# Round 8 CEDA – ASU RV vs. Minnesota SS (Neg)

## 1NC

### 1

#### Text: The United States Federal government should remove the federal government liability waiver for Tribal Energy Resource Agreements.

#### Reinstating liability avoids politics and solves energy development

THEIR AUTHOR Kronk, assistant professor of law – Texas Tech University, ‘12

[Elizabeth Ann, 29 Pace Envtl. L. Rev. 811]

B. An Alternative Possibility for Reform: Reinstate Federal Liability under the TERA Provisions

**As an alternative,** a second recommendation for **reform**ing the existing **TERA** provisions would call **for reinstatement of federal liability** so as **to increase tribal participation** in TERAs. **This** second proposal **is** also **an improvement over the status quo in that it will** (with any luck) **alleviate tribal concerns related to the federal government's responsibility** to tribes. **Such a revision would** arguably be **consistent with the** federal government's **trust responsibility** to tribes. As "the ability to hold the federal government liable for breach is at the heart of its trust obligation toward tribes," n163 the waiver of federal governmental liability [\*856] seems to be inconsistent with this federal trust obligation. **Removing the waiver would** also **allay fears that "private entities** such as energy companies **will** exploit tribal resources and **take unfair advantage of tribes**." n164 This is **because the federal government would** likely **maintain a more active role** in energy development **under TERAs**. Moreover, this proposal would likely be consistent with the federal viewpoint, such as the one expressed by Senator Bingaman, which envisions the federal government maintaining a significant role in Indian country.¶ **Congress** apparently **intended** the **TERA** provisions **to be consistent with the federal** government's **trust responsibility** to tribes. For example, one subsection of the TERA provisions refers specifically to the federal trust responsibility, affirming that the trust responsibility remains in effect. This provision mandates that the Secretary "act in accordance with the trust responsibility of the United States relating to mineral and other trust resources ... in good faith and in the best interests of the Indian tribes." It also notes that with the exception of the waiver of Secretarial approval allowed through the TERA framework, the Indian Energy Act does not "absolve the United States from any responsibility to Indians or Indian tribes, including ... those which derive from the trust relationship." n165¶ In addition to apparent consistency with the federal trust responsibility, **federal liability** under the TERA provisions **is appropriate given that the federal government maintains a significant role in** **the development of energy within Indian country** even under the TERA agreements. For example, under the TERA provisions, the federal government retains "inherently Federal functions." n166 Moreover, as discussed above, the federal government maintains a significant oversight role through the existing TERA provisions because it has a mandatory environmental review process which tribes must incorporate into TERAs. The failure to relinquish oversight to tribes ensures that the federal government will maintain a strong management role, even after a tribe enters into a TERA with the Secretary of the [\*857] Interior. **Given that the federal government maintains a substantial oversight role** under the TERA provisions (which it views as consistent with its federal trust responsibility), **the federal government should remain liable for decisions made under TERAs**. In addition to the strong administrative role that the federal government would still play under approved TERAs, it also maintains an important role as a tribal "reviewer." Under the TERA provisions, the federal government must review the tribe's performance under the TERA on a regular basis. n167 Although the existing TERA provisions certainly mark an increased opportunity for tribes to participate in decision-making related to energy development within Indian country, the federal government's role should remain significant. The proposal to reinstate federal liability under the TERA provisions, therefore, recognizes the significant role that the federal government still plays under the existing TERA provisions.¶ If Senator Bingaman's viewpoint is any indication, Congress may be unwilling to relinquish federal oversight over energy development within Indian country. As a result, the first proposal for reform discussed above may prove to be unacceptable to Congress. Assuming this is the case, this second proposal allows the federal government to maintain an oversight role in Indian county and reinstates the federal government's liability. Based on the legislative history detailed above, **reinstatement of the federal government's liability would likely address many of the concerns raised by tribes regarding the existing TERA provisions**. In this way, this second proposal would also constitute an improvement over the status quo.¶ VI. CONCLUSION¶ For a variety of reasons, America needs to increase energy production from domestic sources. Indian tribes may prove the perfect partners for the federal government to achieve its goal of increased domestic production of energy. These tribes have the available natural resources, and experience managing these resources, to make them excellent partners. **Increased energy** [\*858] **production within Indian country** would serve federal interests and tribal interests, as such endeavors would increase tribal sovereignty and self-determination while promoting economic diversification within Indian country. **Congress recognized this** potentially beneficial relationship with tribes **when it passed the TERA provisions** of the Energy Policy Act of 2005. The existing **TERA provisions arguably** "**streamline**" **the process** of energy production within Indian country. Under these provisions, tribes that enter into a TERA with the Secretary of Interior may be relieved of Secretarial oversight in certain regards. Despite the benefits of such "streamlining," at the time of this writing, no tribe has entered into a TERA agreement with the Secretary of Interior.¶ In an effort to understand the potential reasons for lack of tribal engagement with TERA, this article has explored the legislative history associated with the TERA provisions. A review of the legislative history has illustrated that concerns related to the then-pending TERA provisions generally fell into three categories: (1) concerns associated with the federal government's trust responsibility to tribes; (2) concerns associated with federally-mandated environmental review provisions; and (3) concerns associated with the general waiver of federal liability.¶ Based on the review of applicable legislative history and the concerns expressed therein, this article proposes reform of the TERA provisions. In particular, this article proposes two potential reforms. The first represents a tribal sovereignty perspective. Under the first proposal, the tribes should be liable (i.e., a waiver of federal government liability should be maintained) only if tribes are the true decision-makers. In this regard, **the first proposal argues for the** removal of federal mandates, such as the conditions of **environmental review and administrative oversight**. The reform would allow tribes to truly make decisions regarding energy development within their territories.¶ Because Congress may not accept this **proposal**, **the article also proposes an option for reform that maintains the** federal mandates and **oversight role of the federal government**, but reinstates the federal government's liability under the TERA provisions. Such a reinstitution of federal liability is consistent [\*859] with the federal government's trust responsibility to tribes. **Although the two proposals are contradictory**, **both represent improvements over the status quo and**, should either be adopted by Congress, **would encourage tribes to enter into TERAs with the Secretary of Interior**.

#### Weakened restrictions causes exploitation by companies interested in profiting from native renewable resources – turns case.

Land Letter, 5

[New federal law encourages tapping of Indian resources, 12/1, Lexis]

¶ April Reese, Land Letter Southwest reporter A set of provisions in the new federal **energy law aimed at making it easier to tap Indian Country's vast resources has received mixed reviews from native interests, with** supporters convinced the measure will boost tribal economies and strengthen sovereignty and **critics warning it will** open tribes to exploitation by outside companies. The Indian Tribal Energy Development and Self-Determination Act, tucked into the 1,700-page Energy Policy Act of 2005 that was signed into law by President Bush in August, allows tribes to develop and regulate their energy resources under reduced supervision from the federal government. The first tribally owned, large-scale wind turbine in Indian Country was erected in 2003. Tribes can choose to forego the National Environmental Policy Act if the Interior Department approves a "tribal energy resource agreement," which would govern leases, rights-of-way and business arrangements. The new law also authorizes tribes to receive Energy Department grants formerly offered only to states for the development of energy projects and creates an Office of Indian Energy Policy within DOE. Supporters of the measure, which was proposed by members of the Council of Energy Resource Tribes (CERT), say it will help tribes meet growing demand for energy both on and off the reservation. "Indian lands represent tremendous potential for economic advancement for the tribes that want to use those resources and develop them, and they represent an important energy supply to the rest of the country," said David Lester, executive director of CERT, adding that tribes can provide "far more" energy than the Arctic National Wildlife Refuge holds. Tribal populations are growing twice as fast as the general U.S. population and tribal economies are growing three times as fast as the national economy, Lester said. With almost all of the 562 federally recognized Indian tribes harboring some kind of energy resource, from wind, solar and biomass to coal and natural gas, tribes that choose to take advantage of the incentives in the new law can provide electricity and heat to their members, with plenty left over to sell to their non-tribal neighbors, he said. While only about 2 percent of the lands within the United States are tribally owned, lands on or adjacent to reservations contain more than 30 percent of its fossil energy sources, Lester said. Supporters, which include the National Congress of American Indians, say giving Indian tribes more control over their resources is a good idea, especially since the federal government has not been a good steward of tribal lands in the past. Several tribes have wrangled in court with the Interior Department and energy companies over what they contend are paltry royalty payments for resources extracted from their lands. A major case involving the federal government's alleged mishandling of tribal energy revenues is still pending in federal court. The new law, Lester and others say, will help avoid such problems by giving tribes greater say over energy development on their lands. 'Culture at stake' But critics of the new law say not all **tribes are ready for that kind of responsibility**. They fear **it will** allow energy companies to take advantage of tribes **that are energy-rich but lack the governing capacity to ensure they are getting a fair deal**. Clayton Thomas-Muller, native energy organizer at the Indigenous Environmental Network, said some **tribes also do not have the institutional and enforcement mechanisms needed to guarantee that their resources will be developed responsibly. The law essentially allows the federal government to abandon its trust responsibility to the tribes, which is intended to prevent unfair treatment of tribes by outside entities such as energy companies,** he said. "Yes, there are **tribes** that have those resources -- the lawyers, the scientists, the capacity to do what they need to do -- but there are hundreds that don't and **are being set up to fail,"** Thomas-Muller said. "**This** energy bill basically **takes us back 100 years,** allowing corporations to exploit tribes **that are still reeling from the impacts of colonization and dealing with different socioeconomic situations."** The law encourages development of conventional energy resources like coal, natural gas and oil, which could scar tribal lands and undermine native ways of life, while bringing very little benefit to the tribes, he added. "Our very culture is at stake here," Thomas-Muller said. "To further destroy our land, our air, and our water for short-term economic solutions is not economic development, and it sets up our unborn generations for a very hard life." Lester emphasized that the new incentives will encourage the development of renewables like wind and solar, which are even more abundant on Indian lands than conventional, fossil-based resources. And the measure is voluntary, he added, noting that tribes can choose not to develop their resources, and those that do can choose to continue using NEPA instead of crafting their own regulatory framework. "This law strengthens each tribe's hand to use [energy] resources the way they want to use them," he said. "If they have coal resources but don't want to develop them, there's nothing that says they have to." And the law also seeks to ensure that tribes are capable of regulating energy development themselves before handing over the reins to them. When considering whether to approve a tribal energy resource agreement, the secretary of Interior must determine that the tribe "has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe," according to the law. Obstacles Bob Gough, secretary of the Intertribal Council on Utility Policy, which promotes renewable energy development on tribal lands, characterized the measure as "a good start" but said some of the timelines for implementing its provisions appear to be unrealistic. For instance, it will likely take tribes six months or more to set up a system to sell clean energy bonds and funds to support that effort are not likely to be available until fiscal year 2007. But the provision expires at the end of 2007, he said. "There are a whole lot of new procedures," Gough said. "It's not going to happen overnight. There aren't a lot of tribes who will take advantage of this quickly." Tribal leaders, Interior officials and energy industry representatives will meet Monday in Chicago to discuss what the new law means and how to implement it, Gough said. Lizana Pierce, with DOE's tribal energy program in Golden, Colo., said the law has the potential to help tribes develop their resources, but that it will mean little unless Congress provides the funding to implement it. "There's a whole cadre of deadlines," she said. "But at least on the DOE side, there's no funds." Lester said the CERT tribes plan to "work our tails off" to convince lawmakers to back the law with appropriate funding levels, most likely through the Interior and Energy appropriations bills for fiscal year 2007. "We have a lot of work ahead of us," Lester said. Southwest reporter April Reese is based in Santa Fe, N.M.

### 2

#### CIR will pass now

Martin 3/22 (Gary, San Antonio Express News columnist, GOP developments on immigration reform give hope of eventual legislative action, http://www.mysanantonio.com/opinion/columnists/gary\_martin/article/GOP-developments-on-immigration-reform-give-hope-4377241.php#ixzz2OJ9VowEV)

Several developments on Capitol Hill this week led many to believe Congress will pass a comprehensive immigration reform bill this year.¶ Those developments involved traditional Republican opposition to citizenship for undocumented immigrants.¶ First, the Republican National Committee issued a report that recommended the GOP embrace comprehensive reform — which commonly denotes citizenship.¶ Second was the support for eventual citizenship by GOP presidential hopeful Rand Paul, although tortured in his explanation. Paul's nuanced speech to the U.S. Hispanic Chamber of Commerce was careful to avoid the actual word “citizenship,” which conservatives often claim to be “amnesty.”¶ All this was watched intently by Democrats, who voiced disbelief at how fast the GOP position on immigration reform has shifted since the November election.

#### Obama’s capital is key to holding the coalition together

Bloomberg 3/22 (Guest-Worker Visas Sticking Point on Immigration Rewrite, http://www.bloomberg.com/news/2013-03-21/guest-worker-visas-sticking-point-on-immigration-rewrite.html)

With Senate Republicans and Democrats moving closer to an agreement to grant a chance at U.S. citizenship to 11 million undocumented immigrants, a long- simmering dispute between organized labor and the business lobby risks sapping momentum for the measure.¶ The two constituencies are at odds over a new program to provide U.S. work visas to low-skilled foreign workers, placing pressure on lawmakers poised for a compromise. Unions are pressing for a limited visa system that guarantees better wages for future immigrant workers, while businesses seek a broader program more responsive to their hiring needs.¶ It’s the tougher side of what is otherwise a broadening consensus in both parties around an immigration plan, whose centerpiece is a path to U.S. citizenship for undocumented immigrants. A bipartisan group of eight senators is nearing a deal to bolster border security and workplace verification while revamping the legal immigration system.¶ Republican Senator Marco Rubio of Florida, a member of the group, called the guest-worker issue “one of the more difficult parts” of the negotiations.¶ “I’m not going to be part of a bill that doesn’t create a process whereby people can come to this country temporarily in the future if we need them,” Rubio said yesterday. “There’s no secret that the broader labor movement, with some exceptions, would rather not even have an immigration bill.”¶ Political Consequences¶ The disagreement carries significant political consequences for Republicans and Democrats alike, essentially making them choose between their strongest constituencies -- organized labor for Democrats and big business for Republicans -- and achievement of an overriding policy goal that both parties increasingly see as an electoral imperative.¶ Hispanics accounted for 10 percent of voters in the 2012 presidential election. President Barack Obama won 71 percent of their votes, and just 27 percent backed Republican nominee Mitt Romney, who had proposed “self-deportation” for undocumented immigrants. Since then, a growing chorus of Republicans has publicly backed legal status for undocumented immigrants.¶ Meanwhile, a group of Republican officials who unveiled a top-to-bottom review this week called for the party to back “comprehensive immigration reform” or see its appeal shrink.¶ “It is in neither party’s interest for one group within a party to stop this, because it is bad for the economy if we don’t have immigration reform,” former Mississippi Governor and Republican National Committee Chairman Haley Barbour said this week, referring to labor unions’ objections to a guest-worker program.¶ Worker Program¶ Former Pennsylvania Governor Ed Rendell, a Democrat co- chairing an immigration task force with Barbour at the Bipartisan Policy Center in Washington, said it is ultimately up to Obama to persuade Democrats not to abandon the bill if the immigrant-worker program doen’t match the unions’ agenda.¶ “If we don’t get guest-worker provisions that are exactly in line with what labor wants, we can’t hold up the bill because of that,” Rendell said. “We’ve got to do the best we can to preserve and protect the interests of organized labor, but in the end you can’t always get what you want.”¶ The president, he added, has “his work cut out for him.”¶ The bipartisan plan, expected to be unveiled early next month following a two-week congressional break, also faces a potentially rough road in the Senate and uncertain fate in the House, where Republican opposition to granting citizenship to undocumented immigrants is more prevalent.¶

#### Plan leads to backlash—the existence of restrictions proves the link

Miles 06 (Andrea, JD Candidate, “TRIBAL ENERGY RESOURCE AGREEMENTS: TOOLS FOR ACHIEVING ENERGY DEVELOPMENT AND TRIBAL SELF-SUFFICIENCY OR AN ABDICATION OF FEDERAL ENVIRONMENTAL AND TRUST RESPONSIBILITIES”. 30 Am. Indian L. Rev. 461, Lexis)

Opponents, including some environmental groups, have expressed concern that Title V will eliminate the federal guarantees of public participation and environmental review from energy development decisions in Indian Country. n78 Further, opponents state that the "language also undercuts the federal trust [\*471] responsibility to Tribes by providing a waiver for the federal government of all liability from energy development." n79 Additionally, "other governments - state, local and foreign - are not required to conduct a NEPA review of actions they approve." n80¶ Some claim that the bill releases the federal government from its traditional trust responsibility to ensure the protection of the health, environment, and resources of Tribes and undermines federal environmental laws such as NEPA for energy development projects on Indian lands, resulting in a rearrangement of the federal- tribal relationship. n81 For example, during a congressional oversight hearing on NEPA, Zuni tribal member Calbert Seciwa stated "that NEPA was a vital tool in the Zuni Salt Lake Coalition's successful fight to block development of a coal mine near the sacred lake south of Gallup." n82¶ Environmentalists also criticize the new language. The National Resources Defense Council argued that the provisions remove the federal guarantee of environmental review and public participation. n83 Sharon Buccinio, an attorney for the NRDC argues¶ Title V could remove the application of federal laws, such as NEPA and the National Historic Preservation Act, from energy development decisions on tribal lands. The bill affects land both on and off the reservation. It provides that once the Secretary of the Interior approves a [TERA] providing a process for making energy development decisions, individual energy projects would proceed without federal approval. Since no federal action would occur, the existing guarantees of environmental review and public participation under NEPA would be lost. Concerned tribal community members and communities adjacent to the project would lose the mechanism that they now have to make their voices heard. n84¶ [\*472] ¶ Because of the ongoing concern that TERA tribes could ignore NEPA, Congress added a tribal environmental review process to the TERA. n85 The environmental review process must provide for the identification and evaluation of all significant environmental effects, including effects on cultural resources, identify proposed mitigation measures, and incorporate these measures into the TERA agreement. n86 In addition, the Tribe must ensure that the public is informed of and has the opportunity to comment on the environmental impacts of the proposed action, provide responses to relevant and substantive comments before tribal approval of the TERA agreement, provide sufficient administrative support and technical capability to carry out the environmental review process and allow Tribal oversight of energy development activities by any other party under any TERA agreement to determine whether the activities are in compliance with the TERA and applicable federal environmental law. n87

#### Solves warming

Norris and Jenkins 9, \*Project Director at the Breakthrough Institute, \* Director of Energy and Climate Policy, The Breakthrough Institute,(Teryn and Jessie, “ Want to Save the World? Make Clean Energy Cheap,” Huffington Post, March 10, <http://www.thebreakthrough.org/blog/2009/03/want_to_save_the_world_make_cl.shtml>)

Whatever the cause, we have very little chance of overcoming climate change without enlisting young innovators at a drastically greater scale. Simply put, they represent one of the most important catalysts for creating a clean energy economy and achieving long-term prosperity. The reason is this: at its core, climate change is a challenge of technology innovation. Over the next four decades, global energy demand will approximately double. Most of this growth will happen in developing nations as they continue lifting their citizens out of poverty and building modern societies. But over the same period, global greenhouse gas emissions must fall dramatically to avert the worst consequences of climate change. Shortly before his untimely death in 2005, the Nobel Prize-winning physicist Richard Smalley coined this the "Terawatt Challenge": increasing global energy production from roughly 15 terawatts in 2005 to 60 terawatts annually by 2100 in a way that simultaneously confronts the challenges of global warming, poverty alleviation, and resource depletion. The single greatest obstacle to meeting the Terawatt Challenge is the "technology gap" between dirty and clean energy sources. Low-carbon energy technologies remain significantly more expensive than fossil fuels. For example, solar photovoltaic electricity costs up to three to five times that of coal electricity, and plug-in hybrid and electric vehicles can be twice as expensive as their gasoline-fueled competitors. Unless this technology gap is bridged and clean energy technologies become affordable and scalable, poor and rich nations alike will continue opposing significant prices on their carbon emissions and will continue relying primarily upon coal and other fossil fuels to power their development. This will virtually assure massive climate destabilization. So the task is clear: to avoid climate catastrophe and create a new energy economy, we must unleash our forces of innovation - namely, scientists, engineers and entrepreneurs- to invent a new portfolio of truly scalable clean energy technologies, chart new paths to bring these technologies to market, and ensure they are affordable enough to deploy throughout the world.

#### Warming leads to resource wars and extinction.

Sify ‘10 (Sify, Sydney newspaper citing Ove Hoegh-Guldberg, professor at University of Queensland and Director of the Global Change Institute, and John Bruno, associate professor of Marine Science at UNC (Sify News, “Could unbridled climate changes lead to human extinction?”, <http://www.sify.com/news/could-unbridled-climate-changes-lead-to-human-extinction-news-international-kgtrOhdaahc.html>)

The findings of the comprehensive report: 'The impact of climate change on the world's marine ecosystems' emerged from a synthesis of recent research on the world's oceans, carried out by two of the world's leading marine scientists. One of the authors of the report is Ove Hoegh-Guldberg, professor at The University of Queensland and the director of its Global Change Institute (GCI). 'We may see sudden, unexpected changes that have serious ramifications for the overall well-being of humans, including the capacity of the planet to support people. This is further evidence that we are well on the way to the next great extinction event,' says Hoegh-Guldberg. 'The findings have enormous implications for mankind, particularly if the trend continues. The earth's ocean, which produces half of the oxygen we breathe and absorbs 30 per cent of human-generated carbon dioxide, is equivalent to its heart and lungs. This study shows worrying signs of ill-health. It's as if the earth has been smoking two packs of cigarettes a day!,' he added. 'We are entering a period in which the ocean services upon which humanity depends are undergoing massive change and in some cases beginning to fail', he added. The 'fundamental and comprehensive' changes to marine life identified in the report include rapidly warming and acidifying oceans, changes in water circulation and expansion of dead zones within the ocean depths. These are driving major changes in marine ecosystems: less abundant coral reefs, sea grasses and mangroves (important fish nurseries); fewer, smaller fish; a breakdown in food chains; changes in the distribution of marine life; and more frequent diseases and pests among marine organisms. Study co-author John F Bruno, associate professor in marine science at The University of North Carolina, says greenhouse gas emissions are modifying many physical and geochemical aspects of the planet's oceans, in ways 'unprecedented in nearly a million years'. 'This is causing fundamental and comprehensive changes to the way marine ecosystems function,' Bruno warned, according to a GCI release. These findings were published in Science.

### 3

#### The promotion of energy projects is a front for energy companies to increase exploitation of Native Americans while “greenwashing” continuing fossil fuel extraction

Awehali 6 (Brian, , Tribal Member – Cherokee Nation of Oklahoma, LiP Magazine, “Native Energy Futures: Renewable Energy, Actual Sovereignty, & the New Rush on Indian Lands”, 6/5, <http://www.lipmagazine.org/articles/featawehali_nativefutures.htm>, Accessed 7/11/08)

“Consistent with the President’s National Energy Policy to secure America’s energy future,” testified Theresa Rosier, Counselor to the Assistant Secretary for Indian Affairs, “increased energy development in Indian and Alaska Native communities could help the Nation have more reliable home-grown energy supplies. [The Native American Energy Development and Self-Determination Act of 2003] promotes increased and efficient energy development and production in an environmentally sound manner.” The bill did not ultimately pass, but the idea that “America’s energy future” should be linked to having “more reliable home-grown energy supplies” can be found in other native energy-specific legislation that has passed into law. What this line of thinking fails to take into consideration is that Native America is not actually US America, and that the “supplies” in question belong to sovereign nations, not to the United States or its energy sector. ¶ Rosier’s statement conveys quite a lot about how the government and the energy sector intend to market the growing shift away from dependence on foreign energy, and how they plan to deregulate (by using “efficiency” as a selling point) and step up their exploitation (“development”) of “domestic” native energy resources: by spinning it as a way to produce clean energy while helping Native Americans gain greater economic and tribal sovereignty.

#### Capitalism is at the core of solar and wind technology development. Corporations use “environmental destruction” as an opportunity for growth. The impact is continual environmental crises and endless corporate growth.

Harris 10 (Jerry, Network for Critical Studies of Global Capitalism, Oct-Dec, Going Green to Stay in the Black: Transnational Capitalism and Renewable Energy, Race & Class, Vol. 52 #2, http://netglobalcapitalism.wordpress.com/articles/going-green-to-stay-in-the-black-transnational-capitalism-and-renewable-energy/)

Is the future of capitalism green? And will the country that leads in green technology dominate the global economy? That is certainly the outlook of important sectors of the capitalist class, both among long established corporations as well as new entrepreneurs. But **the green economy, particularly the energy sector, is already taking a globalized path of development under the control of the transnational capitalist class** (TCC). While **innovative corporations may emerge as dominant players,** it will be **as transnational corporations** (TNS), not as national champions of nation-states. In the U.S. the green revolution is promoted as the way to maintain world economic supremacy. In President Obama’s state of the union speech he said, “the nation that leads the clean-energy economy will be the nation that leads the global economy, and America must be that nation.” (1) Environmentalist Hunter Lovins calls on the U.S. to lead the world in green innovation because “they’ll rule the world, economically, politically, and probably militarily.” (2) Thomas Friedman wraps green technology in red, white and blue calling it the new currency of power. “**It’s all about national power…what could be more patriotic, capitalistic and geostrategic than that?”** (3). But these dreams of national greatest are already outdated. **Green energy** can indeed **extend the life of capitalism, but not within the confines of nation-centric logic and power**. Major wind and solar **corporations already operate on a global scale, with innovations and research ongoing** in Europe, India,¶ Japan, China and the U.S. Furthermore, the scale of the environmental crisis is beyond any one country to solve. It calls for a global response and advanced sectors of the TCC understand these world dimensions. The environmental crisis actually offers an opportunity for capitalism to begin a new cycle of accumulation. A way to end the repeating failures of financial speculation with a renewal of productive capital. As Muller and Passadakis explain, “the point about the ecological crisis…is that it is neither solved nor ignored in a green capitalist regime, but rather placed at the heart of its growth strategy.”(4) By creating new systems of energy, transportation, architectural design and reengineering productive processes, capitalism can greatly reduce its abuse of the environment. This would free capital from environmentally harmful industries for new areas of investment and create profitable opportunities in dynamic new markets. Such a strategic shift will not only solve the current crisis but legitimize a new political regime and lay the foundation for a hegemonic bloc with a global social base. Nonetheless, this transformation will not solve the contradiction between capital and labor, and the TCC may lack the political resolve to move fast and far enough to avoid major environmental disasters. But if the transformation does occur over the coming decades, it may solve the most pressing problems between finite environmental resources and the need of capitalism to grow and profit. With global warming widely accepted as an existential crisis capitalists have seized upon alternative and sustainable energy as a major transformative technology. United Nations Secretary General Ban Ki Moon has called for a worldwide “Green New Deal” that would be a “wholesale reconfiguration of global industry.” (5) A study published by Scientific American argues for a $100 trillion dollar program, projecting that ”100 percent of the world’s energy, for all purposes, could be supplied by wind, water and solar resources by 2030.” (6) That is a fair amount of money, but Fatih Birol, chief economist at the International Energy Agency points out that, “Each year without an international agreement adds $500 billion to the costs – estimated at $10 trillion¶ annually — of cleaning up the power sector to help keep temperatures within a range that would avoid unstoppable climate changes.” (7) Given the scale of the problem $100 trillion over 20 years sounds feasible. But dedicating $5 trillion a year from a world GDP of $54 trillion (2007) seems impossible without a political revolution.Although still a very small part of energy consumption, wind and solar power are rapidly expanding and total clean energy investments in 2008 were $155 billion and $145 billion in 2009. (8) Eventually renewable energy may play an economic role similar to the digital, computer and telecommunications revolution of the past 30 years. These technologies laid the basis for globalization and vastly expanded access to knowledge and information. (9) Economically there was innovation, dynamic emerging corporations and new cycles of accumulation. The technologies were also used by progressive activists across the world for organizing and education. Just as the digital revolution spearheaded a new era of capitalist globalization, so too can green technology open the door to the next era of growth while promoting important progressive changes.While these possibilities exist, they will develop within historic capitalist patterns that continually reassert themselves. Digital technologies became centralized into a handful of transnational corporations, both old and new, that today dominate the market and consume innovations through constant buy-outs. That pattern is already appearing in the green energy field, except there will be no singular leading location such as Silicon Valley. Solar and wind technologies are global and being consolidated by a small number of competitive TNCs. This does not necessarily undercut their environmental benefits. But **it does undercut the democratic possibilities for a decentralized system of energy, and fails to solve the problems between capital and labor**. By examining the major wind and solar TNCs below, we can begin to uncover the character of the new green economy.

#### Particularism as the basis of political activity is the process by which capitalism divides the working class to make resistance impossible. This guarantees that political demands are not elevated past the level of appeal to individual groups and reaching the level of the bourgeoisie becomes the ultimate objective

Brown 93 (Wendy, Professor of Political Science at the University of California, Berkeley, “Wounded Attachments” Political Theory, Vol. 21, No. 3 (Aug., 1993), pp. 392-395, JSTOR, http://www.jstor.org/stable/191795)

Although this détente between universal and particular within liberalism is potted with volatile conceits, it is rather thouroughly unraveled by two features of late modernity, spurred by developments in what Marx and Froucault, respectively, reveal as liveralism’s compainion powers: capitalism and disciplinarity. On one side, the state loses even its guise of universality as it becomes ever more transparently invested in particular economic interests, political ends, and social formations. This occurs as it shifts from a relativley minimalist “night watchman” state to a heavily bureacratized, managerial, fiscally complex, and highly interventionist welfare-warfare state, a transmogrification occasioned by the combined imperatives of capital and the autoproliferating characteristics of bureacracy. On the other side, a range of economic and political forces increasingly disinter the liberal subject from substantive nation-state identification: deterritorializing demographic flows; disintegration from within and invasion from without of family and community as (relatively) autonomous sites of social production and identification; consumer capitalism’s marketing discourse in which individual (and subindividual) desires are produced, commodified, and mobilized as identities; and disciplinary productions of a fantastic arry of behavior-based identities ranging from recovering alchoholic professionals to unrepentant crack mothers. These disciplinary productions work to conjure and regulate subjects through classificatory schemes, naming and normalizing social behaviors as social positions. Operating through what Foucault calls “an anatomy of detail,” “disciplinary power” produces social identities (available for politicization because they are deployed for purposes of political regulation) that crosscut juridicial identities based on abstract right. Thus, for example, the welfare state’s production of welfare subjects – themselves subdivided through the socially regulated categories of motherhood, disability, race, age and so forth – potentially produce political identity through these categories, produce identities as the these categories*.* In this story, the always imminent but increasingly politically manifest failure of liberal universalism to be universal – the transparent fiction of state universality – combines with the increasing individuation of social subjects through capitalist disinternments and disciplinary productions. Together, they breed the emergence of politicized identity rooted in disciplinary productions but oriented by liberal discourse toward protest against exclusion from a discursive formation of universal justice. This production, however, is not linear or even but highly contradictory: although the terms of liberalism are part of the ground of production of a politicized identity that reiterates yet exceeds these terms, liberal discourse itself also continuously recolonizes political identity as political interest – a conversion that recasts politicized identity’s substantive and often deconstructive cultural claims and critiques as generic claims of particularism endemic to universalist political culture. Similarly, disciplinary power manages liberalism’s production of politicized subjectivity by neutralizing (re-depoliticizing) identity through normalizing practicies. As liberal discourse converts politcal identity into essentialized private interest, disciplinary power converts interest into normativized social identity manageable by regulatory regimes. Thus disciplinary power politicially neutralizes entitlement claims generated by liberal individuation, whereas liberalism poltiically neutralize rights claims generated by disciplinary identities. In addition to the formations of identity that may be the complex effects of disciplinary and liberal modalities of power, I want to suggest one other historical strand relevant to the production of politicized identity, this one hewn more specifically to recent developments in political culture. Although sanguine to varying degrees about the phenomenon they are describing, many on the European and North American Left have argued that identity politics emerges from the demise of class politics consequent to post-Fordism or pursuant to May 1968. Without adjudicating the precise relationship between the breakup of class politics and the proliferation of other sites of political identification, I want to refigure this claim by suggesting that what we have come to call identity politics is partly dependent on the demise of a critique of capitalism and of bourgeois cultural and economic values. In a reading that links the new identity cliams to a certain relegitimation of capitalism, identity politics concerned with race, sexuality, and gender will appear not as a supplement to class politics, not as an expansion of Left categories of oppression and emancipation, not as an enriching complexification of progressive formulations of power and person – all of which they also are – but as tethered to a formulation of justice which, ironically, reinscribes a bourgeois ideal as its measure. If it is this ideal that signifies educational and vocational opportunity, upward mobility, relative protection against arbitrary violence, and reward in proportion to effort, and if it is this ideal against which many of the exclusions and privations of people of color, gays and lesbians, and women are articulated, then the political purchase of contemporary American identity politics would seem to be achieved in part through a certain discursive renaturalization of capitalism that can be said to have marked progressive discourse since the 1970s. What this suggests is that identity politics may be partly configured by a peculiarly shaped and peculiarly disguised form of resentment – class resentment without class consiousness or class analysis. This resentment is displaced onto discourses of injustice other than class but, like all resentments, retains the real or imagined holding of its reviled subject – in this case, bourgeois male privileges – as objects of desire. From this perspective, it would appear that the articulation of politicized identities through **race,** gender, and sexuality require, rather than incidentally produce, a relatively limited identification though class. They necessarily rather than incidentially abjure a critique of class power and class norms precisely because the injuries suffered by these identities are measured by bourgeois norms of social acceptance, legal protection, relative material comfort, and social independence. The problem is that when not only economic stratification but other injuries to body and psyche enacted by capitalism (alientation, commodificiation, exploitation, displacement, disintegration of sustain, albeit contradictory, social forms such as familes and neighborhoods) are discursively normalized and thus depoliticized, other markers of social difference may come to bear an inordinate weight. Absent an articulation of capitlism in the political discourse of identity, the marked identity bears all the weight of the sufferings produced by capitalism in addition to that bound to the explicity politicized marking.

#### The logic of capitalism results in extinction through the creation of ecological catastrophe and violent imperialist wars that will turn nuclear

Foster 5 [John Bellamy, Monthly Review, September, Vol. 57, Issue 4, “Naked Imperialism”, <http://www.monthlyreview.org/0905jbf.htm>]

From the longer view offered by a historical-materialist critique of capitalism, the direction that would be taken by U.S. imperialism following the fall of the Soviet Union was never in doubt. Capitalism by its very logic is a globally expansive system. The contradiction between its transnational economic aspirations and the fact that politically it remains rooted in particular nation states is insurmountable for the system. Yet, ill-fated attempts by individual states to overcome this contradiction are just as much a part of its fundamental logic. In present world circumstances, when one capitalist state has a virtual monopoly of the means of destruction, the temptation for that state to attempt to seize full-spectrum dominance and to transform itself into the de facto global state governing the world economy is irresistible. As the noted Marxian philosopher István Mészáros observed in Socialism or Barbarism? (2001)—written, significantly, before George W. Bush became president: “[W]hat is at stake today is not the control of a particular part of the planet—no matter how large—putting at a disadvantage but still tolerating the independent actions of some rivals, but the control of its totality by one hegemonic economic and military superpower, with all means—even the most extreme authoritarian and, if needed, violent military ones—at its disposal.” The unprecedented dangers of this new global disorder are revealed in the twin cataclysms to which the world is heading at present: nuclear proliferation and hence increased chances of the outbreak of nuclear war, and planetary ecological destruction. These are symbolized by the Bush administration’s refusal to sign the Comprehensive Test Ban Treaty to limit nuclear weapons development and by its failure to sign the Kyoto Protocol as a first step in controlling global warming. As former U.S. Secretary of Defense (in the Kennedy and Johnson administrations) Robert McNamara stated in an article entitled “Apocalypse Soon” in the May–June 2005 issue of Foreign Policy: “The United States has never endorsed the policy of ‘no first use,’ not during my seven years as secretary or since. We have been and remain prepared to initiate the use of nuclear weapons—by the decision of one person, the president—against either a nuclear or nonnuclear enemy whenever we believe it is in our interest to do so.” The nation with the greatest conventional military force and the willingness to use it unilaterally to enlarge its global power is also the nation with the greatest nuclear force and the readiness to use it whenever it sees fit—setting the whole world on edge. The nation that contributes more to carbon dioxide emissions leading to global warming than any other (representing approximately a quarter of the world’s total) has become the greatest obstacle to addressing global warming and the world’s growing environmental problems—raising the possibility of the collapse of civilization itself if present trends continue. The United States is seeking to exercise sovereign authority over the planet during a time of widening global crisis: economic stagnation, increasing polarization between the global rich and the global poor, weakening U.S. economic hegemony, growing nuclear threats, and deepening ecological decline. The result is a heightening of international instability. Other potential forces are emerging in the world, such as the European Community and China,that could eventually challenge U.S. power, regionally and even globally. Third world revolutions, far from ceasing, are beginning to gain momentum again, symbolized by Venezuela’s Bolivarian Revolution under Hugo Chávez. U.S. attempts to tighten its imperial grip on the Middle East and its oil have had to cope with a fierce, seemingly unstoppable, Iraqi resistance, generating conditions of imperial overstretch. With the United States brandishing its nuclear arsenal and refusing to support international agreements on the control of such weapons, nuclear proliferation is continuing. New nations, such as North Korea, are entering or can be expected soon to enter the “nuclear club.” Terrorist blowback from imperialist wars in the third world is now a well-recognized reality, generating rising fear of further terrorist attacks in New York, London, and elsewhere. Such vast and overlapping historical contradictions, rooted in the combined and uneven development of the global capitalist economy along with the U.S. drive for planetary domination, foreshadow what is potentially the most dangerous period in the history of imperialism. The course on which U.S and world capitalism is now headed points to global barbarism—or worse. Yet it is important to remember that nothing in the development of human history is inevitable. There still remains an alternative path—the global struggle for a humane, egalitarian, democratic, and sustainable society. The classic name for such a society is “socialism.” Such a renewed struggle for a world of substantive human equality must begin by addressing the system’s weakest link and at the same time the world’s most pressing needs—by organizing a global resistance movement against the new naked imperialism.

#### Vote negative to adopt the historical material criticism of the 1NC - historical analysis of the material conditions of capital is the only way to break free from is contradictions and social inequalities it causes

Tumino 1 (Steven, teaches at the City University of New York, Spring, What is Orthodox Marxism and Why it Matters Now More Than Ever Before)

Any effective political theory will have to do at least two things: it will have to offer an integrated understanding of social practices and, based on such an interrelated knowledge, offer a guideline for praxis. My main argument here is that among all contesting social theories now, only Orthodox Marxism has been able to produce an integrated knowledge of the existing social totality and provide lines of praxis that will lead to building a society free from necessity. But first I must clarify what I mean by Orthodox Marxism. Like all other modes and forms of political theory, the very theoretical identity of Orthodox Marxism is itself contested—not just from non-and anti-Marxists who question the very "real" (by which they mean the "practical" as under free-market criteria) existence of any kind of Marxism now but, perhaps more tellingly, from within the Marxist tradition itself. I will, therefore, first say what I regard to be the distinguishing marks of Orthodox Marxism and then outline a short polemical map of contestation over Orthodox Marxism within the Marxist theories now. I will end by arguing for its effectivity in bringing about a new society based not on human rights but on freedom from necessity. I will argue that to know contemporary society—and to be able to act on such knowledge—one has to first of all know what makes the existing social totality. I will argue that the dominant social totality is based on inequality—not just inequality of power but inequality of economic access (which then determines access to health care, education, housing, diet, transportation, . . . ). This systematic inequality cannot be explained by gender, race, sexuality, disability, ethnicity, or nationality. These are all secondary contradictions and are all determined by the fundamental contradiction of capitalism which is inscribed in the relation of capital and labor. All modes of Marxism now explain social inequalities primarily on the basis of these secondary contradictions and in doing so—and this is my main argument—legitimate capitalism. Why? Because such arguments authorize capitalism without gender, race, discrimination and thus accept economic inequality as an integral part of human societies. They accept a sunny capitalism—a capitalism beyond capitalism. Such a society, based on cultural equality but economic inequality, has always been the not-so-hidden agenda of the bourgeois left—whether it has been called "new left," "postmarxism," or "radical democracy." This is, by the way, the main reason for its popularity in the culture industry—from the academy (Jameson, Harvey, Haraway, Butler,. . . ) to daily politics (Michael Harrington, Ralph Nader, Jesse Jackson,. . . ) to. . . . For all, capitalism is here to stay and the best that can be done is to make its cruelties more tolerable, more humane. This humanization (not eradication) of capitalism is the sole goal of ALL contemporary lefts (marxism, feminism, anti-racism, queeries, . . . ). Such an understanding of social inequality is based on the fundamental understanding that the source of wealth is human knowledge and not human labor. That is, wealth is produced by the human mind and is thus free from the actual objective conditions that shape the historical relations of labor and capital. Only Orthodox Marxism recognizes the historicity of labor and its primacy as the source of all human wealth. In this paper I argue that any emancipatory theory has to be founded on recognition of the priority of Marx's labor theory of value and not repeat the technological determinism of corporate theory ("knowledge work") that masquerades as social theory.

#### Class divisions are the root of all other oppressions

Kovel 2 (Alger Hiss Professor of Social Studies at Bard College, awarded Fellowship at the John Guggenheim Foundation, Joel, The Enemy of Nature, pages 123-124)

If, however, we ask the question of efficacy, that is, which split sets the others into motion, then priority would have to be given to class, for the plain reason that class relations entail the state as an instrument of enforce­ment and control, and it is the state that shapes and organizes the splits that appear in human ecosystems. Thus class is both logically and historically distinct from other forms of exclusion (hence we should not talk of 'classism' to go along with 'sexism' and 'racism,' and `species-ism'). This is, first of all, because class is an essentially man-made category, without root in even a mystified biology. We cannot imagine a human world without gender dis­tinctions – although we can imagine a world without domination by gender. But a world without class is eminently imaginable – indeed, such was the human world for the great majority of our species' time on earth, during all of which considerable fuss was made over gender. Historically, the difference arises because 'class' signifies one side of a larger figure that includes a state apparatus whose conquests and regulations create races and shape gender relations. Thus there will be no true resolution of racism so long as class society stands, inasmuch as a racially oppressed society implies the activities of a class-defending state.'° Nor can gender inequality be enacted away so long as class society, with its state, demands the super-exploitation of woman's labour. Class society continually generates gender, racial, ethnic oppressions and the like, which take on a life of their own, as well as profoundly affecting the concrete relations of class itself. It follows that class politics must be fought out in terms of all the active forms of social splitting. It is the management of these divisions that keeps state society functional. Thus though each person in a class society is reduced from what s/he can become, the varied reductions can be combined into the great stratified regimes of history — this one becoming a fierce warrior, that one a routine-loving clerk, another a submissive seamstress, and so on, until we reach today's personi­fications of capital and captains of industry. Yet no matter how functional a class society, the profundity of its ecological violence ensures a basic antagonism which drives history onward. History is the history of class society — because no matter how modified, so powerful a schism is bound to work itself through to the surface, provoke resistance (`class struggle'), and lead to the succession of powers. The relation of class can be mystified without end — only consider the extent to which religion exists for just this purpose, or watch a show glorifying the police on television — yet so long as we have any respect for human nature, we must recognize that so funda­mental an antagonism as would steal the vital force of one person for the enrichment of another cannot be conjured away.

#### Historical materialism must come first - it predetermines consciousness and the very possibilities of reflective thinking

**Marx 1859** (Karl, a pretty important dude. “A Contribution to the Critique of Political Economy: Preface” http://www.marxists.org/archive/marx/works/1859/critique-pol-economy/preface.htm) JM

>edited for gendered language<

In the social production of their existence, [people] inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material forces of production. The totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life. It is not the consciousness of [people] that determines their existence, but their social existence that determines their consciousness. At a certain stage of development, the material productive forces of society come into conflict with the existing relations of production or – this merely expresses the same thing in legal terms – with the property relations within the framework of which they have operated hitherto. From forms of development of the productive forces these relations turn into their fetters. Then begins an era of social revolution. The changes in the economic foundation lead sooner or later to the transformation of the whole immense superstructure. In studying such transformations it is always necessary to distinguish between the material transformation of the economic conditions of production, which can be determined with the precision of natural science, and the legal, political, religious, artistic or philosophic – in short, ideological forms in which [people] become conscious of this conflict and fight it out. Just as one does not judge an individual by what he thinks about himself, so one cannot judge such a period of transformation by its consciousness, but, on the contrary, this consciousness must be explained from the contradictions of material life, from the conflict existing between the social forces of production and the relations of production. No social order is ever destroyed before all the productive forces for which it is sufficient have been developed, and new superior relations of production never replace older ones before the material conditions for their existence have matured within the framework of the old society.

### TERA

#### Can’t solve sovereignty – secret nuclear dumping makes federal intervention inevitable

Brook 98 (Daniel, Department of Sociology, San Jose State University, 1998, “Environmental Genocide: Native Americans and Toxic Waste”, American Journal of Economics & Sociology, 57.1, p.105)

Unfortunately, it is a sad but true fact that "virtually every landfill leaks, and every incinerator emits hundreds of toxic chemicals into the air, land and water" (Angel 1991, 3). The U.S. Environmental Protection Agency concedes that "[e]ven if the . . . protective systems work according to plan, the landfills will eventually leak poisons into the environment" (ibid.). Therefore, even if these toxic waste sites are safe for the present generation--a rather dubious proposition at best--they will pose an increasingly greater health and safety risk for all future generations. Native people (and others) will eventually pay the costs of these toxic pollutants with their lives, "costs to which [corporate] executives are conveniently immune" (Parker 1983, 59). In this way, private corporations are able to externalize their costs onto the commons, thereby subsidizing their earnings at the expense of health, safety, and the environment. Sadly, this may not be the worst environmental hazard on tribal lands. Kevin Grover and Jana Walker try "[t]o set the record straight" by claiming that "the bigger problem is not that the waste industry is beating a path to the tribal door [although it is of course doing so]. Rather, it is the unauthorized and illegal dumping occurring on reservations. For most Indian communities the problem of open dumping on tribal lands is of much greater concern than the remote prospect that a commercial waste disposal facility may be sited on a reservation" (Haner 1994, 107).(n3) There are two major categories of people who illegally dump waste on tribal land. They have been called "midnight dumpers" and "native entrepreneurs." Midnight dumpers are corporations and people who secretly dump their wastes on reservations without the permission of tribal governments. Native entrepreneurs are tribal members who contaminate tribal land, without tribal permission, for private profit or personal convenience. Both midnight dumpers and native entrepreneurs threaten Native American tribes in two significant ways: tribal health and safety, and tribal sovereignty. First, toxic waste poses a severe health and safety risk. Some chemical agents cause leukemia and other cancers; others may lead to organ ailments, asthma, and other dysfunctions; and yet others may lead to birth defects such as anencephaly. Toxic waste accomplishes these tragic consequences through direct exposure, through the contamination of the air, land, and water, and through the bioaccumulation of toxins in both plants and animals. And because of what Ben Chavis in 1987 termed "environmental racism," people of color (and poor people) are disproportionately affected by toxic waste. Native Americans are especially hard hit because of their ethnicity, their class, and their unique political status in the United States. A second problem that Native Americans must confront when toxic waste is clumped on their lands is the issue of tribal sovereignty, and more specifically the loss of this sovereignty. "Native American governments retain all power not taken away by treaty, federal statute, or the courts. As an extension of this principle, native governments retain authority over members unless divested by the federal government" (Haner 1994, 109-110). Jennifer Haner, a New York attorney, asserts that illegal dumping threatens tribal sovereignty because it creates the conditions that make federal government intervention on the reservations more likely (ibid., 121). The federal government can use the issue of illegally dumped toxic waste as a pretext to revert to past patterns of paternalism and control over Native American affairs on the reservations; Native Americans are viewed as irresponsible, the U.S. government as their savior.

#### Status quo solves.

LeBeau, 12

[Senate Indian Affairs Committee Hearing, "Energy Development in Indian Country." 2/16, Director of the Office of Indian Energy Policy and Programs at DOE, Lexis]

To accomplish these goals, **Title V of the Energy Policy Act** of 2005 ("EPAct") **conferred** my Office **the authority to provide grants, including formula grants or grants on a competitive basis to eligible tribal entities. Grants may be used for establishing programs to assist consenting Indian Tribes in meeting energy education, research and development, planning, and management needs, including: \* Energy generation, energy efficiency, and energy conservation programs;** \* Studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in promoting electrification of homes and businesses on Indian land; \* Planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; \* Development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities; \* **Developing a program to support and implement research projects that provide Indian Tribes with opportunities to participate in carbon sequestration practices on Indian land; and \* Encouraging cooperative arrangements between Indian Tribes and utilities that provide service to Tribes.** Since joining DOE a little more than a year ago, I have been committed to accomplishing four strategic programmatic and administrative goals: 1. Fully implement Congressional stated goals for energy development in Indian Country, as found in Title V of the Energy Policy Act of 2005; 2. Reach out to Indian Country to understand what the high priority needs are for energy development and how this Office can help address those needs, and based on feedback from Indian Country, develop policies and programs to fill gaps in current Department programs; 3. Work within the Department to leverage the many resources--financial and technical--to promote Indian energy development throughout the Department and to institutionalize Indian energy development; and 4. Coordinate resources across agencies to promote Indian energy development. In that same time period, **the DOE Office of Indian Energy has: \* Conducted a major outreach initiative to Indian Country through eight roundtable discussions with tribal leaders around the country to discuss current needs and priorities related to Indian energy policy and programs; \* Established the Indian Country Energy and Infrastructure Working Group, an informal group of tribal leaders that provides input and recommendations to the DOE Office of Indian Energy on issues related to energy development and opportunities in Indian Country; \* Developed programs that provide tribal leader energy education, strategic and targeted technical assistance for Tribes on renewable energy project deployment, information on transmission and electrification, innovative project development, and best practices forums for tribal leaders; and \* Supported interagency coordination efforts to promote energy development in Indian Country.** More details about these efforts, as well as future plans are provided below. My testimony today will touch on some of our efforts to fulfill congressional and Administration goals. My written testimony goes into considerably more detail regarding these activities. Pursuing Sustainable Energy Development in Indian Country The Administration is committed to safely, responsibly harnessing America's domestic energy resources to power our economy--from oil and gas to clean coal to nuclear energy to renewable energy and energy efficiency. Our Office's charge is also broad in terms of the scope of energy development we are directed to facilitate in Indian Country - including renewable energy sources such as wind and solar and traditional energy sources such as coal and natural gas, as well as improving the infrastructure needed to deliver this energy. However, **Tribes have shown a high motivation to pursue expanded clean energy development. It is our strong belief that the new DOE Office of Indian Energy initiatives that are taking root in Indian Country are a direct reflection of the innovation and the promise of the next generation of tribal energy development. Our priority is in designing and implementing new programs in close collaboration with tribal leaders and tribal experts that will accelerate energy development in Indian Country. By providing reliable and accurate information, quality training, and technical assistance, we seek to further empower tribal leaders to make informed energy decisions that promote community economic development and job creation,** foster energy self-sufficiency and self-determination, **and advance tribal clean energy visions.** Shortly after being appointed, I asked the National Renewable Energy Lab to update all the renewable resource estimates in Indian Country. Based on 2011 data provided by DOE's National Renewable Energy Laboratory using updated analysis and modeling tools, the estimated maximum renewable energy resource potential on Indian lands is millions of megawatts (MW) of nameplate capacity. Solar and wind are the primary energy resources that contribute to this potential. These estimates do not, however, take into account cost, transmission access, or other critical constraints on renewable energy deployment, and they assume that all land that is not protected, impervious to (or too small for) system installation, or clearly ill-suited for the technology is used for generation. Most of these resources will not be economical to access and there are competing land-use constraints. Although it would not be realistic to blanket Indian Country with solar panels or wind turbines, these numbers certainly illustrate the vast amount of resources potentially available. These resources are generally regional and geographic in nature: solar in the southwest, wind in the plains, biomass in the northwest and east, and geothermal in the West. When combined, it's clear that further development of these energy resources in Indian Country provide an incredible opportunity to not only increase tribal energy reliability and self-sufficiency, but also provide an opportunity for Tribes to contribute to the nation's energy security goals. Energy Economies in Indian Country that are Built to Last There are many critical factors to building sustainable economies around energy. Key among those factors are policy support, strong collaborative partnerships and understanding of issues affecting the hoped for outcomes, and of course designing appropriate responses to meeting the challenges identified. Policy Support President **Obama and Secretary Chu have been extremely supportive of improving the economy of Tribal communities through enhanced energy development.** At the 2011 White House Tribal Nations Conference, the President stated: "While our work together is far from over, today we can see what change looks like. It's the Native American-owned small business that's opening its doors, or a worker helping a school renovate. It's new roads and houses. It's wind turbines going up on tribal lands, and crime going down in tribal communities. That's what change looks like." At DOE's Tribal Summit, held May 2011, the Secretary reaffirmed his commitment to Indian energy development. The summit provided a historic opportunity for the Department and tribal leaders to discuss a broad range of critical energy and environmental issues in Indian Country. Secretary Chu said, "By working together, we can promote economic development and help many more tribes and villages seize the clean energy opportunity." In support of this commitment, Secretary **Chu announced three key initiatives to support DOE's goals of promoting Indian energy: 1) the creation of the previously mentioned Indian Country Energy and Infrastructure Working Group (ICEIWG); and 2) intent to issue policy guidance to the Department to implement the Title V provision on giving preference to tribal majority-owned businesses for DOE acquisition of electricity, energy products, and by-products. DOE also supports a number of programs that provide technical assistance to Indian tribes, including the Strategic Technical Assistance Response Team** (START) **initiative to help advance clean energy development in tribal communities**, as described later in this testimony. The Indian Country Energy and Infrastructure Working Group was established in August 2011. The working group provides advice and recommendations to the Director of the DOE Office of Indian Energy Policy and Programs and to the Secretary of Energy on the strategic planning and implementation of the Department's energy resource, energy technology, and energy infrastructure development programs. To provide the most relevant and up-to-date perspectives, the ICEIWG is comprised of five (5) elected tribal leaders from Tribes that are actively developing or have established energy projects, or can demonstrate business interest in energy development. This composition of tribal leaders enables ICEIWG to provide technical and experienced analysis and feedback to the Office of Indian Energy and DOE on complex energy development issues. **We also have been working** since May 2011 with several DOE offices, including the Office of Procurement, Federal Energy Management Program, Office of Policy, Office of Economic Impact and Diversity, Western Area Power Administration (WAPA), and the Bonneville Power Administration (BPA) **to implement Secretary Chu's directive to develop policy guidance to implement the Indian energy procurement preference provision. S**ection 503 in Title V of the **Energy Policy Act** of 2005 (codified at 25 U.S.C. 3502(d)) **grants DOE new authority to give preference to tribal majority-owned business organizations when purchasing electricity, energy products, and energy by-products. This procurement preference is intended to promote energy development in Indian Country by providing federal agencies the discretion to give tribal majority-owned business organizations preferred access to the federal government marketplace for electricity, energy, and energy by-products.** Promoting tribal renewable energy development further enables economic development in Indian Country, and also helps meet the Administration goals on the acquisition and use of clean energy. Strong Partnerships and Common Challenges I began my appointment by meeting with tribal leaders in their communities to hear first-hand about the obstacles, issues, and opportunities for energy development in Indian Country. During the eight roundtable discussions with tribal leaders that I mentioned earlier, we learned about these as well as the needs, priorities, and possible solutions related to: conventional and renewable energy development; transmission and infrastructure; public-private partnerships; energy efficiency and management; education and workforce development; funding and tax incentives; and leveraging, coordinating, and optimizing federal resources and programs. **The feedback from tribal leaders and organizations fed into Secretary Chu's Tribal Summit in May 2011 and the program initiatives developed by the Office of Indian Energy to fulfill its statutory mandates and the Administration's energy policy priorities. We also have taken time to evaluate the thrust of many of our programs to date, including the grants offered through the Office of Energy Efficiency and Renewable Energy's Tribal Energy Program**. Below are important lessons learned we would like to highlight:

#### Focus on energy to solve development can’t solve – ignores the critical issues.

Cornell and Kalt, ‘6

[Stephen (director of the Udall Center for Studies in Public Policy) and Joseph (Ford Foundation Professor of International Political Economy), ““Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t.” http://jopna.net/pubs/jopna\_2005-02\_Approaches.pdf]

3. In the standard approach, economic development is treated as an economic problem. This is logical enough: after all, it is economic development we’re talking about. It should hardly seem odd that much of the conversation about development in Indian Country is preoccupied with economic factors: focusing on natural resources, lobbying for more money, promoting education, worrying about proximity to markets, and so forth. Furthermore, much of that conversation typically is about jobs and income, and these are classically economic goals. The prevailing idea seems to be that if only various tribes could overcome the market or capital or educational obstacles they face, jobs and income would follow. This is not necessarily wrong. Economic factors loom large in development processes and typically set limits on development choices. Big successes in tribal gaming, for example, have been heavily dependent on location near major gaming markets. 7 Obviously natural resource endowments or the educational level of the reservation labor force have similarly significant impacts on development possibilities, and finding adequate financing is a recurrent problem for reservation planners. In other words, tribes are not wrong to spend time on these things. What is significant about this conversation, however, is what it doesn’t include. Two issues in particular often are left out. The first is strategic goals. In focusing on short-term increases in jobs and income the development conversation tends to ignore longer term questions about the sort of society the tribe is trying to build. Second, this conversation typically ignores political issues. By political issues we refer to the organization of government and the environment of governing institutions in which development has to proceed. Can the tribal courts make decisions that are free of political influence? Can the legislature keep enough distance from tribal businesses to allow them to flourish? Are the appropriate codes in place, are they fair, and are they enforced? Is the reservation political environment one which encourages investors—by which we mean anyone with time or energy or ideas or money to bet on the tribal future—to invest, or is it an environment in which both tribal citizens and outsiders feel their investments are hostage to unstable, opportunistic, or corrupt politics? In short, are tribal political institutions adequate to the development task? In its focus on economic factors, the standard approach ignores institutional and political issues and thereby misses entirely the key dynamic in economic development.

#### The aff might be necessary but not sufficient --- institutional illegitimacy make paternalism inevitable

Cornell and Kalt, ‘6

[Stephen (director of the Udall Center for Studies in Public Policy) and Joseph (Ford Foundation Professor of International Political Economy), ““Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t.” http://jopna.net/pubs/jopna\_2005-02\_Approaches.pdf]

In the nation-building approach, Indian nations back up sovereignty with effective governing institutions. But sovereignty alone is not enough. If sovereignty is to lead to economic development, it has to be exercised effectively. This is a matter of governing institutions. Why should governing institutions be so important in economic development? Among other things, governments put in place the “rules of the game”: the rules by which the members of a society make decisions, cooperate with each other, resolve disputes, and pursue their jointly held objectives. These rules are captured in constitutions, by-laws, or shared understandings about appropriate distributions of authority and proper ways of doing things: they represent agreement among a society’s members about how collective life should be organized. These rules—these patterns of organization—make up the environment in which development has to take hold and flourish. Some rules discourage development. For example, a society whose rules allow politicians to treat development as a way to enrich themselves and their supporters will discourage development. A society in which court decisions are politicized will discourage development. A society in which day-to-day business decisions are made according to political criteria (for example, according to who voted for a particular official in the last election) instead of merit criteria (for example, according to who has the necessary skills to run a good business, regardless of who their friends or relatives are) will discourage development. And the reverse is true as well. Where societies prevent politicians from enriching themselves from the public purse, provide fair court decisions, reward ability instead of voting records, and support other such rules, sustainable development is much more likely. In other words, having effective governing institutions means putting in place “rules of the game” that encourage economic activity that fits tribal objectives. Whatever those objectives might be, our research indicates that several features of institutional organization are key to successful development. • Governing institutions have to be stable. That is, the rules don’t change frequently or easily, and when they do change, they change according to prescribed and reliable procedures. • Governing institutions have to separate politics from day-to-day business and program management, keeping strategic decisions in the hands of elected leadership but putting day- to-day management decisions in the hands of managers. • Governing institutions have to take the politics out of court decisions or other methods of dispute resolution, sending a clear message to tribal citizens and outsiders that their investments and their claims will be dealt with fairly. • Governing institutions have to provide a bureaucracy that can get things done reliably and effectively. Again, there is substantial evidence in support of these requirements. For example, Harvard Project studies of tribally owned and operated businesses on Indian reservations found that those enterprises in which day-to-day business management is insulated from tribal council or tribal presidential interference are far more likely to be profitable—and to last—than those without such insulation. In the long run, this means more jobs for reservation citizens. Similarly, research shows that tribes whose court systems are insulated from political interference—in which the tribal council has no jurisdiction over appeals and in which judges are not council-controlled—have significantly lower levels of unemployment—other things equal— than tribes in which the courts are under the direct influence of elected officials. This is because an independent court sends a clear message to potential investors—whether outsiders or tribal citizens—that their investments will not be hostage to politics or corruption. 17 When tribes back up sovereignty with stable, fair, effective, and reliable governing institutions, they create an environment that is favorable to sustained economic development. In doing so, they increase their chances of improving tribal welfare. 3. In the nation-building approach, governing institutions match indigenous political culture. To be effective, governing institutions have to be legitimate in the eyes of the people. One of the problems that Indian nations have had is their dependence on institutions that they did not design and that reflect another society’s ideas about how authority ought to be organized and exercised. The governments organized under the Indian Reorganization Act, for example, tend to follow a simple pattern: strong chief executive, relatively weak council, no independent judicial function, and political oversight of economic activity. This approach has been applied across tribes with very different political traditions, leading to a mismatch, in many cases, between formal governing institutions and indigenous beliefs about authority. 18 Historically, some tribes had strong chief executive forms of government in which decision-making power was concentrated in one or a few individuals, while others dispersed power among many individuals or multiple institutions with sophisticated systems of checks and balances and separations of powers. Still others relied on spiritual leaders for political direction, while some relied on broad-based, consensus decision- making. Indian political traditions were diverse. But tradition is not the issue here. In some cases, indigenous political traditions are long gone. But in many nations, distinctive ideas about the appropriate organization and exercise of authority still survive and often are starkly at odds with IRA structures or other structures imposed on Indian nations. The crucial issue is the degree of match or mismatch between formal governing institutions and contemporary indigenous ideas—whatever their source—about the appropriate form and organization of political power. Where cultural match is high, economic development tends to be more successful. Where cultural match is low, the legitimacy of tribal government also is low, the governing institutions consequently are less effective, and economic development falters.

#### Native government bureaucracy prevents solvency.

Cornell and Kalt, ‘6

[Stephen (director of the Udall Center for Studies in Public Policy) and Joseph (Ford Foundation Professor of International Political Economy), ““Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t.” http://jopna.net/pubs/jopna\_2005-02\_Approaches.pdf]

5. In the standard approach, elected leadership serves primarily as a distributor of resources In the standard approach, tribal leadership is concerned much of the time with distributing resources: jobs, money, services, favors, etc. There are several reasons for this. First, elected leadership controls most reservation resources. Where jobs and money are scarce, whoever controls the jobs and money holds most of the power. Most employment is in tribal government; most programs are federally funded through grants to tribal governments; and many business enterprises are tribally owned. This means that tribal governments—and, therefore, elected tribal leaders—are the primary distributors of most of the resources that tribal citizens need, especially jobs. Second, reservation socioeconomic conditions mean that there is enormous pressure on tribal governments to distribute those resources on a short-term basis. If there is money around, there is less sentiment in support of long-term investment than in support of short-term expenditures such as the hiring of tribal citizens, per capita payments, or other local distributions. Tribal politicians often get more electoral support from the quick distribution of goodies than they do from more prudent investment in long-term community success and security. This in turn reflects a local attitude toward tribal government that sees it simply as a pipeline for resources instead of as a force shaping the future of the nation. The federal government has inadvertently encouraged this view by funneling programmatic resources to tribes while denying them the power to use those resources to fundamentally alter the course of the nation. All of this means that there are enormous incentives for tribal politicians to retain control of scarce resources and use them to stay in office. This leads to patronage, political favoritism and, in some cases, corruption. It reduces politics to a battle between factions trying to gain or keep control of tribal government resources that they can then distribute to friends and relatives. People vote for whomever they think will send more resources in their direction. Leadership becomes almost meaningless under these conditions: the nation isn’t really going anywhere; it’s just shoving resources around among factions.

#### Too many structural problems mean all solvency fails.

Cornell and Kalt, ‘6

[Stephen (director of the Udall Center for Studies in Public Policy) and Joseph (Ford Foundation Professor of International Political Economy), ““Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t.” http://jopna.net/pubs/jopna\_2005-02\_Approaches.pdf]

Native nations operating with the standard approach tend to pursue development by focusing only on the last two of these steps—choosing projects and launching them—or sometimes on asserting sovereignty as well, ignoring the need for effective institutions, strategies, and policies. The development conversation tends to be not about growing an economy but instead about projects, and the goal is just to get something going. But without the other steps—building capable institutions, figuring out where you want to go, and putting in place the policies that can get you there—things are unlikely to last.

### Solvency

#### Nuke war threat is real and o/w structural and invisible violence---their expansion of structural violence to an all-pervasive omnipresence makes preventing war impossible

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

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

#### Life outweighs value to life.

Kacou, ‘8

[Amien, “Why Even Mind? On the A Priori Value of “Life”, Cosmos and History: The Journal of Natural and Social Philosophy, Volume 4,

cosmosandhistory.org/index.php/journal/article/view/92/184]

Furthermore, that manner of finding things good that is in pleasure can certainly not exist in any world without consciousness (i.e., without “life,” as we now understand the word)—slight analogies put aside. In fact, we can begin to develop a more sophisticated definition of the concept of “pleasure,” in the broadest possible sense of the word, as follows: it is the common psychological element in all psychological experience of goodness (be it in joy, admiration, or whatever else). In this sense, pleasure can always be pictured to “mediate” all awareness or perception or judgment of goodness: there is pleasure in all consciousness of things good; pleasure is the common element of all conscious satisfaction. In short, it is simply the very experience of liking things, or the liking of experience, in general. In this sense, pleasure is, not only uniquely characteristic of life but also, the core expression of goodness in life—the most general sign or phenomenon for favorable conscious valuation, in other words. This does not mean that “good” is absolutely synonymous with “pleasant”—what we value may well go beyond pleasure. (The fact that we value things needs not be reduced to the experience of liking things.) However, what we value beyond pleasure remains a matter of speculation or theory. Moreover, we note that a variety of things that may seem otherwise unrelated are correlated with pleasure—some more strongly than others. In other words, there are many things the experience of which we like. For example: the admiration of others; sex; or rock-paper-scissors. But, again, what they are is irrelevant in an inquiry on a priori value**—**what gives us pleasure is a matter for empirical investigation. Thus, we can see now that, in general, something primitively valuable is attainable in living—that is, pleasure itself. And it seems equally clear that we have a priori logical reason to pay attention to the world in any world where pleasure exists. Moreover, we can now also articulate a foundation for a security interest in our life: since the good of pleasure can be found in living (to the extent pleasure remains attainable),[17] and only in living, therefore, a priori, life ought to be continuously (and indefinitely) pursued at least for the sake of preserving the possibility of finding that good. However, this platitude about the value that can be found in life turns out to be, at this point, insufficient for our purposes. It seems to amount to very little more than recognizing that our subjective desire for life in and of itself shows that life has some objective value. For what difference is there between saying, “living is unique in benefiting something I value (namely, my pleasure); therefore, I should desire to go on living,” and saying, “I have a unique desire to go on living; therefore I should have a desire to go on living,” whereas the latter proposition immediately seems senseless? In other words, “life gives me pleasure,” says little more than, “I like life.” Thus, we seem to have arrived at the conclusion that the fact that we already have some (subjective) desire for life shows life to have some (objective) value. But, if that is the most we can say, then it seems our enterprise of justification was quite superficial, and the subjective/objective distinction was useless—for all we have really done is highlight the correspondence between value and desire. Perhaps, our inquiry should be a bit more complex.

#### Some rights violations are inevitable – cost-benefit analysis is the only way to justify action to solve concrete harms

Cummiskey Associate Professor of Philosophy – Bates 1999 Gewirth ed. Boylan p. 134

The PGC’s (Principle of Generic Consistency’s) goal of securing the generic rights of all may indeed require the infringement of the negative rights of some as a necessary means of securing the more weighty negative and positive rights of many others. Since the infringement of the rights of some would prevent the injustice of significant rights violations, the acts of coercion or harm would indeed function to prevent injustice as Gewirth requires. The duty to protect the more weighty rights of the many would thus require the infringements on the rights of the few. In truly tragic situations, someone’s rights are infringed no matter what choice is made. If we take seriously Gewirth’s compelling arguments for robust positive rights, then we cannot simply rely on the institutions of a common sense morality which is much more libertarian. We must instead treat the objective needs of those we would hurt by helping. The criterion of the degree of needfulness of action (which involves rights conflicts) simply provides no basis for a bias in favor of negative rights over positive rights. It thus leaves the limits of justified coercion to be determined by a cost-benefit analysis on the objective needs of generic agency. So once again we find no basis for limiting Gewirthian consequentialism.

## 2NC

### Cap K

#### The perm is worse than the plan – it validates the ability of capitalism to fix its own problems which short circuits any attempt at a more radical form of politics

Meszaros 95 [Istavan, Prof. Emeritus at Sussex, Beyond Capital: Towards a Theory of Transition] p. 930

THE difficulty is that the ‘moment’ of radical politics is strictly limited by the nature of the crises in question and the temporal determinations of their unfolding. The breach opened up at times of crisis cannot be left open forever and the measures adopted to fill it, from the earliest steps onwards, have their own logic and cumulative impact on subsequent interventions. Furthermore, both the existing socioeconomic structures and their corresponding framework of political institutions tend to act against radical initiatives by their very inertia as soon as the worst moment of the crisis is over and thus it becomes possible to contemplate again ‘the line of least resistance’. And no one can consider ‘radical restructuring’ the line of least resistance, since by its very nature it necessarily involves upheaval and the disconcerting prospect of the unknown. No immediate economic achievement can offer a way out of this dilemma so as to prolong the life-span of revolutionary politics, since such limited economic achievements made within the confines of the old premises — act in the opposite direction by relieving the most pressing crisis symptoms and, as a result, reinforcing the old reproductive mechanism shaken by the crisis. As history amply testifies, at the first sign of ‘recovery’, politics is pushed back Into its traditional role of helping to sustain and enforce the given socio-economic determinations. The claimed ‘recovery’ itself reached on the basis of the ‘well tried economic motivations’, acts as the self-evident ideological justification for reverting to the subservient, routine role of politics, in harmony with the dominant institutional framework. Thus, radical politics can only accelerate its own demise (and thereby shorten, instead of extending as it should, the favourable ‘moment’ of major political intervention) if it consents to define its own scope in terms of limited economic targets which are in fact necessarily dictated by the established socioeconomic structure in crisis

#### You cannot permute a method – it strips out all of the conceptual theory that allows us both understand the world and to create a praxis to end oppression

Tumino 1 [Stephen, Prof English at Pitt, ““What is Orthodox Marxism and Why it Matters Now More than Ever”, Red Critique, p. online]

Orthodox Marxism has become a test-case of the "radical" today. Yet, what passes for orthodoxy on the left—whether like Smith and Zizek they claim to support it, or, like Butler and Rorty they want to "achieve our country" by excluding it from "U.S. Intellectual life" ("On Left Conservatism"), is a parody of orthodoxy which hybridizes its central concepts and renders them into flexodox simulations. Yet, even in its very textuality, however, the orthodox is a resistance to the flexodox. Contrary to the common-sensical view of "orthodox" as "traditional" or "conformist" "opinions," is its other meaning: ortho-doxy not as flexodox "hybridity," but as "original" "ideas." "Original," not in the sense of epistemic "event," "authorial" originality and so forth, but, as in chemistry, in its opposition to "para," "meta," "post" and other ludic hybridities: thus "ortho" as resistance to the annotations that mystify the original ideas of Marxism and hybridize it for the "special interests" of various groups. The "original" ideas of Marxism are inseparable from their effect as "demystification" of ideology—for example the deployment of "class" that allows a demystification of daily life from the haze of consumption. Class is thus an "original idea" of Marxism in the sense that it cuts through the hype of cultural agency under capitalism and reveals how culture and consumption are tied to labor, the everyday determined by the workday: how the amount of time workers spend engaging in surplus-labor determines the amount of time they get for reproducing and cultivating their needs. Without changing this division of labor social change is impossible. Orthodoxy is a rejection of the ideological annotations: hence, on the one hand, the resistance to orthodoxy as "rigid" and "dogmatic" "determinism," and, on the other, its hybridization by the flexodox as the result of which it has become almost impossible today to read the original ideas of Marxism, such as "exploitation"; "surplus-value"; "class"; "class antagonism"; "class struggle"; "revolution"; "science" (i.e., objective knowledge); "ideology" (as "false consciousness"). Yet, it is these ideas alone that clarify the elemental truths through which theory ceases to be a gray activism of tropes, desire and affect, and becomes, instead, a red, revolutionary guide to praxis for a new society freed from exploitation and injustice. Marx's original scientific discovery was his labor theory of value. Marx's labor theory of value is an elemental truth of Orthodox Marxism that is rejected by the flexodox left as the central dogmatism of a "totalitarian" Marxism. It is only Marx's labor theory of value, however, that exposes the mystification of the wages system that disguises exploitation as a "fair exchange" between capital and labor and reveals the truth about this relation as one of exploitation. Only Orthodox Marxism explains how what the workers sell to the capitalist is not labor, a commodity like any other whose price is determined by fluctuations in supply and demand, but their labor-power—their ability to labor in a system which has systematically "freed" them from the means of production so they are forced to work or starve—whose value is determined by the amount of time socially necessary to reproduce it daily. The value of labor-power is equivalent to the value of wages workers consume daily in the form of commodities that keep them alive to be exploited tomorrow. Given the technical composition of production today this amount of time is a slight fraction of the workday the majority of which workers spend producing surplus-value over and above their needs. The surplus-value is what is pocketed by the capitalists in the form of profit when the commodities are sold. Class is the antagonistic division thus established between the exploited and their exploiters. Without Marx's labor theory of value one could only contest the after effects of this outright theft of social labor-power rather than its cause lying in the private ownership of production. The flexodox rejection of the labor theory of value as the "dogmatic" core of a totalitarian Marxism therefore is a not so subtle rejection of the principled defense of the (scientific) knowledge workers need for their emancipation from exploitation because only the labor theory of value exposes the opportunism of knowledges (ideology) that occult this exploitation. Without the labor theory of value socialism would only be a moral dogma that appeals to the sentiments of "fairness" and "equality" for a "just" distribution of the social wealth that does the work of capital by naturalizing the exploitation of labor under capitalism giving it an acceptable "human face."

#### Energy production drives capitalism – it enables the capitalist cycle of growth and exploitation of the working class

ICC 11 (International Communist Current, “Nuclear energy, capitalism and communism” August 16th, World Revolution no.347, September 2011, http://en.internationalism.org/wr/347/nuclear#\_ftnref30)

The increasing use of energy has been a feature of industrialisation around the world. It expresses not only the increase in scale of production and the impact of rising population, but also the development of productivity with the increase in the quantity of the means of production, including energy, that each worker is able to set in motion. This trend has continued today: between 1973 and 2008 total energy consumption increased by 80%.[18] The revolution in the form and quantity of energy available to humanity underpinned the industrial revolution and opened the door from the realm of want to that of plenty. But this revolution was driven by the development of capitalism whose purpose is not the satisfaction of human needs but the increase of capital based on the appropriation of surplus value produced by an exploited working class. Energy is used to drive the development of productivity but it is also a cost of production. It is part of the constant capital alongside raw materials, machines and factories and, as such, tends to increase in relation to the variable capital that is the source of capitalism’s profits. It is this that dictates capitalism’s attitude to energy. Capitalism has no regard for the use of energy, for the destruction of finite resources, other than as a cost of production. Increased productivity tends to require increased energy, so the capitalists (other than those in the oil industry) are driven to try and reduce the cost of this energy. On the one hand this results in the profligate use of energy for irrational ends, such as transporting similar commodities back and forth across the world and the ceaseless multiplication of commodities that meet no real human need but serve only as a means to extract and realise surplus value. On the other, it leads to the denial of access to energy and to the products of energy for millions of humans who lack the money to be of interest to the capitalists. This is illustrated in Nigeria where Shell pumps out billions of dollars worth of oil while the local people go without or risk their lives by trying to illegally tap the oil from the pipeline. The price is also paid by those working in the energy industries in lives lost and bodies maimed or poisoned and by the environment and all that lives in it, from the polluted, toxic waters of the Thames that characterised 19th century London to the warming of the globe that threatens the future of humanity today.

#### Deregulation increases the control of corporations at the expense of the people

Bretton Woods Project 2k (14 June 20 The World Bank And The State: A Recipe For Change? <http://www.brettonwoodsproject.org/art.shtml?x=16242> pg 7-8)

Deregulation the dismantling of legal and administrative controls deemed to interfere with the operation of the market has also greatly increased the powers and influence of the corporate sector in general and of transnationals in particular. Limitations on the free movement of capital between countries have been stripped away through international agreements and governments have sought to attract inward investment by creating as attractive a "policy environment" for business as possible. To do so they have dismantled many social and environmental controls that might add to business costs. Britain’s national economic policy, as outlined by the 1992-1997 Conservative administration, for example, was to promote the country to foreign investors as a low wage, deregulated "enterprise zone" with relatively pliant workforces. In a 1995 brochure the government’s Invest in Britain Bureau (IBB) highlighted the country’s "pro-business environment" specifying "labour costs significantly below other European countries" and assuring potential investors that "no new laws or regulations may be introduced without ascertaining and minimising the costs to business." It continues: "The UK has the least onerous labour regulations in Europe, with few restrictions on working hours, overtime and holidays... There is no legal requirement to recognise a trade union. Many industries operate shift work, and 24-hour, seven days-a-week production for both men and women." 31 The Conservative government removed important regulations which companies claimed made them less internationally competitive. By 1993, 605 regulations had been identified for the axe; these included measures for which environmental, consumer and other citizen’s groups had long campaigned for example on health and safety, biotechnology, advertising in sensitive areas, hedgerow preservation, food standards and energy efficiency. 32 A similar process of active deregulation has been undertaken in the economies of the former Soviet Union which have undergone crash marketisation under World Bank and IMF guidance. In the Russian Far East, for example, land use and tax laws have been reformed to attract foreign investment in mining and forestry. 33 Foreign companies, eager to exploit the mineral and timber resources of the Russian Far East, are pressing the Russian government to relax environmental standards. Meanwhile, in the countries of the South, where governments (under the tutelage of the IMF) have been setting up "free trade zones" since the early 1970s to provide "a favourable climate" for private sector investment, deregulation is now being extended throughout the wider national economy. 35 Workers rights to organise and strike have been restricted; environmental regulations weakened; foreign ownership restrictions watered down or abolished; and TNCs granted freedom from planning and environmental controls and given permission to repatriate profits without restriction. 36,37 Since the ratification of the latest General Agreement on Tariffs and Trade (GATT) agreement in 1994, these deregulated regimes, North and South, have the protection of international law. Moreover, as Alexander Goldsmith, editor of the business and environment magazine Green Futures, notes: "Under the rules by which countries can initiate challenges to other countries’ trading practices or their environmental or consumer laws, an alarming process of mutual deregulation is underway." 38 US corporations lobby the US government to target EU regulations under GATT, whilst their subsidiaries and partners in Europe lobby the EU to target US regulations. North American interests, for instance, are seeking to overturn European bans on the use of Bovine Somatotropin (BST), a genetically-engineered growth hormone for cattle, and on the sale of furs from animals caught with steel leg-hold traps. The EU, meanwhile, is challenging US fuel consumption standards for cars; food safety laws, limitations on lead in consumer products; state recycling laws; and restrictions on driftnet fishing and whaling. Several hard-won pieces of European environmental or public health legislation have already been overturned. In May 1997, the WTO ruled against the European Union’s ban on imports of beef produced with artificial growth hormones. 39 Indeed, in many instances, companies themselves have been actively involved in writing new investment and environmental rules. In the Philippines, for example, the government in 1995 introduced a new mining code overturning previous laws which limited foreign control of mining companies to 40 per cent. Under the new code which companies such as Western Mining Corporation helped to draft 100 per cent foreign ownership is now allowed. Companies also have the right to displace and resettle people within their "concessionary areas" and have far fewer environmental regulations to deal with.

#### Environmental Justice link - The affirmative’s attempt to save the environment from within the system of capitalism gets co-opted and never addresses the underlying cause of the problem

Luke 97 (Department of Political Science at Virginia Polytechnic Institute, 1997 Timothy W., The (Un)Wise (Ab)Use of Nature: Environmentalism as Globalized Consumerism? http://www.cddc.vt.edu/tim/tims/Tim528.htm)

Newer ecological discourses about total cost accounting, lifecycle management, or environmental justice may simply articulate more refined efforts to sustainably develop these bigger global processes of universal capitalization by accepting small correctives against particular capitalist interests. Admitting that poor people have been treated unjustly in siting decisions for environmental bads lets rich people redistribute these ecological costs across more sites so that they might benefit from the material and symbolic goods created by being just so environmental. Environmental justice movements perhaps are not so much about attaining environmental justice as they are about moving injustices more freely around in the environment, assuring the birth of new consumerisms for increased efficiency at risk management and broader participation ecological degradation in our terraformed Nature.

#### Alternative solves – we can have pockets of resistance – but oriented ourselves towards the state guarantees cooption and commodification by capitalism, reinforcing domination and hierarchy.

Holloway 5 professor at Institute for Humanities and Social Sciences at the Autonomous University of Puebla John, Can We Change The World Without Taking Power?, 5 April 05,

http://www.isj.org.uk/index.php4?id=98)

I don’t know the answer. Perhaps we can change the world without taking power. Perhaps we cannot. The starting point—for all of us, I think—is uncertainty, not knowing, a common search for a way forward. Because it becomes more and more clear that capitalism is a catastrophe for humanity. A radical change in the organisation of society, that is, revolution, is more urgent than ever. And this revolution can only be world revolution if it is to be effective. But it is unlikely that world revolution can be achieved in one single blow. This means that the only way in which we can conceive of revolution is as interstitial revolution, as a revolution that takes place in the interstices of capitalism, a revolution that occupies spaces in the world while capitalism still exists. The question is how we conceive of these interstices, whether we think of them as states or in other ways.In thinking about this, we have to start from where we are, from the many rebellions and insubordinations that have brought us to Porto Alegre. The world is full of such rebellions, of people saying NO to capitalism: NO, we shall not live our lives according to the dictates of capitalism, we shall do what we consider necessary or desirable and not what capital tells us to do. Sometimes we just see capitalism as an all-encompassing system of domination and forget that such rebellions exist everywhere. At times they are so small that even those involved do not perceive them as refusals, but often they are collective projects searching for an alternative way forward and sometimes they are as big as the Lacandon Jungle or the Argentinazo of three years ago or the revolt in Bolivia just over a year ago. All of these insubordinations are characterised by a drive towards self-determination, an impulse that says, ‘No, you will not tell us what to do, we shall decide for ourselves what we must do.’ These refusals can be seen as fissures, as cracks in the system of capitalist domination. Capitalism is not (in the first place) an economic system, but a system of command. Capitalists, through money, command us, telling us what to do. To refuse to obey is to break the command of capital. The question for us, then, is how do we multiply and expand these refusals, these cracks in the texture of domination?There are two ways of thinking about this. The first says that these movements, these many insubordinations, lack maturity and effectiveness unless they are focused, unless they are channelled towards a goal. For them to be effective, they must be channelled towards the conquest of state power—either through elections or through the overthrowing of the existing state and the establishment of a new, revolutionary state. The organisational form for channelling all these insubordinations towards that aim is the party. The question of taking state power is not so much a question of future intentions as of present organisation. How should we organise ourselves in the present? Should we join a party, an organisational form that focuses our discontent on the winning of state power? Or should we organise in some other way?The second way of thinking about the expansion and multiplication of insubordinations is to say, ‘No, they should not be all harnessed together in the form of a party, they should flourish freely, go whatever way the struggle takes them.’ This does not mean that there should be no coordination, but it should be a much looser coordination. Above all, the principal point of reference is not the state but the society that we want to create. The principal argument against the first conception is that it leads us in the wrong direction. The state is not a thing, it is not a neutral object: it is a form of social relations, a form of organisation, a way of doing things which has been developed over several centuries for the purpose of maintaining or developing the rule of capital. If we focus our struggles on the state, or if we take the state as our principal point of reference, we have to understand that the state pulls us in a certain direction. Above all, it seeks to impose upon us a separation of our struggles from society, to convert our struggle into a struggle on behalf of, in the name of. It separates leaders from the masses, the representatives from the represented; it draws us into a different way of talking, a different way of thinking. It pulls us into a process of reconciliation with reality, and that reality is the reality of capitalism, a form of social organisation that is based on exploitation and injustice, on killing and destruction. It also draws us into a spatial definition of how we do things, a spatial definition which makes a clear distinction between the state’s territory and the world outside, and a clear distinction between citizens and foreigners. It draws us into a spatial definition of struggle that has no hope of matching the global movement of capital. There is one key concept in the history of the state-centred left, and that concept is betrayal. Time and time again the leaders have betrayed the movement, and not necessarily because they are bad people, but just because the state as a form of organisation separates the leaders from the movement and draws them into a process of reconciliation with capital. Betrayal is already given in the state as an organisational form. Can we resist this? Yes, of course we can, and it is something that happens all the time. We can refuse to let the state identify leaders or permanent representatives of the movement, we can refuse to let delegates negotiate in secret with the representatives of the state. But this means understanding that our forms of organisation are very different from those of the state, that there is no symmetry between them. The state is an organisation on behalf of, what we want is the organisation of self-determination, a form of organisation that allows us to articulate what we want, what we decide, what we consider necessary or desirable. What we want, in other words, is a form of organisation that does not have the state as its principal point of reference. The argument against taking the state as the principal point of reference is clear, but what of the other concept? The state-oriented argument can be seen as a pivoted conception of the development of struggle. Struggle is conceived as having a central pivot, the taking of state power. First we concentrate all our efforts on winning the state, we organise for that, then, once we have achieved that, we can think of other forms of organisation, we can think of revolutionising society. First we move in one direction, in order to be able to move in another: the problem is that the dynamic acquired during the first phase is difficult or impossible to dismantle in the second phase. The other concept focuses directly on the sort of society we want to create, without passing through the state. There is no pivot: organisation is directly prefigurative, directly linked to the social relations we want to create. Where the first concept sees the radical transformation of society as taking place after the seizure of power, the second insists that it must begin now. Revolution not when the time is right but revolution here and now.

#### Only seizing by first seizing control of the means of production can we effectively deal with energy production. That means only the alt solves

Socialist Labor Party of America 79 (“The Socialist Alternative to Nuclear Catastrophe” http://www.slp.org/res\_state\_htm/nuc\_catas79.html)

While the Three Mile Island accident dramatically reconfirms that conclusion, the conflict between the commercial use of nuclear technology and the well-being of the American people has for years been obvious to anyone willing to review the facts. Scores of scientific studies and a host of commercial accidents had long ago obviated any need to doubt the dangers posed by nuclear plants. The capitalist class would like workers to believe that the Three Mile Island accident will result in stiffer regulations and standards that will render such plants safe, but what the crippled Pennsylvania reactor really attests to is the wanton irresponsibility of those who own and control nuclear technology. Even if nuclear plant operations could somehow be rendered fail-safe, the nuclear industry has found no solution to the stockpiles of nuclear waste that have already mortgaged the health and safety of generations to come.¶ Business as Usual¶ In fact, while calling for additional federal regulations and increased government policing of nuclear power plants, capitalist politicians and bureaucrats have already demonstrated that even a near-catastrophe like the one that occurred near Harrisburg will have no substantive impact on the manner in which the nuclear industry does business. Dozens of nuclear plants, a number of them virtual “clones” of the Three Mile Island installation, continue to operate in callous disregard for the public safety. And the Carter administration has already announced that it will push ahead with legislation to streamline the procedure to license new nuclear facilities.¶ The recent nuclear accident again supports the Socialist Labor Party’s position that nothing less than the abolition of the profit system and the socialist reconstruction of society will make it possible for the American people to restore and maintain a safe and healthful environment. Only with the elimination of private ownership in the means of production and the establishment of a socialist industrial democracy will the working-class majority of Americans be able to harness technology while giving due consideration to its health, safety and environmental implications.¶ The call for a socialist solution to the nuclear energy problem has nothing in common with calls for the nationalization of the nuclear industry. Such a step would neither alter the profit motivations which dictate how nuclear technology is implemented nor take control of such technology out of the hands of a small minority and place it under the collective control of the working class. Indeed, the fact that the current nuclear peril has been overseen by government agencies for years provides ample proof that a resolution of the problem is not to be found in government ownership by the capitalist state.¶ Socialist Solution¶ In a socialist society, the government would consist of the industrial organization of the working class at the workplace, where workers would democratically make the decisions on how the resources available to society are to be used, what energy sources are to be developed, what goods are to be produced, etc. Workers would collectively hold full decision-making power over the use of all technology, nuclear or otherwise. With the abolition of the profit motive and the transformation of the means of production from private into social property, such decisions would be made not by a minority to serve its own vested interests, but by the working-class majority, which could rationally assess the overall impact any decision would have on the general welfare.¶ Moreover, putting the nation on a socialist foundation based on production for use would free the economy of the capitalist economic imperatives that have fueled the drive toward nuclear energy. A socialist economy would be characterized by the planning and rational allocation of resources that are rendered impossible by the profit motive. A socialist society would reduce the need for all sources of energy by eliminating the enormous waste that takes place today under capitalism. Planned obsolescence, shoddy products and other manifestations of the waste that permeate capitalist production would be eliminated. Mass transit systems would be developed. And a socialist society would accelerate the development of safe, nonpolluting, renewable sources of energy. These efforts—coupled with the dismantling of U.S. imperialism’s massive nuclear arsenal—would rapidly eliminate the social peril nuclear energy now poses.¶ Workers today continue to live under the shadow of nuclear disaster, but in a socialist society workers could enjoy a material abundance without in any way compromising their health and safety. Outrages like the one that occurred near Harrisburg continue to expose the antisocial nature of the capitalist system for all workers to see. And as the manifold social problems of capitalism increasingly threaten the lives and well-being of workers, it becomes more and more imperative that they recognize the need to organize politically and economically to take control of the economy, abolish class-divided capitalism and administer production through their own democratic bodies.

## 1NR

### Liability CP

#### CP reaffirms trust obligations – tribes would opt in

Kronk (1AC Author) 12—Assistant Professor, Texas Tech University School of Law (Elizabeth, Tribal Energy Resource Agreements: The Unintended "Great Mischief for Indian Energy Development" and the Resulting Need for Reform, 29 Pace Envtl. L. Rev. 811)

Despite Senator Campbell’s reaction to Senator Bingaman’s proposed amendment, a review of the legislative history related to this provision suggests that **the majority of the commentators were concerned** that **the waiver of the federal government’s liability** contained **in** the then-pending **TERA** provisions **amounted to an abrogation of the federal government’s trust responsibility** to federally recognized tribes. **This** concern, like the issues previously examined, **has** likely **contributed to tribes’ unwillingness to enter into a TERA**.

#### Couple of DAs to the perm

#### 1.) Corporate Exploitation DA

#### Causes a land grab for renewables which wrecks sovereignty

Awehali, 6

(Brian, Independent Journalist & Author of Tipping the Sacred Cow, Society of Professional Journalists and Project Censored Award Recipient, “NATIVE ENERGY FUTURES: Renewable Energy & the New Rush on Indian Lands,” http://loudcanary.com/2006/06/05/native-energy-futures/)

Now jump forward with me, to April 2003, and the completion of the first large-scale native-owned wind turbine in history—the aforementioned Rosebud Sioux project, built in partnership with NativeEnergy, LLC. During the preceding 21 years, reports ranging from the cautionary to the apocalyptic about carbon emissions and global warming have piled up, and all but the most pig-headed of carbon-emitting industrialists now concede that a fossil fuel-based business model is soon going to be a lot less lucrative. NativeEnergy, which wants to help consumers “enjoy a climate neutral lifestyle,” was founded in 2000 with a mission “to get more wind turbines and other renewable energy systems built.” **There were no Native Americans present in the management of NativeEnergy** at the time of its founding. The multiphase wind development initiative, which began in earnest with the completion of the first wind turbine in 2003, was billed as a way to bring renewable energy–related jobs and training opportunities to the citizens of this sovereign nation, who are among the poorest in all of North America. NativeEnergy’s President and CEO Tom Boucher is an energy industry vet who formerly worked at Green Mountain Energy, a subsidiary of a company now controlled by oil industry giant BP and Nuon, a Netherlands-based energy company. Boucher was convinced there was profit to be made in alternative energy, and the Rosebud project was his test case. Boucher financed the project by selling, of all things, air. More specifically, he took advantage of the new “flexible emissions standards” created by the Kyoto Protocol. Essentially, the standards created tax-deductible pollution credits (or “green tags”) for ecologically responsible companies, which can then be sold to polluters wishing to “offset” their carbon dioxide generation without actually reducing their emissions. As you might expect from a company staffed largely by energy industry vets, NativeEnergy was fiscally crafty. In a novel accounting move, they bought from the Rosebud Sioux, at deep discount, all the green tag pollution credits that they speculated would be accrued over the lifespan of the Rosebud wind project—a total of 50,000 tons of carbon dioxide—then made a lump-sum, one-time funding commitment to the construction of the project. In an April 2003 interview with the Business Journal, Boucher would not divulge how deep the discount he got was, nor would he divulge the terms of subsequent sales of green tags. Since their first test case proved successful, NativeEnergy has moved forward with plans to develop a larger “distributed wind project,” located on eight different reservations. NativeEnergy also became a majority Indian-owned company in August 2005, when the pro-development Intertribal Council on Utility Policy (yes, Intertribal COUP), purchased a majority stake in the company on behalf of its member tribes. Pat Spears, the President of COUP and a member of the lower Brule Sioux tribe, described the purchase as “a great day for Native American people everywhere, because we are demonstrating that living in harmony with our Mother Earth is not only good for the environment, it is also good business. We look forward,” he added, “to bringing in more tribes as equity participants and taking NativeEnergy to the next level.” It’s probably no coincidence that this purchase coincided with that month’s passage of the 2005 Energy Policy Act, which contains native energy–specific provisions in its Title V. Supporters like Tex Hall, president of the National Congress of American Indians, touted the act as “one of the most important tribal pieces of legislation to hit Indian country in the past 20 years. [It] provides real incentives for energy companies to partner with Indian tribes in developing tribal resources.” Keeping in mind that tribal-owned companies are exempt from a great deal of the regulation, oversight, and competitive bidding stipulations that apply to other businesses, and that the legislation increases subsidies for wind energy in particular, the act leaves NativeEnergy ideally situated to exploit its tribal status. But there are a host of alarming provisions in the act. For starters, Section 1813 of Title V gives the US the obviously dangerous power to grant rights of way through Indian lands without permission from Indian tribes, if deemed to be in the strategic interests of an energy-related project. Other critics have derided the act as a fire sale on Indian energy, characterizing various incentives as a broad collection of subsidies for US energy companies, particularly those in Texas. And, according to a 2005 Democracy Now! interview with Clayton Thomas-Muller, Native Energy Organizer for the Indigenous Environmental Network, the act “rolls back the protections of the National Environmental Policy Act and the protections of the National Historic Preservation Act, both of which are critical pieces of legislation that grassroots indigenous peoples utilize to protect our sacred sites.” Most importantly, under the guise of promoting tribal sovereignty (leaving out those aspects of sovereignty that have little or nothing to do with economics), the act also releases the federal government from its traditional trust responsibility to tribes where resource development is concerned. The trust relationship between the US and native tribes has been a crucial way for Native Americans to hold the government legally accountable, as evidenced by the many recent court losses suffered by the Department of the Interior and Treasury during the years-long Indian Trust Case filed by Eloise Cobell on behalf of more than 500,000 Native American landholders. The trust relationship was originally imposed on Native Americans in 1887, after the passage of the Dawes Allotment Act. This act was a fairly straightforward (and successful) attempt to break down tribal unity by dispersing parcels of land to individual Indian “heads of household” who signed on to the government’s “tribal rolls.” The land was not to be managed by Native Americans, however: It was held “in trust,” and the government was supposed to disburse to Native landholders the royalties generated by the leasing of their lands to timber, mining, livestock, and energy interests. But for the most part, the government didn’t disburse the money, and now admits that at least $137 billion of it is simply missing. Without the trust relationship, which among other things makes the government legally responsible for the money it manages, Cobell and her coplaintiffs could not have sued. The Energy Policy Act also shifts responsibility for environmental review and regulation from the federal to tribal governments. This, too, was promoted under the auspices of increasing tribal sovereignty, but it doesn’t take a genius to know that Native Americans **won’t be any more successful in regulating the energy industry than the US government**, a host of well-funded environmental groups, and the UN have been. In fact, it probably only takes a village-variety idiot to comprehend the predictably disastrous outcome of this shift for Native Americans. It’s hard to believe, in light of the relevant history, that an ever-avaricious energy industry—which has been all too willing to play a game of planetary ecological brinksmanship in the name of profit—places any value on tribal sovereignty unless there’s a way to exploit it. **It’s hard to believe, after hundreds of years of plunder and unaccountability, that further deregulation, coupled with economic incentives**, and even with the participation of some well-meaning “green” players on the field, **is going to deliver anything but the predictable domination of Native Americans by white European economic powers**. In fact, I’ll go out on a limb and say that **the emerging Native American energy infrastructure looks more like the beginnings of** a new rush on Indian lands **than it does the advent of any kind of brave new sovereign era.** But don’t take my word for it. Take it from Billy Connelly, the senior advisor on marketing and communications for NativeEnergy, the company, you’ll recall, that helped usher in the dawn of this renewable energy rush. When asked during a March 2006 phone interview why the demonstration of a potentially viable renewable energy economy on Native American lands wasn’t simply an example of small businesses laying the groundwork for the eventual control and megaprofits of major corporations, Connelly sighed and said simply, “I’d be pleasantly surprised if this didn’t follow that age-old pattern.” Perhaps, at a minimum, tribes can attain a modicum of energy independence from the development of wind, solar, and other renewable energy infrastructure on their lands. And there may well be a way to ride Native American renewable energy resources to a future of true tribal sovereignty**. But it won’t come from getting into bed with, and becoming indebted to, the very industry currently driving the planet to its doom.**

#### Turns every solvency deficit because it results in corporate ownership of renewables and ruins sovereignty

Reese, reporter – High Country News (Colorado) and Energy & Environment, ‘3

(April, “Plains tribe harnesses the wind,” <http://www.hcn.org/issues/255/14139>)

The legislation would also waive Interior’s trust responsibility to the tribes in energy dealings. This trust relationship means the federal government must ensure that tribes get a fair shake when their land is leased for mining, grazing, logging or drilling. In recent years, Indians have sued the Interior Department, accusing the agency of mismanaging billions of dollars it collected from those leases (HCN, 5/12/03: Missing Indian money: Piles or pennies?). ¶ But some tribal leaders and environmental groups say there aren’t enough financial and human resources in Indian Country to ensure that tribal energy resources are developed in an environmentally responsible way. They fear that the legislation, dubbed the “Native American Energy Development and Self-Determination Act” before being rolled into a larger, catchall Senate energy bill, would leave tribes vulnerable to exploitation by energy companies. ¶Historically, when tribes have tried to assert their authority over corporations, “they’re challenged at every turn,” says David Getches, a professor of natural resource law at the University of Colorado and one of the founders of the Native American Rights Fund. “When you’re talking about things like power plants, where there are millions of dollars involved, you will see some of the most vigorous challenges ever to tribal sovereignty.” ¶ “I think a better name for this legislation would be the ‘Native American Self-Termination Act’,” says Robert Shimek, special projects director for the Indigenous Environmental Network and a member of the Chippewa Tribe. “The way it’s proposed, it reopens the door for dirty projects — projects that nobody else wants.” ¶ Shimek is wary of a return to the days when the federal government endorsed projects like the Black Mesa coal mine on the Navajo reservation in northeastern Arizona. In the 1960s, the Peabody Coal Company strip-mined 17,000 acres of tribal lands, and the still-active operation has been blamed for depleting the aquifer and drying up the Hopi Tribe’s sacred springs. ¶ “(Tribal lands) were essentially energy colonies for the rest of the country,” says Lester. ¶ When the Senate resumes debate on the energy bill this summer, Campbell is expected to offer an amendment addressing some of critics’ concerns, including retaining Interior’s trust responsibility and laying out requirements that tribes would have to follow when conducting environmental reviews.

#### Bigger internal link to self-determination

Di Giovanni, 3

[8/6, Gallup Independent, Navajo Prez sees fed energy bill as road map to exploitation, Article from Gallup posted at http://groups.yahoo.com/group/NAICCO/message/1708]

Shirley said he's also still concerned with "waivers of (federal) liability" that would remove the Interior Secretary from trust responsibility to tribes under certain conditions when energy-related leases, business agreements and rights-of-way agreements are approved. This has been done under the guise of providing tribes with a "streamlining mechanism" for energy development to prevent long delays, he added, noting that the "Indian" portion of the Energy Bill has been scripted for tribal support as a "self-determination" measure. **"Nothing could be further from the truth**," Shirley said in a recent letter he issued on the topic. "What this bill actually delivers is **a system that will undermine tribal self-determination, eliminate the United States role in the protection of tribal natural resources and ways of living, and establish a mechanism to exploit Indian reservations for energy development with neither tribal control nor federal accountability**." Shirley sees the opportunity for the federal government to waive more of its trust responsibility to protect energy development on Indians lands as a **continued attack on tribal sovereignty**. He has the backing of a large number of tribes holding that same view, including recent concurrence from the National Congress of American Indians. However, not all tribes agree with Shirley that removing the Bureau of Indian Affairs from energy development approval is necessarily a bad thing. The voluntary participation of tribes to enter into energy-related leases and business agreements without Secretary approval can actually be of huge benefit to tribes trying to act in their own interests, according to the oil- and natural gas-rich Southern Ute Indian Tribe of Ignacio, Colo. Southern Ute Indian Tribal Council Chairman Howard D. Richards Sr. wrote a letter last month to fellow tribal leaders urging support of S. 14, the "Indian Energy Bill." The Southern Utes assisted Colorado Sen. Ben Nighthorse Campbell in drafting a section of the Energy Bill that would support a new, voluntary program permitting any tribe with the "will and qualifications" to enter into a Tribal Energy Resource Agreement with the Interior Secretary. A Tribal Energy Resource Agreement, or TERA, would allow a tribe to negotiate and enter into energy-related leases, business agreements and rights-of-way agreements without the approval of the Interior Secretary. It would also exempt the Secretary from liability for "the terms and losses" resulting from such TERA-spawned energy pacts. "That seems reasonable, Richards wrote. "Why should the Secretary (of the Interior) be liable for business terms she did not approve? Senator Campbell's amendments do, however, expressly affirm the Secretary's ongoing trust responsibility, including the Secretary's duty to enforce the provisions of leases that participating tribes have negotiated." The Southern Utes of Ignacio, Colo., north of Farmington, are members of a small tribe with a diverse economy that includes gaming from their own Sky Ute casino as just a small part of their total tribe-generated revenue. The Southern Utes are able to use their wealth to put their own tribal members through college, while paying out dividends to their seniors that total more than $40,000 per senior annually. Richards argued that from his tribe's perspective, "holding onto the Secretary's approval process is embracing federal delay, bad judgment, and perhaps worse" during a time when recent U.S. Supreme Court decisions have "made it almost impossible to secure accountability for the Secretary's actions." "At a time when the public thinks all tribes are rich from gaming, we seriously doubt that Congress will make federal taxpayers financially responsible for the BIA's incompetence," Richards wrote. "We should not put all our eggs in one basket. We should also fight for the chance to make our own decisions, and we hope that other tribes respect that viewpoint, as well." Richards said the Southern Utes have learned to exercise their own self-determination and thereby hold onto their sovereignty largely by not relying on the Interior Department to act in their interests. "We developed our own programs for evaluating our resources," he offered. "We brought in highly qualified experts as employees and we negotiated tough deals. Success in (oil and gas) leasing allowed us to start our own operating company and, later, our own pipeline company." "Over time, the pace and complexity of our transactions simply became too much for the BIA to handle," Richards wrote. "Yet, under current law, we are required to slow down our success to match the inefficiency of the Department of the Interior." Shirley, however, said the Interior Department must demonstrate its trust responsibility to tribes which goes back to long-approved treaty obligations whenever a tribe's natural resources are at stake. "I do not want a fourth generation of my people to suffer from the physical, psychological and cultural devastation caused by predatory energy practices," Shirley wrote in his letter concerning the Energy Bill. "The lack of tribal consent contained in the Indian Energy title means that the federal government could override the Navajo law that prohibits uranium-mining activities on our land." In the final analysis, Shirley surmised, "The 'Indian' Energy title is just one more in a long line of misguided federal policies that is doomed to fail, **the only difference in this one is that you my brothers and sisters are being sacrificed along with us in the name of Indian self-determination.** We are all in this together."

#### 2.) Land DA

#### A wave of unregulated renewables projects would destroy native land

Aronsen, 11

[Mother Jones Columnist, 3/31, Will Big Solar Bulldoze Sacred Tribal Sites?, http://www.motherjones.com/environment/2011/04/solar-energy-native-american-desert]

Alfredo **Figueroa, an elder in the Chemehuevi tribe, has** spent all of his 77 years in the Sonoran Desert town of Blythe, next to the Colorado River in southeastern California. But now, he's **worried burial grounds and giant etchings in the earth that are sacred to his people could soon be replaced by giant solar panels**. It's part of the unprecedented expansion of solar power into California's deserts, a key piece of President Obama's push to make energy production 80 percent "clean" by 2035. Late last year, Figueroa filed suit to stop the 7,000-acre solar plant being built outside his hometown, along with five others approved for public lands. The litigation was the latest in a series of lawsuits protesting the federal government's expedited cultural and environmental review of solar project sites. It contends that the Bureau of Land Management (BLM), in a rush to qualify projects for Obama's stimulus fund deadline (since extended to the end of this year), failed to adequately consult with tribes and properly identify at-risk ecosystems and sacred lands to avoid. A self-taught historian, **Figueroa believes that the sands and hills outside Blythe are especially sacred:** After reading a book his uncle gave him half a century ago, **he became convinced that the fabled Aztec ancestral lands of Aztlán sat there.** One of Figueroa's sympathizers once told a reporter that researchers would quickly dismiss "some little old man from the desert telling them he's found Aztlán." (Speculation about where the lands are runs from central Mexico to Wisconsin, but there's no clear consensus that they exist at all.) But it would be a mistake to sell the man short. In the mid-'70s, he helped kill the Sundesert Nuclear Power Plant that was to go up southwest of Blythe. He launched a successful eight-year effort in 1992 to stop a proposed nuclear waste dump in the Mojave Desert. After that, he fought to win official recognition for hundreds of cultural sites along the Colorado River. A study last year by the California Energy Commission (PDF), which grants permits to large-scale solar plants, found 17,000 cultural sites—not all indigenous—in the southern California desert that "will potentially be destroyed" by past, present, and future construction of various sorts. (That number is probably larger today, the CEC says.) BLM archeologist Rolla Queen defends the government's review process, but admits that the dozens of **solar** proposals and **projects in the desert region** are "a little overwhelming." Not since the days of the major dam-building projects of the 1920s and '30s has the country seen public-land construction on this scale, he says. It shows: Overstressed government workers scramble to review new proposals while continuing to monitor sensitive areas at approved sites. Environmental groups are even more strapped for resources, and tribes often don't have any legal staff at all. While efforts are made to recover ancient artifacts, the excavation sites aren't usually considered protection-worthy by government standards. But **a good-faith effort to conduct a nation-to-nation consultation with federally recognized tribes, which have sovereign status, is mandator**y. Last December, a federal judge imposed a temporary injunction on **a project in Imperial Valley** because in its review process, the government blew off the Quechan tribe of the Fort Yuma Reservation. (If built to its original specs, the project **would engulf more than 6,000 acres of desert by the Mexican border, including habitats of the revered horned toad that is part of the tribe's creation story**.) "That's pretty strong medicine," says Patrick Parenteau, a professor at Vermont Law School. "The judge said, 'I'm not going to be swayed by arguments that say you can't do this, you'll kill the project.'" Instead, the judge said that the government should have considered the consequences beforehand. The company ended up selling the project to AES Solar, which appears to be waiting until the lawsuit is resolved before proceeding with any plans. Whatever the outcome, Quechan tribal elder Preston Arrow-weed will remain uneasy. "There's places all over Imperial County where they plan to put these projects," he says. "And it's right over sacred sites." Figueroa's challenge faces longer odds. Unlike the Quechan lawsuit, his is filed through his nonprofit, La Cuna de Aztlán Sacred Sites Protection Circle (PDF), rather than his tribe. (Of the dozens of desert tribes, so far only the Quechan has sued.) That means his frustrations over the consultation process will likely be a non-starter, Parenteau says, because he lacks the sovereign governmental standing of the tribe itself. Charles Wood, the Chemehuevi tribal chairman, says that he has "wide-ranging concerns" about the project outside Blythe, including the eyesore and noise it will surely create. But he says that the company has heard him out and the tribe probably won't sue. "We may have pushed it as far as we can to this point," he says. Because Solar Millennium, the company that owns the Blythe project, has circumnavigated some of the area's most sacred sites in its ongoing construction, Figueroa's other legal challenges there could be a tough sell, too. Ground etchings known as the Blythe Intaglios are fenced off, protected by federal law. The company agreed to avoid two other intaglios, of the Kokopelli fertility and Cicimitl afterlife deities, which Figueroa believes are thousands of years old but the BLM says are clearly less than 50 (which would make legal protection harder to come by). Still, the Chemehuevi people, like the Aztecs, were migratory, and burial grounds and other cultural sites are scattered throughout the desert. Certainly, Figueroa reasons, that includes the lands on which the six solar plants he's suing are approved. Some of the five other solar projects in Figueroa’s lawsuit could be tripped up by environmental litigation, even if his own efforts don’t make headway. The Sierra Club has launched a strong case against the CEC over review of the Calico project, now owned by K Road Power, in the Mojave (the CEC has an impressive track record at the state Supreme Court, however). The smaller Western Watersheds Project, concerned about the threatened desert tortoise, sued the federal government over the Ivanpah project, also in the Mojave. And the California Unions for Reliable Energy sued the BLM over the Sonoran-based Genesis project, arguing it would make improper use of water from a Colorado River aquifer. People familiar with the Quechan's Imperial Valley injunction say that energy companies and the BLM have learned their lesson. But to some Native Americans, that just means they'll try harder to avoid lawsuits, sometimes by trying to save face after their projects have already won approval. "More and more, the BLM is in a position of throwing out this term 'mitigation,'" Wood says, "not necessarily looking to tribes to stop the process, but what are the tribes' problems so we can get around them?" Dave Singleton, who works for California’s Native American Heritage Commission, says that the BLM has not always respected tribal customs including the oral history of tribal elders who, like Figueroa and Arrow-weed, aren't always members of their tribal councils. "**We’re not against renewable energy," Singleton says. "But it’s a matter of smart development, not just bulldozing through pursuant to an engineer’s drawing." Figueroa calls the influx of big solar the** worst affront to tribes "since the coming of Cortés." Whether it's the latest theft of land **from Native Americans or a renewable energy renaissance** (or something in between), the continued construction of large-scale solar power plants in the southern California desert region seems for now like an inevitability. But Aztlán's protector won't submit. Figueroa promises, "This is a big, long battle that we're going to undertake."

#### Land exploitation turns and outweighs the whole case

Wood, 94

[Assistant Professor of Law, University of Oregon, “Indian Land and the Promise of Native Sovereignty: The Trust Doctrine Revisited,” 1994 Utah L. Rev. 1471]

Some believe the Indian trust doctrine is obsolete in the modern age. After two centuries of cyclical swings, n2 Indian policy has come to rest in the Self-Determination era. n3 This era purportedly [\*1473] leaves behind the legacy of egregious offenses committed against native peoples n4 and embraces a commitment by the federal government to promote the autonomy of Indian nations. n5 **Indian policy now assumes a consensual, rather than overtly coercive, posture**. n6 In this modern milieu of tribal Self-Determination, the trust doctrine may seem unnecessary and out of place. n7 This Article suggests otherwise. Despite the promises of the modern era, the survival of Indian tribal existence, at least in its fullest form, may be in peril. Indian tribes are independent sovereigns, as distinguished from voluntary associations, states, or trust territories.n8 Fully functioning native [\*1474] nations embody a sovereignty composed of four distinct, yet interwoven, attributes: a secure land base, a functioning economy, selfgovernment, and cultural vitality. As nation-entities, their continued existence depends on maintaining all four of these attributes of sovereignty. n9 Though the **Self-Determination** period appears to signal a time of safe harbor in which tribes as sovereigns may coexist within the United States, it **has also brought new hazards to Indian Country. Those hazards** may jeopardize continued tribal existence **as much as did the flagrant assaults of the nineteenth century. An overriding threat facing native nations today is the** deterioration of their land base**.** n10 **A tribe's land base is the** linchpin to other attributes of sovereignty**. The tribal territory forms the geographical limits of the tribe's jurisdiction, supports a residing population, is the basis of a tribal economy, and provides an irreplaceable forum for religious practices and cultural traditions often premised on the sacredness of land.** n11 **Though the majority society's overt land grabbing of the past is unlikely to reoccur in the Self-Determination era, the native land base is imperiled by rapid development,** pollution, and loss of resources **occurring within** and around **Indian reservations. Despite the consensual dynamics of the Self-Determination era, these actions jeopardize tribes' ability to preserve a land-based existence and threaten to erode tribal sovereignty**. n12 [\*1475] The federal government continues to play a critical role affecting land within Indian Country. n13 The government's influence stems from its legal designation as trustee of tribal lands, its ownership of substantial public land holdings abutting Indian land, and its regulatory role in implementing laws affecting land and resource uses in and around Indian Country. n14 The accelerative pace of environmental degradation occurring within and near Indian Country presents an imposing new threat which could have irreversible consequences for the future of many tribes**. While there has been considerable scholarly attention devoted to jurisdictional issues arising from environmental regulation in Indian Country**, n15 **an equally important, and broader, question concerns the government's fiduciary obligations toward tribes in protecting their land base and resources from degradation**. n16 **In the modern era of consensualism and tribal self-determination, such trust duty questions are often brushed aside in the overriding trend to analyze federal-tribal relations outside the parameters of the** [\*1476] **federal trusteeship.** This Article, together with a companion article, n17 suggests that **the trust doctrine is particularly important in the modern era of Self-Determination as a means of responding to threats to the native land base.** The Article attributes the doctrine's past shortcomings largely to the absence of standards by which courts could pro tect tribal sovereignty concerns. Part I of the Article explores threats to the reservation lands and explains the federal government's various roles affecting Indian land. Part II discusses the origins of the trust doctrine and draws on past judicial decisions in an attempt to formulate a coherent trust paradigm. The discussion differentiates between use of the doctrine to review congressional action and use of the doctrine to review executive action, acknowledging that only the latter offers much immediate promise for Indian litigants. Part III evaluates use of the doctrine to challenge federal agency activities affecting Indian land and explores legal barriers to trust litigation. Part IV weighs the policy ramifications of employing the doctrine to challenge federal actions. The companion article reflects on the role of a reconstituted trust doctrine in the area of federal Indian jurisprudence and offers doctrinal standards more responsive to tribal sovereignty interests. It defines the federal fiduciary obligation as one that promotes the four attributes of native sovereignty: a secure land base, a functioning economy, an ability to self-govern, and cultural vitality. It also discusses appropriate ways to reconcile the fiduciary obligation owed to Indian tribes with obligations owed to other competing constituencies.

#### Consensus goes to the CP – it would jumpstart renewable development.

Castro 12

[Scott N, partner in JMBM’s Government, Land Use, Environment and Energy practice group. He has extensive experience working with the Department of Interior and other federal and state agencies on renewable energy, mining and minerals, and related issues, and has expertise in a broad array of federal, state and local land use and environmental regulations. He has worked with various tribes, the Bureau of Indian affairs and other governmental agencies on fee-to-trust land transfers, tribal ordinances, municipal services agreements, cultural resource assessments and protection, and related matters, "RENEWABLE ENERGY UPDATE: Proposed Regulatory Changes For Tribal Leases Provide Promise for Solar and Wind Projects," http://www.jmbm.com/docs/proposed\_regulatory\_changes.pdf]

The proposed rulemaking is notable given the failure of provisions in the Energy Policy Act of 2005 to foster energy development, including renewables, on Indian lands. The Energy Policy Act of 2005 included a provision intended to promote energy development on Indian lands by requiring the DOI establish a process by which tribes can enter into what is known as a Tribal Energy Resource Agreement (TERA) with the Secretary of Interior. Under the TERA regulations issued by DOI in March 2008, if a tribe can meet the multiple criteria for a TERA, the tribe is responsible for managing energy development within its territory without approval from the Secretary of Interior. TERAs allow tribes to avoid certain federal requirements, notably compliance with the National Environmental Policy Act. While the TERA process aims to provide tribes with greater authority and autonomy to pursue energy development on their lands, to date, no tribe has entered into a TERA. Many believe that the waiver of federal liability under the TERA provisions, coupled with other factors, have dissuaded tribes from pursuing TERAs. CONTINUING GOVERNMENT SUPPORT FOR RENEWABLES ON INDIAN LANDS The proposed rulemaking, by focusing on solar and wind projects, and by avoiding the current problems with the TERA process, may serve as a catalyst for increased renewable energy efforts on tribal lands. Indeed, the federal government’s continued interest in and support for such developments, particularly financial support, should provide added incentive. For example, the Department of Energy and the Office of Indian Energy Policy and Programs (OIEPP), just awarded on February 16, 2012 over $6.5 million in funding to 19 clean energy projects on tribal lands for feasibility studies, pre-construction, and installation activities.

#### Critiques of paternalism don’t apply to our counterplan – it repudiates the status quo.

Wood, 94

[Assistant Professor of Law, University of Oregon, “Indian Land and the Promise of Native Sovereignty: The Trust Doctrine Revisited,” 1994 Utah L. Rev. 1471]

B. The Trust Doctrine and Historical Paternalism A second criticism focuses on the paternalistic and moralistic overtones which have at times pervaded judicial, congressional, and administrative characterizations of the trust obligation. **It is undeniable that during certain periods of history courts have cast the trusteeship as a duty owed by a morally superior culture to a dependent, primitive, non-Christian culture**.n350 Those judicial opinions contain characterizations of native people as incompetent individuals in need of the trust protection and wisdom of the federal government. n351 Such overtones likely have perpetuated a power less and disenfranchised role for tribes during the course of history. n352 Tainted as the trust doctrine is by historical characteriza- [\*1548] tions repugnant to contemporary moral standards**, some commentators suggest that the doctrine is a destructive symbol inappropriate for the centerpiece position in future Indian policy or law**. n353 Despite that valid concern, it is equally undeniable that Indian law as a whole rests on an historical approach that is socially, though still not legally, repudiated today. Claiming title to indigenous lands, waging war against Indian tribes, and punishing Indian people for practicing their time-honored traditions are regarded as deplorable actions in a present-day normative sense. Many commentators point out that the entire span of federal Indian law rests on a reprehensible foundation of hegemony. n354 **The trust doctrine, like most doctrines in federal Indian law, has roots anchored in distant history.** Some historical expressions of the doctrine, particularly during the Assimilation and Allotment periods, inevitably reflect the tenor of those times. However, an alternative "sovereign trust" paradigm also emerges from the historical accounts, having its reference point in the Treaty-Making period, which reflected more of a sovereign tribal status than any period since the beginning of the Republic. n355 A revisionist analysis of the trust doctrine would draw its paradigm from historical expressions of tribes as sovereigns to which the federal government owed, and still owes, negotiated duties to protect native autonomy. n356 **Presumptions of moral inferiority and incompetency on the part of native peoples have no place in a sovereign trust paradigm. The goal of viable separatism which forms the central tenet of a sovereign trusteeship necessarily implies respect for the native way of life. Moreover,** the necessity of limited dependency on the United States does not presume inferiority or a lack of autonomy **on the part of tribes.** Indeed, in Worcester v. Georgia, Justice Marshall [\*1549] characterized Indian tribes as autonomous nations, even if they are significantly dependent in some sense on the dominant sovereign: The settled doctrine of the law of nations is, that a weaker power does not surrender its independence--its right to self-government--by associating with a stronger, and taking its protection. **A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state**. n357 The quoted language is refreshingly devoid of the moral or paternalistic overtones that are present in other Indian law opinions of that and later eras. n358 Moreover, Justice Marshall's approach in Worcester is buttressed by treaty language that can be read as contract terms negotiated between two sovereigns which provided for compensation in exchange for land tendered. n359 The historical characterization of tribes as morally inferior, culturally deprived, inherently dependent entities derives from an historical snapshot that fails to reflect the entire span of federalIndian relations. Reference to the Treaty-Making period provides a far different vision of trust duties and creates a contemporary role for the trust relationship based on historical commitments and sovereign recognition of Indian nations by the federal government. n360 And indeed, this portrayal is prominent in much contem- [\*1550] porary Native American testimony. n361 **Casting the trust obligation as a paternalistic device essentially elevates what is a tragic distortion of federal obligation to the status of enduring and controlling interpretation. Wholesale rejection of the trust responsibility in an effort to cleanse modern Indian policy of its reprehensible past may simply excuse federal repudiation of those compelling obligations inhering in the trusteeship. It is therefore preferable to focus future attention on supporting a sovereign trust paradigm which repudiates federal paternalism**. n362

#### They say that they don’t lead to exploitation because the tribes get the choice – however, ‘Choice’ favors corporations—resource disparities and empirics

Getzan, 4

[Contributing Journalist-The New Standard, 1/18, Energy Act Provision May Offer ‘False Sovereignty,’ http://newstandardnews.net/content/?action=show\_item&itemid=110]

A controversial provision of the Energy Policy Act of 2003 has Native American activists worried that their lands will become even more vulnerable to exploitation from large energy corporations. Jan 18, 2004 - Depending on who you talk to, a provision in the Energy Policy Act of 2003 will either make it increasingly easy for large corporations to treat Native American reservations like “batteries for large cities,” or it will or help ensure tribal sovereignty. The provision causing controversy -- the Indian Tribal Energy Development and Self Determination Act, or Title V -- places tribal governments, rather than the U.S. Department of the Interior, at the center of the decision making process concerning reservations' energy development. The act also provides subsidies for increased oil and gas extraction in general and encourages nuclear power plant construction and research. Though the bill stalled in the Senate last December, it is expected to be reintroduced in the coming session, possibly as soon as the end of this month. As it stands now, the federal government -- usually the Department of the Interior -- has a “trust responsibility” with the majority of American Indian tribes. Title V, save initial impact reviews, allows a tribal government the choice to once and for all opt out of involving the Department of the Interior in energy development projects. Opponents of the bill, including the advocacy group Native Movement, the Black Mesa Water Coalition, and the Indigenous Environmental Network, say that **persistent problems facing many American Indian communities** cloud assurances that tribal governments alone, **rather than stronger oversight all around, will lead to cleaner and less bureaucratic energy extraction on reservations.** However, David Lester, a citizen of the Muscogee Nation and the executive director of the Council of Energy Resource Tribes -- a group that promotes tribal independence through capitalizing on resource development -- and other advocates of the bill say that it will enable tribes to bargain as an "equal partner" with companies looking to mine or withdraw oil from their lands without “the stumbling blocks” of federal interference. “The [impact] review period has killed most of the deals” of tribes looking to utilize their resources, Lester said. “It's the hassle factor of doing business with the Department of the Interior as [an] interference every step of the way." “If they could control their own resources,” he added, “they could advance their own economic, social, political goals.” Opponents of Title V, on the other hand, say that **though this may seem like an opportunity for American Indians to get out from under an outdated and repressive federal scheme, there are flaws in both the resolution's intent and function. “Well-developed tribes may be ready to take on the responsibility of their own lands**,” said Evon Peter, director of the Native Movement and former chief of the Neetsaii Gwich'in of Alaska. “Those with money can have a say in how things work. Major **corporations are going to come in, with a lot more money, with a lot more lawyers. Now, these corporations are going to be able to do what they want with these tribal governments** . . . Basically, **it's the federal government stepping back from its responsibility and saying, 'Go for it, corporations.'”** Consumer advocate groups say that in the last decade, mining and dumping have had an adverse effect on many American Indian lands. For example, the Skull Valley Goshute reservation in Utah is planned as a pit stop for what the Department of Energy estimates will be a 100,000-shipment, thirty-year caravan of traveling nuclear waste. According to the Indigenous Environmental Network, just one component of the irradiated fuel that will be stored at Skull Valley, Plutonium 235, will remain toxic for the next 24,000 years, creating the possibility of an accident at the Goshute reservation that would quite literally poison the land forever. Besides the environmental impact of resource extraction and nuclear waste, **poor oversight has often led to Native Americans** seeing little or no financial gain for resources removed from their land. For example, in 1995, an article in American Indian Quarterly noted that as much as $180 million had been paid by oil companies in royalty fees to the Utah Navajo Trust Fund for operations near Aneth Montezuma Creek. Still, third-world conditions persisted over the forty plus years of extraction on Navajo lands. Seventy five percent of Utah Navajos still had no electricity or running water, and the fund was practically bankrupt due to mismanagement and fraud. By the end of the 1990s, Utah Navajos were left broke and stuck with nearly 600 oil wells drilled into their lands. However, according to advocates of the bill, the argument that Native American tribes are not yet ready to bargain with companies without the federal government's intervention ignores Native Americans' historical ability to set high environmental standards. Lester said the record shows that native communities, when given the chance to act independently, have made sound environmental decisions. He gives the example of the Northern Cheyenne in Montana who rejected a proposed coalmine outright, or the Pueblos of New Mexico, who are located downstream from Albuquerque and managed to turn around water quality for the whole region by setting high standards of their own. Lester said tribal activists and Democrats opposing Title V have been whipped up by activists in the environmental movement. “We can substitute the environmental movement for the BIA (Bureau of Indian Affairs). We can't accept federal paternalism, and we can't accept [environmental groups] maternalism.” “We've had a number of different eras in relations with the tribes,” says Paul Moorehead, Staff Director and Chief Legislative Counsel for the Committee on Indian Affairs. “But the clear trend [is moving] away from the massive federalization of tribal government.” Moorehead says that Title V represents a first step in an “analog” of trust liberalization that would extend into other fields on the reservation handled by the US government such as health care and law-enforcement. However, to many Native American ears, **arguments** such as those of Lester and Moorehead, **which present Title V as a mechanism for self-determination and economic freedom, ring hollow**. Many such promises have been made in the past -- like the Dawes Act, which at the time was hailed as a kind of “Magna Carta” for American Indians, but in reality functioned only as a colonial land grant system. “It's put forward as a tool for sovereignty, but really, it's just disguised as sovereignty,” said Enei Begaye, the director of the Black Mesa Water Coalition and an Arizona Navajo. “Really, **our tribes aren't given any real enforcement power. They're not equipped right now to take over [their] own environmental protection.”** Other critics of the bill, like Tom Goldtooth, the executive director of the Indigenous Environmental Network, say that another problem with the bill is that large scale **energy resource extraction** stands in direct contradiction to native cultural traditions**. “It is at the detriment of something we hold sacred,”** Goldtooth said. “**These corporations have no interests in the rights of indigenous people. It is a form of** environmental racism.”

#### The entire process is anti-democratic—internal power differentials prop up ineffective governments beholden to corporate interests

Lacey 4

[J.D. 2004, Georgetown University Law Center, and Pocatello, Idaho native. I thank my wife for her love and support through an exceptionally difficult season; my family for their constant prayers; and the Journal staff for their tireless, thankless work to make others look brilliant.

Manifest Destiny's New Face: "Soft-Selling" Tribal Heritage Lands for Toxic Waste]

All Residents Do Not Have Equal Say in Bargaining for Burdens The economic model's "meaningful involvement" assumption seeks to give affected members of society a real say in the process of determining the environmental burdens that a community is asked to bear. Although the EPA's policy on environmental discrimination pays lip service to this principle, n175 the EPA's actual practice suggests the difficulty of involving all interested parties in negotiations for environmental burdens. For example, Region 10's Strategic Plan for Tribal Programs foresees cooperation with the 267 tribes it serves in any environmental decision that the EPA makes on their behalf. n176 However, limiting such cooperation to the tribes' leadership elites, rather than "meaningfully [\*427] involving" every faction of the tribe, may not yield the most accurate vision of the tribe's desires. Because toxic wastes potentially affect every member of the community with varying intensities, it is essential that a broad consensus be reached before a community agrees to build a waste site. n177 Just as majority communities can discriminate against minority communities regarding the amount of environmental burdens they are forced to bear, so too can minorities within the minority communities be required to bear a disproportionate share of the costs. In the case of reservations, more traditional members of the tribe often will more keenly feel the costs of seeing lands destroyed by development of toxic waste sites. n178 The different values that members of the tribe may place on lands of spiritual or historical significance will not be taken into account in economic bargaining. n179 The modern economic model fails to account for or discounts externalities such as these. n180 As a result, current federal policy, giving free rein to that economic model, has pitted tribes against themselves and their ancestors. Significant decisions are commonly made by a few leading members of the tribes, often without regard to dissenting voices within the community. n181 The Indian Reorganization Act of 1934 replaced many traditional tribal governing structures based on consensus with democratic governments. n182 These westernized governments are often not representative of the historic structure and values of the tribe, and tend to favor economic development regardless of the spiritual implications. n183 The more economically-minded leaders of the tribe often use loopholes or procedures built into the democratized governments to overcome opposition against proposals for these waste sites. n184 The result is a systematic devaluation of traditional tribal values and a rising preference for short-term economic gain. The tribal voting process, according to self-determination paradigms, can be checked only by the federal government's [\*428] fiduciary duty toward Native Americans, n185 a check that would most likely be deemed paternalistic or meddlesome. But is it enough to grant Native American sovereignty to the point that it suits American economic interests, or must the federal government make sure that the political processes it created (and supports) reflect the desires of America's Indians? The Shoshone-Bannock settlement exemplifies the preference of tribal leadership for economically-minded solutions to the exclusion of all others. Shortly after FMC announced the closure of its plant, its management approached the Tribal Economic Council about a possible settlement. n186 The Council held a public notice period, during which some activists and members of the Tribe opposed to the settlement registered comments. n187 But in the end, it was the Tribal Economic Council that made the final decision, withholding many of the details from the media. n188 Once the settlement was finalized, the Council announced the $ 40 million payment and allowed the entire tribe to vote on the distribution of the settlement money. The tribe voted overwhelmingly to distribute the money equally. n189

#### Fair negotiation impossible in tribal energy context

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(Ezra, 58 Ark. L. Rev. 291)

The Navajo Nation and Peabody reached a negotiated royalty rate coupled with related provisions on the lease amendments; arguably, the Secretary's responsibility to critically examine the amendments stopped once the agreed rate was above the federally mandated minimum. n168 However, a fair negotiation can be thwarted if one of the parties does not have the power to walk away or is not in an equal position to negotiate. The Navajo Nation suffers from rampant poverty, and "lacks [the] basic infrastructure needed to support a self-sustaining economy." n169 Consequently, the royalties received from mineral extraction are of incredible importance to the Dine, for their government and people. For tribes such as the Navajo, "the mineral estate represents the best, if not the only, hope for economic development of the reservation." n170 ""Facing severe [\*317] economic pressures,' the Navajo Nation eventually caved in to Peabody's proposal for a facial royalty rate of [12.5]%." n171 The pressures faced by the tribe arguably make the negotiated agreement little more than a contract of adhesion. n172 In natural resource exploitation leases, "once the leases were negotiated and in place, corporations could muster tremendous legal power to make certain they remained unaltered." n173 Although not strictly "legal power," Peabody's use of a close personal friend of Secretary Hodel to lobby on their behalf was representative of their "tremendous" power.