# Topicality

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

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

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

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

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

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

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

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

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

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

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

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

#### Conditions aren’t restrictions---this distinction matters

Pashman 63 Morris is a justice on the New Jersey Supreme Court. “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. Lexis

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. It is within these rules of construction that this policy must be construed.¶ Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [\*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition." A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that the word "restrictions," as used [\*\*\*12] by defendant insurers, is ambiguous. The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [\*\*472] of redevelopment work within 32 months because (1) the word is used ambiguously and must be strictly construed against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added)

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

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

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

#### Energy production is only electricity creation, not extraction

Vaekstfonden 6 Vaekstfonden is a Danish government backed investment fund that facilitates the supply of venture capital in terms of start-up equity and high-risk loans "THE ENERGY INDUSTRY IN DENMARK- perspectives on entrepreneurship andventure capital" No Specific Cited, Latest Data From 2006 s3.amazonaws.com/zanran\_storage/www.siliconvalley.um.dk/ContentPages/43667201.pdf

In all, 20 industry experts were interviewed about the composition and dynamics of the Danish energy sector. Insights from a minimum of 3 industry experts have been assigned to each of the stages in the value chain. Following is a brief description of what the different stages encompass.

Raw material extraction

This stage encompass the process before the actual production of the energy. As an example it is increasingly expensive to locate and extract oil from the North Sea. Likewise coal, gas and waste suitable for energy production can be costly to provide.

Energy production

Energy production encompasses the process, where energy sources are transformed into heat and power.Transmission and distribution

Energy transmission and distribution is in this report defined as the infrastructure that enables the producers of energy to sell energy to consumers.

Consumption

The last stage in the value chain is consumption. This stage encompasses products and services that geographically are placed near the consumers. As an example, decentralized energy production via solar power systems is part of the consumption stage.

#### The best lexicography proves restriction and regulation are distinct by definition

Schackleford 17 J. is a justice of the Supreme Court of Florida. “Atlantic Coast Line Railroad Company, a corporation, et al., Plaintiff in Error, v. The State of Florida, Defendant in Error,” 73 Fla. 609; 74 So. 595; 1917 Fla., Lexis

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. While it is undoubtedly true that the words, rule, regulation and order are frequently used as synonyms, as the dictionaries, both English and law, and the dictionaries of synonyms, such as Soule's show, it does not follow that these words always mean the same thing or are interchangeable at will. It is well known that the same word used in different contexts may mean a different thing by virtue of the coloring which the word [\*633] takes on both from what precedes it in the context and what follows after. Thus in discussing the proper constructions to be placed upon the words "restrictions and regulations" as used in the Constitution of this State, then in force, Chap. 4, Sec. 2, No. 1, of Thompson's Digest, page 50, this court in Curry v. Marvin, 2 Fla. 411, text 415, which case is cited to us and relied upon by both the parties litigant, makes the following statement: "The word restriction is defined by the best lexicographers to mean limitation, confinement within bounds, and would seem, as used in the constitution, to apply to the amount and to the time [\*\*\*33] within which an appeal might to be taken, or a writ of error sued out. The word regulation has a different signification -- it means method, and is defined by Webster in his Dictionary, folio 31, page 929, to be 'a rule or order prescribed by a superior for the management of some business, or for the government of a company or society.' This more properly perhaps applies to the mode and form of proceeding in taking and prosecuting appeals and writs of error. By the use of both of those terms, we think that something more was intended than merely regulating the mode and form of proceedings in such cases." Thus, in Carter v. Louisiana Purchase Exposition Co., 124 Mo. App. 530, text 538, 102 S.W. Rep. 6, text 9, it is said, "The definition of a rule or order, which are synonymous terms, include commands to lower courts or court officials to do ministerial acts." In support of this proposition is cited 24 Amer. & Eng. Ency. of Law 1016, which is evidently an erroneous citation, whether the first or second edition is meant. See the definition of regulate and rule, 24 amer. & Eng. Ency. of Law (2nd Ed.) pages 243 to 246 and 1010, and it will be seen that the two words are not always [\*\*\*34] synonymous, much necessarily depending upon the context and the sense in which the words are used. Also see the discussion [\*634] of the word regulation in 34 Cyc. 1031. We would call especial attention to Morris v. Board of Pilot Commissioners, 7 Del. chan. 136, 30 Atl. Rep. 667, text 669, wherein the following statement is made by the court: "These words 'rule' and the 'order,' when used in a statute, have a definite signification. They are different in their nature and extent. A rule, to be valid, must be general in its scope, and undiscriminating in its application; an order is specific and not limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made." Also see 7 Words & Phrases 6271 and 6272, and 4 Words & Phrases (2nd Ser.) 419, 420. As we held in City of Los Angeles v. Gager, 10 Cal. App. 378, 102 Pac. Rep. 17, "The meaning of the word 'rules' is of wide and varied significance, depending upon the context; in a legal sense it is synonymous with 'laws.'" If Section 2908 had contained the word order, or had authorized the Commissioners to impose a penalty for the violation of any order [\*\*\*35] made by them, there would be no room for construction. The Georgia statute, Acts of 1905, p. 120, generally known as the "Steed Bill," entitled "An act to further extend the powers of the Railroad Commission of this State, and to confer upon the commission the power to regulate the time and manner within which the several railroads in this State shall receive, receipt for, forward and deliver to its destination all freight of every character, which may be tendered or received by them for transportation; to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said commission in the execution of these powers, and for other purposes," expressly authorized the Railroad Commissioners "to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said Commision." [\*635] See Pennington v. Douglas, A. & G. Ry. Co., 3 Ga. App. 665, 60 S.E. Rep. 485, which we cited with approval in State v. Atlantic Coast Line R. Co., 56 fla. 617, text 651, 47 South. Rep. 969, 32 L.R.A. (N.S.) 639. Under the reasoning in the cited authorities, especially State v. Atlantic Coast Line R. Co., [\*\*\*36] supra, and Morris v. Board of Pilot Commissioners, we are constrained to hold that the fourth and eighth grounds of the demurrer are well founded and that HN16the Railroad Commissioners were not empowered or authorized to impose a penalty upon the three railroads for failure to comply with the order for the erection of a union depot.

Financial incentives require the disbursement of public funds directly linked to encouraging energy production

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

In this paper, "financial incentives" are taken to mean disbursements 18 of public funds or contingent commitments to individuals and organizations, intended to encourage, support or induce certain behaviours in accordance with express public policy objectives. They take the form of grants, contributions, repayable contributions, loans, loan guarantees and insurance, subsidies, procurement contracts and tax expenditures.19 Needless to say, the ability of government to achieve desired behaviour may vary with the type of incentive in use: up-front disbursements of funds (such as with contributions and procurement contracts) may put government in a better position to dictate the terms upon which assistance is provided than contingent disbursements such as loan guarantees and insurance. In some cases, the incentive aspects of the funding come from the conditions attached to use of the monies.20 In others, the mere existence of a program providing financial assistance for a particular activity (eg. low interest loans for a nuclear power plant, or a pulp mill) may be taken as government approval of that activity, and in that sense, an incentive to encourage that type of activity has been created.21 Given the wide variety of incentive types, it will not be possible in a paper of this length to provide anything more than a cursory discussion of some of the main incentives used.22 And, needless to say, the comments made herein concerning accountability apply to differing degrees depending upon the type of incentive under consideration.¶ By limiting the definition of financial incentives to initiatives where *public funds are either* disbursed or contingently committed, a **large number** of regulatory programs with incentive *effects* which exist, but in which no money is forthcoming,23 are excluded from direct examination in this paper. Such programs might be referred to as *indirect* incentives. Through elimination of indirect incentives from the scope of discussion, thedefinition of the incentive instrument becomes both more manageable and more particular. Nevertheless, it is possible that much of the approach taken here may be usefully applied to these types of indirect incentives as well.24 Also excluded from discussion here are social assistance programs such as welfare and *ad hoc* industry bailout initiatives because such programs are not designed primarily to *encourage* behaviours in furtherance of specific public policy objectives. In effect, these programs are assistance, but they are not incentives.

#### It’s arbitrary and undermines research

Resnick 1 Evan- assistant professor of political science – Yeshiva University, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

# Courts CP

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#### The United States Supreme Court should rule that the definition of national security used by the Committee on Foreign Investment to prevent investment by the Ralls Corporation in wind installations unconstitutional on the grounds that it violates the tenth amendment

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

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

**THE COURTS**

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

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

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

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

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

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

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

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

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

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

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

Enforcement of the statute followed without congressional action. n44

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

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

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

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

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

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

## 2NC

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

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

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

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

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

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

[continues]

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

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

#### It’s specific to when courts rule on restrictions

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

The Supreme Court's decision in Planned Parenthood v. Casey n1 reshaped the law of abortion in this country. The Court overturned two of its previous **decisions invalidating** state **restrictions** on abortions, Thornburgh v. American College of Obstetricians and Gynecologists n2 and Akron v. Akron Center for Reproductive Health, n3 and it abandoned the trimester analytic framework established in Roe v. Wade. n4 At the time Casey was handed down, twenty states had restrictive abortion statutes on the books that were in conflict with Akron or Thornburgh and which were unenforced. n5 In six of these states, courts had held the statutes unconstitutional. n6 [\*1903] Almost **as soon as the Casey ruling was announced, the campaign to secure enforcement of these restrictions began.** n7

Are these statutes good law, despite the fact that they were once in conflict with governing Supreme Court precedent (and in some cases had been judicially determined to violate women's constitutional rights)? Alternatively, will they have to be re-enacted by the legislature to be enforceable? These questions highlight the revival issue. The revival issue arises when a court overrules a prior decision in which it had held a statute unconstitutional. (We will throughout this article refer to the first decision as the "invalidating decision," and to the second decision as the "overruling decision.") Should the enforceability of a statute passed prior to the overruling decision be determined by reference to the invalidating decision - in which case the statute would have to be repassed to be in effect - or by reference to the overruling decision - in which case the statute would not have to be repassed? In other words, does the overruling decision automatically revive a previously unenforceable statute? [\*1904]

The way in which the revival issue is resolved will thus determine whether, in light of Casey, previously unenforced statutes became enforceable without the need for any post-Casey legislative action. **In addition to affecting what kind of** abortion **regulations are in effect in** twenty **states** in the immediate wake of Casey, this determination has profound consequences for the kind of abortion regulations that will be in effect in these states in the future. Such long-term consequences reflect the fact that our governmental system is not one of pure majoritarianism and that the burden of inertia in our legislative process is heavy: as we will discuss, **statutes on the books can stay on the books** even if a current majority no longer desires them; in contrast, proposed statutes need supermajoritarian support to secure passage. n8 Therefore**, the starting point** for future legislative action - such as **whether** pre-Casey abortion **regulations are enforceable** - **influences the legislative action that in fact develops.**

The revival issue arose in perhaps its starkest form in the case of Weeks v. Connick. n9 In 1989, elected officials in Louisiana responded to the Supreme Court's decision in Webster v. Reproductive Health Services n10 by claiming that Roe had been effectively overruled and by seeking enforcement of a draconian 134-year-old law criminalizing abortion n11 which had previously been found unconstitutional under Roe. n12 The court in Weeks avoided confronting the revival issue by holding that the statute in question had been implicitly repealed. n13 As the Court's decision in Casey made clear, Webster did not overrule Roe, and the Court is unlikely to allow the enforcement of criminal abortion laws in the near future. But **Louisiana's attempt to enforce its 1855 statute focused significant attention** for the first time **on the future status of** the dozens of then-**unconstitutional** state abortion restrictions, as well as on the revival issue more generally. n14 [\*1905]

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

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

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

#### Courts already striking down environmental regs

Adler 12 [Jonathan H. Adler – JD, Johan Verheij Memorial Professor of Law; Director, Center for Business Law and Regulation, “Texas Wins Clean Air Act Fight with EPA,” March 28, 2012, http://www.volokh.com/2012/03/28/texas-wins-clean-air-act-fight-with-epa/]

The U.S. Court of Appeals for the Fifth Circuit sternly rebuked the U.S. Environmental Protection Agency for overstepping its statutory authority in **rejecting three air pollution** **control regulations** adopted by the state of Texas for their alleged non-conformity with applicable Clean Air Act requirements. In Luminant Generation Company, LLC v. EPA, the Fifth Circuit the EPA had “no legal basis” for its decision and remanded the decision back to the agency.

#### Solves perception --- changes resource allocation

\*Also in AT Rollback

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

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

#### Politicians can deflect blame

Alison M. Martens, political science at University of Louisville, 2007 (*Perspectives on Politics* 5.3)

The outline of this revised research agenda, begins by looking at a 1993 article written by Mark Graber challenging the countermajoritarian difficulty paradigm. Graber's observations point to the importance of studying systemic transformations, such as the evolution of judicial supremacy. Using historical case studies on abortion, the *Dred Scott* controversy, and anti-trust issues to study perceived incidents of judicial independence, he contends that scholars who seek to justify independent judicial policymaking, even in the face of believed democratic deficiencies, misunderstand and inaccurately represent the relationships between justices and elected officials. By looking at the dialogues between these parties it becomes apparent that judicial independence, when it actually occurs, is often exercised **at the invitation of elected officials**, and in the absence of any expressed majoritarian choice, in order to **resolve political controversies** that elected officials cannot or do not want to resolve themselves. Hence the counter-majoritarian difficulty can be more appropriately characterized as the “non-majoritarian difficulty.” [33](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484" \l "fn33#fn33)

According to Graber, where crosscutting issues divide a lawmaking majority an invitation is often tacitly but consciously issued to the Court by political elites to **resolve the political controversy** that they themselves are unwilling or unable to address, thereby “foisting disruptive political debates off on the Supreme Court.” [34](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484" \l "fn34#fn34) Graber writes that “elected officials encourage or tacitly support judicial policymaking both as a means of **avoiding political responsibility** for making tough decisions and as a means of pursuing controversial policy goals that they **cannot publicly advance** through open legislative and electoral politics.” [35](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484" \l "fn35#fn35) Furthermore, political and electoral advantages can accrue by ducking these tough questions and sending them on to be settled by the Court. Graber explains that elites (including **the executive) can benefit from passing the political buck** to the Court in multiple ways. Party activists can be redirected to focus on legal action in the courts, thereby reducing pressure on mainstream politicians who wish to maintain a more politically viable moderate stance. Voters can be redirected to focus any ire they might have over policy outcomes on the Court. Politicians can take responsive positions on judicial decisions that may make for a good sound bite but really require no politically accountable action on their part. Finally, political compromise between the legislature and the executive might be had under the table of Court policymaking. [36](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484" \l "fn36#fn36) This is an impressive set of political benefits that can stem from a practice of judicial supremacy that creates a Court equipped with the interpretive authority and legitimacy to make controversial public policies. Graber's article, then, highlights the perversion of political accountability that can possibly occur where everyone in the system, the public included, accepts and expects interpretive authority to reside with the courts.

#### Court decisions preserve capital—only a risk of a turn

Tushnet 8—William Nelson Cromwell Professor of Law @ Harvard University [Mark, “The Obama Presidency and the Roberts Court: Some Hints From Political Science” 25 Const. Commentary 343, Summer, lexis]

What can the courts do for a resilient regime? Presidents and Congress have limited time and political energy. They will spend them on what they regard as central issues. But at any time there will be "outliers"--geographic regions as yet uncommitted to the regime's constitutional understandings, or substantive areas that plainly require change if those understandings are to become deeply implanted in society, yet politically too touchy or relatively unimportant to Congress. "For the affiliated leader, enhancing judicial authority to define and enforce constitutional meaning provides an efficient mechanism for supervising and correcting those who might fail to adhere to the politically preferred constitutional vision" (pp. 105-06). The courts can serve as a convenient but essentially administrative mechanism for bringing these outliers

into the constitutional order. (16) In addition, the courts may have rhetorical resources unavailable to presidents. Their obligation to explain their decisions, and the fact that they make decision after decision, means that they have an opportunity to develop a reasonably general account of the resilient regime's constitutional understandings. In Whittington's words, "It is the classic task of judges within the Anglo-American tradition ... to render new decisions and lay down new rules that can be explicated as a mere working out of previously established legal principles" (p. 84). Presidents, in contrast, only sporadically make speeches illuminating those understandings. More boldly, affiliated presidents may try to use the courts to "**overcome[el gridlock**" (p. 124) caused by the strategic positions recalcitrant opponents of the new constitutional regime may occupy. And, if not "use the courts," at least rely on the courts to take the initiative, because "[t]he Court can sometimes **move forward on the** constitutional **agenda** where other political officials cannot" (p. 125). "[C]oalition leaders might be constrained by the needs of coalition maintenance," but "judges have a relatively free hand" (p. 125). This "use" of the courts, though, poses risks. The courts may push the regime's constitutional principles further and faster than is politically wise, and the regime's political leaders may find themselves on the defensive. Indeed, in this way the courts can contribute to making a resilient regime vulnerable, which may be part of the story about the Warren Court and the demise of the New Deal/Great Society regime. (17) Preemptive presidents face a special strategic problem. Sometimes they take office because they manage to persuade the public that they remain committed to a resilient regime's constitutional vision even if in

their hearts they want to transform the regime. (18) At other times they take office as a regime becomes vulnerable, but do not themselves have the program, vision, or charisma to be reconstructive presidents themselves. (19) They are likely to face opposition in Congress and to some

degree in the courts. But they can turn divided government to their advantage by seeking judicial confirmation of executive prerogative. The judges in place might be sympathetic to such claims for doctrinal and political reasons. They will have "inherited from affiliated administrations" (p. 169) doctrines supporting executive authority. And, though Whittington doesn't make this point explicitly, they may see the preemptive president as an accident, soon to be replaced by an affiliated one whose exercises of presidential power they will want to endorse. Finally, preemptive presidents need to get their authority from somewhere when they face congressional opposition, as they will. They don't have much of their own, but they can try "to borrow from the authority of the courts in order to hold off their political adversaries" (p. 195). One final point before I move to some speculations about the future of judicial supremacy. Whittington emphasizes the growth of judicial supremacy during the twentieth century, both m terms of the judges' self-understanding and, perhaps more importantly, in terms of the degree of political commitment to judicial supremacy (p. 25). He suggests that politicians have had increasingly strong reasons to support the Supreme Court. The reconstructive presidency of Ronald Reagan was less ambitious than that of Franklin Roosevelt (p. 232), assuring the American people that Reagan's policies would strengthen rather than destroy the social safety nets that Roosevelt and Lyndon Johnson's regimes had created. Even a reconstructive president could hope that the Supreme Court would assist in articulating regime principles in the way the Court ordinarily does for affiliated presidents. Further, drawing again on Skowronek's account of the ways in which regimes leave a residue even after they have been displaced, Whittington describes the doctrinal thickening that occurred during the twentieth century with respect to essentially every possible ideological and political commitment a President could have (p. 283). Doctrinal thickening means that every member of a ruling coalition will have some basis in constitutional law for its assertions that the Constitution requires satisfaction of its policy preferences, and that the Court cannot possibly satisfy all the demands on it. (20) So, for the future, we might expect Presidents to have increasingly ambivalent views about the Supreme Court. In the twenty-first century, the Supreme Court will be useful and annoying to every President--useful because the Court can serve to articulate regime principles and can do some policy work that **Presidents would rather not expend time and political capital on**, and annoying because the Court's failure to satisfy all the demands emanating from a President's political supporters will put pressure on the President to do something about the Court.

# Politics

## 1NC

#### Fiscal cliff will pass but PC’s key

Kimberly Atkins 11-8, Boston Herald columnist, “Prez returns to D.C. with more clout,” 11/8/12, http://bostonherald.com/news/columnists/view/20221108prez\_returns\_to\_dc\_with\_more\_clout

When President Obama returned yesterday to the White House, he brought with him political capital earned in a tough re-election fight as well as a mandate from voters — which means bold changes and bruising fights could lie ahead. ¶ The first agenda item is already waiting for him: reaching an agreement with lawmakers to avert the looming fiscal cliff. GOP lawmakers have previously shot down any plan involving tax increases. Obama’s win — based in part on a message of making the wealthiest Americans pay more — may already be paying dividends.¶ In remarks at the Capitol yesterday, House Speaker John Boehner seemed to acknowledge the GOP has to take a different tack than the obstructionism that has marred progress in the past.¶ “The president has signaled a willingness to do tax reform with lower rates. Republicans have signaled a willingness to accept new revenue if it comes from growth and reform,” Boehner said. “Let’s start the discussion there.” ¶ Obama’s fresh political clout could extend to longer term fiscal policies beyond the fiscal cliff, though don’t expect GOP pushback to vanish. House Republicans still have plenty of fight in them. ¶ Comprehensive immigration reform — designed to smooth the path to citizenship while also strengthening the nation’s borders — also will be high on the president’s priority list. But unlike in his first term, when such a plan got little more than lip service in the face of staunch GOP opposition, Obama’s 3-to-1 support from Latinos on Election Day gives him the incentive to get it done. It also robs Republicans, who learned firsthand that dwindling support from Hispanics and other minority groups is costing them dearly, of any reason to stand in the way. ¶ An influx of new female voices in the Senate could also make Obama’s next four years the “Term of the Woman,” putting a new focus on equal pay and reproductive rights. ¶ U.S. Sen. Patty Murray of Washington state, who chairs the Democratic Senatorial Campaign Committee, told reporters yesterday that having a historically high 20 women in the Senate in January won’t just mean more attention to women’s issues. She said the Senate will function better overall with “great women who have really strong voices” on board, such as U.S. Sen.-elect Elizabeth Warren. “There is no stronger advocate for middle-class Americans,” Murray said of Warren. ¶ None of this, of course, will be a cakewalk, but unlike his first term, Obama will have more power to push back.

#### The plan makes China a pivotal election issue – bashing empirically benefits the GOP

Yingzi, 10 (Tan, “US likely to give nod to CNOOC deal, despite opposition” 10/14, China Daily,

http://www.chinadaily.com.cn/bizchina/2010-10/14/content\_11409139.htm

In 2005, CNOOC gave up plans to acquire Unocal Oil Co after the bid met unexpected US political opposition. Some had viewed the proposed merger as a threat to US security.

Several proposed Chinese investment projects in the US have encountered political obstacles this year. Some Congress members blamed China for the high US unemployment rate and regard the emerging economy's global expansion as a national security threat.

China has appeared as a "scapegoat" for the wobbly US economy in the fierce campaign for November's midterm elections. At least 29 candidates have aired advertisements blaming their opponents for being too sympathetic to China, the New York Times reported on Saturday.

Strong political opposition to the CNOOC deal is likely, given the recent congressional objections to Anshan Iron and Steel Group's investment in a small US steel company, said Scissors from the Heritage Foundation.

**Sequestration destroys US global military power---collapses deterrence and triggers multiple scenarios for nuclear war (Iranian adventurism, Hormuz closing, African instability, terrorism, Korean war, Taiwan war, Russian military modernization, Afghanistan instability, naval power)**

**Hunter 9/30** Duncan is a U.S. Representative from Alaska. “SEQUESTRATION SENDS WRONG MESSAGE TO U.S. FRIENDS AND FOES ALIKE,” 2012, http://www.utsandiego.com/news/2012/sep/30/tp-sequestration-sends-wrong-message-to-us/?page=1#article

Over the next 10 years, because of **sequestration**, the Pentagon will be forced to absorb $500 billion in budget cuts that **will** **strike at the heart of America’s military**. Making this even more dangerous is the fact that the legislation triggering sequestration, the Budget Control Act, also imposed an additional $450 billion in defense budget cuts for a total of nearly $1 trillion of reductions over the next decade. The next 10 years are sure to be no different from the last. In the Middle East, **Iran** is desperately searching to fill a regional power vacuum and enhance its weapons program**, while threatening to close the Strait of Hormuz and targeting Israel** with unapologetic provocation. Meanwhile, the United States still has an obligation to Iraq. There is a necessity for diplomatic support and engagement, even though the ground combat mission is over. **Africa** is also experiencing power struggles of its own. The situations in Libya and Egypt are evolving, while Yemen and Somalia are acting as staging grounds for **al-Qaeda.** There is also the threat of Somali pirates in international waters. Multiple high-profile hostage situations and combat rescues show just how serious of a threat that rogue bands of pirates are to naval and commercial shipping lanes. **There is also the threat of North Korea with its aggressive pursuit of advanced aerial weaponry, Russia with its focus on arms modernization, and China with its large-scale and rapid military buildup. China’s display of hostility toward Taiwan** — a friend and ally of the United States — **also shows no sign of diminishing**. With all of this, more than 70,000 American troops are in Afghanistan, facing down a dangerous enemy. For the United States and other nations, interest in Afghanistan and the region will continue long after the last of the coalition ground forces leave and the next phase of the mission begins. **Ignoring America’s obligation as a world leader and the patchwork of threats that exist today won’t eliminate the risk posed by an Iran that one day acquires nuclear weapons or a North Korea that eventually acquires effective strike capabilit**y. More likely, **these and other threats will develop more quickly and efficiently, putting the global interests of the U.S. directly in the cross hairs.** Through a robust national defense, the United States has always sent a clear message around the world that American intentions are good and we stand by our allies. **The strength of the U.S. military has dissuaded conflict and suggested to adversaries that challenging freedom is a losing proposition**. **It was this deterrent**, in fact, **that won the Cold War and turned the U.S. military into the world’s most effective fighting force. Sequestration would change all of this, for the worse.** In the words of Defense Secretary Leon Panetta, sequestration is a “nutty formula, and it’s goofy to begin with, and it’s not something, frankly, that anybody responsible ought to put into effect.” He also said **sequestration is the equivalent of “shooting ourselves in the head.”** Tough words, but Secretary Panetta is right. Sequestration would produce **the smallest ground force since 1940**, the smallest Navy since 1915 and the smallest tactical fighter force in Air Force history. Ironically, the president’s defense policy shift to the Pacific increases reliance on the Navy, but with the smallest fleet in nearly a century, controlling the oceans and projecting force will become an even more difficult and selective process, requiring prioritization that would create vulnerabilities elsewhere. Resetting America’s armed forces after a decade-plus of combat action is another necessity that cannot be overlooked. There is also a guarantee of pink slips throughout the uniformed services and every industry that directly supports the U.S. military. In San Diego, the military sustains hundreds of thousands of jobs, and billions of dollars in economic productivity. San Diego — even for all of its strategic value — is not immune to job loss and other economic impacts accompanying deep budget cuts. Sequestration is a term Americans should get to know and understand, because it will have real and lasting consequences if left unchecked. The upside is that the risks and dangers can be avoided as long as Congress and the president act in the coming months. The clock is ticking to stave off sequestration — a move that **would signal to our friends and enemies alike that we uphold our promises and stand ready to defend our interests against any threat.**

**Hegemony solves nuke war and extinction**

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

It is worth first examining the larger picture: We live in a time of arguably **the greatest structural change in the global order yet endured**, with this historical moment's most amazing feature being its relative and absolute **lack of mass violence**. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our **stunningly successful stewardship of global order** since World War II. Let me be more blunt: As the **guardian of globalization**, the U.S. military has been the **greatest force for peace the world has ever known**. Had America been removed from the global dynamics that governed the 20th century, the **mass murder never would have ended**. Indeed, it's entirely conceivable **there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation.** But the world did not keep sliding down that **path of perpetual war**. Instead, America stepped up and changed everything by **ushering in our now-perpetual great-power peace**. We introduced the **international liberal trade order known as globalization** and played loyal Leviathan over its spread. What resulted was the collapse of empires, **an explosion of democracy**, the **persistent spread of human rights**, the liberation of women, **the doubling of life expectancy**, a roughly **10-fold increase in adjusted global GDP** and a **profound and persistent reduction in** battle deaths from **state-based conflicts.** That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. ¶ As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw **a death toll of about 100 million across two world wars**. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude, these calculations suggest a 90 percent absolute drop and a **99 percent relative drop in deaths due to war**. We are **clearly headed for a world order characterized by multipolarity**, something the American-birthed system was designed to both encourage and accommodate. But given how things turned out the last time we collectively faced such a fluid structure, **we would do well to keep U.S. power**, in all of its forms, deeply embedded in the geometry to come.

## 1NR

#### Cliff turns the case---creates investor uncertainty that prevents commercialization

Malone 9/26 Scott is a Reuters writer. “Analysis: Corporate America sweats as U.S. nears fiscal cliff,” 2012, http://www.reuters.com/article/2012/09/27/us-usa-economy-fiscalcliff-idUSBRE88P1PX20120927

Top U.S. executives have less confidence in the business outlook now than at any time in the past three years - and a key reason is fear of gridlock in Washington over the fiscal deficit and tax policy. **The uncertainty**, coupled with slowing demand in Asia and Europe, **is forcing corporate leaders to postpone decisions on** major investments and hiring, and hurting sales of everything from textbooks to telephone lines. "If we don't deal with the fiscal cliff and don't deal with predictability on taxes for both citizens and business, with the rest of the world in a struggling state, this is really bad for us," John Chambers, CEO of network equipment maker Cisco Systems Inc (CSCO.O), told Reuters on Tuesday. Some 34 percent of U.S. CEOs plan to cut jobs in the United States over the next six months, up from 20 percent a quarter ago, according to a Business Roundtable survey released on Wednesday. Only 30 percent plan to raise capital spending, compared with 43 percent previously. The group's index of CEO confidence fell to its lowest point since the third quarter of 2009, when the United States had just emerged from its worst recession in 80 years. The main culprit is the fiscal cliff -- Washington's self-imposed year-end deadline to agree on a plan to shrink the federal budget or trigger $600 billion in spending cuts and higher taxes that were put in place last summer. The sharpest pain would be felt by the defense and healthcare sectors, which face direct funding cuts. But any **resulting slowdown could send shockwaves across the economy.**

#### It’s possible but not inev—capital key

Todd Gillman 11-11, “Obama must balance compromise, coercion to get second-term agenda accomplished,” Dallas Morning News, http://www.dallasnews.com/news/politics/national-politics/20121111-obama-must-balance-compromise-coercion-to-get-second-term-agenda-accomplished.ece

WASHINGTON — No one wants a second term like the first one. But for President Barack Obama to advance his agenda while overcoming confrontation and gridlock could require a more deft approach and arm-twisting that, so far, he hasn’t mustered well.¶ The short-term crisis is the fiscal cliff. Obama and Republican House Speaker John Boehner each vowed Friday to seek common ground in the next seven weeks, in time to avert $7 trillion in spending cuts and tax increases. But they also threw down markers that **could make a deal elusive**.¶ In the most optimistic scenario, the parties reach a deal to avoid a plunge that all believe would tip the economy back into recession, building trust toward bigger agreements on problems that have festered for years: the deficit, immigration and entitlement programs. House Republicans absorb the lessons of the party’s defeat Tuesday and compromise, and the president, with his legacy in mind, gives enough ground to make it work.¶ But there are serious obstacles to even the basic deal, including historic levels of polarization and party discipline among House Republicans, who may see the survival of their majority as a sign that voters want them to serve as a check on Democrats in the White House and Senate.¶ “You’ve got to get tough. You don’t want to embarrass them. You don’t want to humiliate them. But you want to demonstrate that this election meant something,” said Patrick Griffin, who served as President Bill Clinton’s congressional liaison for four years. “Part of getting to a deal was not being afraid to piss the other side off. You play hardball so you can get to a deal.”¶ Obama’s approach during his first term “was not to play hardball. It was more behind the scenes cajoling,” he said, and that often didn’t work. Health care legislation became utterly partisan. An immigration overhaul stalled when Republicans backed away.¶ Obama needs a deal on the fiscal cliff, Griffin said, arguing that “you’ve got to get something on the scoreboard or it begins to undermine your ability to drive other issues as a lame-duck president,” Griffin said.¶ The president quickly began making overtures after his historic re-election. He has invited Boehner and other congressional leaders from both parties to the White House on Friday to begin discussions on deficit reduction.¶ But skepticism runs deep, after the scoldings he delivered during some of the meetings he held during his first term and on the campaign trail.¶ “It was a nice, healthy Electoral College victory, but I’d be careful reading too much into a 51-49 percent victory. … Whatever mandate the president feels he received with a 51-49 popular vote, Republicans feel an equal mandate,” said Dallas Rep. Jeb Hensarling, the fourth-ranked House Republican and no fan of the president.¶ He noted that Medicare, Medicaid and Social Security are the major long-term engines driving up the national debt and that all the solutions entail politically risky choices.¶ “This is heavy lifting, and it’s not going to happen without presidential leadership,” he said. “I anxiously await to see what his vision of a balanced approach is. … History shows that it is easier to work on a bipartisan basis after an election than before an election.”

#### b) Deal isn’t inevitable – capital is key

Tom Brune 11-11 --- “'Fiscal cliff' deal unlikely to come easy,” Newsday, http://www.newsday.com/news/nation/fiscal-cliff-deal-unlikely-to-come-easy-1.4212128

WASHINGTON -- The showdown over the "fiscal cliff" begins in earnest as Congress reconvenes Monday and both parties prepare for what could be weeks of grueling, high-stakes negotiations with a deadline of Dec. 31.¶ Unless lawmakers act by year's end on the expiring Bush tax cuts and the automatic defense and domestic spending reductions, forecasters warn **the country will be plunged into another recession** and unemployment will soar to 9.1 percent.¶ As the lame duck session opens, the big question is whether Republicans and Democrats are ready to actually compromise and strike a deal, said Anthony McCann, a federal budget expert who teaches at Georgetown University and the University of Maryland.¶ "It's going to be difficult," he said, noting the rancorous battle over the past two years in Congress by two parties that have few moderates.¶ President Barack Obama and House Speaker John Boehner (R-Ohio) pledged Friday to work together to reach an agreement, saying they are open to new ideas and are not tied to their own plans.¶ But these two key players, who tried but failed to reach a "grand bargain" last year, remain far apart on key issues.¶ Obama still demands higher tax rates on "wealthier Americans," which Republicans reject. Boehner demands "entitlement reform" that could restructure Medicare and Medicaid, which Democrats oppose.¶ And while Obama wants again to strike the "grand bargain" before the end of the year, Boehner wants a patch to resolve the deadlines on tax and spending cuts, but to push big issues such as tax and entitlement reform into 2013.¶ Representatives from Long Island say they're ready for a compromise, but say a deal will be up to their party leaders.¶ "We're going to work together, hopefully," said Rep. Carolyn McCarthy (D-Mineola).¶ Yet they also drew lines in the sand on the same key issues as Obama and Boehner.¶ Reps. Tim Bishop (D-Southampton) and Peter King (R-Seaford) signed a bipartisan letter a year ago saying everything is on the table.¶ But last week, Bishop said, "I am not open-minded on Medicare. I do not believe in the privatization of Medicare."¶ And King said, "I'm opposed to raising tax rates."¶ Obama said he will **hold the first face-to-face meeting with congressional leaders on both sides next Friday at the White House**, but he also said he would hold meetings with representatives of business, labor and the middle class.¶ Sen. Charles Schumer (D-N.Y.), chairman of the Democratic Policy and Communications Committee, said Obama probably will seek the support of business to put pressure on Republicans to seal a deal to remove uncertainty about the economy.¶ Both sides, he said, are exploring ways to resolve the issues of increasing tax revenue and reforming Medicare.¶ McCann, however, said it will be much more difficult to reach an agreement this year than it was to reach the landmark budget and tax deals in 1986, 1990 and 1997.¶ Back then, he said, a bridge over the partisan divide was created by moderates, including Democrats more conservative than liberal Republicans.

Their card just cites Boehner and says he won’t compromise but postdating ev disproves

Daniel Politi 11-11,¶ Are Republican Lawmakers Getting Ready To Compromise?¶ Slate, 11-11-12, http://www.slate.com/blogs/the\_slatest/2012/11/11/john\_boehner\_fiscal\_cliff\_negotiations\_will\_republicans\_compromise\_after.html

David Axelrod, one of President Obama’s closest advisers said that House Speaker John Boehner had given “encouraging” signs that Republican lawmakers are willing to work with the president to avoid the so-called fiscal cliff, according to the Hill. He wasn’t the only one sounding optimistic Sunday. “There is a **basis for a deal**” on the fiscal cliff, Republican Sen. Bob Corker of Tennessee told Fox News, reports the Globe and Mail.¶ A day after Election Day, Boehner held a conference call with House Republicans, saying it was time to compromise with Democrats and avoid the destructive fights of the last two years. Lawmakers on the call “murmured words of support,” reports to the New York Times. It might not seem like much but it’s quite a change from last year when lawmakers were not shy about criticizing Boehner’s suggestion that lawmakers compromise on taxes.¶ While the general theme of the Sunday talk shows was that Republicans are “realizing they’re in a weak position on budget negotiations,” as Talking Points Memo’s Josh Marshall writes, that doesn’t mean they all agree there’s a need to change strategies.¶ Rep. Tom Price of Georgia, for example, said Sunday that he doesn’t agree with Boehner’s assessment that Obama’s health care reform is now the “law of the land.” Price added: “We're not opposed to the president's health care law because of this election, we're opposed because it's bad policy and it's bad for patients all across this land,” reports Politico.¶ As for the fiscal cliff, analyzing the nuance of previous statements by Boehner and Obama suggest **an agreement** **could involve cutting tax breaks**, many of which favor the wealthy. Although Obama has said the wealthy should pay more in taxes he has avoided demanding specifically for a higher tax rate, which Republicans vehemently oppose, points out the Times.

**c) S&P analysis**

**MoneyNews 11-9**-12, “S&P: 15% Chance US Will Drop Off Fiscal Cliff,” http://www.moneynews.com/StreetTalk/S-P-Fiscal-Cliff-us/2012/11/09/id/463470

**S**tandard **& P**oor's said it sees an **increasing chance** that the U.S. economy will go over the so-called fiscal cliff next year, though policymakers **will probably compromise in time to avoid that outcome**. Analysts at the credit rating agency now see about a 15 percent chance that political brinkmanship will push the world's largest economy over the fiscal cliff. "**The most likely scenario**, in our view, is that policymakers **reach sufficient political compromise in time to avoid most, if not all, potential economic effects** of the cliff," S&P analysts wrote. The automatic spending cuts coupled with significant tax increases in January could take an estimated $600 billion out of the U.S. economy and **push it into recession,** according to the non-partisan **C**ongressional **B**udget **O**ffice's assessment of the fiscal cliff.

**d) The more capital Obama has the more he can hold the line against the GOP**

**Boston Globe 11/7** Economy kept Obama afloat, blocked Romney win. 11/7/12. http://bostonglobe.com/news/nation/2012/11/07/economy-kept-obama-afloat-blocked-romney-win/GGjoaHhlk06KobPutBJoSP/story.html.

Next up for Obama is proving to those voters that he can achieve results. That remains an exceedingly difficult task in a deeply divided capital, with Republicans retaining control of the House on Tuesday and Democrats staying in charge in the Senate. Latinos who voted for Obama in large numbers Tuesday will demand that he seriously pursue immigration reform. Hurricane Sandy’s devastating effects in New York and New Jersey have renewed calls to address climate change.¶ **Most immediately**, the president and Congress will have to deal with the looming “fiscal cliff’’ — a set of automatic budget cuts that were put in place by Washington leaders to extract themselves from the 2011 debt-ceiling standoff, combined with the expiration of the George W. Bush-era tax cuts.¶ Economists warn that the nation will slide into another recession if the president and Congress do not come up with a plan to avoid the sudden shock to the economy that would result.¶ How these fiscal talks proceed **will depend on how much political capital** Obama is perceived to have gained in the election. He was narrowly winning the popular vote as the ballots were tallied into Wednesday. If Republicans see political danger in continuing to dig in their heels, will they be more willing to negotiate a tax overhaul that includes higher taxes for the wealthy?

#### It’s top of the agenda---nothing else comes before it

Espo 11/8 David is a writer for the Associated Press. “AVERTING ‘FISCAL CLIFF’ MOVES TO TOP OF AGENDA,” 2012, http://webcache.googleusercontent.com/search?q=cache:6H1SIjsXWsoJ:www.utsandiego.com/news/2012/nov/08/tp-averting-fiscal-cliff-moves-to-top-of-agenda/+&cd=6&hl=en&ct=clnk&gl=us

AVERTING ‘FISCAL CLIFF’ MOVES TO TOP OF AGENDA¶ WASHINGTON — One day after a bruising, mixed-verdict election, President Barack Obama and Republican House Speaker John Boehner both pledged Wednesday to seek a compromise to avert looming spending cuts and tax increases that threaten to plunge the economy back into recession.¶ Added Senate Majority Leader Harry Reid, D-Nev.: “Of course” an agreement is possible.¶ While all three men spoke in general terms, Boehner stressed that Republicans would be willing to accept higher tax revenue under the right conditions as part of a more sweeping attempt to reduce deficits and restore the economy to full health.¶ While the impending “fiscal cliff” **dominates** the postelection agenda, the president and Republicans have other concerns, too.¶ Obama is looking ahead to top-level personnel changes in a second term, involving three powerful Cabinet portfolios at a minimum.¶ And Republicans are heading into a season of potentially painful reflection after losing the presidency in an economy that might have proved Obama’s political undoing. They also have fallen deeper into the Senate minority after the second election in a row in which they lost potentially winnable races by fielding candidates with views that voters evidently judged too extreme.

#### It will either be after the fiscal cliff negotiations or included in the deal

Lincicome 10/21 Scott is an international trade attorney. “Will Green Subsidies Be Part of a "Fiscal Cliff" Deal?” 2012, http://lincicome.blogspot.com/2012/10/will-green-subsidies-be-part-of-fiscal.html

In order to avoid the political spotlight, Congress and the President have punted on all sorts of tax and spending issues until after the November elections. The **primary issue** to be addressed during the short post-election legislative session is the "fiscal cliff" - an onslaught of automatic tax hikes and spending cuts that will occur on January 1, 2013 - but there are also a lot of other matters that were shelved due to political cowardice expediency. Among them are several green subsidy programs, including a one-year extension of the wind energy production tax credit and its $12 billion price tag. Given the many problems with US green energy subsidies, the best move would be to let this boondoggle and its brethren expire at the end of the year, but - fear not! - it ain't gonna be that easy. In fact, BNA reports that the PTC and other green subsidies could very well end up in the fiscal cliff deal:¶ Legislation that would extend the wind energy production tax credit and other expiring energy incentives may be included as part of a congressional deal to avert looming tax increases and budget cuts expected by year's end, a Senate Finance Committee staffer said Oct. 17.

#### Not pushed by Obama

Siemers 11/8 Erik, writer for Sustainable Business Oregon. “Kitzhaber to urge Congress to pass wind tax credit extension,” 2012,

Gov. John Kitzhaber on Tuesday will play a **leading role** in urging Congress to immediately pass an extension of the federal Production Tax Credit for wind energy.¶ The Governors Wind Energy Coalition, a bipartisan group of 28 governors supportive of the wind industry, will hold a news conference on Capital Hill at 8 a.m. to implore Congress to extend the credits during their upcoming lame-duck session.

#### Bipartisan support for being tough on China through CFIUS

Barron, 12 -Mint Press's New York Correspondent. She has worked for leading news organizations, including Time, Inc., CNN, CNBC and CBS News, in Europe, Asia, Africa, South America and the Middle East as well as in the United States (Lisa, “Republicans, Democrats Come Together To Oppose Chinese Oil Deal” Mint Press News, 7/30, http://www.mintpress.net/chinese-oil-deal-becoming-political-football-in-u-s/)

(NEW YORK) MintPress — It seems that Congressional Democrats and Republicans have finally found something on which they can agree. Both parties are coming out against a bid by Chinese energy giant CNOOC for Canadian oil company Nexen.¶ CNOOC, owned by the Chinese government and based in Beijing, agreed on July 23 to pay $15.1 billion for Calgary-based Nexen, which operates in the U.S. portion of the Gulf of Mexico. It is CNOOC’s biggest North American deal since it walked away from Unocal under pressure from Congress in 2005.¶ This time around, Sen. Charles Schumer (D-N.Y.), who is a frequent critic of China’s trade and currency policy, has sent a letter to Treasury Secretary asking the U.S. government to block the Nexen deal.¶ “I respectfully urge you, in your capacity as chairman of the Committee on Foreign Investment in the United States (CFIUS), to withhold approval of this transaction to ensure U.S. companies reciprocal treatment,” Schumer wrote.¶ Schumer pointed to the 2012 Strategic and Economic Dialogue in which the U.S. committed to a fair review process by the CFIUS and, in return, China committed to “fair treatment to foreign investors in China.”¶ “I urge you not to miss this opportunity – the largest foreign acquisition ever by a Chinese company – to hold China to the commitments it has made to provide a level playing field for U.S. companies seeking to access Chinese markets,” Schumer said.¶ His sentiments were shared by the Democratic leader in the House of Representatives, Nancy Pelosi. “This deal prompts great concern about the Chinese government’s continued attempts to use its state-owned enterprises to acquire global energy resources,” spokesman Drew Hamill said in a statement.¶ Republican reaction¶ A similar response came from Sen. David Vitter (R-La.). “I’m concerned because it’s really a trend, particularly in the Gulf of Mexico,” he said. “I do think the far better alternative is for us to play offense, and for us to be developing, taking advantage of these energy resources.”¶ And Sen. John Hoeven (R-N.D.), whose home state is the country’s second-largest oil producer, told a news conference, “Do we really want to be buying our oil or Canadian oil back from the Chinese? If we don’t take action to develop our resources and work with our closest friends and ally Canada, that’s exactly what’s going to happen.”¶ Hoeven and other Republicans have unveiled a package of proposals that would allow for more drilling on government-owned land, reduce regulations, streamline drilling permits and approve TransCanada’s Keystone project.¶ In January, Obama refused to approve the proposed Canada-to-Texas pipeline because he said Congress cut short the environmental review process.¶ Republicans branded his decision as a job-killer that undermines energy independence. “It is time for President Obama to stop putting politics ahead of struggling families and small businesses and approve the Keystone XL pipeline,” House Speaker John Boehner, the top congressional Republican, said in a statement in February.¶ 2012 elections¶ CFIUS lawyers have said they believe the deal will not face regulatory obstacles, but it’s not clear whether the transaction could become a political issue in a tight election year.¶ One of the main driving forces behind the company’s problem with Unocal in 2005 was the fact that it was competing against Chevron, a U.S. oil major with strong allegiances on Capitol Hill.¶ CNOOC does not have a U.S. rival in the Nexen deal. And in May, it hired Hill & Knowlton Strategies to lobby Congress on issues relating to the environment and natural gas.¶ It is clearly going to remain a divisive issue. Both sides may want to seize the opportunity to look tough on China, but foreign investment overall helps the economy and investment in the oil and gas sector in particular helps the U.S. become less dependent on oil from overseas.

#### Link turns the case --- public backlash disrupts FDI

**Merrill, 11** - \* B.A. Tufts University; J.D. Columbia Law School (Margaret, “Overcoming CFIUS Jitters: A Practical Guide for Understanding the Committee on Foreign Investment in the United States”, 30 Quinnipiac L. Rev. 1, lexis)

The second measure relates to the public's perception of the proposed covered transaction. Considering the highly politicized nature of the CFIUS process, creating a positive public image is crucial for any deal. As discussed above, the negative publicity surrounding past FDI misfires has often played a key role in a transaction's collapse. Time and time again, generating negative media coverage in regards to potential FDI transactions has been a potent tool for private interests looking to gain from the transaction's undoing. This type of maneuvering, however, can also be employed by those who would like to see the transaction consummated. Given the prominent and widespread trepidation over the future strength of economic stability in this country, FDI transactions are likely to be viewed more favorably than they have been in a long time. n232 Proactively reaching out to suitable media outlets with information regarding the benefits of any proposed FDI transaction allows the foreign investor to shape the conversation rather than being on the defensive. The resulting public support for the transaction will make it that much more resistant to political attack.

#### Pushing clean energy is unpopular and partisan

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

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

#### Winners win is wrong for fiscal cliff

Calmes 11/12 Jackie, NYTimes, 2012, In Debt Talks, Obama Is Ready to Go Beyond Beltway, mobile.nytimes.com/2012/11/12/us/politics/legacy-at-stake-obama-plans-broader-push-for-budget-deal.xml

That story line, stoked by Republicans but shared by some Democrats, holds that Mr. Obama is too passive and deferential to Congress, a legislative naïf who does little to nurture personal relationships with potential allies - in short, not a particularly strong leader. Even as voters re-elected Mr. Obama, those who said in surveys afterward that strong leadership was the most important quality for a president overwhelmingly chose Mr. Romney.¶ George C. Edwards III, a leading scholar of the presidency at Texas A & M University who is currently teaching at Oxford University, dismissed such criticisms as shallow and generally wrong. Yet Mr. Edwards, whose book on Mr. Obama's presidency is titled "Overreach," said, "He didn't understand the limits of what he could do."¶ "They thought they could continuously create opportunities and they would succeed, and then there would be more success and more success, and we'd build this advancing-tide theory of legislation," Mr. Edwards said. "And that was very naïve, very silly. Well, they've learned a lot, I think."¶ "Effective leaders," he added, "exploit opportunities rather than create them."¶ The budget showdown is an opportunity. But like many, it holds risks as well as potential rewards.¶ "This election is the second chance to be what he promised in 2008, and that is to break the gridlock in Washington," said Kenneth M. Duberstein, a Reagan White House chief of staff, who voted for Mr. Obama in 2008 and later expressed disappointment. "But it seems like this is a replay of 2009 and 2010, when he had huge majorities in the House and Senate, rather than recognizing that 'we've got to figure out ways to work together and it's not just what I want.' "¶ For now, at least, Republican lawmakers say they may be open to raising the tax bill for some earners. "We can increase revenue without increasing the tax rates on anybody in this country," said Representative Tom Price, Republican of Georgia and a leader of House conservatives, on "Fox News Sunday." "We can lower the rates, broaden the base, close the loopholes."¶ The challenge for Mr. Obama is to use his postelection leverage to persuade Republicans - or to help Speaker John A. Boehner persuade Republicans - that a tax compromise is in their party's political interest since most Americans favor compromise and higher taxes on the wealthy to reduce annual deficits.¶ Some of the business leaders the president will meet with on Wednesday are members of the new Fix the Debt coalition, which has raised about $40 million to urge lawmakers and their constituents to support a plan that combines spending cuts with new revenue. That session will follow Mr. Obama's meeting with labor leaders on Tuesday.¶ His first trip outside Washington to engage the public will come after Thanksgiving, since Mr. Obama is scheduled to leave next weekend on a diplomatic trip to Asia. Travel plans are still sketchy, partly because his December calendar is full of the traditional holiday parties.¶ Democrats said the White House's strategy of focusing both inside and outside of Washington was smart. "You want to avoid getting sucked into the Beltway inside-baseball games," said Joel Johnson, a former adviser in the Clinton White House and the Senate. "You can still work toward solutions, but make sure you get out of Washington while you are doing that."¶ The president must use his leverage soon, some Democrats added, because it could quickly wane as Republicans look to the 2014 midterm elections, when the opposition typically takes seats from the president's party in Congress.

#### Winners lose---PC’s not renewable, is zero-sum, and diminishes fast

Ryan 9 Selwyn, Professor Emeritus and former Director, Institute of Social and Economic Research, University of the West Indies, “Obama and political capital,” 1/18 http://www.trinidadexpress.com/index.pl/article\_opinion?id=161426968

Like many, I expect much from Obama, who for the time being, is my political beast of burden with whom every other politician in the world is unfavourably compared. As a political scientist, I however know that given the structure of American and world politics, it would be **difficult for him to deliver half of what he has promised**, let alone all of it. Reality will **force him to make many "u" turns** and detours which may well land him in quick sand. Obama will, however, begin his stint with a **vast accumulation of political capital**, perhaps more than that held by any other modern leader. Seventy-eight per cent of Americans polled believe that his inauguration is one of the most historic the country will witness. Political capital is, however, a lumpy and **fast diminishing asset** in today's world of instant communication, which once misspent, is **rarely ever renewable**. The world is full of political leaders like George Bush and Tony Blair who had visions, promised a lot, and probably meant well, but who **did not know how to husband** the **political capital** with which they were provided as they assumed office. They squandered it as quickly as they emptied the contents of the public vaults. Many will be watching to see how Obama manages his assets and liabilities register. Watching with hope would be the white young lady who waved a placard in Obama's face inscribed with the plaintive words, "I Trust You." Despite the general optimism about Obama's ability to deliver, many groups have already begun to complain about being betrayed. Gays, union leaders, and women have been loud in their complaints about being by-passed or overlooked. Some radical blacks have also complained about being disrespected. Where and when is Joshua going to lead them to the promised land, they ask? When is he going to pull the troops out of Iraq? Civil rights groups also expect Obama to dis-establish Guantanamo as soon as he takes office to signal the formal break with Dick Cheney and Bush. They also want him to discontinue the policy which allows intelligence analysts to spy on American citizens without official authorisation. In fact, Obama startled supporters when he signalled that he might do an about-turn and continue this particular policy. We note that Bush is signalling Obama that keeping America safe from terrorists should be his top priority item and that he, Bush, had no regrets about violating the constitutional rights of Americans if he had to do so to keep them safe. Cheney has also said that he would do it again if he had to. The safety of the republic is after all the highest law. Other groups-sub-prime home owners, workers in the automobile sector, and the poor and unemployed generally all expect Obama to work miracles on their behalf, which of course he cannot do. Given the problems of the economy which has not yet bottomed out, **some promises have to be deferred** beyond the first term. Groups, however, expect that the promise made to them during the campaign must be kept. Part of the problem is that almost every significant social or ethnic group believes that it was instrumental in Obama's victory. White women felt that they took Obama over the line, as did blacks generally, Jews, Hispanics, Asians, rich white men, gays, and young college kids, to mention a few of those whose inputs were readily recognisable. Obama also has a vast constituency in almost every country in the world, all of whom expect him to save the globe and the planet. Clearly, he is the proverbial "Black Knight on a White Horse." One of the "realities" that Obama has to face is that **American politics is not a winner-take-all system**. It is pluralistic vertically and horizontally, and getting **anything done politically**, even when the President and the Congress are controlled by the same party, **requires groups to negotiate, bargain and engage in serious horse trading.** No one takes orders from the President who can only use moral or political suasion and promises of future support for policies or projects. The system was in fact deliberately engineered to prevent overbearing majorities from conspiring to tyrannise minorities. The system is not only institutionally diverse and plural, but socially and geographically so. As James Madison put it in Federalist No 10, one of the foundation documents of republicanism in America, basic institutions check other basic institutions, classes and interests check other classes and interests, and regions do the same. All are grounded in their own power bases which they use to fend off challengers. The coalitions change from issue to issue, and there is no such thing as party discipline which translated, means you do what I the leader say you do. Although Obama is fully aware of the political limitations of the office which he holds, he is fully aware of the vast stock of political capital which he currently has in the bank and he evidently plans to enlarge it by drawing from the stock held by other groups, dead and alive. He is clearly drawing heavily from the caparisoned cloaks of Lincoln and Roosevelt. Obama seems to believe that by playing the all-inclusive, multipartisan, non-ideological card, he can get most of his programmes through the Congress without having to spend capital by using vetoes, threats of veto, or appeals to his 15 million strong constituency in cyberspace (the latent "Obama Party").

#### **Sequestration tanks heg---kills readiness, military modernization, flexibility, and perceptions of security assurances---our evidence is more qualified**

BPC 12 Bipartisan Policy Center's Task Force on Defense Budget and Strategy. Co-Chairs: Senator Pete Domenici, Former Chairman of the U.S. Senate Budget Committee and Senior Fellow at the BPC, Secretary Dan Glickman, Former U.S. Agricultural Secretary and Former Chairman of the U.S. House Select Intelligence Committee and Senior Fellow at the BPC, and General James Jones, Former National Security Advisor and Former Commander of U.S. European Command and Senior Fellow at the BPC. Members: Dr. Graham Allison, Director of the Belfer Center at Harvard, Ross Perot, General Peter Chiarelli, Former Vice Chief of Staff of the U.S. Army, Major General Arnold Punaro, Senior Fellow of the Defense Business Board and Former Staff Director of the U.S. Senate Armed Services Committee, Admiral Greg Johnson, Former Commander of U.S. Naval Forces in Europe, Dr. Abram Shulsky, Senior Fellow at the Hudson Institute, General George Joulwan, Former Commander of U.S. European Command, General Charles Wald, Former Deputy Commander of U.S. European Command, Read Admiral David Mercer, Former Commander of Navy Region Europe, Dr. Dov Zakheim, Former Under Secretary of Defense, and Dr. Michael O'Hanlon, Senior Fellow at the 21st Century Defense Initiative at the Brookings Institution. "Indefensible: The Sequester’s Mechanics and Adverse Effects on National and Economic Security," June, http://bipartisanpolicy.org/sites/default/files/6-7-12%20FINAL%20Sequester%20White%20Paper.pdf

Note: Charts omitted

The FY 2013 sequester will replace the ability of elected leaders to set defense policy with a procedure that will indiscriminately cut 15 percent from defense programs. Indeed, at a time when the military is reorienting its missions to new strategic priorities and seeking to modernize its forces as two major land wars wind down, **these across-the-board cuts will make it significantly more difficult to ensure** readiness**, procure** new weapons **systems, and invest in** new tech**nology to meet** emerging threats. ¶ The president is charged with defining the threats that the United States is likely to confront and a strategic vision for how to avoid or defeat them. The Pentagon contributes to formulating that strategy, and is responsible for ensuring that our forces are prepared and have the necessary equipment to enact it. Through the authorization and appropriations processes, lawmakers are able to modify that blueprint to best serve the security interests of the nation. But on January 2, 2013, the views of the president, Pentagon, and Congress will matter little. ¶ The sequester will deprive all three of these stakeholders of their power to shape the country’s defense policy. Instead, a mechanism that uniformly slashes 15 percent from most defense budget accounts will take the place of the best judgments of our elected representatives and their appointed officials about what is needed to keep us safe. ¶ Such cuts, **blind to strategic priorities**, will leave the U.S. military unable to implement effectively any credible national security strategy – whether President Obama’s or any other one – because arbitrary reductions will have taken the place of deliberative planning. Cuts made in this fashion will eliminate almost all of DoD’s discretion to preserve funding for the most important and efficient national security missions and capabilities. ¶ As an example, consider the administration’s Strategic Guidance issued in January 2012 and the capabilities that the Pentagon has deemed necessary. This new strategy highlights that “U.S. economic and security interests are inextricably linked to developments in the arc extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia,” 17 and therefore, “we will of necessity rebalance toward the Asia-Pacific region.” Accomplishing this, according to the Pentagon, will require the military to shift toward a leaner, more agile force – one that can effectively project its power across the vast distances of the Pacific Ocean. Accordingly, military planners have identified the need for greater investment in technologically-superior air-, sea- and cyber-power at the cost of heavy ground forces. Additionally, after 10 years of war, military leaders have made it clear that our troops need to recover and aging equipment needs to be repaired. ¶ The Pentagon’s budget request for FY 2013 reflects these priorities – increasing funding for weapons platforms that support power projection and other missions critical to the new strategy, and cutting money for programs that military leaders no longer have deemed to be as critical. As Secretary Panetta told an Asian security conference on June 2, 2012: ¶ We are investing specifically in those kinds of capabilities – such as an advanced fifth-generation fighter, an enhanced Virginia-class submarine, new electronic warfare and communications capabilities, and improved precision weapons – that will provide our forces with freedom of maneuver in areas in which our access and freedom of action may be threatened. We recognize the challenges of operating over the Pacific’s vast distances. That is why we are investing in new aerial-refueling tankers, a new bomber, and advanced maritime patrol and anti-submarine warfare aircraft. 18 ¶ DoD’s budget request strives to meet the demands of the president’s new defense strategy while roughly abiding by the original BCA cap levels for defense spending, lowering the base defense budget by about $5 billion compared to FY 2012, but without accounting for the sequester’s further automatic cuts. ¶ Our analysis, however, indicates that the sequester will greatly constrain the Pentagon’s ability to execute any of these strategic shifts in its procurement, planning, and training. Without meaningful reforms, inefficiencies in the defense budget are already eroding funds needed to train, equip, and deploy our forces. Now, the combination of continued FY 2012 funding, which does not reflect the president’s new strategic priorities, and the indiscriminate 15 percent sequester cut mean that funds available to DoD on January 2, 2013, will differ greatly from those it requested. Indeed, some priority projects might receive as much as 75 percent less funding than the Pentagon determined was needed for FY 2013. Conversely, weapons systems for which DoD has requested reduced funding because of their lower priority in light of the new strategy could receive as much as nine times more funding than requested. ¶ More specifically, our calculations indicate that refurbishment of the nearly 25-year-old USS Abraham Lincoln aircraft carrier, development and purchases of a new aerial refueling tanker, and funding for resetting and retraining troops could be cut by 72, 57, and 42 percent, respectively, relative to the Pentagon’s FY 2013 request. Additionally, funding could fall roughly $1.7 billion short of the nearly $4 billion requested by DoD and Homeland Security for investments in the personnel, technology, and infrastructure needed to protect our sensitive computer networks by developing offensive cyber capabilities. Simultaneously, funding for Heavy Tactical Vehicles, the M-1 Abrams tank, and Stryker armored vehicles – all ground vehicles that serve little purpose in the Asia-Pacific region – could be increased by 934, 442, and 107 percent, respectively, over the Pentagon’s request for FY 2013. ¶ Thus, the sequester will leave military leaders with some combination of three options, each of which will increase risks and costs: ¶ • Indefinitely delay implementation of the new strategy, and accept the strategic risks that would flow from not moving to address the threats identified in the Strategic Guidance. ¶ • Attempt to pursue the new strategy with fewer of the new capabilities and weapons platforms than the Pentagon has deemed necessary, and accept the operational risks that come from not having enough of the right tools for the job and lower force readiness. ¶ • Make do with the older weapons systems that DoD already possesses, and accept the tactical and safety risks of using outdated technology that does not fulfill the requirements of current missions, and is also more likely to fail. ¶ The first two options cause contract delays, reductions, and renegotiations, contributing to increases in per-unit costs. The last option will result in increased maintenance costs, as antiquated planes, ships, and helicopters are pushed beyond their expected service lives. Either way, the military eventually will need some of the weapons that the sequester will keep us from purchasing today. Indeed, nearly one-quarter of our ships failed inspection last year. The average age of our fighter jets is 22 years, our bombers 35 years, and our aerial refueling tankers 47 years. The longer we put off modernizing our armed forces, the greater the risk to our troops and the greater the eventual procurement costs will be, defeating the very logic of deficit reduction. ¶ Meanwhile, although China’s military power is still inferior to that of the United States, Beijing’s actions – and fear of its intentions – have already led many regional countries to look to the United States for security guarantees and cooperation. **If U.S. commitment to these alliances is perceived to be weakening, or our ability to defend them waning, our partners could feel pressured to accommodate China’s growing ambitions.** ¶ At a time when the military is reconstituting itself as two major land wars wind down, being called upon to reorient its missions to new strategic priorities and seeking to modernize its forces, across-the-board cuts will make it significantly more difficult to properly ensure readiness, procure new weapons systems, and invest in new technology to meet emerging threats. As a result, **the U.S. military will be left in a holding pattern, trying to make do with yesterday’s military to fight tomorrow’s wars.**

#### Going over the fiscal cliff causes a second great depression

Morici 8/7 Peter, PhD, is a "recognized expert on economic policy and international economics." He is a Professor of International Business at the R.H. Smith School of Business at the University of Maryland. "Fix fiscal cliff now or face next Great Depression," 2012, http://www.foxnews.com/opinion/2012/08/07/fix-fiscal-cliff-now-or-face-next-great-depression/

President Obama and Republicans are engaging in dangerous brinksmanship. Putting off a political solution to the looming “fiscal cliff” until after the election **risks a** second Great Depression.¶ Without a compromise by January, $400 billion in mandatory spending cuts and more than $100 billion in tax increases will immediately go into effect. **With our economy only growing by only $300 billion annually, such a shock would thrust it into a prolonged contraction.**

# SEP CP

#### The United States Federal Government should establish that the penalty for violating the definition of national security used by the Committee on Foreign Investment may include entry into a Supplemental Environmental Project.

#### Implementation of the Supplemental Environmental Projects should follow the 1991 *Policy on the Use of Supplemental Environmental Projects in EPA Settlements*, and any conflicting federal laws and regulations should be modified to provide a narrow exemption for the above penalty.

#### Penalties determine regulatory compliance—restrictions are irrelevant if penalties are marginal

CPR 8 – The Center for Progressive Reform, a nonprofit research and educational organization with a network of Member Scholars working to protect health, safety, and the environment through analysis and commentary, 2008, “Environmental Enforcement,” <http://progressiveregulation.org/perspectives/environEnforce.html>

Effective enforcement is key to ensuring that the ambitious goals of our environmental statutes are realized. Enforcement refers to the set of actions that the government can take to promote compliance with environmental law. . Currently, rates of noncompliance with environmental laws remain disturbingly high; experts believe that as many as twenty to forty percent of firms regulated by federal environmental statutes regularly violate the law. Tens of millions of citizens live in areas out of compliance with the health based standards of the Clean Air Act, and close to half of the water bodies in the country fail to meet water quality standards set by the Clean Water Act. In communities burdened by multiple sources of pollution, noncompliance has particularly serious health consequences for affected residents.

As in virtually every other area of government regulation, environmental enforcement traditionally has been based on the theory of deterrence. This theory assumes that persons and businesses act rationally to maximize profits, and will comply with the law where the costs of noncompliance outweigh the benefits of noncompliance. The job of enforcement agencies is to make both penalties and the probability of detection high enough that it becomes irrational– unprofitable-- for regulated firms to violate the law.

EPA’s enforcement policies traditionally have reflected these principles. EPA has emphasized the importance of regular inspections and monitoring activity to detect noncompliance, and has responded to violations with swift and appropriate sanctions. EPA’s policies also mandate that the agency recover the economic benefit firms realize through noncompliance, since **if a firm is able to profit from illegal activity, it has little incentive to comply in the first place.**

State environmental agencies actually carry out the majority of enforcement activity in this country because most states have received authority from EPA to administer federal environmental laws under EPA oversight (see CPR Perspective on Devolution) States also administer and enforce their own state laws. As in other areas of environmental regulation, the quality of state enforcement programs vary considerably. Some states carefully follow EPA mandates and vigorously enforce environmental requirements. In other states, enforcement is relatively lax, and agencies rarely respond to violations with penalties.

Citizen enforcement also is a feature of most federal environmental statutes. The statutes allow citizens to sue companies for violations when the government fails to do so and various, often strict, procedural conditions are met. Traditionally, Congress has viewed citizen enforcement as an important supplement to agency enforcement and an important prod to agency regulators.

What People are Fighting About

In recent years there has been a sharp debate over the future direction of environmental enforcement. Many states and regulated entities advocate a more business-friendly, conciliatory enforcement strategy, one that does not emphasize enforcement actions and penalties as the keys to securing compliance. In their view, businesses are likely to comply without resort to sanctions because of adherence to social and political norms, market forces, and other factors.

Thus, many states have reduced funding for inspections. enforcement cases and similar activities, and shifted resources toward compliance assistance programs. Some have created “customer service centers” for regulated entities. Many states do not follow EPA guidance for responding to violations with “timely and appropriate” enforcement actions. Many impose only limited penalties on violators, penalties that typically are far lower than those assessed by EPA in similar circumstances. Many states fail to recover economic benefit when assessing penalties--a core element of deterrence theory. In the past decade, almost one-half of the states have enacted environmental audit privilege or immunity laws that preclude penalties for violations voluntarily disclosed and corrected by regulated entities as a result of environmental audits. These laws also keep materials contained in environmental audits secret and exempt from public disclosure.

At the same time, EPA has to some degree deemphasized traditional enforcement and used its limited resources to provide more compliance assistance to small businesses and other regulated sectors. It has also searched for positive incentives for companies that carry out self-policing efforts. Until very recently, however, EPA has continued to demand that the states impose sanctions, conduct inspections, and bring enforcement actions as the main tools for deterring firms from violating the law. EPA also resisted the most far-reaching efforts of states to weaken enforcement of environmental laws. Funding shortfalls and emerging policy changes in such areas as whether new sources must obtain new permits have taken their toll and EPA’s commitment to deterrence-based enforcement appears to be weakening.

In reaction to these changes, environmental groups, contend that government enforcement is too lax, that too often fines for violating environmental requirements have become no more than a routine cost of doing business for regulated entities, and that the government lacks the resources to pursue most violations. They would like to more vigorously enforce environmental violations. During the past decade or so, however, the Supreme Court has erected a series of hurdles to citizen enforcement of environmental laws. The Court has imposed restrictions on who has standing to bring suit, what type of illegal conduct can be challenged, when a decision is “ripe” for suit, when government agencies can be sued, and when attorneys fees can be awarded to successful plaintiffs’ attorneys. These court-imposed obstacles have significantly undermined the role envisioned by Congress for citizen enforcers.

#### The SEP penalty causes industry noncompliance --- triggers the same industry response as the aff, while preserving the restriction

David Dana, Professor of Law, Boston University School of Law, 1998, ARTICLE: THE UNCERTAIN MERITS OF ENVIRONMENTAL ENFORCEMENT REFORM: THE CASE OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS, 1998 Wis. L. Rev. 1181, Lexis

The previous analysis illustrates that the inclusion of SEPs in an enforcement regime may lead to negotiated settlements that cost violators substantially less than the standard monetary penalty. The particular implications of this insight for a deterrence analysis depend on whether the standard monetary penalty represents "an optimal penalty" or instead a sub- or super-optimal penalty. As a preliminary matter, a brief discussion of the concept of optimal penalty (PEN<opt>) thus may be in order. Economists typically regard the goal of an enforcement regime as the achievement of "optimal deterrence." The phrase optimal deterrence, of course, implies that absolute or complete deterrence of regulatory violations should not be the goal of an enforcement regime. Rather, the regime should act to prevent violations which will generate social costs in excess of social benefits. Conversely, of course, the regime should not discourage violations that produce net social benefits. In settings involving perfect detection and prosecution of regulatory violations by government agencies, a penalty equalling the social harm of a violation will produce optimal deterrence. Where detection and prosecution are imperfect, a penalty equalling the harm of a violation will result in underdeterrence because potential violators will discount the nominal penalty to take account of the probability that they will evade detection and/or prosecution. To achieve optimal deterrence, therefore, [\*1206] nominal penalties must equal the social harm divided by the probability of detection and prosecution. The standard monetary penalty for any particular regulatory violation - the penalty that would be imposed in the absence of any SEP settlement options - logically can have only one of three relations to the optimal penalty: The standard monetary penalty can be less than the optimal penalty, equal to the optimal penalty, or greater than the optimal penalty. In all three of these cases, the introduction of SEP settlement options into an enforcement regime is troublesome from an optimal deterrence perspective. Each case will be taken in turn. 1. pen[in'mon.std'] < pen<opt> Where the standard monetary penalty is less than the optimal penalty, regulators' exclusive reliance on monetary penalties will produce underdeterrence. n77 That is, some violations will occur even though the social costs of the violations exceed the social benefits. The introduction of SEPs into such regimes will only make matters worse: SEPs will lower regulated entities' expected penalties for regulatory violations n78 and [\*1207] hence produce more underdeterrence and more socially costly violations. For example, imagine that the harm from a particular regulatory violation has a dollar equivalent value of $ 400, and the perceived probability of detection is 0.1. The optimal penalty thus would be $ 400/0.1 or $ 4000. Assume, however, that the standard monetary penalty is only $ 3000 and regulated entities' expected penalty for violating the regulation is thus only $ 300. Profit-maximizing regulated entities will take the risk of violating the regulation if they expect to gain more than $ 300 by doing so. Now assume that a regulatory agency adds SEP settlements to the enforcement regime. The regulated entity in question now believes that there is a fifty percent probability that it could successfully negotiate a SEP in the event government regulators detect its regulatory noncompliance. n79 Assume also that the regulated entity estimates that the SEP discount or savings off the standard monetary penalty would be thirty-three percent, so that the expected cost of a SEP would be $ 2000. The total expected penalty thus would be 0.1[(0.5)($ 3000) + (0.5)(0.66)($ 3000)], or approximately $ 250. This reduction in the expected penalty from $ 300 to $ 250 could translate into real differences in regulated entities' behavior. Under the pre-SEP regime, regulated entities at least would avoid socially undesirable violations offering them less than $ 300 in savings. The addition of SEPs to the regime eliminates deterrence for violations offering between $ 250 and $ 300 in savings. 2. pen[in'mon.std'] = pen<opt> Where the standard monetary penalty equals the optimal penalty, the enforcement regime will achieve optimal deterrence. Regulated entities will be deterred from committing all of the potential violations that result in greater social loss than social gain, but they will not be deterred from [\*1208] committing any potential violations that are, on net, socially beneficial. The introduction of SEPs into the penalty regime will lower expected penalties and thus produce a shift from this state of optimal deterrence to one of underdeterrence.

#### Establishing SEP penalties solves inevitable environmental crisis

Jeff Ganguly, Executive Editor, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW, Fall 1998, COMMENT: ENVIRONMENTAL REMEDIATION THROUGH SUPPLEMENTAL ENVIRONMENTAL PROJECTS AND CREATIVE NEGOTIATION: RENEWED COMMUNITY INVOLVEMENT IN FEDERAL ENFORCEMENT, 26 B.C. Envtl. Aff. L. Rev. 189, Lexis

Such a dynamic has been developing through EPA's employment of SEPs as well. While oversight is critical to ensure the SEP program continues to attain breakthrough achievements in creative and effective settlement agreements, the unique ability of SEPs to respond to the individual circumstances of environmental problems must be maintained. Thus, while litigation remains an effective tool to apply pressure and force action in some cases, dispute resolution and creative settlements should become the goal in the new generation of environmental enforcement. The use of SEPs is only one advantage to dispute resolution, as SEP provisions could be written into federal statutes and become an everyday part of adjudicated relief. Dispute resolution also saves time and money. n303 All of these qualities, as evidenced by the MHD settlement, are the most effective means of responding to environmental crises. Apart from outright prevention, dispute negotiation and community remediation through creative settlements and SEPs continue to be one of the most effective means of preserving and protecting human health and the environment.

#### Extinction

Clark and Downes 6

Dana Clark, Center for International Environmental Law, and David Downes, US Interior Dept. Policy Analysis Senior Trade Advisor, 2006, What price biodiversity?, http://www.ciel.org/Publications/summary.html

Biodiversity is the diversity of life on earth, on which we depend for our survival. The variability of and within species and ecosystems helps provide some of our basic needs: food, shelter, and medicine, as well as recreational, cultural, spiritual and aesthetic benefits. Diverse ecosystems create the air we breathe, enrich the soil we till and purify the water we drink. Ecosystems also regulate local and global climate. No one can seriously argue that biodiversity is not valuable.

Nor can anyone seriously argue that biodiversity is not at risk. There are over 900 domestic species listed as threatened or endangered under the Endangered Species Act, and 4,000 additional species are candidates for listing. We are losing species as a result of human activities at hundreds of times the natural rate of extinction. The current rate of extinction is the highest since the mass extinction of species that wiped out the dinosaurs millions of years ago.

The Economics of Biodiversity Conservation

The question which engenders serious controversy is whether society can afford the costs associated with saving biodiversity. Opponents of biodiversity conservation argue that the costs of protecting endangered species are too high. They complain that the regulatory burden on private landowners is too heavy, and that conservation measures impede development. They seek to override scientific determinations with economic considerations, and to impose cost/benefit analyses on biodiversity policy making.

An equally important question, however, is whether we can afford not to save biodiversity. The consequences of losing this critical resource could be devastating. As we destroy species and habitat, we endanger food supplies (such as crop varieties that impart resistance to disease, or the loss of spawning grounds for fish and shellfish); we lose the opportunity to develop new medicines or other chemicals; and we impair critical ecosystem functions that protect our water supplies, create the air we breathe, regulate climate and shelter us from storms. We lose creatures of cultural importance - the bald eagle is an example of the cultural significance of biodiversity and also of the need for strong regulations to protect species from extinction. And, we lose the opportunity for mental or spiritual rejuvenation through contact with nature.

#### Turns the economy

Coyne and Hoekstra, 7 (Jerry, University of Chicago Professor in the Department of Ecology and Evolution; Ph.D. in Biology from Harvard University, and Hopi, John L. Loeb Associate Professor of Biology, Harvard; Curator of Mammals in the Museum of Comparative Zoology; Ph.D., Zoology, University of Washington; B.A., Integrative Biology, University of California, Berkeley, “The Greatest Dying, 9/24,” <http://www.truthout.org/article/jerry-coyne-and-hopi-e-hoekstra-the-greatest-dying>)

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. In fact, the global value of "hidden" services provided by ecosystems - those services, like waste disposal, that aren't bought and sold in the marketplace - has been estimated to be as much as $50 trillion per year, roughly equal to the gross domestic product of all countries combined. And that doesn't include tangible goods like fish and timber. Life as we know it would be impossible if ecosystems collapsed. Yet that is where we're heading if species extinction continues at its current pace. Extinction also has a huge impact on medicine. Who really cares if, say, a worm in the remote swamps of French Guiana goes extinct? Well, those who suffer from cardiovascular disease. The recent discovery of a rare South American leech has led to the isolation of a powerful enzyme that, unlike other anticoagulants, not only prevents blood from clotting but also dissolves existing clots. And it's not just this one species of worm: Its wriggly relatives have evolved other biomedically valuable proteins, including antistatin (a potential anticancer agent), decorsin and ornatin (platelet aggregation inhibitors), and hirudin (another anticoagulant). Plants, too, are pharmaceutical gold mines. The bark of trees, for example, has given us quinine (the first cure for malaria), taxol (a drug highly effective against ovarian and breast cancer), and aspirin. More than a quarter of the medicines on our pharmacy shelves were originally derived from plants. The sap of the Madagascar periwinkle contains more than 70 useful alkaloids, including vincristine, a powerful anticancer drug that saved the life of one of our friends. Of the roughly 250,000 plant species on Earth, fewer than 5 percent have been screened for pharmaceutical properties. Who knows what life-saving drugs remain to be discovered? Given current extinction rates, it's estimated that we're losing one valuable drug every two years. Our arguments so far have tacitly assumed that species are worth saving only in proportion to their economic value and their effects on our quality of life, an attitude that is strongly ingrained, especially in Americans. That is why conservationists always base their case on an economic calculus. But we biologists know in our hearts that there are deeper and equally compelling reasons to worry about the loss of biodiversity: namely, simple morality and intellectual values that transcend pecuniary interests. What, for example, gives us the right to destroy other creatures? And what could be more thrilling than looking around us, seeing that we are surrounded by our evolutionary cousins, and realizing that we all got here by the same simple process of natural selection? To biologists, and potentially everyone else, apprehending the genetic kinship and common origin of all species is a spiritual experience - not necessarily religious, but spiritual nonetheless, for it stirs the soul. But, whether or not one is moved by such concerns, it is certain that our future is bleak if we do nothing to stem this sixth extinction. We are creating a world in which exotic diseases flourish but natural medicinal cures are lost; a world in which carbon waste accumulates while food sources dwindle; a world of sweltering heat, failing crops, and impure water. In the end, we must accept the possibility that we ourselves are not immune to extinction. Or, if we survive, perhaps only a few of us will remain, scratching out a grubby existence on a devastated planet. Global warming will seem like a secondary problem when humanity finally faces the consequences of what we have done to nature: not just another Great Dying, but perhaps the greatest dying of them all.

# ASPEC

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

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

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

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

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

# Ontology K

#### The aff enframes the world to limit out any ontological questioning and ensures a violent monopoly on truth that results in endless warfare

Burke 7—Associate Professor of Politics and International Relations in the University of New South Wales (Anthony, *Theory & Event*, Volume 10, Issue 2, 2007, “Ontologies of War: Violence, Existence and Reason,” Project MUSE)

This essay develops a theory about the causes of war -- and thus aims to generate lines of action and critique for peace -- that cuts beneath analyses based either on a given sequence of events, threats, insecurities and political manipulation, or the play of institutional, economic or political interests (the 'military-industrial complex'). Such factors are important to be sure, and should not be discounted, but they flow over a deeper **bedrock of modern reason** that has not only come to form a powerful structure of common sense but **the apparently solid ground of the real itself**. In this light, the two 'existential' and 'rationalist' discourses of war-making and justification mobilised in the Lebanon war are more than merely arguments, rhetorics or even discourses. Certainly **they mobilise forms of knowledge and power together; providing political leaderships, media, citizens, bureaucracies and military forces with organising systems of belief, action, analysis and rationale**. But they run deeper than that. They are truth-systems of the most powerful and fundamental kind that we have in modernity: **ontologies, statements about truth and being which claim a rarefied privilege to state what is and how it must be maintained** as it is.

I am thinking of ontology in both its senses: ontology as both a statement about the nature and ideality of being (in this case political being, that of the nation-state), and as a statement of epistemological truth and certainty, of methods and processes of arriving at certainty (in this case, the development and application of strategic knowledge for the use **of armed force**, and the creation and maintenance of geopolitical order, security and national survival). These derive from the classical idea of ontology as a speculative or positivistic inquiry into the fundamental nature of truth, of being, or of some phenomenon; the desire for a solid metaphysical account of things inaugurated by Aristotle, an account of 'being qua being and its essential attributes'.17 In contrast, drawing on Foucauldian theorising about truth and power, I see ontology as a particularly powerful claim to truth itself: a claim to the status of an underlying systemic foundation for truth, identity, existence and action; one that is not essential or timeless, but is thoroughly historical and contingent, that is deployed and mobilised in a fraught and conflictual socio-political context of some kind. In short, ontology is the 'politics of truth'18 in its most sweeping and powerful form.

I see such a drive for ontological certainty and completion as particularly problematic for a number of reasons. Firstly, when it takes the form of the existential and rationalist ontologies of war, it amounts to a hard and exclusivist claim: **a drive for ideational** hegemony and closure that limits debate and questioning, **that confines it within the boundaries of a particular, closed system of logic, one that is grounded in the truth of being**, in the truth of truth as such. The second is its intimate relation with violence: the dual ontologies represent a simultaneously social and conceptual structure that generates violence. Here **we are witness to an epistemology of violence (strategy) joined to an ontology of violence (the national security state)**. When we consider their relation to war, the two ontologies are especially dangerous because each alone (and doubly in combination) tends both to **quicken the resort to war and to lead to its escalation** either in scale and duration, or in unintended effects. In such a context **violence is not so much a tool that can be picked up and used on occasion**, at limited cost and with limited impact -- **it permeates being.**

This essay describes firstly the ontology of the national security state (by way of the political philosophy of Thomas Hobbes, Carl Schmitt and G. W. F. Hegel) and secondly the rationalist ontology of strategy (by way of the geopolitical thought of Henry Kissinger), showing how they crystallise into a mutually reinforcing system of support and justification, especially in the thought of Clausewitz. This creates both a profound ethical and pragmatic problem. The ethical problem arises because of their militaristic force -- they embody and reinforce a norm of war -- and because they enact what Martin Heidegger calls an 'enframing' image of technology and being in which **humans are merely utilitarian instruments** for use, control and destruction, and force -- in the words of one famous Cold War strategist -- can be thought of as a 'power to hurt'.19 The pragmatic problem arises because force so often produces neither the linear system of effects imagined in strategic theory nor anything we could meaningfully call security, but rather **turns in upon itself in a nihilistic spiral of pain and destruction**. In the era of a 'war on terror' dominantly conceived in Schmittian and Clausewitzian terms,20 the arguments of Hannah Arendt (that violence collapses ends into means) and Emmanuel Levinas (that 'every war employs arms that turn against those that wield them') take on added significance. Neither, however, explored what occurs when war and being are made to coincide, other than Levinas' intriguing comment that in war persons 'play roles in which they no longer recognises themselves, making them betray not only commitments but their own substance'. 21

#### The alt is to engage in meditative reflection and ask the question of Being

Swazo 2 Norman is a Professor of Philosophy at the University of Alaska. “Crisis Theory and World Order: Heideggerian Reflections,” p. 12-14

In line with the above thought, I have noted that world order scholars are genuinely concerned about the manifold dimensions of planetary crisis­: war, both conventional war and the post-Cold War threat of thermonuclear war; social and economic injustice, especially between the industrialized North and the developing South of the globe; conditions of extreme poverty, especially in Africa, the subcontinent of Asia, and Latin America; and esca­lating ecological decay across the face of the planet. I submit that this "prag­matic" concern is really a manifestation of an existential anxiety in the face of a prospect of death through global catastrophe issuing from one or a combi­nation of these global problems. Such anxiety in the face of death is fully con­sonant with Heidegger's concern for the human way to be during the global reign of technology, that way in which modernity in its extreme configura­tion determines human life for better and for worse. With this in mind, it is not sufficient merely to contrapose the logic of world order to the logic of statecraft in the manner of straightforward nor­mative disputation. It is necessary, rather, that this existential anxiety be experienced in an essential way; i.e., such that all ethical and political logic and thinking come into question, and such that we come to see that even the logic of world order can have hidden prejudices that must be put into ques­tion. This "putting into question" is not a nihilistic move, such that we would come away from this questioning justifying anything or nothing at all. Rather, the fragility of our inherited and then transmitted justifications within the Western valuation comes into clear relief against the background of the human way to be that Heidegger seeks to clarify. We must remember, after all, as Charles Scott observes, that ... anything has been justified in our history by appeal to universal values and meanings, including the most severe repressions, torture, violent cru­elty, war, and the morbid enslaving and destructive segregation of vast groups of people. The proliferation of `universal' norms whereby we justify certain values and contend against other values mirrors our fear of what the world would be like if we lacked an adequate basis for justifying our values and realizing the best possibilities of ourselves.... The tension in Heidegger's thought ... puts in question the combina­tion of axioms, authorizing disclosure and judgment, as well as the belief that with a proper normative basis for our values we can hope to overcome the destructive proliferation of violently opposing ways of life."

# T Substantial

#### And the Aff must substantially increase energy production---that’s means 10%

US Department of the Interior et al 05 (Bureau of Reclamation, and the California Department of Water Resources, South Delta Improvements Program Draft Environmental Impact Statement, http://www.deltarevision.com/2005\_docs/chapter\_7.pdf)

Effects on the SWP net energy requirements would be considered significant if net electricity consumption increased substantially. For this analysis, a substantial increase is defined as an increase in net electricity consumption of more than 10%.

# Case

## Solvency

#### CFIUS reviews encourage Chinese oil companies to prudently negotiate the American political climate to avoid backlash

WSJ 12 --- China Foothold in U.S. Energy, 3-6-12, http://webcache.googleusercontent.com/search?q=cache:qnxJVCUg4KgJ:online.wsj.com/article/SB10001424052970204883304577223083067806776.html+&cd=2&hl=en&ct=clnk&gl=us&client=firefox-a

**China's new approach to investing in U.S. energy companies suggests it has learned lessons about how to make the industry and American politicians more comfortable with Chinese money**. "Buy a portion of that company, work together with that company, and that company is your strongest ally in the U.S.," says S. Ming Sung, a former executive at Royal Dutch Shell PLC who has advised Sinopec and is now an adviser to several organizations that promote clean energy.¶ Sinopec's Mr. Fu, who declined to comment for this article, has been China's most visible proponent of the new approach. Born in China's remote northern Heilongjiang province, the 60-year-old executive earned a master's degree in petroleum engineering in 1986 from the University of Southern California, where he now serves on the board of trustees. Like other leaders of major state-run companies, he is a senior member of the Communist Party.¶ Those who know him say his technical and operational knowledge of the oil industry is considerable. "He built his foundation in engineering," said Iraj Ershaghi, a professor of petroleum engineering at USC who taught Mr. Fu in the 1980s.¶ Mr. Fu joined Cnooc when the state-owned company was set up in 1982, and held senior positions in its joint ventures with foreign companies such as Shell and the former Phillips Petroleum, now part of ConocoPhillips .¶ By 2005, China's oil consumption was surging, and Chinese companies of all sorts were beginning to explore major acquisitions abroad.¶ Mr. Fu, by then Cnooc's chairman, began negotiating directly with Unocal's then Chief Executive Charles Williamson to buy the El Segundo, Calif.-based company for $18.5 billion. News of the offer brought criticism from U.S. lawmakers, who argued the deal would put crucial U.S. energy resources in Chinese hands. U.S. lawmakers passed a resolution asking the Bush administration to review any Unocal-Cnooc deal. ¶ Mr. Fu spoke out publicly in defense of the deal—an unusual move for the leader of a state-controlled company. In an opinion piece in The Wall Street Journal titled "Why is America Worried?", he argued that most of Unocal's reserves were outside the U.S. anyway, and that Cnooc would preserve American jobs and "will be an open and responsible participant in the process."¶ Nevertheless, members of the Committee for Foreign Investment in the U.S., an interagency body chaired by the Treasury Department, indicated they would recommend that President George W. Bush block the deal, say people briefed by members. The Treasury Department declined to comment, saying it doesn't talk publicly about specific cases reviewed by the committee.¶ After lawmakers passed language in a bill that would delay a deal, Mr. Fu pulled the offer. Cnooc blamed "unprecedented political opposition." Unocal subsequently was bought by Chevron for $17.3 billion.¶ In a 2006 interview with the Journal, Mr. Fu said that Cnooc "learned we need to be more prudent in terms of public relations and political lobbying when dealing with such a big deal.We now understand American politics better."¶ In the wake of the busted deal, Chinese energy firms shied away from North America. State-owned oil companies began striking energy deals elsewhere in the world, such as in Nigeria and Yemen, which gave it access to significant reserves.¶ Meanwhile, back in North America, new techniques were being developed to extract oil and natural gas from shale formations deep underground, from tar sands in Canada, and from deep water in the Gulf of Mexico. Chesapeake and its competitors were rushing to buy drilling rights to U.S. shale fields.¶ Such projects require vastly more capital to drill than conventional reservoirs. A single shale well can cost more than $9 million, U.S. companies say. But the global financial crisis was constricting capital for these expensive projects, so energy companies began looking for new sources of funding.¶ In 2009, China National Petroleum Corp., or PetroChina, bought 60% stakes in two oil-sands projects from a Canadian operator for about $1.9 billion. The following year, Sinopec committed $4.65 billion for a 9% stake in Alberta's Syncrude oil-sands project, one of Canada's biggest energy projects. Last summer, Cnooc agreed to pay $2.1 billion for OPTI Canada Inc., a producer that held a minority stake in a large oil-sands project. There was little political opposition in Canada.¶ Cnooc tiptoed back into the U.S. in 2009 with a small deal to provide development funding and receive a minority stake in some of Statoil ASA's Gulf of Mexico leases.¶ Oklahoma City-based Chesapeake began looking to Asia as a source of capital, says Mr. McClendon, the CEO. In 2010 it sold preferred shares to a unit of Singapore's Temasek Holdings Ltd. and Hopu Investment Management Co., a China-focused private-equity firm. Other investors with ties to the governments of South Korea and China followed with similar investments in Chesapeake.¶ The deals gave Chesapeake "the Good Housekeeping stamp of approval in Asia," says Mr. McClendon. Encouraged, Chesapeake approached Chinese oil companies, and Mr. McClendon developed a rapport with Mr. Fu, who he describes as "comfortable with Americans." Mr. McClendon says Cnooc executives were openly saying: "Since 2005, we haven't had a strategy to invest in the U.S., and we think now is the time to do it."¶ In 2010, Cnooc agreed to pay Chesapeake $1.08 billion for a one-third stake in 600,000 acres in the oil-rich Eagle Ford Shale formation in south Texas, and to spend another $1.08 billion on drilling there. The two executives struck a similar deal, worth nearly $1.3 billion, for stakes in Wyoming and Colorado fields.¶ Messrs. McClendon and Fu were intent on avoiding the kind of political opposition Cnooc faced five years earlier in its ill-fated bid for Unocal. The deals were structured so that Cnooc didn't get an ownership stake in Chesapeake itself and didn't control production.¶ "They didn't come over here and try to buy Chesapeake," Mr. McClendon says. "They came over here to buy a minority, nonoperating interest in an asset and not take the oil and gas home."

#### Failure to effectively negotiate the political climate means Congress and the public will backlash regardless of CFIUS --- scuttles deals --- empirically proven

MATTHEW R. BYRNE 6, J.D., The Ohio State University Moritz College of Law, expected 2007, Protecting National Security and Promoting Foreign Investment: Maintaining the Exon-Florio Balance, OHIO STATE LAW JOURNAL, 2006, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/67.4.byrne\_.pdf

CNOOC’s attempt to acquire Unocal occurred in the summer of 2005. After a much-publicized bidding and public relations war for control of Unocal between CNOOC and another major U.S. oil company, Chevron, Inc., CNOOC’s bid was ultimately defeated by political pressure applied by the United States Congress.8 Many members of Congress had publicly and forcefully expressed grave reservations about the possible national security repercussions if China’s state-owned company gained control of Unocal’s oil reserves.9 This debate led to discussion of not only national security, but also economic security.10 Even though CFIUS never initiated a review of the CNOOC transaction, let alone gave the transaction its approval, numerous members of Congress who feared that the Committee would not block the transaction began to suggest that changes to the Exon-Florio statute were in order as a means to address these concerns.11¶ This debate over changes to Exon-Florio resumed in early 2006, when DPW attempted to purchase Peninsular and Oriental Steam Navigation Co. (“P&O”), a British firm, in a $6.8 billion deal.12 With the acquisition of P&O, the Dubai-based company would have acquired operational control of certain terminals at six U.S. ports.13 The revelation that CFIUS had approved the deal set off a firestorm of criticism on Capitol Hill as members and leaders of both political parties in Congress denounced the merger.14 Though DPW and the Bush Administration agreed to conduct an additional fortyfive- day investigation under the CFIUS statute, the House Appropriations Committee voted 62–2 to effectively block the transaction, and under intense political pressure DPW agreed to transfer its U.S. ports interests to an American buyer.15 In the midst of the ports controversy, legislation was proposed in Congress not only to block the deal, but also to make substantial changes to the Exon-Florio statute in an attempt to strengthen the CFIUS review process.16 As of the time this Note goes to publication, committees in both the House and Senate have approved legislation that would modify the Exon-Florio statute.17 The full bodies have not yet approved these bills, their significant differences have not been reconciled in a conference committee, and the President has not signed a bill. Therefore, these bills’ proposed changes to the statute are still mere possibilities, not certainties.

#### Alternate causalities swamp the case --- a handful of other industries will still politicize the CFIUS national security standard

Susan W. Liebeler 93, a former chairman of the U.S rnational Trade Commission, is a partner in the law firm of Irell & Manella. William H. Lash III is an assistant professor at St. Louis University School of Law, Exon-Florio: Harbinger of Economic. Inte Nationalism? Regulation, Vol. 16, No. 1, Winter 1993, www.cato.org/pubs/regulation/regv16n1/reg16n1d.html

Many members of Congress have pressured CFIUS to use Exon-Florio more widely for reasons having nothing to do with national security. Sen. Exon suggested that CFIUS could block an acquisition by Tokuyama Soda because of Tokuyama's role in a soda ash cartel. House majority leader Richard A. Gephardt has suggested that Exon-Florio can be used to protect ``American competitiveness,'' whatever that means. Investment in South Africa was raised as a reason for stopping BTR's bid for Norton. Citing a disturbing pattern of labor policies in South Africa, Rep. Ronald V. Dellums warned President Bush that allowing BTR to expand its U.S. operations would risk ``a potential backlash from African countries with whom the United States has vital political and economic interests.''¶ The problem is that Exon-Florio is a potential tool for a future administration to use in implementing a policy of economic nationalism. The statute and implemention regulations neither define national security nor provide a list of industries exempt from Exon-Florio scrutiny. National security can be stretched fairly thin. In the past clothespin, peanut, pottery, shoe, pen, paper, and pencil manufacturers have tried to justify government protection by invoking national security. Under another administration national security could be interpreted to encompass economic security. Changes in the political philosophy of future administrations could certainly result in a change in the makeup of CFIUS and the way Exon-Florio is administered.

#### No impact --- CFIUS approves 99.9% of all transactions

Marchick 7 (David, partner at Covington & Burling, where he advises companies on the CFIUS process, “Swinging the Pendulum too Far: An Analysis of the CFIUS Process Post-Dubai Ports World,” Jan, http://www.nfap.net/researchactivities/studies/NFAPPolicyBriefCFIUS0107.pdf)

In the 18 years that Exon-Florio has been in force, there have been slightly more than 1700 CFIUS filings. Only one transaction has formally been blocked by the President — a 1990 aerospace investment by a Chinese company. From the data, one would think that CFIUS has merely been a rubber stamp, approving 99.9 percent of the acquisitions. The data belie actual practice, since tough restrictions are imposed by CFIUS as a condition for approval — typically through “mitigation” or “national security” agreements. In addition, parties typically will abandon a transaction in the face of a possible rejection rather than force the President to formally block a proposed acquisition. The public relations damage to a company if a President were to block an acquisition would be substantial.

#### Minimal effect on investment

Mark E. Plotkin 6, partner in Covington & Burling's Washington office, chairs the firm's Electronic Commerce and Information Technology practice, David M. Marchick, leading authority on the Exon-Florio amendment to the Defense Production Act of 1950, and David N. Fagan, associate - Covington & Burling, Foreign Investment Laws and National Security: Lessons from Exon-Florio, May, 2006, <http://www.cov.com/files/Publication/8fdb961b-d279-4e73-802e-e6de0555af86/Presentation/PublicationAttachment/2696e4d4-1d5f-4c9d-8589-f1b433c93009/oid14563.pdf>

The flexibility in the CFIUS process has produced at least three, related results. First, at a high-level, Exon-Florio appears to have had a minimal impact on the overall flow of FDI into the United States, which remains the leading recipient of FDI in the world. Indeed, over the last 17 years, only about ten percent of all FDI in the United States has been subject to even a minimal level of review by CFIUS, less than one percent of those transactions have been fully investigated, and only one transaction in history has been formally rejected by the President - a 1990 investment by a Chinese state-owned company in a U.S. defense contractor in the aviation sector.

#### Their evidence reflects a media bias --- most deals move through CFIUS without problems

Ting Xu 12, Bertelsmann Foundation, Dr. Thieß Petersen, Bertelsmann Stiftung, and Tianlong Wang, China Center for International Economic Exchanges (CCIEE), Cash in Hand, Bertelsmann Foundation, 2012, <http://www.bfna.org/sites/default/files/publications/Cash%20in%20Hand%20Second%20Edition%20final.pdf>

The lack of transparency surrounding the CFIUS process–particularly the lack of a clearly defined¶ industry blacklist or a set of credibility criteria guiding review of investments—has created¶ uncertainty among investors. This in turn may deter otherwise benign and mutually beneficial¶ FDI from China. However, **the emphasis on CFIUS and on the deterred deals by media is largely**¶ **overblown** and it taints the image that in general the U.S. wants to attract Chinese FDI. CFIUS has¶ covered 313 transactions from 2008–2010, only 16 of which involved Chinese acquirers compared¶ to 91 transactions of UK origin. That said, it is understandable that Chinese companies are under¶ heavier scrutiny, given that Japan over the same period had roughly the same number of covered¶ transactions, while the Netherlands and Finland combined had fewer than China (CFIUS 2011,¶ 18). These countries take a far more significant share in FDI in the U.S. than China (See Figure 9).¶ Even so, **most of the Chinese transactions covered by CFIUS moved forward without any problem.**¶Although CNOOC hit a wall in 2005 trying to acquire Unocal, its acquisition of offshore fields in¶ the Gulf of Mexico in 2009 was unopposed and the company successfully closed on a multi-billion¶ dollar investment in Chesapeake Energy Corp in 2010. While Huawei was not able to acquire¶ network gear maker 3Com, Lenovo’s acquisition of IBM’s personal computer division was cleared¶ by CFIUS. In 2011, the Chinese Aviation Industry General Aircraft Co. also successfully acquired¶ U.S. aircraft maker Cirrus after CFIUS review.

#### Ralls proves that Chinese firms are still inexperienced in grappling with the US’ regulatory environment --- Ralls didn’t give CFIUS advance notification

Thaddeus Rogers McBride 12, Sheppard, Mullin, Richter & Hampton LLP - Washington Office, “CFIUS Sued by Chinese Investors,” September 27, 2012, http://www.martindale.com/international-trade-law/article\_Sheppard-Mullin-Richter-Hampton-LLP\_1597126.htm

In its filing with the District Court, CFIUS noted that Ralls only submitted its notification to CFIUS upon the invitation of CFIUS itself.  **This may have put Ralls in a difficult situation from the outset** since CFIUS encourages voluntary notifications of - or, at the least, informal communications about - a transaction **before and not after it occurs**. CFIUS also explained that national security concerns were triggered by the proximity of Ralls’ proposed location to restricted air space relied upon by the U.S. military for training exercises.

## SCS Adv

#### South China Sea war won’t escalate

Scobell 1**,** phd, strategic studies institute,[ Dr, Andrew, “The Rise of China: Security Implications”, <http://www.sanford.duke.edu/centers/tiss/pubs/documents/TheRiseofChina.pdf>]

The South China Sea presents a very different kind of flashpoint --one quite unlikely to be the location of a major conflict. Most of the disputed islands there are uninhabited and remote, and rival claimants to the area all have very limited power projection capabilities. China, Vietnam, the Philippines, Malaysia, and Brunei are among the states that claim some or all of the reefs, islets, and atolls that dot the area. China has the largest and most insistent claim. Beijing is very concerned with the sea lanes of communication and the natural resources of the region. China is increasingly dependent on Middle East oil that is shipped via the Strait of Malacca and through the South China Sea. Moreover, China is keen on tapping the fisheries and any energy reserves discovered in the area. Other nonmilitary security threats to the area are piracy--some estimates put about half of the world's pirates operating in the region. Environmental issues could exacerbate regional tensions and possibly lead to limited hostilities, but these are unlikely to escalate or directly involve the United States in a war.

#### Economics prevent conflict escalation

Creehan 12 – Senior Editor of the SAIS Review of International Affairs (Sean, “Assessing the Risks of Conflict in the South China Sea,” Winter/Spring, SAIS Review, Vol. 32, No. 1)

Regarding Secretary Clinton’s first requirement, the risk of actual closure of the South China Sea remains remote, as instability in the region would affect the entire global economy, raising the price of various goods and commodities. According to some estimates, for example, as much as 50 percent of global oil tanker shipments pass through the South China Sea— that represents more than three times the tanker traffic through the Suez Canal and over five times the tanker traffic through the Panama Canal.4 It is in no country’s interest to see instability there, least of all China’s, given the central economic importance of Chinese exports originating from the country’s major southern ports and energy imports coming through the South China Sea (annual U.S. trade passing through the Sea amounts to $1.2 trillion).5 Invoking the language of nuclear deterrence theory, disruption in these sea lanes implies mutually assured economic destruction, and that possibility should moderate the behavior of all participants. Furthermore, with the United States continuing to operate from a position of naval strength (or at least managing a broader alliance that collectively balances China’s naval presence in the future), the sea lanes will remain open. While small military disputes within such a balance of power are, of course, possible, the economic risks of extended conflict are so great that significant changes to the status quo are unlikely.

#### Multiple factors make Asia war unlikely

Vannarith 10—Executive Director of the Cambodian Institute for Cooperation and Peace. PhD in Asia Pacific Studies, Ritsumeikan Asia Pacific U (Chheang, Asia Pacific Security Issues: Challenges and Adaptive Mechanism, <http://www.cicp.org.kh/download/CICP%20Policy%20brief/CICP%20Policy%20brief%20No%203.pdf>)

Some people look to China for economic and strategic interests while others still stick to the US. Since, as a human nature, change is not widely acceptable due to the high level of uncertainty. It is therefore logical to say that most of the regional leaders prefer to see the status quo of security architecture in the Asia Pacific Region in which US is the hub of security provision. But it is impossible to preserve the status quo since China needs to strategically outreach to the wider region in order to get necessary resources especially energy and raw materials to maintain her economic growth in the home country. It is understandable that China needs to have stable high economic growth of about 8 percent GDP growth per year for her own economic and political survival. Widening development gap and employment are the two main issues facing China. Without China, the world will not enjoy peace, stability, and development. China is the locomotive of global and regional economic development and contributes to global and regional peace and stability. It is understandable that China is struggling to break the so-called containment strategy imposed by the US since the post Cold War. Whether this tendency can lead to the greater strategic division is still unknown. Nevertheless, many observers agree that whatever changes may take place, a multi-polar world and multilateralism prevail. The reasons or logics supporting multilateralism are mainly based on the fact that no one country can really address the security issues embedded with international dimension, no one country has the capacity to adapt and adopt to new changes alone, and it needs cooperation and coordination among the nation states and relevant stakeholders including the private sector and civil societies. Large scale interstate war or armed conflict is **unthinkable** in the region due to the high level of interdependency and democratization. It is believed that economic interdependency can reduce conflicts and prevent war. Democracy can lead to more transparency, accountability, and participation that can reduce collective fears and create more confidence and trust among the people in the region. In addition, globalism and regionalism are taking the center stage of national and foreign policy of many governments in the region except North Korea. The combination of those elements of peace is necessary for peace and stability in the region and those elements are **present and being improved in this region.**

#### No impact

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

## Relations/Trade Adv

#### No US-China trade war

Daniel J. Ikenson 12, director of the Herbert A. Stiefel Center for Trade Policy Studies at the Cato Institute, "Trade Policy Priority One: Averting a U.S.-China "Trade War"" March 5, CATO Institute, Free Trade Bulletin no. 47, www.cato.org/publications/free-trade-bulletin/trade-policy-priority-one-averting-uschina-trade-war

An emerging narrative in 2012 is that a proliferation of protectionist, treaty-violating, or otherwise illiberal Chinese policies is to blame for worsening U.S.-China relations. China trade experts from across the ideological and political spectra have lent credibility to that story. Business groups that once counseled against U.S. government actions that might be perceived by the Chinese as provocative have changed their tunes. The term "trade war" is no longer taboo.¶ The media have portrayed the United States as a victim of underhanded Chinese practices, including currency manipulation, dumping, subsidization, intellectual property theft, forced technology transfer, discriminatory "indigenous innovation" policies, export restrictions, industrial espionage, and other ad hoc impediments to U.S. investment and exports.¶ Indeed, it is beyond doubt that certain Chinese policies have been provocative, discriminatory, protectionist, and, in some cases, violative of the agreed rules of international trade. But there is more to the story than that. U.S. policies, politics, and attitudes have contributed to rising tensions, as have rabble-rousing politicians and a confrontation-thirsty media. If the public's passions are going to be inflamed with talk of a trade war, prudence demands that the war's nature be properly characterized and its causes identified and accurately depicted.¶ Those agitating for tough policy actions should put down their battle bugles and consider that trade wars are never won. Instead, such wars claim victims indiscriminately and leave significant damage in their wake. Even if one concludes that China's list of offenses is collectively more egregious than that of the United States, the most sensible course of action — for the American public (if not campaigning politicians) — is one that avoids mutually destructive actions and finds measures to reduce frictions with China.¶ Nature of the U.S.-China Trade War¶ It should not be surprising that the increasing number of commercial exchanges between entities in the world's largest and second largest economies produce frictions on occasion. But the U.S.-China economic relationship has not descended into an existential call to arms. Rather, both governments have taken protectionist actions that are legally defensible or plausibly justifiable within the rules of global trade. That is not to say that those measures have been advisable or that they would withstand closer legal scrutiny, but to make the distinction that, unlike the free-for-all that erupted in the 1930s, these trade "skirmishes" have been prosecuted in a manner that speaks to a mutual recognition of the primacy of — if not respect for — the rules-based system of trade. And that suggests that the kerfuffle is containable and the recent trend reversible.1

#### China trade wars never escalate

Ding Dou 11, is associate professor in School of International Studies at Peking University, September 23, 2011, “Tire Trade Truncheon Looks More Threatening for the Future,” online: http://www.chinausfocus.com/finance-economy/tire-trade-truncheon-looks-more-threatening-for-the-future/

Trade battles are no surprise to China. As a rising and already mighty economic power in a short span of time, it has become accustomed to various trade disputes with other countries around the globe. As the Chinese Commerce Ministry claimed, China suffered the most anti-dumping lawsuits in 16 consecutive years up to 2010, and the most anti-subsidy lawsuits in five consecutive years. In its long-term struggle to deal with these trade disputes, Chinese government adopted a bilateral negotiation approach rather than letting complaints or appeals be dealt with by the multi-national WTO or other watchdogs. In tandem with its bilateral negotiations, China sometimes threatened retaliatory action against imports from the complainant. One outstanding example was the trade war between Japan and China in early 2001 when Japan took safeguard measures against three Chinese agricultural imports. As a tit-for-tat retaliation, China declared punitive tariffs on three Japanese industrial imports. Through a raft of subsequent discussion, both sides reached a rapprochement at the end of that year and cancelled punitive tariffs against each other. Eventually, this belligerant trade friction lasting for three hundred days was quelled, as if it never occurred at all.

#### China will back down at the last minute to avoid a trade war

**Arab Times 10** (15 October 2010, Retaliation In Reserve But China Seeks To Avoid Trade War With US, http://www.arabtimesonline.com/NewsDetails/tabid/96/smid/414/ArticleID/160765/t/Retaliation-in-reserve-but-China-seeks-to-avoid-trade-war-with-US/Default.aspx)

**Expect harsh words but no concrete retaliation** from Beijing if the United States labels China a currency manipulator in a report due later on Friday. **China is focused on trying to defuse tensions with the U**nited **S**tates by yielding some ground in a mini-burst of yuan appreciation and hopes that these efforts will still pay off, even if Washington brands it a manipulator. But should the United States ratchet up the pressure yet further by passing into law a bill that could penalise China, Beijing will not be so docile, Chinese analysts say.¶ “China is telling the United States that it is willing to help to resolve the problems. Things have not gotten out of hand yet and both sides still have some room to manoeuvre,” said Zhao Xijun, an economist at Renmin University in Beijing. President Barack Obama’s administration faces a deadline on Friday to decide whether to formally label China as a currency manipulator. A desire to look tough on “unfair” trade practices ahead of US congressional elections on Nov. 2, in which Obama’s fellow Democrats are battling to retain control of Congress, could tempt the administration to cite China for the first time in 16 years.¶ The Chinese commerce ministry made its feelings clear on Friday, warning the United States not to make a scapegoat of the yuan. Rhetoric aside, though, Beijing knows that the currency manipulator designation carries no specific consequences, apart from forcing Obama to seek consultations with China.¶ A different calculus would apply if the Senate approved a bill already passed by the House of Representatives that would allow the United States to slap duties on countries with undervalued currencies.¶ “It will be a very serious issue if the US legislation is approved by the Senate and signed by the president,” said Li Wei, a researcher under the commerce ministry.¶ For starters, China would challenge the US law at the World Trade Organisation — a case that some trade experts think China would be able to win.¶ Analysts say Beijing is also bracing for the law by considering possible retaliation, from imposing curbs on US businesses in China to the so-called nuclear option of dumping its holdings of US Treasuries.¶ Jump¶ But **Beijing is not going to jump the gun. It is first taking what it sees as pre-emptive steps to keep US anger from boiling over** — and to keep the legislation from becoming law.

#### Won’t cause recession or protectionism

Kroeber, 9/7/11 Nonresident Fellow, Foreign Policy, Brookings-Tsinghua Center

(“The Renminbi: The Political Economy of a Currency”, http://www.brookings.edu/papers/2011/0907\_renminbi\_kroeber.aspx)

International pressure to accelerate the pace of RMB appreciation is unlikely to have much impact. The basic reason is that other countries have very little leverage that they can bring to bear. In the 1970s, the United States was able to pressure Germany and Japan to appreciate their currencies because those countries were militarily dependent on America. (Moreover, the United States was able unilaterally to engineer a devaluation of the dollar by going off the gold standard in 1971.) Japan’s position of dependency forced it to accede to the Plaza Accord of 1985, which resulted in a doubling of the value of the yen over the next two years. China, being, geopolitically independent, has no incentive to bow to pressure on the exchange rate from the United States, let alone Europe or other nations such as Brazil. The only plausible threat is that failure to appreciate the RMB could lead to a protectionist backlash that would shut the world’s doors to Chinese exports. Yet this threat has so far proved empty: even after three years of the worst global recession since the Great Depression, trade protectionism has failed to emerge in the United States or Europe.

#### Chinese leaders don’t want war

Goldstein 9/1—professor emeritus of IR, American U. PhD in pol sci from MIT. Former visiting professor emeritus at Yale (Sept 2011, Joshua, Think Again: War, http://www.foreignpolicy.com/articles/2011/08/15/think\_again\_war)

What about China, the most ballyhooed rising military threat of the current era? Beijing is indeed modernizing its armed forces, racking up double-digit rates of growth in military spending, now about $100 billion a year. That is second only to the United States, but it is a distant second: The Pentagon spends nearly $700 billion. Not only is China a very long way from being able to go toe-to-toe with the United States; it's not clear why it would want to. A military conflict (particularly with its biggest customer and debtor) would impede China's global trading posture and endanger its prosperity. Since Chairman Mao's death, China has been hands down the most peaceful great power of its time. For all the recent concern about a newly assertive Chinese navy in disputed international waters, China's military hasn't fired a single shot in battle in 25 years.¶ "A More Democratic World Will Be a More Peaceful One."¶ Not necessarily. The well-worn observation that real democracies almost never fight each other is historically correct, but it's also true that democracies have always been perfectly willing to fight non-democracies. In fact, democracy can heighten conflict by amplifying ethnic and nationalist forces, pushing leaders to appease belligerent sentiment in order to stay in power. Thomas Paine and Immanuel Kant both believed that selfish autocrats caused wars, whereas the common people, who bear the costs, would be loath to fight. But try telling that to the leaders of authoritarian China, who are struggling to hold in check, not inflame, a popular undercurrent of nationalism against Japanese and American historical enemies. Public opinion in tentatively democratic Egypt is far more hostile toward Israel than the authoritarian government of Hosni Mubarak ever was (though being hostile and actually going to war are quite different things).

#### Trade doesn’t solve war

May 5**—**Professor Emeritus (Research) in the Stanford University School of Engineering and a senior fellow with the Institute for International Studies at Stanford University. Former co-director of Stanford University's Center for International Security and Cooperation. Principal Investigator for the DHS. (Michael, “The U.S.-China Strategic Relationship,” September 2005, http://www.ccc.nps.navy.mil/si/2005/Sep/maySep05.asp)

However important and beneficial this interdependence may be from an economic point of view, it is not likely to be a significant factor for strategic stability. Famously, economists before World War I sounded clear warnings that Europe had become economically interdependent to an extent that war there would ruin Europe. The war was fought nevertheless, Europe was duly ruined, and the ensuing political consequences haunted Europe to the end of World War II. Other cases exist. Modern war has been an economic disaster. Economic realities, including economic interdependence, play little role in whether a country goes to war or not. Economic myths certainly do and they usually affect strategic stability quite negatively. This is another reason why domestic perceptions matter: they determine which myths are believed

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