been complied with. Strong reliance has been placed by the learned Additional Solicitor General upon a decision of this Court in Principal Appraiser (Exports), Collectorate of Customs and Central Excise and Others v. Esajee Tayabally Kapasi, Calicut [(1995) 6 SCC 536] wherein this Court was concerned with the change in the rate of duty and in that context the construction of Sections 16(1), 39 and 51 of the 1962 Act fell for its consideration. In relation to the rate of duty it was held that the date of "entry outwards" would be the relevant date with reference to which the rate of custom duty on the exported duty is to be worked out. In that case, the goods were cleared for a vessel known as S.S. Neils Maersk. However, for want of space therein goods were shut out. Necessary space for exporting those were secured in another vessel named S.S. P'Xilas wherefor fresh shipping bill was filed on 9.08.1996. It was in the peculiar fact of that case, this Court opined that the rate of export duty prevalent as on 9.08.1996 would be leviable stating: "...It becomes thus clear that the shipping bill as well as the ultimate entry outwards for the goods concerned sought to be exported must have reference to the vessel through which such goods are to be exported. Therefore, before any goods are exported out of Indian territorial waters which vessel is to be utilised for exporting them, becomes a relevant consideration. The shipping bill concerned has to be lodged with reference to a given vessel which is to carry these goods out of the Indian territorial waters and in connection with such a vessel the entry outwards has to be obtained and only thereafter the master of the vessel should allow the loading of the goods for being exported out of India. The rate of duty payable on such exported goods would, therefore, be the rate of duty that was prevalent at the time when entry outwards through a given vessel is obtained. There cannot be an entry outwards in connection with a vessel which does not actually carry such goods for the purpose of export. In the facts of the present case, therefore, conclusion is inevitable that earlier entry outwards for the vessel S.S. Neils Maersk was an ineffective entry outwards for the purpose of computing the rate of customs duty of export on the goods in question. Only the subsequent entry outwards for vessel S.S. PXilas which actually carried these goods out of Indian territorial waters and effected the export of these goods was the only relevant and operative entry outwards and the rate of duty prevalent on the date of the said entry outwards for vessel S.S. PXilas was the only effective rate of duty payable on the export of these goods. Consequently it must be held that the respondent has made out no case for refund of Rs 4444.96 for which he lodged the claim." We may notice that a Constitution Bench of this Court in Gangadhar Narsingdas Agarwal v. P.S. Thrivikraman and Another [(1972) 3 SCC 475] opined that Section 16 of the 1962 Act speaks of the fictional date only in relation to the order of date of entry outwards of the vessel, but the issue with which we are concerned did not arise therein. The fundamental and statutory right of an exporter, in that case, were not sought to be taken away. Esajee Tayabally Kapasi (supra), therefore, has no application in the instant case. Reliance has also been placed on Union of India and Others v. M/s. C. Damani & Co. and Others [1980 (Supp) SCC 707] wherein the vires of Exports (Control) Fifteenth Amendment Order, 1979 prohibiting pre-ban commitments was in question. It was held that there was no ground to discredit the policy. The question raised therein, viz., the effect of failure to honour foreign contracts owing to change in law imposing ban on goods covered thereby whether would attract the plea of frustration of contract was not decided stating: "...This contention may have to be considered here or elsewhere, but, if we may anticipate our conclusion even here, this question is being skirted by us because the kismet of this case can be settled on other principles. The discipline of the judicial process forbids decisional adventures not necessary, even if desirable." **----NU Card starts---**We may, however, notice that M/s. C. Damani (supra) was explained by this Court in State Trading Corporation of India Ltd. v. Union of India and Others [1994 Supp (3) SCC 40]. It is not necessary for us to advert thereto as the said judgment has no application in the instant case. We are, however, not oblivious of the fact that in certain circumstances **regulation may amount to prohibition**. But, ordinarily the word "regulate" would mean to control or to adjust by rule or to subject to governing principles [See U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and Others [(2004) 5 SCC 430] whereas the word "prohibit" would mean to forbid by authority or command. The expressions "regulate" and "prohibit" inhere in them elements of restriction but it varies in degree. **The element of restriction is inherent both in regulative measures as well as in prohibitive** or preventive **measures**. 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 contended itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect." **---NU Card ends--However**, in Talcher Municipality v. Talcher Regulated Market Committee and Another [(2004) 6 SCC 178], it was opined that regulation is a term which is capable of being interpreted broadly and it **may amount to prohibition**. [See also K. Ramanathan v. State of Tamil Nadu and another, AIR 1985 SC 660] The terms, however, indisputably would be construed having regard to the text and context in which they have been used. Section 3(2) of the 1992 Act uses prohibition, restriction and regulation. They are, **thus, meant to be applied differently**. Section 51 of the 1962 Act also speaks of prohibition. Thus, in terms of the 1992 Act as also the policy and the procedure laid down thereunder, the terms are required to be applied in different situations wherefor different orders have to be made or different provisions in the same order are required therefore.

### 1AR—We Meet

#### Contextual evidence.

**Eberhardt 6** B.A., 1998, Swarthmore (Biology); M.F.S., 2001, Harvard; J.D. Candidate, 2006, New York University School of Law. Senior Notes Editor, 2005-2006, New York University Environmental Law Journal [Robert W. Eberhardt, FEDERALISM AND THE SITING OF OFFSHORE WIND ENERGY FACILITIES, New York University Environmental Law Journal, 14 N.Y.U. Envtl. L.J. 374]

What is clear, however, is that federal consistency review provides states with opportunities to **stop** or at least delay the issuance of federal authorizations for offshore wind energy facilities like those required under the RHA and Section 388 of the EPAct of 2005. By objecting to sponsor certifications that a project is consistent with a state's enforceable policies, states can force sponsors into a largely untested adjudicatory process within the Department of Commerce where the regulations appear to give the agency considerable discretion in decision-making. Furthermore, these agency decisions are subject to judicial review, which provides states with an additional chance to prevent or delay federal authorizations.

### 1AR—Interpretation

#### Context is key.

**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."

#### Only contextual definition.

**Crampton 9** Paul, Partner at Osler, Hoskin & Harcourt LLP, J.D., June, MAJOR CHANGES TO THE COMPETITION ACT (CANADA) AND THE COMPETITION BUREAU'S ENFORCEMENT POLICIES, 8-5 Antitrust Src. 5

OUTPUT **RESTRICTIONS**. Paragraph 45(1)(c) applies to all agreements "to fix, maintain, **control, prevent, lessen or eliminate the production** or supply of the product." In the Bureau's view, in addition to garden-variety output agreements, this language captures agreements that reduce the quantity of products supplied to specific customers or groups of customers as well as agreements to permanently or temporarily close manufacturing facilities. n31

The Draft CC Guidelines are not particularly helpful regarding agreements that typically would not be considered to constitute hard-core cartel conduct but which could raise issues under this provision, such as standard-setting agreements and JV agreements that **place restrictions on the production** or supply **of products** to be produced by the JV.

#### Only definition of production.

**FTIS 89** (Foreign Trade Information System, Canada: Import Restrictions On Ice Cream and Yogurt, Report of the Panel adopted at the Forty-fifth Session, Contracting Priorities, L/6568 - 36S/68, http://www.sice.oas.org/dispute/gatt/88icecrm.asp)

25. Canada maintained that it effectively managed the supply of all domestically produced milk, through the provincial controls on fluid milk and the joint federal provincial market share quota system for industrial milk. It was an agreed interpretation of the General Agreement that "in interpreting the term "restrict" for the purposes of paragraph 2(c), **the essential point** was that the measures of domestic restrictions effectively keep output **below the level** which it would have attained in the absence of restrictions" (Havana reports, page 89). The Canadian programs restricted production to a level less than would be the case without the governmental controls. Farmers' participation in the supply management programmes was mandatory. Production quotas were ultimately established at the individual farm level, and the imposition of severe financial disincentives for overproduction assured the effectiveness of the system. The level of return received by producers for over-quota industrial milk was lower than the cash cost of production. The over-quota levy thus effectively restricted production above the quantitative level established by the quotas. Over the last decade there had been under-production of milk in some years, and over production in others. In the most recent six years, over-quota production of milk averaged only one per cent of total milk production. While it could not be directly demonstrated that production would be higher in the absence of the programmes, there was considerable indirect evidence that it would be. Each province fully utilized its Market Share Quota (MSQ) and applications for increased MSQs indicated that farmers had the capacity and willingness to produce more milk at the current prices if not restricted by the over-quota levy. Canada further cited recent econometric analyses, which indicated that milk production would be 31 to 39 per cent higher in the absence of restrictions.

#### Feasibility determines energy production, so barriers are restrictions.

**Phil et al 12** Erik Phil and Filip Johnsson, Division of Energy Technology, Chalmers University of Technolog, and Duncan Kushnir and Bjorn Sanden, Division of Environmental Systems Analysis, Chalmers University of Technology, August 2012,Material constraints for concentrating solar thermal powerEnergy Volume 44, Issue 1, August 2012, Pages 944–954

The available solar flux on land is several thousand times higher than today's anthropogenic primary energy conversion and is thereby the dominant potential source for renewable energy. The global solar market has been rapidly growing for the past decade, but is still dwarfed when compared to conventional fossil fuel power. So far, **the** main **barrier to large-scale deployment of solar** power **has been higher costs of electricity**, because of relatively small volumes and less historical investments in technology development than presently dominant power generation technologies. Through development and continued strong growth, as solar technologies progress down the learning-curve, the cost per kWh of solar electricity is projected to reach parity with peaking power in main markets by about 2020–2030 [1], [2], [3] and [4].

So far, photovoltaic (PV) technologies have the largest share of the solar power market, but there is at present a relatively steady share of concentrating solar thermal power (CSP, also sometimes referred to as Solar Thermal Power, STP). CSP has undergone expansion from about 400 MW installed capacity in the early 2000s, to about 1.3 GW in 2011, with another 2.3 GW under construction and 32 GW in planning. The technology is today in commercial scale deployment in Spain, USA, Australia, Egypt and India [5], [6] and [7].

CSP plants use reflective surfaces to concentrate sunlight, providing heat for a thermodynamic cycle, such as a steam turbine. The physical principle is thus very different from photovoltaic panels, which use the photons in sunlight to excite electrons and create currents in solid state matter. These differences mean that CSP will differ significantly from PV regarding properties such as environmental impact and material constraints.

With projected strong growth in view, it is of interest to identify and quantify **barriers to** large-scale **solar power** deployment, other than cost as mentioned above. One such **barrier is restrictions in** either the reserves (extractable resources at a given cost) or annual supply of materials needed for solar power conversion devices. Such **restrictions** can **imply increased** raw material **costs as the technologies grow**, **or** even set absolute **limits to how much that can be built**. The recent study on CSP by the EASAC [2] has pinpointed a need to investigate the limits and potential bottlenecks and manufacturing constraints for CSP production.

## \*\*\* Coal DA

#### Coal dominating renewables—question of price controls the aff would change

Desiree Mohindra 3/5/2013 (Associate Director, World Economic Forum, "Despite rise of renewables, fossil fuel still fastest growing energy source" www.weforum.org/news/despite-rise-renewables-fossil-fuel-still-fastest-growing-energy-source)

In response to this challenge, policy-makers are looking towards low-carbon and renewable sources of energy. However, 87% of total world primary energy demand is met by oil, coal and natural gas; more than 92% with nuclear energy. Wind, solar, geothermal and other non-hydro renewable resources provide just 1.6% of total world energy. Today, there is a renewed and much more intense focus on what kind of energy transition might be ahead and what the timing might be. Trade, globalization, energy storage and transmission, as well as policies and pricing of carbon, will be among main factors influencing the changing mix. The shifts in balance within the mix will have direct consequences for all society. “The general assumption is that we will gravitate towards a world dominated by renewables,” said Roberto Bocca, Senior Director, Head of Energy Industries, World Economic Forum. “Surprisingly though, this transition will be different than in the past where the energy mix moved from one fuel to another, like from wood to coal. What we’ll see in the future instead will be a transition from some energy sources to many energy sources, for example, from a diverse energy mix to a set of diversified energy mixes.” The report, written in collaboration with IHS Cambridge Energy Research Associates (IHS CERA), aims to provide a framework for understanding the potential for changes in the energy mix and how an energy transition could unfold. Without attempting to predict a specific future, it analyses factors that may drive changes in the energy mix in the coming decades. Although energy efficiency and other demand-side issues are critical to future energy systems, the report focuses on the supply side of the equation and how society will meet its ever-growing energy needs. “Transitions in the energy industry unfold over decades, owing to the large scale of the industry and the size and longevity of the infrastructure involved,” said Daniel Yergin, IHS Vice Chairman and the Forum’s Oil and Gas Community Leader 2012. “However, shifts in the energy mix will have direct consequences for all participants in the world’s energy industry – incumbents, new entrants and innovators, governments and, of course, for all society.” In the report’s analysis, the following conclusions and observations stand out: The beginning of this century has seen a rebirth of renewables. Renewable power has become a significant and highly visible global industry, with revenues totalling US$ 184 billion in 2012. Its growth has been spurred by the combination of research and development, innovation and government policies – mandates, subsidies and incentives – aimed at promoting its market penetration. Parallel policies have promoted biofuels. Coal, however, has experienced the fastest growth of any energy source in absolute terms over the same time frame – almost 10 times that of renewables, nearly twice that of natural gas and nearly three times that of oil. Rapid growth in coal demand is the result of high economic growth rates in emerging market countries and the rapidly rising need for power. Price and value delivered will be key determinants in shaping the energy mix of the future. That price may be set in the competitive marketplace or may result from a price on carbon and/or government incentives and subsidies. New technology will likely have a major impact on the energy mix, but probably not until the 2030s, owing to lead times.

### Low Prices

#### Coal has bottomed out – red headed energy stepchild

**Sizemore 3-4** [Charles Sizemore manages the Tactical ETF and Sizemore Investment Letter portfolios on Covestor. He is the founder and Chief Investment Officer of Dallas-based Sizemore Capital Management LLC, a registered investment advisory firm, and editor of the Sizemore Investment Letter; Is it time to buy coal? http://www.marketwatch.com/story/is-it-time-to-buy-coal-2013-03-04]

DALLAS (MarketWatch) — As the fracking boom has generated massive new interest in domestic oil and gas production, coal has become the red-headed stepchild of the energy industry.¶ Soaring new supplies of natural gas have led to a glut that has kept prices depressed for the past several years, but they’ve also pushed down the prices of energy competitors, such as coal. Coal prices collapsed during the 2008 meltdown and are still less than half of their old highs.¶ In an age of climate-change awareness, coal is about as politically incorrect as you can get. By Energy Information Administration estimates, coal produces 77% more carbon dioxide than natural gas for a comparable amount of energy. This is a tough sell in an era when we have abundant alternatives. Not surprisingly, coal consumption fell in the United States in 2012 and is expected to rise only modestly this year and next.

#### Grid parity solves the link

Randall 3/14/12 - Tom Randall is a deputy sustainability editor for Bloomberg News [“Wind Innovations Drive Down Costs, Stock Prices”. Bloomberg. http://go.bloomberg.com/multimedia/wind-innovations-drive-down-costs-stock-prices/]

The world’s wind-power capacity increased 113-fold over the past 20 years. As installations increase, turbines become more efficient and electricity prices decline. For a growing number of countries, this means wind power is now cheaper than conventional energy sources, even without government subsidies.

Wind's ‘Learning Curve’

This chart shows how the cost of producing a wind turbine falls as more turbines are produced. The improved efficiencies of technology and scale -- the industry's learning curve -- reduce wind-power prices by 7 percent every time installed capacity doubles. The price for a megawatt of wind power dropped by almost half since 1991.

The global turbine price is currently lower than the industry's historic learning curve by about 60,000 euros ($78,000) per megawatt. Oversupply and competition from China have led manufacturers like Vestas, the world's largest turbine maker, to cut prices. The company's shares tumbled 68 percent in the last year.

Wind's Golden Goal

Wind electricity providers have begun to reach what energy experts call the "golden goal" of grid parity, when operating fields of wind turbines is as cheap as burning coal or natural gas. Falling natural gas prices makes it harder for wind to compete in the US, despite its good wind resources. However, rising natural gas prices in Europe are making wind more competitive

Countries with high power prices and strong winds are already past parity: Brazil, Italy, Argentina, Canada, the U.K. and Portugal. As time passes, the country bubbles expand to represent growing capacity and shift right to reflect increased turbine efficiency.

"The cost of producing wind energy needs to come down to reach parity," said Stefan Linder, an analyst at Bloomberg New Energy Finance. "However in the best locations onshore wind is already competitive with fossil fuel electricity, and most wind farms in fair resource areas will be at parity by 2016."

## \*\*\* Politics

### 1AR—Won’t Pass

#### Don’t buy the spin—won’t pass the House

RAW STORY 3—27—13 http://www.rawstory.com/rs/2013/03/27/obama-expects-senate-immigration-bill-next-month/

US President Barack Obama said Wednesday that he expected the Senate would start debating comprehensive immigration reform next month, putting an optimistic spin on the legislation’s prospects.

In an interview with the Univision Spanish-language television station, Obama praised a bipartisan group of Democratic and Republican senators working to come up with a joint bill on the issue.

“The good news is, it seems like they are actually making progress. My expectation is that we will actually see a bill on the floor of the Senate next month,” he said.

In a separate interview with Telemundo, Obama said Congress could pass legislation by this summer.

Immigration reform is a centerpiece of Obama’s second-term agenda and would represent a substantial enhancement of his political legacy if he can get it passed.

Long-stalled immigration reform efforts gained momentum after the November elections, in which Obama won another term with overwhelming support from Hispanic voters for whom the issue is a motivating one.

Obama has courted Republican leaders on the issue and a group of senators from both parties is seeking to wrap up an agreement on a proposed law that would bring 11 million undocumented migrants out of the shadows.

The senators say their plan would offer a pathway to eventual citizenship, taking up to 13 years or more.

The plan would also include steps to better secure US borders and the introduction of an employee verification program.

But even if a plan passes the Senate, it must make its way through the House of Representatives, where majority Republicans oppose any solution that could be branded “amnesty” for illegal immigrations.

#### AT ODDS—key issues

AP 3—27—13 http://www.google.com/hostednews/ap/article/ALeqM5iro-yOddbr4F\_vTzZD1xgFv9KNJQ?docId=ef575ceb4bce4bc2a8e706f72dda1718

The president has, however, privately called members of the Senate working group, and the administration is providing technical support to the lawmakers. The Gang of Eight is expected to unveil its draft bill when Congress returns from a two-week recess the week of April 8.

Obama and the Senate group are in agreement on some core principles, including a pathway to citizenship for most of the 11 million illegal immigrants already in the country, revamping the legal immigration system and holding businesses to tougher standards on verifying their workers are in the country legally.

But they're at odds over key issues. The Senate group wants the citizenship pathway to be contingent on securing the border, something Obama opposes. The president has also sidestepped the contentious guest-worker issue, which contributed to derailing immigration talks in 2007.

#### More Ev

AP 3—25—13 http://www.myfoxphoenix.com/story/21786888/mccain-holds-town-hall-on-immigration-reform

McCain lowers expectations for immigration reform

Arizona Sen. John McCain says civil rights advocates applauding his work on immigration reform won't be happy with the results.

McCain told a town hall meeting in northern Phoenix Monday that he and other lawmakers working on immigration legislation haven't been able to agree on key details and it's unclear when a compromise might be brokered.

McCain says the so-called Gang of Eight has agreed on more work visas for workers and protections for illegal immigrants brought to the country as children, but declined to provide specific details.

### AT: Obama is optimistic

#### Obama overly optimistic

DAILY POLITICAL 3—26—13 http://www.dailypolitical.com/issues/obama-pushing-congress-for-immigration-reform.htm

Obama urged lawmakers in Washington to deliver a bill to him for his signature as soon as possible following the break for Easter.

Obama said progress is being made, but the job needs to be finished. He was attending a ceremony where 28 immigrants were taking their Oath of Allegiance to officially become citizens of the United States.

Obama said it was quite simple—Everyone is aware of what is broken in the immigration laws and everyone is aware of how to correct it.

However, it might not be as easy as Obama hopes. Last week, the chairman of the Judiciary committee in the Senate, Democrat Patrick Leahy criticized the president and other lawmakers for moving slowly on the legislation. He said it was not probable that the committee would complete its work on the bill prior to the end of next month.

### 1AR—Security Trigger

#### No security trigger agreement

CSM 3—27—13 http://www.csmonitor.com/USA/DC-Decoder/2013/0327/How-border-security-trigger-could-stop-immigration-reform

Congressional negotiators say immigration reform will need a border security 'trigger' to pass. But agreeing on what counts as 'border security' won't be easy, and could determine whether reform happens.

Immigration reformers want to bring the more than 10 million undocumented immigrants out of the shadows. Border security hawks want assurances that if they go along with that plan, they won’t be back in 10 years deciding whether or not to legalize 10 million more.

What’s Congress to do?

Figure out a “trigger,” where advances in border security are deemed sufficient to trigger the beginning of the journey to citizenship for the undocumented already in the country.

As immigration reform negotiations continue, determining just what counts as a “secure border” and how to link that to plans for the undocumented will be crucial. Indeed, finding an answer could determine whether a bipartisan immigration reform measure reaches President Obama’s desk or if 2013 is yet another disappointment for reformers.

Historically, those on Capitol Hill have tried to craft a delicate balance between border security and a path to legal status for the undocumented. For example, the comprehensive immigration reform legislation of the George W. Bush years, which ultimately failed, had a series of triggers. In 2009, Sen. Chuck Schumer (D) of New York proposed more broadly that “operational control” of the border “must be achieved within a year of enactment of legislation.”

But those triggers aren't helpful anymore. Most of the benchmarks for border security established in 2007, for example, have been met today, according to an analysis by the pro-reform advocacy group America’s Voice.

Border patrol staffing north of 20,000? Check: there are more than 21,000 agents on the border at present. Requirements for unmanned drones and a variety of other observation methods? All are at or above the 2007 requirements today. Fencing? Within eight miles of the 2007 target.

Want your top political issues explained? Get customized DC Decoder updates.

Department of Homeland Security Secretary Janet Napolitano said on Tuesday that while the department lacks a single measure on which to base a trigger—and that a trigger based on any single measure would be a bad idea—all the data DHS collects point to a border safer than ever before.

Some Democrats and immigration reform advocates take this to say that the border is secure already and should not stand in the way of the undocumented becoming US citizens even if further border security measures are needed.

Republican reformers like Sen. John McCain of Arizona have a slightly different view, holding that while the southern border certainly is far improved from nearly a decade ago there’s still plenty of room for improvement.

“There's no question there's been a significant reduction in illegal crossings over the past five years…. But that work is not yet complete,” Senator McCain said in January at the press conference announcing a bipartisan Gang of Eight’s principles.

Other Republicans, like Sen. Jeff Sessions (R) of Alabama, are skeptical of such claims and believe figuring out just what constitutes a secure border should be among the goals of a lengthy series of hearings around immigration reform.

So what do lawmakers propose to do this time around? Mr. Obama’s answer appears to be scrap the trigger altogether.

### 1AR—House

#### Won’t pass—GOP senate Slowing Immigration Push

SLT 3—26—13 Salt Lake Tribune http://www.sltrib.com/sltrib/politics/56034887-90/immigration-debate-hatch-lee.html.csp

A group of Republican senators, including Utah’s Orrin Hatch and Mike Lee, wants to put the brakes on immigration reform, calling for a series of hearings and maybe even years of debate before a bill comes up for a vote in the Judiciary Committee.

The request comes amid a call for quick action on legislation that would include a program to provide legal status and eventual citizenship to the estimated 11 million illegal immigrants in the United States. President Barack Obama has pressed Congress to act on an immigration bill within the first half of this year, and bipartisan groups in the House and Senate are working toward that goal.

Hatch and Lee were among six Republicans to spell out their concerns in a letter to Judiciary Committee Chairman Patrick Leahy, D-Vt., on Tuesday. Two GOP members of the committee didn’t sign the letter. They are Sens. Lindsey Graham of South Carolina and Jeff Flake of Arizona, who are part of a bipartisan eight-senator team working to release an immigration bill by April.

### 1AR—Same Sex

#### Won’t pass—same-sex benefits

FRAGA 3—4—13 NC Register Staff [Brian Fraga, Obama’s Immigration Plan Faces Obstacles (2929), http://www.ncregister.com/daily-news/obamas-immigration-plan-faces-obstacles/]

Same-Sex Partners

But the administration has called into question its Catholic support and also rankled Republican lawmakers by insisting that immigration reform extend to same-sex partners. The White House, on its website, says its plan “treats same-sex families as families by giving U.S. citizens and lawful permanent residents the ability to seek a visa on the basis of a permanent relationship with a same-sex partner.”

Such a plan — which is not in the Gang of Eight proposal — would mark a significant shift in federal law. Homosexuals in states that allow same-sex “marriage” currently cannot confer legal status on their immigrant partners in the same manner that a husband and wife can. The 1996 federal Defense of Marriage Act, which the administration is arguing against in the Supreme Court as unconstitutional, prohibits the federal government from granting benefits to same-sex couples.

Homosexual-rights groups are lobbying for the same-sex inclusion in the immigration bill, as are several congressional Democrats. They say the legislation would affect 30,000-40,000 homosexual Americans and their partners.

The USCCB has written the White House to express its concerns over the same-sex provision, which could undermine support for reform, said Kevin Appleby, director of the USCCB’s Office of Migration Policy and Public Affairs.

“Immigration is hard enough without making it harder by adding another controversial issue to it,” Appleby told the Register.

McCain also warned a Politico-sponsored forum on Jan. 30 that loading immigration reform with “social issues and things that are controversial ... will endanger the issue.”

Rubio said during a Feb. 5 interview with the website BuzzFeed that if the same-sex issue “becomes a central issue in the debate, it’s going to become harder to get it done because there will be strong feelings on both sides.”

Testifying before the Senate Judiciary Committee on Feb. 12, Archbishop Gomez said the same-sex legislative language would erode the unique meaning of marriage and unnecessarily introduce controversy into an already divisive debate.

Said the archbishop, “We should not jeopardize the success of comprehensive immigration reform by using it as a vehicle to advance an issue that is already the source of polarizing debate in the states and in the courts.”

### 1AR—Wages

#### Won’t pass—wage fight

MSNBC 3—25—13 http://tv.msnbc.com/2013/03/25/obama-calls-on-congress-to-stop-avoiding-immigration-issue/

The president, who has made immigration reform a priority for his second term, acknowledged that it will take work. ”We are making progress, but we’ve got to finish the job.” He outlined his own priorities, including a “responsible pathway to earned citizenship,” an issue that has been one of the most contentious in the past. Some Republicans, though, have voiced support for such a pathway, including most recently Kentucky Senator Rand Paul, who voiced his support this past week.

But it appears that details surrounding the new guest worker program have slowed negotiations between the so-called “gang of eight.” According to recent reports, those eight U.S. Senators cannot come to an agreement over how to pay guest workers under a new proposed category that would allow some low-skilled immigrant workers to remain in the country legally. Labor and business groups are at odds over whether these workers deserve American worker wages, or could be paid less.

### 1AR—Hirsh

#### This is uniquely true in the current political environment.

**Hirsh 2/7**/13 (Michael, Chief correspondent for National Journal, Previously served as the senior editor and national economics correspondent for Newsweek, Overseas Press Club award for best magazine reporting from abroad in 2001 and for Newsweek’s coverage of the war on terror which also won a National Magazine Award, There’s No Such Thing as Political Capital, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through.

Most of this talk **will have no bearing** on what actually happens over the next four years.

Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and ***gun-control*** legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen.

What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.”

As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically **in very little time**. Whole new possibilities exist now that didn’t a few weeks ago.

Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on ***immigration*** reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all.

The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.”

The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history.

Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger.

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.

Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

ALL THE WAY WITH LBJ

Sometimes, a clever practitioner of power can get more done just because he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?”

Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)

And then there are the presidents who get the politics, and the issues, wrong. It was the last president before Obama who was just starting a second term, George W. Bush, who really revived the claim of political capital, which he was very fond of wielding. Then Bush promptly demonstrated that he didn’t fully understand the concept either.

At his first news conference after his 2004 victory, a confident-sounding Bush declared, “I earned capital in the campaign, political capital, and now I intend to spend it. That’s my style.” The 43rd president threw all of his political capital at an overriding passion: the partial privatization of Social Security. He mounted a full-bore public-relations campaign that included town-hall meetings across the country.

Bush failed utterly, of course. But the problem was not that he didn’t have enough political capital. Yes, he may have overestimated his standing. Bush’s margin over John Kerry was thin—helped along by a bumbling Kerry campaign that was almost the mirror image of Romney’s gaffe-filled failure this time—but that was not the real mistake. The problem was that whatever credibility or stature Bush thought he had earned as a newly reelected president did nothing to make Social Security privatization a better idea in most people’s eyes. Voters didn’t trust the plan, and four years later, at the end of Bush’s term, the stock-market collapse bore out the public’s skepticism. Privatization just didn’t have any momentum behind it, no matter who was pushing it or how much capital Bush spent to sell it.

The mistake that Bush made with Social Security, says John Sides, an associate professor of political science at George Washington University and a well-followed political blogger, “was that just because he won an election, he thought he had a green light. But there was no sense of any kind of public urgency on Social Security reform. It’s like he went into the garage where various Republican policy ideas were hanging up and picked one. I don’t think Obama’s going to make that mistake.… Bush decided he wanted to push a rock up a hill. He didn’t understand how steep the hill was. I think Obama has more momentum on his side because of the Republican Party’s concerns about the Latino vote and the shooting at Newtown.” Obama may also get his way on the debt ceiling, not because of his reelection, Sides says, “but because Republicans are beginning to doubt whether taking a hard line on fiscal policy is a good idea,” as the party suffers in the polls.

THE REAL LIMITS ON POWER

Presidents are limited in what they can do by time and attention span, of course, just as much as they are by electoral balances in the House and Senate. But this, too, has nothing to do with political capital. Another well-worn meme of recent years was that Obama used up too much political capital passing the health care law in his first term. But the real problem was that the plan was unpopular, the economy was bad, and the president didn’t realize that the national mood (yes, again, the national mood) was at a tipping point against big-government intervention, with the tea-party revolt about to burst on the scene. For Americans in 2009 and 2010—haunted by too many rounds of layoffs, appalled by the Wall Street bailout, aghast at the amount of federal spending that never seemed to find its way into their pockets—government-imposed health care coverage was simply an intervention too far. So was the idea of another economic stimulus. Cue the tea party and what ensued: two titanic fights over the debt ceiling. Obama, like Bush, had settled on pushing an issue that was out of sync with the country’s mood.

Unlike Bush, Obama did ultimately get his idea passed. But the bigger political problem with health care reform was that it distracted the government’s attention from other issues that people cared about more urgently, such as the need to jump-start the economy and financial reform. Various congressional staffers told me at the time that their bosses didn’t really have the time to understand how the Wall Street lobby was riddling the Dodd-Frank financial-reform legislation with loopholes. Health care was sucking all the oxygen out of the room, the aides said.

Weighing the imponderables of momentum, the often-mystical calculations about when the historic moment is ripe for an issue, will never be a science. It is mainly intuition, and its best practitioners have a long history in American politics. This is a tale told well in Steven Spielberg’s hit movie Lincoln. Daniel Day-Lewis’s Abraham Lincoln attempts a lot of behind-the-scenes vote-buying to win passage of the 13th Amendment, banning slavery, along with eloquent attempts to move people’s hearts and minds. He appears to be using the political capital of his reelection and the turning of the tide in the Civil War. But it’s clear that a surge of conscience, a sense of the changing times, has as much to do with the final vote as all the backroom horse-trading. “The reason I think the idea of political capital is kind of distorting is that it implies you have chits you can give out to people. It really oversimplifies why you elect politicians, or why they can do what Lincoln did,” says Tommy Bruce, a former political consultant in Washington.

Consider, as another example, the storied political career of President Franklin Roosevelt. Because the mood was ripe for dramatic change in the depths of the Great Depression, FDR was able to push an astonishing array of New Deal programs through a largely compliant Congress, assuming what some described as near-dictatorial powers. But in his second term, full of confidence because of a landslide victory in 1936 that brought in unprecedented Democratic majorities in the House and Senate, Roosevelt overreached with his infamous Court-packing proposal. All of a sudden, the political capital that experts thought was limitless disappeared. FDR’s plan to expand the Supreme Court by putting in his judicial allies abruptly created an unanticipated wall of opposition from newly reunited Republicans and conservative Southern Democrats. FDR thus inadvertently handed back to Congress, especially to the Senate, the power and influence he had seized in his first term. Sure, Roosevelt had loads of popularity and momentum in 1937. He seemed to have a bank vault full of political capital. But, once again, a president simply chose to take on the wrong issue at the wrong time; this time, instead of most of the political interests in the country aligning his way, they opposed him. Roosevelt didn’t fully recover until World War II, despite two more election victories.

In terms of Obama’s second-term agenda, what all these shifting tides of momentum and political calculation mean is this: **Anything goes**. Obama has no more elections to win, and he needs to worry only about the support he will have in the House and Senate after 2014. But if he picks issues that the country’s mood will support—such as, perhaps, immigration reform and gun control—there is no reason to think he can’t win **far more victories than** any of the careful calculators of political capital now believe is possible, including battles over tax reform and deficit reduction.

Amid today’s atmosphere of Republican self-doubt, a new, more mature Obama seems to be emerging, one who has his agenda clearly in mind and will ride the mood of the country more adroitly. If he can get some **early wins**—as he already has, apparently, on the fiscal cliff and the upper-income tax increase—that will create momentum, and **one win may well lead to others**. “Winning wins.”

Obama himself learned some hard lessons over the past four years about the falsity of the political-capital concept. Despite his decisive victory over John McCain in 2008, he fumbled the selling of his $787 billion stimulus plan by portraying himself naively as a “post-partisan” president who somehow had been given the electoral mandate to be all things to all people. So Obama tried to sell his stimulus as a long-term restructuring plan that would “lay the groundwork for long-term economic growth.” The president thus fed GOP suspicions that he was just another big-government liberal. Had he understood better that the country was digging in against yet more government intervention and had sold the stimulus as what it mainly was—a giant shot of adrenalin to an economy with a stopped heart, a pure emergency measure—he might well have escaped the worst of the backlash. But by laying on ambitious programs, and following up quickly with his health care plan, he only sealed his reputation on the right as a closet socialist.

After that, Obama’s public posturing provoked automatic opposition from the GOP, no matter what he said. If the president put his personal imprimatur on any plan—from deficit reduction, to health care, to immigration reform—Republicans were virtually guaranteed to come out against it. But this year, when he sought to exploit the chastened GOP’s newfound willingness to compromise on immigration, his approach was different. He seemed to understand that the Republicans needed to reclaim immigration reform as their own issue, and he was willing to let them have some credit. When he mounted his bully pulpit in Nevada, he delivered another new message as well: You Republicans don’t have to listen to what I say anymore. And don’t worry about who’s got the political capital. Just take a hard look at where I’m saying this: in a state you were supposed to have won but lost because of the rising Hispanic vote.

Obama was cleverly pointing the GOP toward conclusions that he knows it is already reaching on its own: If you, the Republicans, want to have any kind of a future in a vastly changed electoral map, you have no choice but to move. It’s your choice.

The future is wide open.

### 1AR—Dickerson

#### Alternate theories of agenda success ignore key facts.

Dickerson 13 [John, Chief Political Correspondent at the Slate, Political Director of CBS News, Covered Politics for Time Magazine for 12 Years, Previous White House Correspondent, They Hate Me, They Really Hate Me, http://tinyurl.com/arlxupq]

When you are on the Fox News’ ticker for the wrong reasons, it's time to put things into context.

On the eve of the president's inauguration, I wrote a piece about what President Obama needs to do to be a transformational rather than caretaker president. I was using a very specific definition of transformational presidencies based on my reading of a theory of **political science** and the **president's own words** about transformational presidencies from the 2008 campaign. It was also based on these givens: The president is ambitious, has picked politically controversial goals, has little time to operate before he is dubbed a lame-duck president, and has written off working with Republicans. "Bloodier-minded when it comes to beating Republicans,” is how Jodi Kantor put it in the New York Times. Given **these facts**, there is **only one logical conclusion** for a president who wants to transform American politics: He must take on Republicans—aggressively.

For me, this was a **math problem** with an **unmistakable conclusion**. Some people thought I was giving the president my personal advice. No. My goal was to make a compelling argument based on the facts. I used words like "war" and “pulverize,” and some have responded with threats to me and my family. (“Go for his throat!” some have counseled, echoing the headline.) These words have also liberated some correspondents (USUALLY THE ONES THAT TYPE IN ALL CAPS!!!!) from reading the piece or reading it in the spirit in which it was written. But there were also almost 2,000 other words in the piece, which should put that provocative language in context. What's been lost in the news ticker and Twitter threats is the argument of the piece: This is the **only plausible path** for a bold, game-changing second term for a president who has positioned himself the way President Obama has. Indeed, the piece accurately anticipated the forceful line the president ultimately took in his inaugural address with his call for collective action and failure to reach out to Republicans. Brit Hume said Obama’s speech confirms for all time the president’s essential liberalism. The New Republic’s Noam Scheiber precisely identified the speech not merely as liberal but an argument for liberalism.

Some correspondents have asked why I didn't advocate that Obama embrace House GOP spending plans or some other immediate compromise, a more pleasant outcome than the prospect of even more conflict in Washington. There's **no evidence**, however, that the president is in a compromising mood. (Again, see second inaugural.) This piece was written from the viewpoint of the reality as it stands, not a more pleasing future we would all prefer to inhabit. That reality (and the initial piece) includes an unpleasant fact to some Republicans: The GOP is in a state of disequilibrium. For evidence of that disarray, I rely on Rep. Tom Cole, Sen. Rand Paul, participants at the House GOP retreat, and Ramesh Ponnuru at the National Review. (As I mentioned in the piece, Democrats have their own tensions, too.)

#### Our argument is based in academia and cites empirics.

**Dickerson 13** [John, Chief Political Correspondent at the Slate, Political Director of CBS News, Covered Politics for Time Magazine for 12 Years, Previous White House Correspondent, Go for the Throat!, http://tinyurl.com/b7zvv4d]

Obama’s only remaining option is to pulverize. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of clarifying fights over controversial issues, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

This theory of political transformation rests on the weaponization (and slight bastardization) of the work by **Yale political scientist** Stephen Skowronek. Skowronek has written extensively about what distinguishes transformational presidents from caretaker presidents. In order for a president to be transformational, the old order has to fall as the orthodoxies that kept it in power exhaust themselves. Obama's gambit in 2009 was to build a new post-partisan consensus. That didn't work, but by exploiting the weaknesses of today’s Republican Party, Obama has an opportunity to hasten the demise of the old order by increasing the political cost of having the GOP coalition defined by Second Amendment absolutists, climate science deniers, supporters of “self-deportation” and the pure no-tax wing.

The president has the ambition and has picked a second-term agenda that can lead to clarifying fights. The next necessary condition for this theory to work rests on the Republican response. Obama needs two things from the GOP: overreaction and charismatic dissenters. They’re not going to give this to him willingly, of course, but mounting pressures in the party and the personal ambitions of individual players may offer it to him anyway. Indeed, Republicans are serving him some of this recipe already on gun control, immigration, and the broader issue of fiscal policy.

On gun control, the National Rifle Association has overreached. Its Web video mentioning the president's children crossed a line.\* The group’s dissembling about the point of the video and its message compounds the error. (The video was also wrong). The NRA is whipping up its members, closing ranks, and lashing out. This solidifies its base, but is not a strategy for wooing those who are not already engaged in the gun rights debate. It only appeals to those who already think the worst of the president. Republicans who want to oppose the president on policy grounds now have to make a decision: Do they want to be associated with a group that opposes, in such impolitic ways, measures like universal background checks that 70 to 80 percent of the public supports? Polling also suggests that women are more open to gun control measures than men. The NRA, by close association, risks further defining the Republican Party as the party of angry, white Southern men.

The president is also getting help from Republicans who are calling out the most extreme members of the coalition. New Jersey Gov. Chris Christie called the NRA video "reprehensible." Others who have national ambitions are going to have to follow suit. The president can rail about and call the GOP bad names, but that doesn't mean people are going to listen. He needs members inside the Republican tent to ratify his positions—or at least to stop marching in lockstep with the most controversial members of the GOP club. When Republicans with national ambitions make public splits with their party, this helps the president.

(There is a corollary: The president can’t lose the support of Democratic senators facing tough races in 2014. Opposition from within his own ranks undermines his attempt to paint the GOP as beyond the pale.)

If the Republican Party finds itself destabilized right now, it is in part because the president has already **implemented a version** of this strategy. In the 2012 campaign, the president successfully transformed the most intense conservative positions into liabilities on immigration and the role of government. Mitt Romney won the GOP nomination on a platform of “self-deportation” for illegal immigrants—and the Obama team never let Hispanics forget it. The Obama campaign also branded Republicans with Romney's ill-chosen words about 47 percent of Americans as the party of uncaring millionaires.

Now Republican presidential hopefuls like Chris Christie, Marco Rubio, and Bobby Jindal are trying to fix the party's image. There is a general scramble going on as the GOP looks for a formula to move from a party that relies on older white voters to one that can attract minorities and younger voters.

Out of fear for the long-term prospects of the GOP, some Republicans may be willing to partner with the president. That would actually mean progress on important issues facing the country, which would enhance Obama’s legacy. If not, the president will stir up a fracas between those in the Republican Party who believe it must show evolution on issues like immigration, gun control, or **climate change** and those who accuse those people of betraying party principles.

That fight will be loud and in the open—and in the short term unproductive. The president can stir up these fights by poking the fear among Republicans that the party is becoming defined by its most extreme elements, which will in turn provoke fear among the most faithful conservatives that weak-willed conservatives are bending to the popular mood. That will lead to more tin-eared, dooming declarations of absolutism like those made by conservatives who sought to define the difference between legitimate and illegitimate rape—and handed control of the Senate to Democrats along the way. For the public watching from the sidelines, these intramural fights will look confused and disconnected from their daily lives. (Lip-smacking Democrats don’t get too excited: This internal battle is the necessary precondition for a GOP rebirth, and the Democratic Party has its own tensions.)

This approach is not a path of gentle engagement. It **requires confrontation** and bright lines and tactics that are more aggressive than the president demonstrated in the first term. He can't turn into a snarling hack. The posture is probably one similar to his official second-term photograph: smiling, but with arms crossed.

The president already appears to be headed down this path. He has admitted he’s not going to spend much time improving his schmoozing skills; he's going to get outside of Washington to ratchet up public pressure on Republicans. He is transforming his successful political operation into a governing operation. It will have his legacy and agenda in mind—and it won’t be affiliated with the Democratic National Committee, so it will be able to accept essentially unlimited donations. The president tried to use his political arm this way after the 2008 election, but he was constrained by re-election and his early promises of bipartisanship. No more. Those days are done.

Presidents don’t usually sow discord in their inaugural addresses, though the challenge of writing a speech in which the call for compromise doesn’t evaporate faster than the air out of the president’s mouth might inspire him to shake things up a bit. If it doesn’t, and he tries to conjure our better angels or summon past American heroes, then it will be among the most forgettable speeches, because the next day he’s going to return to pitched political battle. He has no time to waste.

### 1AR—Winners Win

#### NO PC now—winners-win. He needs one

THE HILL 3/20/13 [Amie Parnes and Justin Sink, Obama honeymoon may be over, http://thehill.com/homenews/administration/289179-obama-honeymoon-may-be-over]

The second-term honeymoon for President Obama is beginning to look like it is over.¶ Obama, who was riding high after his reelection win in November, has seen his poll numbers take a precipitous fall in recent weeks. ¶ A CNN poll released Tuesday showed Obama’s favorability rating underwater, with 47 percent approving and 50 percent disapproving of Obama’s handling of his job. ¶ Much of the president’s agenda is stuck, with climate change regulations delayed, immigration reform mired in committee negotiations and prospects for a grand bargain budget deal in limbo at best. ¶ On Tuesday, in a decision that underscored Obama’s depleting political capital, the White House watched as Senate Majority Leader Harry Reid (D-Nev.) announced only a watered-down version of Obama’s gun control proposals would be considered on the Senate floor. ¶ Republicans, sensing the sea change, are licking their chops. They point to the lack of movement on Obama’s signature issues, noting the contrast to the ambitious plans outlined in the early weeks of his second term.¶ “The president set very high goals for himself during his State of the Union, but the reality is very little of his agenda is actually moving,” Republican strategist Ron Bonjean said. “He allowed himself to get caught up in the legislative quicksand, [and] the cement is beginning to harden. “¶ History isn’t on Obama’s side. ¶ The last four presidents who won a second term all saw their poll numbers slide by mid-March with the exception of Bill Clinton, whose numbers improved in the four months following his reelection.¶ Clinton may have only been delaying the inevitable. His numbers dropped 5 points in April 1994. Even Ronald Reagan, buoyed by a dominant performance over Walter Mondale in the 1984 election, saw a double-digit erosion by this point in his second term.¶ Obama has yet to complete the first 100 days of his second term. But without a signature achievement since his reelection, he faces a crossroads that could define the remainder of his presidency. ¶ White House aides maintain that the 24-hour news cycle makes comparisons to previous presidents difficult.¶ “I think the nature of our politics now is different than Ronald Reagan’s honeymoon,” one senior administration official said. “The ebb and flow of politics doesn’t follow that model anymore.”¶ But observers say a drop in popularity is typical for second-termers.¶ “There may be some typical second-term honeymoon fade happening,” said Martin Sweet, an assistant visiting professor of political science at Northwestern University. “Honeymoon periods for incumbents are a bit more ephemeral.”¶ But like most other presidents, Sweet added, “Obama’s fate is tied to the economy.”¶ “Continuing economic progress would ultimately strengthen the president but if we are hit with a double-dip recession, then Obama’s numbers will crater,” he said.¶ The White House disputes any notion that Obama has lost any political capital in recent weeks.¶ “The president set out an ambitious agenda and he’s doing big things that are not easy, from immigration to gun control,” the senior administration official said. “Those are policies you can’t rack up easily, and no one here is naive about that.”¶ The White House is aware that the clock is ticking to push its hefty agenda, but the official added, “The clock is not ticking because of president’s political capital. The clock is ticking because there’s a timetable in achieving all of this. [Lawmakers] are not going to sign on because the president’s popular.” ¶ And administration officials believe they still have the leverage.¶ “There’s a decent amount of momentum behind all of this,” the official said. “It looks like immigration is closer [to passage] than ever before.”¶ Republican strategist Ken Lundberg argued that current budget fights “have cut short the president’s second-term honeymoon.” ¶ He said this could also hurt the president’s party, warning “the lower the president’s approval rating, the bigger the consequence for vulnerable Democrats.”¶ “Voters want solutions, and if they see the president headed down the wrong path, lockstep lawmakers will be punished in 2014,” he said.¶ Democratic strategist Chris Kofinis maintained that as long as he’s president, Obama still has the leverage.¶ “Immigration reform doesn’t get impacted by whether Obama’s poll numbers are 55 or 45,” Kofinis said. “Does it make certain things a little more difficult? Possibly. But while his numbers may have fallen, he’s still more likeable than the Republicans are on their best day.”¶ Kofinis said the real question for Obama is what kind of emphasis he’s going to place on his second term because the public will have less patience than they did during his first.¶ “The challenge in a second term is the American people look at certain things and have a higher tolerance in a second term,” he said. “When they know you’re not running for reelection again, they hold you to a higher standard.” ¶ Bonjean and other Republicans are aware that Obama could potentially bounce back from his latest slip in the polls and regain his footing.¶ “He has the opportunity to take minor legislative victories and blow them up into major accomplishments—meaning if he got something on gun control, he can tout that that was part of his agenda and the work isn’t over. If he were able to strike a grand bargain with Republicans, that’d be a legacy issue.”¶ Still, Bonjean added, “It’s not looking so good right now.”

#### Prefer evidence that accounts for the bandwagon effect.

**Green 10** (David Michael, Professor of Political Science at Hofstra University, The Do-Nothing 44th President, June 12th, http://tinyurl.com/axspsc4)

Yet, on the other hand, Bush and Cheney had far less than nothing to sell when it came to the Iraq war - indeed, they had nothing but lies - and their team handled that masterfully. The **fundamental characteristic** of the Obama presidency is that the president is a reactive object, essentially the victim of events and other political forces, rather than the single greatest center of power in the country, and arguably on the planet. He is the Mr. Bill of politicians. People sometimes excuse the Obama torpor by making reference to all the problems on his plate, and all the enemies at his gate. But what they fail to understand - and, most crucially, what he fails to understand - is the nature of the modern presidency. Successful presidents today (by which I mean those who get what they want) not only drive outcomes in their preferred direction, but shape the very character of the debate itself. And they not only shape the character of the debate, but they determine which items are on the docket. Moreover, there is a continuously evolving and **reciprocal relationship** between presidential boldness and achievement. In the same way that **nothing** breeds success like success, nothing sets the president up for achieving his or her next goal better than succeeding dramatically on the last go around. This is absolutely a matter of perception, and you can see it best in the way that Congress and especially the Washington press corps fawn over bold and intimidating presidents like Reagan and George W. Bush. The political teams surrounding these presidents understood the psychology of power all too well. They knew that by simultaneously creating a **steamroller effect** and feigning a **clubby atmosphere** for Congress and the press, they could leave such hapless hangers-on with only one remaining way to pretend to preserve their dignities. By **jumping on board** the freight train, they could be given the illusion of being next to power, of being part of the **winning team**. And so, with virtually the sole exception of the now retired Helen Thomas, this is precisely what they did. But the game of successfully governing is substantive as well as psychological. More often than not, timidity turns out not to yield the safe course anticipated by those with weak knees, but rather their subsequent undoing. The three cases mentioned at the top of this essay are paradigmatic.

#### Momentum outweighs all else. It increases clout and strength.

**Mason 10** [Jeff, Reuters Staff Writer & Correspondent, March 26th, *Obama's health win could boost foreign policy*, http://www.alertnet.org/thenews/newsdesk/N26180856.htm]

President Barack Obama's domestic success on healthcare reform may pay dividends abroad as the strengthened U.S. leader taps his **momentum** to take on international issues with allies and adversaries. More than a dozen foreign leaders have congratulated Obama on the new healthcare law in letters and phone calls, a sign of how much attention the fight for his top domestic policy priority received in capitals around the world. Analysts and administration officials were cautious about the bump Obama could get from such a win: Iran is not going to rethink its nuclear program and North Korea is not going to return to the negotiating table simply because more Americans will get health insurance in the coming years, they said. But the perception of **increased clout**, after a rocky first year that produced few major domestic or foreign policy victories, could generate momentum for Obama's agenda at home and in his talks on a host of issues abroad. "It helps him domestically and I also think it helps him internationally that he was able to win and get through a major piece of legislation," said Stephen Hadley, former national security adviser to Republican President George W. Bush. "It shows **political strength**, and that counts when dealing with foreign leaders." Obama's deputy national security adviser Ben Rhodes said the Democratic president's persistence in the long healthcare battle added credibility to his rhetoric on climate change, nuclear nonproliferation and other foreign policy goals. "It sends a very important message about President Obama as a leader," Rhodes told Reuters during an interview in his West Wing office. "The criticism has been: (He) sets big goals but doesn't close the deal. So, there's no more **affirmative answer** to that criticism than closing the biggest deal you have going."

#### Quick fights are necessary for momentum shifts.

**Rachman 9** [Gideon, Chief Foreign Affairs Commentator @ the Financial Times, *Obama must start punching harder*, http://www.ft.com/cms/s/0/940c78c8-b763-11de-9812-00144feab49a.html]

Just five years ago, Barack Obama was still a local politician in Illinois, preparing for a run for the US Senate. His office wall in Chicago at the time was decorated with the famous picture of Muhammad Ali standing over Sonny Liston, after knocking him out in a heavyweight title fight. Ali famously boasted that he could “float like a butterfly and sting like a bee.” But now that Mr Obama is president, he seems to float like a butterfly—and sting like one as well. The notion that Mr Obama is a **weak** leader is now spreading in ways that are dangerous to his presidency. The fact that he won the Nobel Peace Prize last Friday will not change this impression. Peace is all very well. But Mr Obama now needs to **pick a fight** in public—and win it with a **clean knock-out**. In truth, the Norwegians did the US president no favours by giving him the peace prize after less than a year in office. The award will only embellish a portrait of the president that has been painted in ever more vivid colours by his political enemies. The **right** argues that Mr Obama is a man who has been wildly applauded and promoted for not doing terribly much. Now the Nobel committee seems to be making their point for them. The rightwing assault on the president is based around a number of slogans that are hammered home with damaging frequency: Obama the false Messiah; Obama, the president who apologises for America; Obama, the man who is more loved abroad than at home; Obama, the man who never gets anything done; Obama the hesitant; Obama the weak. Of course, this is the kind of stuff that was always going to be hurled at a liberal, Democratic president by the Republicans. The danger for Mr Obama is that you are beginning to hear echoes of these charges from people who should be the president’s natural supporters. One leading European politician warns that Mr Obama is looking weak on the Middle East: “If he says to the Israelis ‘no more settlements’, there have got to be no more settlements.” And yet it is the White House, not the Israeli government, that has backed down. Even before the Nobel announcement, **liberal** American columnists were sounding increasingly skeptical about the man they once supported with such enthusiasm. Richard Cohen wrote in the Washington Post that the president “inspires a lot of affection but not a lot of awe. It is the latter, though, that matters most in international affairs where the greatest and most gut-wrenching tests await Obama”. Now Saturday Night Live—the slayer of Sarah Palin—has turned its fire on President Obama, portraying him a do-nothing president. How has this impression built up? The promise of bold changes of policy on the Middle East and Iran—without much to show for it—has not helped. The public agonising over policy towards Afghanistan has been damaging. The **slow pace** of progress on healthcare has hurt. Even the president’s strengths can begin to look like weaknesses. His eloquence from a public platform has begun to contrast nastily with his failure to get things done behind the scenes. I winced when I heard him proclaim from the dais at the United Nations that “speeches alone will not solve our problems”. This, from a man who was due to give three high-profile speeches in 24 hours in New York. I winced again, when Muammer Gaddafi of Libya told the UN that he would be happy “if Obama can stay forever as the president”. Obviously, the gloom can be overdone. Mr Obama has been dealt a very difficult hand. He arrived in office when the entire global financial system was still shaking. The American economy remains in deep trouble. The president inherited two wars that were going badly and a deep well of international resentment towards the US. The Nobel committee’s decision was silly, but it reflected something real—the global sense of relief that the US now has a thoughtful, articulate president, who has some empathy for the world outside America. Mr Obama’s conservative critics might deride him as “Hamlet” because of his indecision over Afghanistan. But President Hamlet is still preferable to President George W. Bush. At least Mr Obama makes decisions with his head, rather than his gut. It is worth remembering that the presidency of Bill Clinton also got off to a very rocky start. Mr Clinton failed over healthcare, blundered around over gays in the military (an issue that President Obama is now revisiting) and suffered military debacles in Somalia and Haiti. And yet he went on to be a successful president. Mr Obama has not yet suffered setbacks comparable to the early Clinton years—and he still has plenty of time to turn things around. But **momentum matters**. The president badly needs a **quick victory** or a lucky break. He also needs to show that, at least sometimes, he can inspire fear as well as affection. Mr Obama can charm the birds off the trees. He can inspire crowds in Berlin and committees in Oslo. But—sad to say—he also needs to show that he can pack a punch.

#### The Bush presidency proves.

**Fortier 9** [John, Research Fellow at the American Enterprise Institute, January 14th, *Spend Your Political Capital Before It's Gone*, http://www.politico.com/news/stories/0109/17395.html]

Bush came into the presidency after a protracted election dispute but acted like a man with a mandate. His election victory, no matter how small, was a form of political capital to be spent, and he pushed his tax and education reform packages through Congress. After the Sept. 11 attacks, Republican victories in the 2002 midterm election and the initial phase of the Iraq war, Bush gained more political capital. And each time, he spent it, going to Congress for more tax cuts, the creation of a Department of Homeland Security and other domestic priorities. Bush developed the **image of a winner**. Despite narrow Republican majorities in Congress, he succeeded in holding his party together and pulling out one legislative victory after another. He famously did not veto a bill in his first term. Even when Bush veered from a typical conservative agenda on education reform and Medicare prescription drugs, Republicans voted with him, although some held their noses. Republicans in Congress did not want to break the string of Bush’s first-term **legislative juggernaut**. Bush was spending his political capital and, by winning, was **getting repaid**. Bush’s 2004 reelection was the apex of his presidency. He won a spirited, high- turnout contest by a clear margin, he brought more Republicans to Congress, and he was ready to spend his latest cache of political capital on two big domestic priorities: Social Security reform and tax reform. But 2005 saw Bush lose all of his political capital. His domestic priorities were bold, but he had overreached and did not have plans that Congress could get to work on immediately. The legislative vacuum in Congress stood in contrast to Bush’s first term, where Congress was almost always busy at work on Bush priorities. More importantly, conditions in Iraq deteriorated, and the public began to lose confidence in the president and his ability to win the war. Bush himself said that he had spent his political capital in Iraq and had lost it there. Republican scandals and the president’s lack of leadership immediately after Hurricane Katrina further damaged Bush. The winning streak was over, the president’s job approval numbers had dropped and his days setting the legislative agenda were over. Even though Bush had his biggest Republican majorities in the 109th Congress, Republican leaders staked out their own agenda, not wanting to tie themselves to a now unpopular president. Bush never regained political capital after 2005. Ronald Reagan had early heady days when he controlled the agenda; his popularity waned, but he was able to regain his footing. Bill Clinton famously bounced from highs to lows and back again. But for Bush, there was no second act. Reagan and Clinton could counterpunch and thrive as president without control of Congress. The Bush presidency had only two settings: on and off. In his first term, Bush controlled the legislative agenda like a **prime minister**; in the second, others set the agenda. President-elect Barack Obama won election more convincingly than Bush, and he will have larger congressional majorities than Republicans had. No doubt he will begin with some political capital of his own. But as the Bush presidency has taught us, that capital will **run out** someday, and a real test of leadership will be how Obama adjusts.