



The Daily Dish

# Policy by Legal Settlement

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A new report released on Tuesday shows that despite the Obama Administration's promise to be the “most transparent administration in history” the administration is not so transparent after all. The Brennan Center for Justice found that the Justice Department alone has kept at least 74 opinions, memos, and letters on a variety of topics private. According to the Washington Post, 42 percent of all international agreements and treaties made between 2004 and 2014 still have never been published. Further, the Washington Post states the Obama Administration has set records for stonewalling and rejecting Freedom of Information requests and has even used an obscure law to prosecute leakers.

Globalization is facing some tough headwinds during this election cycle with both major party nominees rejecting calls for global trade. In an op-ed released in the Washington Post on Monday, American Action Forum President Doug Holtz-Eakin lays out five things that can be done to get globalization back on track. Holtz-Eakin states that the candidates, as well as many of those in the public, seem to be dismissing the many world-wide contributions globalization has provided over the past two decades, including reducing poverty in developing nations as well as improving productivity and the standard of living in developed nations.

## *Eakinomics: Policy by Legal Settlement*

By now nearly everyone is aware that Volkswagen cheated on the emissions testing of its diesel cars. Specifically, it developed and installed software that detected when a test was being run and dialed back the engine performance to keep emissions under the legal limits (especially in California). When run outside of the testing environment, engine performance and emissions were both much higher. This is wrong and should be punished.

The Wall Street Journal is reporting that “Nearly half a million Volkswagen owners in the U.S. are close to being able to sell back polluting, diesel-powered vehicles to the German auto maker, after a federal judge indicated Tuesday he’s likely to approve a \$14.7 billion deal within the next week. That makes sense. Among the harms were consumers misled into purchasing cars that did not perform as advertised. But that is not all that is in the deal, “which includes up to \$10.03 billion for consumers and \$4.7 billion for *environmental remediation and investment in electric-vehicle technology*” (emphasis added).

It makes sense that Volkswagen faces punitive damages for violating environmental laws. If \$4.7 billion of such damages was deposited in the Treasury and Congress and the president chose to appropriate those funds for environmental remediation and investment in electric-vehicle technology, it would be business as usual in the policymaking and legislative worlds. You will notice, however, that two very important steps are being bypassed. First, the money will not be deposited into the Treasury. Instead, it will flow from Volkswagen to whoever is engaged in the remediation and investment activities. Second, Congress will get no say at all. Instead, the executive agencies are setting the policy.

Taken at face value, this is simply wrong. One may not be a big fan of Congress right now — its efficiency in dealing with real problems has not been overwhelming — but it is still in the Constitution and the judicial and

executive branches shouldn't gang up to bypass it. The second thing to notice is that it disguises the scale and scope of government intervention in the private sector. And, finally, it tilts the playing field toward electric vehicles.

In all three cases, one must wonder: why is this okay?