

The Volokh Conspiracy

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Tribe: Climate Cases Are Political Questions

Jonathan H. Adler • February 4, 2010 10:47 am

The Washington Legal Foundation has just released an interesting paper by Harvard law professor Laurence Tribe, co-authored with HLS student Joshua D. Branson and Shook, Hardy & Bacon attorney Tristan L. Duncan, arguing that public nuisance lawsuits against utilities for their alleged contributions to climate change should be considered non-justiciable political questions. They write:

global climate change raises such manifestly insuperable obstacles to principled judicial management that its very identification as a judicially redressable source of injury cries out for the response that the plaintiffs have taken their "petition for redress of grievances" to the wrong institution altogether.

Yet in a pair of recent high-profile cases, two U.S. Courts of Appeal allowed common law claims against carbon emitters and producers to proceed, holding that the nuisance doctrine sufficiently equips courts to redress the injuries caused by global climate change. Their holdings rested on two basic arguments. First, because the plaintiffs' cause of action—the common law of nuisance—is both familiar and quintessentially judicial in nature, the claims must be justiciable. Second, . . . climate change plaintiffs do not ask for an explicitly wholesale rewriting of national energy policy, so their claims are insufficiently legislative in character to be nonjusticiable. Both of these arguments reflect a deep misunderstanding of the political question doctrine and its foundations.

The paper also argues that lawsuits against gasoline retailers alleging fraud because fuel quantities dispensed at gas stations is affected by temperature involve a non-justiciable political question as well, albeit on different grounds. In the case of the fuel litigation, the Constitution expressly delegates to Congress the authority to fix weights and measures.

The paper concludes:

Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching. No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power—even where standing problems are at low ebb, as with the Motor Fuel case—then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine's bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

This is an interesting paper. I've been unpersuaded that the climate change cases are non-justiciable political questions, although I have also been unpersuaded that plaintiffs in the various climate cases (including *Massachusetts v. EPA*) satisfied the requirements of Article III standing.

One implication of the argument by Tribe et al. could be that the Court was correct to consider *Massachusetts v. EPA* insofar as it entailed questions of statutory interpretation and administrative law, but that courts should not hear nuisance and other cases that lack any statutory grounding. In *Mass v. EPA*, the Court could look to the text of the Clean Air Act and the EPA's decision to forego regulation. In the various nuisance cases, however,

there is no equivalent source of a judicially manageable standard for a decision, so courts should stay their hands.

Categories: Climate Change

36 Comments

1.

wws says:

I think that allowing them to proceed as legitimate legal questions can have some unexpected side benefits. Make the plaintiffs prove that Global Warming is actually happening and that the science can be trusted — so much has come out in the last 12 weeks that any decent lawyer should be able to blow the case out of the water with ease.

Start with the IPCC documents, move on from there.

Quote

February 4, 2010, 10:59 am

2.

zuch says:

wws: Make the plaintiffs prove that Global Warming is actually happening and that the science can be trusted — so much has come out in the last 12 weeks that any decent lawyer should be able to blow the case out of the water with ease.

This I gotta see. A civil jury definitively resolving deep scientific questions....

FWIW, your fraud allegations against Mann fell into a black hole.

Cheers,

Quote

February 4, 2010, 11:30 am

3.

Mark Buehner says:

Right, because Manns fellow profs at the university are an unbiased arbiter. Check here for *long* list of the omissions and outright misstatements of the 'investigation'. Most egregious was their utter failure to understand (much less address) what the famous 'trick' was and why it was a smoking gun, not even bothering the minimal research it would take in favor accepting a trivial semantic defense. Perhaps if they had bothered to so much as interview Wegman or McIntyre (who were hip deep in this controversy) they would have gotten at least a hint of a clue.

In short– the investigation utterly missed the boat on Mann's practice of slapping one type of data over another on a graph without documenting it (Mann's "trick" was to substitute thermometer data for tree ring data when the tree ring data didn't line up for recent years).

Quote

February 4, 2010, 11:44 am

4.

Jonathan H. Adler says:

zuch –

I didn't make such allegations. I merely reported that PSU opened an inquiry, and I've already added an update to my last ClimateGate post on the PSU findings.

JHA

Quote

February 4, 2010, 11:46 am

5.

arbitraryardvark says:

Haven't read the article. When plaintiffs' argument is that utility is causing global warming, and as such is an abatable nuisance, it makes sense to view that as a nonjusticiable political question. But a smarter plaintiff, motivated by global warming, can argue soot is getting on my window sill, nitrate emissions are becoming acid rain and changing the pH in my fish ponds, carbon monoxide threatens my children's health — if these things are both true and provable — and therefore there's an abatable nuisance under common law. If, for instance, this could be done in china, much of the global warming problem could go away. (and it can't, because China doesn't have a functioning anglo-american common law regime. Not sure about India, not even sure about Indiana.)

Quote

February 4, 2010, 11:54 am

6.

ShelbyC says:

zuch: FWIW, your fraud allegations against Mann fell into a black hole.

Yeah, they're down there right now havin' a big party with a bunch of excessive force allegations against cops :-).

Quote

February 4, 2010, 11:57 am

7.

Cornellian says:

The gas pumps I use all have stickers that mention something about the gas varying with temperature so I don't see any fraud or misleading advertising issue there.

Quote

February 4, 2010, 11:58 am

8.

Houston Lawyer says:

Doesn't a plaintiff have to suffer damages? If man-made global warming is a fact, the only damages I can predict would be that my air conditioning bill will go up. But if I raise the cost of electricity necessary to run my air conditioner by suing the utilities, that will surely fix everything.

Quote

February 4, 2010, 12:04 pm

9.

Brent Cooper says:

FOUR QUESTIONS ABOUT PROF. TRIBE'S DISCLAIMER:

Note the rather vague disclaimer at the start of the article:

"Tristan Duncan is counsel to several of the defendants involved in these cases, Laurence Tribe has consulted for some of those defendants, and Joshua Branson has assisted Professor Tribe in that

consultation”

Four questions for Prof. Tribe:

1. WHICH of the defendants, exactly, has Tribe consulted for on litigation?;
2. HOW MUCH MONEY has he been paid for this consulting work on litigation?;
3. HOW MUCH MONEY has he been paid by these defendants, or by anyone else, for the extra work involved in preparing this paper?; and
4. WHAT INFLUENCE have the defendants exercised on the content of this paper (e.g., review and commenting on drafts, consent required to publish, etc.)?

Cass Sunstein was much more forthcoming in revealing the terms on which his scholarly work on punitive damages had been funded by Exxon, and even so he was widely criticized, most notably in a Supreme Court opinion:

<http://www.law.com/jsp/article.jsp?id=1202422809951>

<http://blogs.wsj.com/law/2008/07/07/justice-souter-and-the-mystery-of-footnote-17/tab/article/>

http://www.abajournal.com/news/article/souters_great_mystery_footnote_disses_exxon_funded_research/

http://www.iq.harvard.edu/blog/sss/archives/2008/06/exxontainted_re.shtml

Tribe hasn't even admitted to getting a penny for the work which led to this article. It will be interesting to see what scrutiny he receives. Hopefully he'll promptly answer the questions set out above.

Quote

February 4, 2010, 12:07 pm

10.

Mark Buehner says:

Doesn't a plaintiff have to suffer damages?

If my zebra farm fails because Walmart went green and reversed global warming, do I have a case?

Quote

February 4, 2010, 12:12 pm

11.

Mike McDougal says:

Josh Branson is a nice guy. He was also a National Debate Tournament champion in college.

Quote

February 4, 2010, 12:25 pm

12.

Mikee says:

Gasoline is generally stored underground, in extremely large tanks that equilibrate their contents to ground temperatures. So other than the difference in, say, Minnesota in summer vs winter, which might be accounted for in the pumps' function already, the volume difference in pumping at 7:00am vs 4:00pm would seem to me to be slight to the point of insignificance. I would suppose the amount is likely less than the several drops that don't go down the inlet tube and end up escaping into the environment.

Likewise, any defendant in a climate change suit might just point at the sun and say, "Sure, my factory emits CO2. I am willing to pay the entire proportion of climate change caused by anthropogenic, as opposed

to natural, climate change." Pennies on the million-dollar judgement, would be my conclusion.

Quote

February 4, 2010, 12:32 pm

13.

Mikee says:

And even less than pennies per million, if the defendant calculates his company's CO2 contribution to AGW vs all human sources of CO2, which would seem only fair to me.

But then again, I am not a lawyer. So I am willing to be corrected on both examples by those who know the precedents and the law better than me.

Quote

February 4, 2010, 12:35 pm

14.

Brent Cooper says:

Sure, Josh Branson's a nice guy — but don't forget that he's also "the ultimate competitor" — "he's universally hailed as one of the most concise and effective communicators."
<http://georgetowndebateseminar.blogspot.com/2008/12/josh-branson.html>

His philosophy toward argumentation is somewhat interesting (reminds me of Nietzsche):
"I'm ambivalent about the 'truth' of almost every argument"
<http://judgephilosophies.wikispaces.com/Branson,+Josh>

Quote

February 4, 2010, 12:54 pm

15.

zuch says:

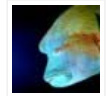
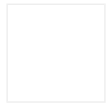
Mark Buehner: Right, because Manns fellow profs at the university are an unbiased arbiter. Check here for long list of the omissions and outright misstatements of the 'investigation'.

Rrrrrrrriiggghhtt. McIntyre is an impartial jury. And I'm the king of Rome.

Mark Buehner: Most egregious was their utter failure to understand (much less address) what the famous 'trick' was and why it was a smoking gun, not even bothering the minimal research it would take in favor accepting a trivial semantic defense.

From the report:

Allegation 1: Did you engage in, or participate in, directly or indirectly, any actions with the intent to suppress or falsify data?
Finding 1. After careful consideration of all the evidence and relevant materials, the inquiry committee finding is that there exists no credible evidence that Dr. Mann had or has ever engaged in, or participated in, directly or indirectly, any actions with an intent to suppress or to falsify data. While a perception has been created in the weeks after the CRU emails were made public that Dr. Mann has engaged in the suppression or falsification of data, there is no credible evidence that he ever did so, and certainly not while at Penn State. In fact to the contrary, in instances that have been focused upon by some as indicating falsification of data, for example in the use of a "trick" to manipulate the data, this is explained as a discussion among Dr. Jones and others including Dr. Mann about how best to put together a graph for a World Meteorological Organization (WMO) report. They were not falsifying data; they were trying to construct an understandable graph for those who were not experts in the field. The so-called "trick"1 was nothing more than a statistical method used to bring two or more different kinds of data sets together **in a legitimate fashion by a technique that has been reviewed by a broad array of peers in the field.**



Included in these reviews is the NRC report.

Mark Buehner: Perhaps if they had bothered to so much as interview Wegman or McIntyre (who were hip deep in this controversy) they would have gotten at least a hint of a clue.

As they stated, they reviewed the corpus of complaints, blogs, *etc.* in synthesizing their allegations. Why should they interview Wegman or McIntyre? What they have said was already on the record.

Mark Buehner: In short– the investigation utterly missed the boat on Mann’s practice of slapping one type of data over another on a graph without documenting it (Mann’s “trick” was to substitute thermometer data for tree ring data when the tree ring data didn’t line up for recent years).

This “without documenting it” nonsense is simply false. They described in the *Nature* article what they did. See here:

“Declines” in the MXD record. This decline was ~~hidden~~ written up in *Nature* in 1998 where the authors suggested not using the post 1960 data. Their actual programs (in IDL script), unsurprisingly warn against using post 1960 data.

Here’s McIntyre’s kvetching:

What I do expect is that the authors not make **untrue statements** that can be easily disproven. (At least make them hard to disprove.)

Point 1. Penn State President Spanier is quoted as saying:

“I know they’ve taken the time and spent hundreds of hours studying documents **and** interviewing people and looking at issues from all sides,” Spanier said.

The only interviews mentioned in the report (aside from Mann) are with Gerry North and Donald Kennedy, editor of *Science*. [Since they are required to provide a transcript or summary of all interviews, I presume that the Inquiry did not carry out any other interviews.]

First of all, the *report* doesn’t say that (I’ll assume *arguendo* that Spanier did, but it’s not in the report). McIntyre should criticise the report, not Spanier. Secondly, he doesn’t say they conducted “hundreds of hours of *interviews*”.

Point 3. The Report states:

The allegation inquires about whether Dr. Mann seriously deviated from accepted practices within the academic community for proposing, conducting, or reporting research or other scholarly activities. In 2006, similar questions were asked about Dr. Mann and these questions motivated the National Academy of Sciences to undertake an in depth investigation of his research.

Similar questions may have been asked in 2006 but the National Academy of Sciences panel did not carry out an “in depth” investigation into whether Mann had “deviated from accepted practices within the academic community for proposing, conducting, or reporting research or other scholarly activities.” Ralph Cicerone of NAS, together with Gerry North, drew up terms of reference that specifically excluded such an investigation.

As I’ve explained here, PSU was looking into whether Mann had been impolite to the anti-AGW folks. And that investigation is continuing (although I suspect that, if they’re reasonable and consider common academic behaviour, they’ll find any nasty comments in e-mail far below what passes for ordinary in many academic disputes).

The NRC report looked at the science (and gave it a pass); the PSU report looked at his behaviour WRT to RA-10 (and specifically listing their areas of inquiry under RA-10, mentioning the NRC review in passing, and declining to get into the depths of the scientific disputes). And in fact, this inquiry is what the NCR panel declined to go into, as noted (strangely enough, correctly) by McIntyre. The two reviews looked at different issues. Neither one is helpful to McIntyre.

The rest is MOTS kvetching.

Pretty lame stuff, wouldn't you say?

Cheers,

Quote

February 4, 2010, 1:21 pm

16.

Kirk Parker says:

Given the fact that retail gasoline is universally priced in gallons rather than BTU's, do we even have to go into technical details of how much temperature variation does or does not occur?

Quote

February 4, 2010, 1:24 pm

17.

zuch says:

Jonathan H. Adler: zuch –

I didn't make such allegations. I merely reported that PSU opened an inquiry, and I've already added an update to my last ClimateGate post on the PSU findings.

I was responding to WWS, not you. But I meant people like WWS in general, who seem to be convinced that Mann committed fraud, based on his apparent desire for trials and ~~burni~~... ummm, "punishment".

Cheers,

Quote

February 4, 2010, 1:29 pm

18.

Mark Buehner says:

The so-called "trick"¹ was nothing more than a statistical method used to bring two or more different kinds of data sets together in a legitimate fashion by a technique that has been reviewed by a broad array of peers in the field.

I've never heard of a peer reviewed process whereby one type of data abruptly ends and is made to look to have picked up by another type as though they were an unbroken series, certainly without explanation. Moreover, an HONEST scientist without an agenda might wonder why tree ring proxies are valid for the last x hundred years but not the last seventy! Wouldn't that be a more fruitful line of inquiry as opposed to figuring out how to 'hide the decline'?

Instead, here's all Mann was thinking about:

So, if we show Keith's series in this plot, we have to comment that "something else" is responsible for the discrepancies in this case. [Perhaps Keith can help us out a bit by explaining the processing that went into the series and the potential factors that might lead to it being "warmer" than the Jones et al and Mann et al series?? We would need to put in a few words in this regard] Otherwise, the skeptics have an field day casting doubt on our ability to understand the factors that influence these estimates and, thus, can undermine faith in the paleoestimates. I don't think that doubt is scientifically justified, and I'd hate to be the one to have to give it fodder! (Mann Sep 22, 0938018124.txt)

There's the signs of an open minded scientist...

As they stated, they reviewed the corpus of complaints, blogs, etc. in synthesizing their allegations. Why should they interview Wegman or McIntyre? What they have said was already on the record.

They could interview Santa Claus and Roger Clemens. Why bother interviewing the guy that initially discovered the deception and was subsequently denied in his FOIA requests? Gee, that's a tough question. Has anyone been more central to this controversy (outside of Jones) than McIntyre? If they HAD payed attention to his postings on the record perhaps this report would have been better than a clumsy white wash.

"This "without documenting it" nonsense is simply false. They described in the Nature article what they did."

Forget Nature– they certainly didn't explain in in the IPCC Third Assessment Report! Are scientists generally expected to dig through every published work in the last 20 years to read a simple graph? The IPCC assessment is obviously the hugest climate project, perhaps ever. There is absolutely no excuse for not documenting why the Briffa data suddenly becomes unreliable after 1960, especially when you dont know the answer to that question!

Pretty lame stuff, wouldn't you say?

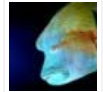
Absolutely, but perhaps not how you mean. The substance of this entire issue is why Mann, Briffa, and Jones feel entitled to toss out data that doesn't agree with them and keep data that does from the same dataset, without explanation.

Quote

February 4, 2010, 2:27 pm

19.

zuch says:



Mark Buehner: I've never heard of a peer reviewed process whereby one type of data abruptly ends and is made to look to have picked up by another type as though they were an unbroken series, certainly without explanation.

Then perhaps you should reconsider your assumptions in that question. But FWIW, the *Mann* paper *was* peer-reviewed (and re-reviewed), so maybe your characterisation of the situation is not quite accurate (or your experience is limited).

Mark Buehner: Moreover, an HONEST scientist without an agenda might wonder why tree ring proxies are valid for the last x hundred years but not the last seventy!

True, but that's a different inquiry.

But no matter. The data are pretty much the same with and without tree ring proxies. You can read more on tree ring proxies here (particularly at comment #4).

Mark Buehner: Why bother interviewing the guy that initially discovered the deception and was subsequently denied in his FOIA requests?

What "deception"?

Mark Buehner:

[zuch]: "This "without documenting it" nonsense is simply false. They described in the Nature article what they did."

Forget Nature– they certainly didn't explain in in the IPCC Third Assessment Report! Are scientists generally expected to dig through every published work in the last 20 years to read a simple graph?

Yes. That's how you do science. GLIU.

Mark Buehner: The substance of this entire issue is why Mann, Briffa, and Jones feel entitled to toss out data that doesn't agree with them and keep data that does from the same dataset, without explanation.

They explained it. You just don't want to listen (or are incapable of it).

Cheers,

Quote

February 4, 2010, 3:10 pm

20.

Anonsters says:



Mark Buehner: Right, because Manns fellow profs at the university are an unbiased arbiter.

Because Climateaudit is an unbiased arbiter....

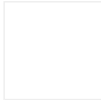
[Edit: Doh; zuch beat me to it.]

Quote

February 4, 2010, 4:53 pm

21.

Nunzio says:



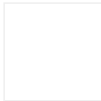
Perhaps counter-claims could be filed against the Plaintiffs in these suits for nuisance. The energy supplied by utilities so that they can purse these lawsuits is contributing to climate change.

Quote

February 4, 2010, 5:44 pm

22.

required says:



Mikee:

Likewise, any defendant in a climate change suit might just point at the sun and say, "Sure, my factory emits CO2. I am willing to pay the entire proportion of climate change caused by anthropogenic, as opposed to natural, climate change." Pennies on the million-dollar judgement, would be my conclusion.

The US doesn't work liability that way. If a defendant has made *any* contribution they are potentially liable for all the damages. The standard is based on making the injured party whole, not on allocating "fair" portions of liability. One can argue that this is a poor standard, but it is the standard which has been adopted and in place since before there was a US and it does have it's advantages. You might want to look at how Superfund liability is handled to see how something similar has been handled.

Brent Cooper:

CONTEXT:

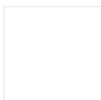
His philosophy is one that is standard for debate judges. In judging debates one is not judging the issues, but the skills of the debaters in presenting their case and responding to the opposition. If one team manages to find evidence that the sky is orange and the other team does not refute it (even by saying "look out the window") for the purposes of that debate many judges are willing to accept that the sky is orange. It's an artifact of the format, competitive debate is not about determining the "truth" of issues but the skill of the debaters.

Quote

February 4, 2010, 5:45 pm

23.

Steve says:



You might want to look at how Superfund liability is handled to see how something similar has been handled.

But Superfund is statutory, based on the principle that there's going to be a cleanup and so someone has to pay for it. Congress hasn't enacted a comprehensive remedy scheme in this instance.

I am skeptical of Tribe's argument. There are many, many subjects on which a comprehensive solution by Congress would be the best option, but the courts continue to address them through individual cases unless and until Congress preempts the field.

Quote

February 4, 2010, 6:29 pm

24.

TokyoTom says:



Jon, I too am "unpersuaded that the climate change cases are non-justiciable political questions", but I would expect a little more insight from you here.

Absurdly, the Washington Legal Foundation, which says it is interested in free markets and limiting government, is in essence here calling on courts to carve out from our traditional common law system of redress a whole array of questions that is says MUST be addressed only by our federal government. Right, we make government smaller and markets more free by insisting that only our federal government can "solve" our problems.

What we have here instead is subtle but nevertheless discernable — and anti-liberatrian, anti-federalist and anti-free-market rent-seeking by utilities and fossil fuel firms, with Tribe acting as paid spokesman. This is the kind of deliberate obfuscation of the public debate that we get from corporate speech, itself a legacy of the grant of limited liability, legal personhood, unlimited life etc. that continues to allow elites to shift risks to the public, and to come out ahead in the ensuing battle to use governments to contain the problem.

Let the corporations do their battles in court on the merits of causation, on which the plaintiffs have an extremely difficult burden to carry, or on the politicized use by government officials of public nuisance, as opposed to private nuisance claims.

TT

—

<http://mises.org/Community/blogs/tokyotom/default.aspx>

http://twitter.com/Tokyo_Tom

"The first principle is that you must not fool yourself — and you are the easiest person to fool."

Richard Feynman

Quote

February 5, 2010, 12:21 am

25.

Ricardo says:

required: The US doesn't work liability that way. If a defendant has made any contribution they are potentially liable for all the damages.

I'm not a lawyer but isn't it the case you have to show one party was at least 50% responsible in order to be liable. Wikipedia tells me McDonald's was held by the jury in the "coffee case [Liebeck]" to be 80% responsible for Liebeck's burns. From what I recall in the lawsuit over the first WTC bombing against the Port Authority (the owner of WTC), a jury held they were more than 50% responsible for the bombing through negligent security measures.

Wouldn't similar reasoning apply here? That any defendant or group of defendants would have to be at least 50% responsible for climate change by a preponderance of evidence?

Steve: There are many, many subjects on which a comprehensive solution by Congress would be the best option, but the courts continue to address them through individual cases unless and until Congress preempts the field.

Again, as a non-lawyer, does it necessarily make a difference if Congress gets involved unless it explicitly prohibits certain kinds of lawsuits? Laws and regulations surrounding prescription drugs don't appear to have stopped product liability lawsuits against pharma companies even if they involve FDA-approved drugs. As I understand it, it was only an explicit prohibition on gun lawsuits that preempted negligence lawsuits against gun manufacturers.

Quote

February 5, 2010, 1:12 am

26.

Mike McDougal says:

Brent Cooper: Four questions for Prof. Tribe:

1. WHICH of the defendants, exactly, has Tribe consulted for on litigation?;
2. HOW MUCH MONEY has he been paid for this consulting work on litigation?;
3. HOW MUCH MONEY has he been paid by these defendants, or by anyone else, for the extra work involved in preparing this paper?; and
4. WHAT INFLUENCE have the defendants exercised on the content of this paper (e.g., review and commenting on drafts, consent required to publish, etc.)?

Does it matter? Assume the worst. How does that change how you interpret the substance of the article?

Quote

February 5, 2010, 2:53 am

27.

JSinAZ says:

Mike McDougal: "Does it matter? Assume the worst. How does that change how you interpret the substance of the article?"

It does not. However, this is Alinsky step one — identify and isolate your opponent. I expect the charges of puppy eating and child molestation will follow; that would be part of the marginalization of the message.

Think of the political AGW movement as a religious phenomena and much becomes clear — the moral path the destroying your enemies is very easy, since the righteous are saving the planet. All must be forced to listen to the Good News, and tithe to the church of the IPCC.

Unfortunately, they don't care that their church is founded on a fraud. At this point, observers that either criticize their practice of science as unsound (eg. the Hockey Stick) or that the measures they wish to take will hurt more than they help (eg. Bjorn Lomborg), are the equivalent of infidel or apostates and are treated as such.

Meanwhile, what's a few gross errors in the IPCC reports? A wild-assed number about the Amazon take from a World Wildlife Fund tract and republished as researched fact? A completely made-up report about glaciers of central Asia melting by 2035? These are things to be seized upon by the Oil Company Scum and their greedy selfish minions to discredit the True Knowledge of AGW. Minions like Tribe.

Quote

February 5, 2010, 9:15 am

28.

Sarcastro says:



JSinAZ: Think of the political AGW movement as a religious phenomena and much becomes clear

I applied this algorithm to some other ideals. It works to discredit any idea! The laffer curve, racism, gays in

the military. If you see them as religious phenomena it all becomes clear.

Follow that up with some straw men and sample bias and I can believe whatever I want, facts bedamned!
Just like a religious phenominon!

Quote

February 5, 2010, 10:10 am

29.

Mark Buehner says:

They explained it. You just don't want to listen (or are incapable of it).

They explained it. That doesn't justify it.

Quote

February 5, 2010, 10:51 am

30.

Mark Buehner says:

Because Climateaudit is an unbiased arbiter....

Is someone suggesting Climateaudit do the investigation?

Quote

February 5, 2010, 10:52 am

31.

Mark Buehner says:

But no matter. The data are pretty much the same with and without tree ring proxies.

SO WHY INCLUDE IT? Is this brain surgery? How many planks of these studies need to shown to be rotted before the 'well there is so much other evidence' excuse becomes farce?

Yes. That's how you do science. GLIU.

Oh really?! So when you publish papers it isn't important to document your work? I think its pretty obvious we're done here. The 'that's how you do science' excuse is an argument to authority and a damn sad one. That isn't how you do science, and more and more actual working scientists are starting to gag over this kind of behavior, because it dragging them into the mud too. No, most science is *not* done with hiding and deception and misdirection and stonewalling and corrupting the peer review process to your own ends. Most science doesn't rely on advocacy groups to provide its study and then claim its a mountain of peer reviewed work. GOOD science stands on its own, and doesn't bother 'padding' its argument with bad arguments, because real science is incontrovertible on its face. If your proof is SO compelling that the 'debate is over', why in gods name do you need to play ANY games with tree rings or datasets or glacier/amazon/netherlands nonsense?!

Quote

February 5, 2010, 11:01 am

32.

JSinAZ says:

"I can believe whatever I want, facts bedamned!"

That does pretty accurately summarizes the AGW argument. Thank you for the precision and clarity with which you have dissected the situation. Bravo!

Quote

February 5, 2010, 1:16 pm

33.

Brent Cooper says:

Answering Mike McDougal (2:53 a.m.), obviously how much, and by whom, Tribe has been paid to develop these arguments — both during litigation and on this paper specifically — matters to understanding to what degree, if any, he may have skewed his analysis away from the baseline of scholarly neutrality. Remember, Cass Sustein provided much more disclosure than Tribe has provided — Tribe hasn't actually even admitted to have gotten paid anything (his wording leaves open the possibility that he's done this pro bono). What is Tribe hiding?

Quote

February 5, 2010, 1:21 pm

34.

Mark Buehner says:

All he had to do was cut off Briffa's inconvenient data at the point where the decline started, in 1961, and replace it with actual temperature readings, which showed an increase.

On the hockey stick graph, his line is abruptly terminated — but the end of the line is obscured by the other lines.

'Any scientist ought to know that you just can't mix and match proxy and actual data,' said Philip Stott, emeritus professor of biogeography at London's School of Oriental and African Studies.

'They're apples and oranges. Yet that's exactly what he did.'

Since Warmergate-broke, some of the CRU's supporters have claimed that Jones and his colleagues made a 'full disclosure' of what they did to Briffa's data in order to produce the hockey stick.

But as McIntyre points out, 'contrary to claims by various climate scientists, the IPCC Third Assessment Report did not disclose the deletion of the post-1960 values'.

On the final diagram, the cut off was simply concealed by the other lines.

By 2007, when the IPCC produced its fourth report, McIntyre had become aware of the manipulation of the Briffa data and Briffa himself, as shown at the start of this article, continued to have serious qualms.

McIntyre by now was an IPCC 'reviewer' and he urged the IPCC not to delete the post-1961 data in its 2007 graph. 'They refused,' he said, 'stating this would be "inappropriate".'

Read more: <http://www.dailymail.co.uk/news/article-1235395/SPECIAL-INVESTIGATION-Climate-change-emails-row-deepens-Russians-admit-DID-send-them.html#ixzz0ehDxrdDQ>

Sounds like a fairly good excuse to talk to McIntyre if you're investigating Mann's slight of hand in the IPCC report. Unless, of course, you aren't looking for the truth.

Quote

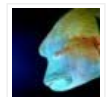
February 5, 2010, 3:41 pm

35.

zuch says:

Mark Buehner:

[zuch]: Yes. That's how you do science. GLIU.



Oh really?! So when you publish papers it isn't important to document your work?

You misstate what I said.

If you scroll back, you see that the comment was about summary papers. You cite other papers, and let people Go Look It Up to see the details. You *don't* just pile the papers one on top of another, add a cover letter, and publish. Citations to the original work are sufficient. Then it's incumbent on the reader to GLIU.

Cheers,

Quote

February 6, 2010, 12:41 pm

36.

wws says:

It will be years before the words "peer review" can ever be used again without guffaws breaking out from all listening — not only did the Climategate e-mails detail the process by which "peer review" was degraded and then completely perverted by the warmists, we now have a host of "peer reviewed" IPCC claims which have turned out to have been based on nothing but fantasy.

Himalayan glaciers melting by 2035? That was in a "peer reviewed" paper by the IPCC! Oh but never mind, we just made it up because we thought it would be politically useful, and no one ever bothered to actually do any real studies.

40% of the amazon in danger due to Global Warming? That was in a "peer reviewed" paper too! Oh but never mind, there were never any actual studies behind that one either, we just copied it from a WWF mailer because it looked good.

And now today, directly from the 2007 benchmark IPCC report, the Holy Scripture of the AGW movement, scrutiny is falling on a claim that global warming could cut rain-fed north African crop production by up to 50% by 2020, a remarkably short time for such a dramatic change. The claim has been quoted in speeches by Rajendra Pachauri, the IPCC chairman, and by Ban Ki-moon, the UN secretary-general.

This weekend Professor Chris Field, **the new lead author of the IPCC's climate impacts team**, told The Sunday Times that he could find nothing in the report to support the claim. The revelation follows the IPCC's retraction of a claim that the Himalayan glaciers might all melt by 2035.

<http://www.timesonline.co.uk/tol/news/environment/article7017907.ece>

It's hard to even imagine the intellectual gyrations it must take to continue to convince oneself that the AGW Religion is still the True Faith, especially as huge chunks of it keep crashing to the ground daily.

Quote

February 6, 2010, 7:22 pm