# 1NC

### Off 1

#### Interpretation – Restrictions on production must mandate a decrease in the quantity produced. Aff only reduces a regulation on production.

Anell 89

Chairman, WTO panel "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6445 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2." 3. On 3 April 1989, the Council was informed that agreement had been reached on the following composition of the Panel (C/164): Composition Chairman: Mr. Lars E.R. Anell Members: Mr. Hugh W. Bartlett Mrs. Carmen Luz Guarda CANADA - IMPORT RESTRICTIONS ON ICE CREAM AND YOGHURT Report of the Panel adopted at the Forty-fifth Session of the CONTRACTING PARTIES on 5 December 1989 (L/6568 - 36S/68) http://www.wto.org/english/tratop\_e/dispu\_e/88icecrm.pdf

The United States argued that Canada had failed to demonstrate that it effectively restricted domestic production of milk. The differentiation between "fluid" and "industrial" milk was an artificial one for administrative purposes; with regard to GATT obligations, the product at issue was raw milk from the cow, regardless of what further use was made of it. The use of the word "permitted" in Article XI:2(c)(i) required that there be a limitation on the total quantity of milk that domestic producers were authorized or allowed to produce or sell. The provincial controls on fluid milk did not restrict the quantities permitted to be produced; rather dairy farmers could produce and market as much milk as could be sold as beverage milk or table cream. There were no penalties for delivering more than a farmer's fluid milk quota, it was only if deliveries exceeded actual fluid milk usage or sales that it counted against his industrial milk quota. At least one province did not participate in this voluntary system, and another province had considered leaving it. Furthermore, Canada did not even prohibit the production or sale of milk that exceeded the Market Share Quota. The method used to calculate direct support payments on within-quota deliveries assured that most dairy farmers would completely recover all of their fixed and variable costs on their within-quota deliveries. The farmer was permitted to produce and market milk in excess of the quota, and perhaps had an economic incentive to do so. 27. The United States noted that in the past six years total industrial milk production had consistently exceeded the established Market Sharing Quota, and concluded that the Canadian system was a regulation of production but not a restriction of production. Proposals to amend Article XI:2(c)(i) to replace the word "restrict" with "regulate" had been defeated; what was required was the reduction of production. The results of the econometric analyses cited by Canada provided no indication of what would happen to milk production in the absence not only of the production quotas, but also of the accompanying high price guarantees which operated as incentives to produce. According to the official publication of the Canadian Dairy Commission, a key element of Canada's national dairy policy was to promote self-sufficiency in milk production. The effectiveness of the government supply controls had to be compared to what the situation would be in the absence of all government measures.

#### Voting issue –

#### 1. Including regulations is a limits disaster.

Doub 76

Energy Regulation: A Quagmire for Energy Policy Annual Review of Energy Vol. 1: 715-725 (Volume publication date November 1976) DOI: 10.1146/annurev.eg.01.110176.003435LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street NW, Washington, DC 20036 Mr. Doub is a principal in the law firm of Doub and Muntzing, which he formed in 1977. Previously he was a partner in the law firm of LeBoeuf, Lamb, Leiby and MacRae. He was a member of the U.S. Atomic Energy Commission in 1971 - 1974. He served as a member of the Executive Advisory Committee to the Federal Power Commission in 1968 - 1971 and was appointed by the President of the United States to the President's Air Quality Advisory Board in 1970. He is a member of the American Bar Association, Maryland State Bar Association, and Federal Bar Association. He is immediate past Chairman of the U.S. National Committee of the World Energy Conference and a member of the Atomic Industrial Forum. He currently serves as a member of the nuclear export policy committees of both the Atomic Industrial Forum and the American Nuclear Energy Council. Mr. Doub graduated from Washington and Jefferson College (B.A., 1953) and the University of Maryland School of Law in 1956. He is married, has two children, and resides in Potomac, Md. He was born September 3, 1931, in Cumberland, Md. http://0-www.annualreviews.org.library.lausys.georgetown.edu/doi/pdf/10.1146/annurev.eg.01.110176.003435

FERS began with the recognition that federal energy policy must result from concerted efforts in all areas dealing with energy, not the least of which was the manner in which energy is regulated by the federal government. Energy selfsufficiency is improbable, if not impossible, without sensible regulatory processes, and effective regulation is necessary for public confidence. Thus, the President directed that "a comprehensive study be undertaken, in full consultation with Congress, to determine the best way to organize all energy-related regulatory activities of the government." An interagency task force was formed to study this question. With 19 different federal departments and agencies contributing, the task force spent seven months deciphering the present organizational makeup of the federal energy regulatory system, studying the need for organizational improvement, and evaluating alternatives. More than 40 agencies were found to be involved with making regulatory decisions on energy. Although only a few deal exclusively with energy, most of the 40 could significantly affect the availability and/or cost of energy. For example, in the field of gas transmission, there are five federal agencies that must act on siting and land-use issues, seven on emission and effluent issues, five on public safety issues, and one on worker health and safety issues-all before an onshore gas pipeline can be built. The complexity of energy regulation is also illustrated by the case of Standard Oil Company (Indiana), which reportedly must file about 1000 reports a year with 35 different federal agencies. Unfortunately, this example is the rule rather than the exception.

#### 2. Precision – A distinction between regulation and restrictions is key.

Sinha 6

http://www.indiankanoon.org/doc/437310/ Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J :

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus: "It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

### Off 2

#### CP text: The United States federal government should remove restrictions on the development of wind energy projects in the United States. The United States federal government should ban solar energy production in the United States.

#### Expanding the solar industry causes e-waste dumping---turns the whole case

Nath 10

ISHAN NATH, Rhodes scholar and Stanford graduate – major in economics and Earth Systems and minor in mathematics, 10 [“Cleaning Up After Clean Energy: Hazardous Waste in the Solar Industry,” Stanford Journal of International Affairs, Volume 11, number 2, http://www.stanford.edu/group/sjir/pdf/Solar\_11.2.pdf]

These hopes for a viable source of renewable ¶ energy, however, have recently been tempered with a ¶ word of caution. Toxic waste, experts say, is something ¶ the solar industry must watch out for, as detailed by ¶ the watchdog nonprofit Silicon Valley Toxics Coalition ¶ (SVTC) in a widely circulated new report. Essentially, ¶ solar firms face two dilemmas concerning their ¶ hazardous chemicals. How can the production process ¶ ensure that panels are manufactured without leaking ¶ waste and how will they be disposed of after a lifetime ¶ of use? These concerns, though fairly manageable in ¶ and of themselves, exist in a complex international ¶ web of competing political, economic, and scientific ¶ interests. Given this complexity, most solar firms ¶ have focused on the more straightforward of the two ¶ problems: end-of-life recycling. But in creating a fairly ¶ solid foundation for addressing this issue, the industry ¶ has largely overlooked investigative reports revealing ¶ current problems with production waste, particularly ¶ pertaining to Chinese manufacturing. Until these ¶ concerns receive more attention, promises of panel ¶ recycling will quell any public anxiety, preventing the ¶ creation of necessary safeguards to stop rogue firms ¶ from unsafe manufacturing practices. To fully address ¶ its hazardous waste issues, the solar industry must move ¶ forward aggressively not only with its development of ¶ panel recycling programs, but also with steps to address ¶ more pressing issues in the production process.¶ The first question facing solar firms is how to ¶ address the prospect of used panels inundating landfills ¶ and leaching toxic waste into the environment. When ¶ a solar module outlives its usefulness 20 to 25 years ¶ after installation, its disposal must be carefully handled ¶ to avoid contamination from the enclosed chemicals. ¶ But, given examples from similar industries, there is no ¶ guarantee that this procedure will take place. More than ¶ two-thirds of American states have no existing laws ¶ requiring electronics recycling and the US currently ¶ exports 80 percent of its electronic waste (e-waste) ¶ to developing countries that lack infrastructure to ¶ manage it.¶ 1¶ Thus, by urging solar companies to plan ¶ for proper disposal of decommissioned panels, SVTC ¶ draws attention to an issue that currently remains ¶ unaddressed. The Coalition makes an appeal for ¶ legislation requiring Extended Producer Responsibility, ¶ which would force firms to take back and recycle their ¶ used products, but in the absence of such requirements, ¶ is the solar industry ready for the eventual onrush of ¶ solar panels?¶ 2¶ “I don’t think enough people are thinking ¶ about [recycling used solar panels],” said Jamie Porges, ¶ COO and Founder of Radiance Solar, an Atlantabased startup. “I’m sure there are people who have ¶ thought about it, but I don’t think there’s been enough ¶ open discussion and I haven’t heard a plan.”¶ 3¶ Another ¶ executive familiar with the solar industry frames the ¶ problem more urgently. Steve Newcomb, Founder and ¶ CEO of “One Block Off the Grid,” a firm that connects ¶ consumers with the solar industry, calls the issue of ¶ used solar modules “a big deal, and one that nobody’s ¶ thought a lot about yet.” If nothing is done, he warns, ¶ the situation could escalate into “a major disaster**.”**¶ 4

**Solar development kills desert tortoise**

**Lovich & Ennen ‘11**

Jeffrey and Joshua, “Wildlife Development and Solar Energy Development in the Desert Southwest, United States,” Bioscience Volume 61 No. 12 Pages 982-992 <http://www.avhidesert.com/pdf/downloaded_file-1.pdf>

Habitat fragmentation. **Until relatively recently, the desert Southwest was characterized by large blocks of continuous and interconnected habitat**. Roads and urban development continue to contribute to habitat fragmentation in this landscape. **Large-scale energy development has the potential to add to and exacerbate the situation, presenting potential barriers to movement and genetic exchange in wildlife populations, including** those of bighorn sheep (Ovis canadensis), deer (Odocoileus spp.), **tortoise**s, and other species of concern and social significance. Research conducted on the effects of oil and gas exploration and development (OGED) on wildlife in the Intermountain West provides a possible analog to USSEDO, since comparable data are not available for the desert Southwest. **The potential effects** on mule deer (Odocoileus hemionus) and other wildlife species **include impediments to free movement, the creation of migration bottlenecks, and a reduction in effective winter range size.** Mule deer responded immediately to OGED by moving away from disturbances, with no sign of acclimation during the three years of study by Sawyer and colleagues (2009). Some deer avoidance resulted in their use of lesspreferred and presumably less-suitable habitats. Despite a lack of data on the direct contributions of USSEDO to habitat fragmentation, USSEDO has the potential to be an impediment to gene flow for some species. Although the extent of this impact is, as yet, largely unquantified in the desert, compelling evidence for the effects of human-caused habitat fragmentation on diverse wildlife species has already been demonstrated in the adjacent coastal region of southern California (Delaney et al. 2010).

**Desert Tortoise is a keystone species, keeps hundreds of species alive and soil correct**

**Becker ’12**

Kendall is an environmental researcher at the University of Washington, “Renewable Energy, Fire, and the Agassiz’s Desert Tortoise,” <http://scienceinshort.wordpress.com/2012/03/13/renewable-energy-fire-and-the-agassizs-desert-tortoise/>

**At the forefront of this debate is the Agassiz’s desert tortoise. The tortoise is a keystone species; the desert ecosystem revolves around the tortoises’ propensity to burrow. “Literally hundreds of other desert animals benefit from tortoise burrows,” says Dr.** Jeffrey **Lovich, director of the Southwest Biological Science Center** in Flagstaff, Arizona. Voles, enda**ngered lizards, and even rattlesnakes seek shady homes in burrows of dimensions they are incapable of engineering on their own**. **Still more critical to the desert ecosystem is the churning of the soil that occurs as tortoises dig these tunnels**. In an environment devoid of worms, **desert plants rely on tortoises to stir up the soil so more water and oxygen can reach plant roots**. In recent decades desert tortoise numbers have plummeted as encroaching civilization and industry fragment their habitat. **Where a full 1,000 tortoises used to populate each square kilometer, now as few as 100 remain**. With the California Bureau of Land Management currently reviewing 22 applications for solar energy permits, the question of how these facilities impact tortoises and, by extension, the entire desert ecosystem, is a pressing one.

**Extinction**

**Fraser 10**

(Caroline, "Could Re-Wilding Avert the 6th Great Extinction?," 1/5, Scientific American, Adapted from the book REWILDING THE WORLD: Dispatches from the Conservation Revolution by Caroline Fraser, <http://www.scientificamerican.com/article.cfm?id=could-re-wilding-avert-6th-great-extinction>)

Why do species matter? Why worry if some go missing? Part of the answer lies in the relationships coming to light between creatures like the canyon coyotes and the chaparral birds. After the nineteenth century’s great age of biological collecting, when collectors filled museums to bursting with stuffed birds and pinned beetles, the twentieth and twenty-first centuries have proved to be an age of connecting. Biologists have begun to understand that nature is a chain of dominoes: If you pull one piece out, the whole thing falls down. Lose the animals, lose the ecosystems. Lose the ecosystems, game over. This was the essential insight of conservation biology, a new scientific field launched with the determination to identify threats to ecosystems and to design the methods to deal with them. E. O. Wilson has called it “a discipline with a deadline.” The Society for Conservation Biology, founded in 1985, became one of the fastest-growing scientific organizations of its time, bringing together diverse specialties from ecology and population genetics to sustainable agriculture and forestry, revolutionizing the once sleepy field of natural history. The tremendous variety of species held in wilderness areas, particularly the tropics, is our bank and lifeline, our agricultural and medical insurance policy. Three-quarters of the world’s food supply comes from twelve plant species, but those species are dependent on thousands of others: pollinators (insects, bats, birds), soil microbes, nitrogen-fixing bacteria, and fungi. The tropical rain forests contain a pool of genetic diversity for important food crops, a source for vital new strains that can be hybridized to fight pests and diseases. Botanists are combing the planet for wild ancestors of soybeans, tomatoes, hard wheat, and grapes, believed to contain valuable genes for drought tolerance and other characteristics, but much diversity has already been lost. Genetic engineering alone cannot replace what hundreds of millions of years of evolution have given us. Wild replacements for pineapples, pomegranates, olives, coffee, and other crops lie in biodiversity-rich areas that must be saved. In terms of medicine, our most important modern pharmaceuticals, including quinine, morphine, aspirin, penicillin, and many other antibiotics, are derived from microbes, plants, and animals found in tropical and marine environments. The first comprehensive scientific treatise on our reliance on other species, Sustaining Life: How Human Health Depends on Biodiversity, published in 2008, confirmed the importance of genetic variety, describing groups of threatened organisms crucial to agriculture and human medicine. Predictably, our close relatives, primates, make up a key group. Contributing to work on smallpox, polio, and vaccine development, primates allow research on potential treatments for hepatitis C and B, Ebola and Marburg viruses, and HIV/AIDS. The list of threatened plants and animals we rely on is weird and varied, including amphibians, bears, gymnosperms (the family of plants that includes pine trees), cone snails, sharks, and horseshoe crabs. Cone snails, a large genus of endangered marine mollusks, inject their prey with paralyzing toxins that are prized in medical research for their use in developing pain medications for cancer and AIDS patients who are unresponsive to opiates. The blood of the horseshoe crab, which carries antimicrobial peptides that kill bacteria, is being tested in treatments for HIV, leukemia, prostate cancer, breast cancer, and rheumatoid arthritis; it also yields cells crucial in developing tests to detect bacteria in medical devices, and its eyes have allowed Nobel Prize–winning researchers to unravel the complexities of human vision. Cone snails and horseshoe crabs are exactly the kinds of species that people tend to dismiss, seeing no utility in them, no connection to human need. This was the attitude expressed in 1990 by Manuel Lujan Jr., secretary of the interior during the George H. W. Bush administration, who asked in exasperation, “Do we have to save every subspecies?” It was the attitude expressed in 2008 by presidential candidate John McCain, who repeatedly declared his opposition to the funding of research on grizzly bear DNA. He got a cheap laugh whenever he said, “I don’t know if that was a paternity issue or a criminal issue.” Medical researchers were not laughing: bears, too, are essential to human medicine. Bear bile yields ursodeoxycholic acid, now used in treating complications during pregnancy, gallstones, and severe liver disease. Denning bears enter a period of lethargy during the winter and recycle body wastes in a process unique in mammals; this process is studied for insights in treating osteoporosis, renal disease, diabetes, and obesity. If species are crucial to medicine, ecosystems are indispensable to the health of the planet. Ecosystems provide the most basic provisioning services— food, firewood, and medicines—along with the so- called regulating services of a fully functional environment, which include cleaning the air, purifying water, controlling floods and erosion, storing carbon, and detoxifying pollutants in soils. When ecosystems are lost, as they have been through felling of forests and conversion of landscape to agriculture on a vast scale, havoc ensues, triggering human and natural catastrophe on an unprecedented scale.

### Off 3

**CP Text:**

**The United States federal government should:**

**· Reinstate federal liability in Tribal Energy Resource Agreements.**

**· Allow identification and incorporation of environmental mitigation measures at the discretion of individuals entering into Tribal Energy Resource Agreements.**

**· Acknowledge successful Public Law 638 compacts and contracts as equivalent to demonstrated capacity.**

**· Stream-line approval of Tribal Energy Resource Agreements and automatically approve Tribal Energy Resource Agreement proposals pending 271 days if inaction is taken on behalf of the Secretary of the Interior.**

**Changing the Secretary’s approval process solves the whole case**

**Royster**, Co-Director – Native American Law Center @ University of Tulsa, **‘12**

(Judith V., “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91)

Nonetheless, there are steps that can be taken to tighten up the approval process and make it friendlier to renewable energy development. The **two amendments** to the IMDA **proposed here** [\*133] would provide that the Secretary's failure to act within the time allotted constitutes approval, and that in determining whether a minerals agreement is in the tribe's best interest, the Secretary will defer to the tribe's decision.¶ Under the IMDA, the Secretary has 180 days to approve or disapprove a minerals agreement, or 60 days after compliance with the National Environmental Policy Act (NEPA), whichever is later. n189 The statute specifically provides that the Secretary's failure to meet the deadline is enforceable by a mandamus action in federal court. n190 Making the Secretary's deadline mandatory is useful, but authorizing enforcement by court action is not. Civil suits proceed slowly through the federal courts, and it is unlikely that a writ of mandamus would be issued before the Secretary reached a decision on the minerals agreement. Waiting two years for the court's decision is no better than waiting two years for the Secretary's.¶ A better approach would borrow from the proposed statutory amendments to the TERA process. The proposed TERA amendments would replace a provision giving the Secretary 270 days to approve a TERA, with a provision that 271 days after the tribe submits its TERA application, the TERA "shall" become effective if the Secretary has not disapproved it. n191 A similar amendment to the IMDA could provide that 181 days after the tribe submits a proposed minerals agreement, or 61 days after compliance with NEPA, whichever is later, the agreement "shall" take effect if the Secretary has not disapproved it or has not provided the tribe with written findings of the intent to approve or disapprove the agreement. n192 As with the proposed TERA [\*134] amendment, this would put substantial additional pressure on the Department of the Interior to act quickly. But the benefit to tribes of knowing whether their minerals agreements have been approved, and being able to implement their agreements within a reasonable time, outweigh those concerns.¶ The second way to streamline the approval process for renewable energy resources is to address the substance of the Secretary's **review of mineral agreements.** The IMDA provides that the Secretary must determine whether a proposed agreement "is in the best interest of the Indian tribe." n193 In so doing, the Secretary "shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement." n194 The statute expressly provides, however, that the Secretary is not responsible for preparing any studies regarding "environmental, socioeconomic, or cultural effects" other than the environmental studies required by NEPA. n195¶ The regulations, on the other hand, require that the Secretary determine both that the minerals agreement is in the tribe's best interest and that any adverse cultural, social, or environmental impacts do not outweigh the benefits of the agreement. n196 The "best interest" standard is further defined as requiring "the Secretary [to] consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects." n197 The regulations further specify that the "best interest" standard is based on information supplied by the parties "and any other [\*135] information considered relevant by the Secretary." n198 That information may include comparisons to other contracts or offers for similar resources, "insofar as that information is readily available." n199¶ These standards, derived from judicial determinations that the Secretary must consider all relevant factors in reviewing mineral leases under the IMLA, n200 place considerable decision-making power with the Secretary. During the rulemaking process, in fact, the Department of the Interior rejected a commenter's suggestion that minerals agreements should be approved if the agreements were in compliance with law. The Department noted that the law itself "allows the Secretary the discretion to weigh relevant factors and requires the Secretary to make, on the basis of the Secretary's judgement, a best interest determination." n201¶ At the time the IMDA was enacted in 1982, federal Indian policy had only recently focused on tribal self-determination, n202 and Indian tribes were still emerging from the uncertainties and destruction of the termination era. n203 The Department of the Interior had experience with considering all relevant factors in the approval of IMLA leases, and carried that standard into the new world of minerals agreements. It took twelve years for the Department to issue IMDA regulations, but the regulations again reflected the central role of the Secretary and the importance of the Secretary's judgment call. In the 1980s and even early 1990s, the Secretary's stringent oversight may have been justified by the imbalance of knowledge and bargaining power between tribes and energy companies.¶ But nearly twenty years have passed since the regulations were [\*136] promulgated in 1994. Indian tribes have thirty years of experience with IMDA minerals agreements, and many of the energy tribes have become sophisticated negotiators of development deals. Certainly tribes are the best determiners of cultural and social impacts, and often of the economic impacts as well. In light of those factors, the **standards for approval** of IMDA agreements are due for amendment.¶ Amending the statute itself to revisit the appropriate factors may be the best choice, **but a simpler** and perhaps **quicker fix is** also **available.** The Department could amend the regulations to reflect modern realities. Similar to the best interests determination in the regulations for agricultural and other surface leases, the IMDA regulations could provide that in reviewing an IMDA minerals agreement, the Secretary will defer to the tribe's determination that the agreement is in its best interest, **to the maximum extent possible.** n204 Although the conditional "maximum extent possible" language preserves the Secretary's ultimate authority under the statute, the regulation would ensure that the Secretary will undertake the minerals agreement review process with **due respect for the tribe's decision.** **Even if** a deferential review is current practice, embedding it in the regulations **strengthens the tribe's role in the decision making process.**¶VII. Conclusion¶ Renewable energy resources are taking on increased importance for tribal economies. While these resources are abundant in Indian country, the federal statutory authority for their development is dispersed and often problematic. Mineral development statutes may or may not apply; other statutes not originally intended for energy development fill the gap, but generally confine tribes to a passive role in renewables development. The recent energy statute solves many of the problems with the other approaches, but creates a process that is [\*137] complex and expensive enough to discourage most tribes from using it. Recent bills would tweak the energy statute and propose broader leasing authority, but none addresses the overarching problem of providing tribes with a way to take an active role in the development of renewable resources without undue expense or federal oversight.¶ The amendments to the IMDA and its regulations proposed here also do not solve that overarching problem entirely. They are intended to suggest **steps in the direction of greater tribal self-determination** in renewable energy development. They would free tribes to **take more active roles** in renewable energy projects, while preserving tribes' ability to use the variety of other available statutory approaches. And they would rein in the secretarial approval power by providing that federal inaction benefits the tribes and by reframing the best interests analysis. Under these proposals, Indian tribes could more easily develop their renewable energy resources, and do so with **more direct say** in the development itself.

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

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 reforming 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**.

### Off 4

#### Obama will win on debt ceiling

Klein 1-2

Ezra is a Washington Post Columnist, “The Lessons of the Fiscal Cliff,” <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/02/the-lessons-of-the-fiscal-cliff/>

The question of who “won” the fiscal cliff won’t be answered till we know what happens when Congress reaches the debt ceiling. The White House says that there’ll be no negotiations over the debt ceiling, and that if Republicans want further spending cuts, their only chance is to hand over more tax revenue. If they’re right and they do manage to enforce a 1:1 ratio of tax hikes to spending cuts in the next deal, they’re going to look like geniuses.¶ Republicans swear they are crazy enough to push the country into default, and they promise that the White House isn’t strong enough to stand by and let it happen. If they’re right, and the White House agrees to big spending cuts absent significant tax increases in order to avert default, then Republicans will have held taxes far lower than anyone thought possible.¶ But both Republicans and Democrats can’t be right. If we take the lessons of this negotiation, here’s what will happen: The White House will negotiate over the debt ceiling. They’ll say they’re not negotiating over the debt ceiling, and in the end, they may well refuse to be held hostage over the debt ceiling, but the debt ceiling will be part of the pressure Republicans use to force the next deal. The White House fears default, and in the end, they always negotiate.¶ That said, the Republicans aren’t quite as crazy as they’d like the Democrats to believe. They were scared to take the country over the fiscal cliff. They’re going to be terrified to force the country into default, as the economic consequences would be calamitous. They know they need to offer the White House a deal that the White House can actually take — or at least a deal that, if the White House doesn’t take it, doesn’t lead to Republicans shouldering the blame for crashing the global economy. That deal will have to include taxes, though the tax increases could come through reform rather than higher rates.¶ The Republicans also have a problem the White House doesn’t: The public broadly believes they’re less reasonable and willing to negotiate than the Democrats are. The White House has a reputation for, if anything, being too quick to fold. They have more room to avoid blame for a default than the Republicans do. In the end, if the White House holds its ground, Republicans will likely compromise — though only after the White House has done quite a bit of compromising, too. ¶ The final moments of the fiscal cliff offered evidence that both sides see how this is going to go. In his remarks tonight, President Obama signaled he would hold firm on the debt ceiling. “While I will negotiate over many things, I will not have another debate with this Congress over whether or not they should pay the bills they’ve already racked up through the laws they have passed,” he said. And Boehner signaled that he knows tax reform will have to be part of the next deal. The post-deal press release his office sent out had the headline, “2013 Must Be About Cutting Spending and Reforming the Tax Code.” That said, the final days of the fiscal cliff, in which the deal almost broke apart a half-dozen times for a hal-dozen reasons, is a reminder that these tense, deadline negotiations can easily go awry. And so there’s a third possibility, too: That the White House is wrong about the Republicans will compromise, that the Republicans are wrong that the White House will fold, and so we really will breach the debt ceiling, unleashing economic havoc.

#### Obama’s capital key to final cliff deal

U.S. News 12-20

“Setting Clear Priorities Will be Clear for Obama,” <http://www.usnews.com/news/blogs/Ken-Walshs-Washington/2012/12/20/setting-clear-priorities-will-be-key-for-obama>

President Obama's administration is brimming with new initiatives, creating a fresh sense of possibility at the White House but also alarming Washington veterans who wonder if he is asking too much of himself, his staff, and especially Congress. The challenge for Obama will be to set clear priorities rather than allow his wish list to get bogged down in a capital that has trouble dealing with more than one or two major issues at a time.¶ First and foremost, Obama is immersed in budget negotiations with House Speaker John Boehner, the top Republican leader in Congress.¶ If they fail to make a deal, tax increases and deep spending cuts will automatically start taking effect on January 1, which could create another recession. And even if Obama reaches an agreement with Boehner, it won't mean that restless conservatives or equally concerned liberals will accept what their leaders produce. Getting a final pact will take up large amounts of energy and political capital.

#### Plan Removes the NEPA review that causes a backlash

**Anderson 05**

[Scot W., Davis Graham & Stubbs LLP. “THE INDIAN TRIBAL ENERGY DEVELOPMENT AND ¶ SELF-DETERMINATION ACT OF 2005: ¶ OPPORTUNITIES FOR COOPERATIVE VENTURES” Rocky Mountain Mineral Law Institute ¶ Special Institute: Natural Resource Development in Indian Country. <http://www.dgslaw.com/images/materials/670412.pdf>]

Environmental Review by TERA Tribes¶ Some **environmental groups** have **expressed concern that the TERA process will truncate** ¶ review under the National Environmental Policy Act **(NEPA**).¶ 33¶ The National Resources ¶ Defense Council, for example, testified that Title V of the Energy Policy Act ¶ 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 ¶ reservation. It provides that once the Secretary of the Interior ¶ approves a tribal energy resource agreement 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 have now to** ¶ **make their voices heard**.¶ 34 NEPA, of course, applies to major federal actions, and a decision made solely by a tribe has no ¶ “federal handle,”¶ 35¶ and therefore is not subject to NEPA.¶ 36¶ **The relationship between tribal** ¶ **approvals under a TERA and NEPA was a consistent theme in Congressional debates during the** ¶ **development of Title V.**¶ 37¶ **Consequently, Congress added a tribal environmental review process** ¶ **to the TERA.**¶ **38**

#### Plan drains capital and causes an immediate fight

Szondy, ‘12

[David, freelance writer -- Gizmag, 2-16, “Feature: Small modular nuclear reactors - the future of energy?” http://www.gizmag.com/small-modular-nuclear-reactors/20860/]

The problem is that nuclear energy is the proverbial political hot potato - even in early days when the new energy source exploded onto the world scene. The tremendous amount of energy locked in the atom held the promise of a future like something out of a technological Arabian Nights. It would be a world where electricity was too cheap to meter, deserts would bloom, ships would circle the Earth on a lump of fuel the size of a baseball, planes would fly for months without landing, the sick would be healed and even cars would be atom powered. But though nuclear power did bring about incredible changes in our world, in its primary role, generating electricity for homes and industry, it ended up as less of a miracle and more of a very complicated way of boiling water.¶ Not only complicated, but expensive and potentially dangerous. Though hundreds of reactors were built all over the world and some countries, such as France, generate most of their electricity from it, nuclear power has faced continuing questions over cost, safety, waste disposal and proliferation. One hundred and four nuclear plants provide the United States with 20 percent of the nation's power, but a building permit hadn't been issued since 1978 with no new reactors coming on line since 1996 and after the uproar from the environmental movement after nuclear accidents at Three Mile Island, Chernobyl and Fukushima, it seemed unlikely that any more would ever be approved - until now. This fierce domestic opposition to nuclear power has caused many governments to take an almost schizophrenic stance regarding the atom.

#### Going over the debt ceiling collapses the economy

Millhiser 12/30

(Ian Millhiser - Senior Constitutional Policy Analyst at the Center for American Progress Action Fund and the Editor of ThinkProgress Justice, “Lindsay Graham: I Will Destroy America’s Solvency Unless The Social Security Retirement Age Is Raised,” Dec 30, 2012, <http://thinkprogress.org/economy/2012/12/30/1379681/lindsay-graham-i-will-destroy-americas-solvency-unless-the-social-security-retirement-age-is-raised/?mobile=nc> KB)

Although official Washington is currently fixated on the so-called “Fiscal Cliff,” the biggest threat to American prosperity is the debt ceiling, which must be raised in February to prevent economic catastrophe. If Republicans refuse to reach a deal on the so-called cliff, the Congressional Budget Office predicts that they will spark a new recession in 2013. But if Republicans block action on the debt ceiling, they will make that potential recession look quaint. Without raising the debt ceiling, the United States will be forced to embrace austerity so severe it will lead to “a bigger GDP drop than that experienced during the Great Recession of 2008.”

#### Decline causes war

Kemp 10

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### Advantage 1

No epistemology is perfect, but we can use empiricism and logic to reason through our actions.

**Loewy ‘91** (Erich, associate professor of medicine at the University of Illinois and associate professor of humanities, “Suffering and the Beneficent Community: Beyond Libertarianism,” p. 17-21)

All of our judgments and decisions ultimately must be grounded in nonverifiable assumptions. The fundamentalist may deny this; but the fundamentalist grounds her judgments and decisions either in a religious belief based on revealed truth or, at least, on the assumption that “somewhere out there” truth exists and that we, in the human condition, can know it. Ultimately, or at least up to this point in time, absolute verification eludes man. At the extreme of this point of view, there are those who claim that truth is not only knowable, but is in fact, known and only the stubborn recalcitrance of the uninitiated prevents it from being generally accepted. This point of view claims not only that morality exists as a discoverable truth, an absolute not fashioned by men but unchanging and immutable, but also that truth has in fact been discovered. Rights and wrongs exist quite apart from the stage on which their application is played out. Situations may differ but, at most, such differences force us to reinterpret old and forever valid principles in a new light. Those who believe themselves to know the truth, furthermore, oftentimes feel compelled not only to persuade others to their point of view but feel morally justified in using considerable force to do so. On the other hand, some of us would deny the existence of immutable truth or, what is not quite the same thing, deny at least that it is knowable in the human condition. Those who flatly deny the existence of unalterable truth find themselves in much the same pickle as do those who flatly assert it: Both lack a standard of truth to which their affirmations can be appealed. Those who concede the possibility that truth exists but not the possibility that man in the human condition can be privy to it, have modified the position without greatly improving it. Their affirmation that man in the human condition can never know absolute truth seems more reasonable but is, once again, not verifiable. Who can know with certainty that tomorrow someone will not discover a way of “getting at” absolute truth and, in addition, be able to provide a simple and brilliant proof which other mortals to date have missed? Only an absolutist could deny such a possibility! That leaves us with a more pragmatic answer: Holding that, in the human condition, truth is not—or at least is not currently—accessible to us leaves more options open and does not fly in the face of the undeniable fact that, unlikely as it seems, our knowing absolute truth may be just around the corner. Outside the religious sphere, no one has ever convinced most thinking people that they are the possessors of absolute truth. Truth, whenever accepted at least for daily use, is invariably hedged. If we accept the fact that absolute truth (at least so far) is unknown to us and accept as an axiom that it may well be unknowable, we are left with a truth which for everyday use is fashioned rather than discovered. What is and what is not true or what is and what is not morally acceptable, therefore, varies with the culture in which we live. This claim (the claim on which, as we shall see, cultural relativism relies) rests on the assertion that there are many ways of looking at truths and that such truths are fashioned by people. Depending on our vantage point, there are many visions of reality,1a fact which the defenders of this doctrine hold to be valid in dealing with the concrete, scientific reality of chemistry and physics.2Such a claim, it would seem, is even more forceful when dealing with morals. As Engelhardt puts it so very well: “Our construals of reality exist within the embrace of cultural expectations.”3And our “construals of reality” include our vision of the moral life. Furthermore, not only do our “visions of reality occur within the embrace of cultural expectations,” the limits of what we as humans can and what we cannot culturally (or otherwise) expect are biologically framed by the totality of our bodies and their capacities as well as (and inseparable from the rest of the body of which it is a part) by our minds. **All human judgments and decisions**, then, **are inevitably grounded to prior assumptions which we accept and do not question for now**. There is a story about William James which illustrates the point. James was giving a lecture dealing with the universe at a Chattauqua: one of those events so popular at the turn of the century, which has, regrettably, been replaced by talk shows. At the end of his well-received lecture, a little old lady came up to him and said: “I enjoyed your talk, Mr. James, but you know you are making an error: The universe rests on the back of a tortoise!” “Very well,” James said, “I can accept that. But tell me, what in turn does that other tortoise rest upon?”  “It’s no use, Mr. James, it’s tortoises all the way down.” And so it goes: **Every assumption rests on the back of another assumption and if we are to examine all before proceeding with our everyday judgments and decisions we would get hopelessly mired** in mud. **The quest is necessarily endless. Ethical theories, like all other human activities, inevitably rest on prior assumptions**. Indeed, one cannot reason without a framework of reasoning, and similarly, one cannot reason about reasoning without such a prior framework. The question, it seems, is not the necessary acceptance of an assumption, for that is inevitable, but the depth and universality of the assumption taken. One needs steer between Scylla and Charybdis: on one side too-easy acceptance of a superficial assumption, on the other an endless and almost neurotic quest for ever more basic assumptions. Crashing on the other condemns one to eternal philosophical backpedaling, inactivity, and to leaving the original problem, whose immediate resolution may be critically needed, entirely unresolved. That some framework of reasoning is necessary was recognized by Kant when he claimed that, thanks to the “common structure of our mind,” thought processes inevitably divided the sensible world into categories which we then use to deal with it.4Rationality requires ways of dealing with the world and reasoning without categories is evidently not possible. The reason why there is no disagreement among persons about some logical propositions is that the common structure of our mind compels us to see certain things in certain ways and to reason along certain lines made inevitable by the very way in which our minds are structured. Even if, later on, we may discover that our universally agreed-upon proposition was wrong, we make this discovery using the same tools. We merely discover that some crucial fact was missing, some critical point not considered. The same basic method of reasoning and the same biological substrate for reasoning (the common structure of our mind) has been used to discover our error. I do not claim that our common biology and the common structure of our minds constitutes a way of discovering absolute truth. What such a common biology and such a common structure imply is that we inevitably will approach problems, see truth, and derive our judgments within such a bodily framework. **We are condemned** (or blessed) **to know the sensible world and to reason from the data presented to us and organized by us in certain and not in other ways. That does not reveal truth to us, but it presents us with a working model to be used, adapted, and learned from.** **The belief that there are no absolutes**(or that, at the very least, they are inaccessible to us in the human condition) **can lead to a moral nihilism in which no firm judgments can be made and no decisions or actions can be undertaken**. Such a moral nihilism claims that truths are fashioned by people and however a person may choose to fashion his truths serves no better than does any other way of constructing truths. The fashioning of truths, in that point of view,lacks its own frame of reference. It does not necessarily follow from this, however, that since our “construals of reality” occur purely within the “embrace of cultural expectations,” all visions of reality that are necessarily of equal worth, or that there are no generally useful standards that we can employ in judging either what we conceive to be physical or ethical reality. One can, for example, claim that some visions of reality are clearly and demonstrably wrong, and support such a claim by empirical observation or by showing that certain visions of reality simply do not work That is the stronger claim. In rejoinder, it can be said that empirical observations and “what works” are themselves part of the framework and that, therefore, such a claim lacks validity. On the other hand, one can make the somewhat weaker claim that certain visions, in the context of a given society and historical epoch, seem less valid than others because they confound careful observation or because they simply fail to work when applied to real situations occurring in real current societies.5This leaves room for a form of modified cultural relativism. Such a move does not deny that our “visions of reality occur within the embrace of cultural expectations.” But while such a move affirms that there are many realities of similar worth, it also suggests that within the context of such cultural expectations some realities have little, and others have much, validity. **Some realities work (have explanatory power translatable into action and are, therefore, usable) in the context of our experience and community, while some do not, and some work better than do others**. **Such a view neither throws up its hands and grants automatic equal worth nor rigidly enforces one view: It looks upon the problem as one of learning and growth in which realities (both empirical and ethical) are neither rigidly fixed nor entirely subject to ad hoc interpretation**. Ethical certitude, no more than certitude about anything else, is not possible in the human condition. The “ut in pluribus,” the generally and for the most part true of which St. Thomas Aquinas speaks, is the best we can hope for in science as well as in ethics. Since, however, we must inevitably act (nonaction being as much action as action itself), we must be prepared to act on less than complete certitude. Truth cannot, in a Cartesian sense, be expected to be apodictic; rather truth (whether it is scientific or moral truth) is to be worked with, shaped and developed as we experience, learn, and grow.

**Even slight risks of catastrophic impacts outweigh**

**Rescher, 83** (Nicholas, Department of Philosophy at the University of Pittsburgh, Risk: A Philosophical Introduction to the theory of risk evaluation, p. 67)

In such situations we are dealing with hazards that are just not in the same league. Certain hazards are simply unacceptable because they involve a relatively unacceptable threat—things may go wrong so badly that, relative to the alternatives, it’s just not worthwhile to “run the risk,” even in the face of a favorable balance of probabilities. The rational man is not willing to trade off against one another by juggling probabilities such outcomes as the loss of one hair and the loss of his health or his freedom. The imbalance or disparity between risks is just too great to be restored by probablistic readjustments. They are (probablistically) incommersuable: confronted with such “incomparable” hazards, we do not bother to weigh this “balance of probabilities” at all, but simply dismiss one alternative as involving risks that are, in the circumstances, “unacceptable”.

**All lives are infinitely valuable, the only ethical option is to maximize the number saved**

**Cummisky, 96**

(David, professor of philosophy at Bates, Kantian Consequentialism, p. 131)

Finally, **even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one**—**because dignity cannot be added and summed in this way**—this **point still does not justify deontologieal constraints**. On the extreme interpretation, **why would not killing one person be a stronger obligation than saving two persons**? If I **am concerned with the priceless dignity of each**, it would seem that 1 may still saw two; it **is just that my reason cannot be that the two compensate for the loss of the** one. Consider Hills example of a priceless object: If **I can save two of three priceless statutes only by destroying one. Then 1 cannot claim that saving two makes up for the loss of the one.** But Similarly, the loss of the two is not outweighed by the one that was not destroyed. Indeed, **even if dignity cannot be simply summed up. How is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible?** Even if two do not simply outweigh and thus compensate for the lass of the one, **each is priceless**: **thus, I have good reason to save as many as I can**. In short, it is not clear how the extreme interpretation justifies the ordinary killing'letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.\*

### Advantage 2

#### Loss of cultural diversity does not cause extinction- Thousands of peoples have disappeared from the planet.

#### Aff doesn’t solve self-determination

Porter 98

Porter, Director – Tribal Law and Government Center @ U Kansas, ‘98¶ (Robert B., 31 U. Mich. J.L. Reform 899)

Nevertheless, no matter how much responsibility we assume **for the redevelopment of our** **sovereignty**, **the** United States **remains a barrier to** our forward **progress**. **America**, **because of its geography**, its **people**, its **culture**, **and** its **media**, **is an overwhelming influence** on the Indigenous nations located within its borders. n9 As a result, **tremendous forces inhibit** the preservation and **strengthening** of the unique fabric of **our nations and** thus **form considerable obstacles to our redevelopment**. n10¶ One of the most **significant barriers** to our redevelopment **lie**s **in** the body of **American law**. Since its founding, the United States has developed an extensive body of law - so-called [\*902] "federal Indian law" - to define and regulate its relationship with the Indian nations remaining within its borders. n11 While this law may seem to have a neutral purpose, it would be more accurate to say that "**federal Indian law**" **is** really "federal Indian control law" because it has the twofold mission of establishing **the legal base**s **for** American **colonization of the continent** n12 **and perpetuating** American power and **control over the Indian nations**. n13 Unfortunately, in addition to this foundational problem, **the law itself is not simple or uniform**. Federal **Indian control** law **is a hodgepodge of statutes**, **cases**, **executive orders**, **and** administrative **regulations that embody a wide variety of divergent policies towards the Indian nations** since the time the United States was established. n14 Because old laws reflecting **these old policies have rarely been repealed** when new ones reflecting new policies have been adopted, n15 **any efforts** that might be taken by the Indian nations and the federal government **to strengthen Indian self-determination must first cut through the legal muck created by over 200 years of** prior federal **efforts to accomplish precisely the opposite** result.¶ As I see it, this legal minefield profoundly effects tribal sovereignty. For example, **conflicting federal laws** - such as those that provide for the federal government's protective trust responsibility over Indian affairs n16 and those that allow federal, [\*903] state, and private interests to interfere with tribal self-government n17 - make it impossible **for the Indian nations to exercise** fully their sovereign right of **self-determination**. As past efforts to destroy our sovereign existence continue to have their corrosive effect, so too, in my view, does the natural result of those efforts: the destruction of Indigenous culture and the eventual assimilation of Indian people into American society. n18 Inevitably, **in the absence of any affirmative efforts to decolonize** both the Indian nations and federal Indian control law, I believe that **our distinct native identity will continue to erode**, **and with it**, **the existence of our nations**.

#### Lack of PTC crushing energy production for tribes and federal policy acts as an alt cause

ITCUP ‘6 (InterTribal Council on Utility Policy. “An Intertribal COUP Background Policy Paper for a Comparable and Appropriate Tribal Energy Production Incentive”, 6-21-6, http://www.intertribalcoup.org/policy/index.html, Accessed 7/11/08)

Current federal renewable energy incentives serve to underwrite the productive development of a variety of renewable energy resources. These incentives, such as the Production Tax Credit (PTC), the Renewable Energy Production Incentive (REPI), and the Clean Renewable Energy Bonds (CREBs), have all been designed to meet the needs of a variety of entities (for profit developers, municipal utilities, cooperatives, and other non-profit public power entities), but not expressly for Tribes, ironically the only group that the federal government has an explicit trust responsibility to assist in economic development. While Tribes have been recently included in the eligibility of several of these renewable energy incentive programs (usually as an afterthought), none have been designed or adapted to meet their unique situation, as governments with abundant trust assets, but with limited practical access to long-term financing, and with limited control over their membership as a rate base for competitive commercial development on or off their reservations. Tribally specific programs under the 1992 and 2005 energy policy acts have been routinely under-funded to adequately assist Tribes in full scale economic development of multi-megawatt renewable energy projects. Where significant funding has, in some cases been authorized, adequate corresponding appropriations have failed to follow. Under the energy policy act of 1992, $10 million dollars had been authorized for each of the DOI and DOE tribal renewable energy programs for tribal renewable projects, but the DOI has never requested any funding under this title, and the requests of DOE are always significantly reduced through lower appropriations, and then further reduced, by the practice of earmarks. Direct federal funding, to the extent authorized for large commercial tribal projects serving loads beyond the local rural areas, is unlikely to be actually available due to the constraints and limitations on appropriated federal support.

#### Alt cause- court rulings- their author

Arizona Law Review ‘10

Bethany C. Sullivan, J.D. Candidate, University of Arizona James E. Rogers College of Law. “NOTE: Changing Winds: Reconfiguring the Legal Framework for Renewable-Energy Development in Indian Country,” 52 Ariz. L. Rev. 823, Fall

Another major roadblock in the path to tribal energy partnerships is the ¶ jurisdictional rigmarole created by the United States Supreme Court—a direct ¶ result of nonexistent federal statutory guidance. The civil jurisdiction that tribes ¶ have over non-members on the reservation is determined by a series of judiciallycreated tests with outcomes more reflective of the Justices‘ personal views of tribal ¶ sovereignty than of any underlying, coherent legal doctrine.¶ 80¶ Virtually anyone who has dealt with Indian civil jurisdiction law can attest to its notorious ¶ complexity and amorphous set of ―rules.‖¶ 81¶ Furthermore, this judicial labyrinth ¶ must be successfully navigated regardless of whether a tribe is attempting to exert ¶ its regulatory authority or exercise civil adjudicatory jurisdiction over nonmembers.¶ 82¶ Perhaps more troublesome are the clearer aspects of civil jurisdiction ¶ in Indian Country; primarily, the Court‘s sanctioning of state and local government ¶ taxing authority over the same non-members for the same activities on the ¶ reservation as tribes may tax.¶ 83¶ For reasons discussed below, this legal framework ¶ creates formidable obstacles in the eyes of many tribes and potential business ¶ partners.¶ The case law concerning tribes‘ ability to tax and regulate non-members ¶ acting within reservation boundaries has converged over time into a single set of ¶ rules, commonly known as the Montana test.¶ 84¶ This test, based on categorical ¶ distinctions of race and land status, asserts that tribes may not ordinarily exercise ¶ civil jurisdiction over non-Indians acting on fee simple lands within the ¶ reservation.¶ 85¶ There are two exceptions to this rule: (1) where non-Indians have ¶ entered into consensual relations with the tribe or its members; and (2) where the ¶ non-Indian conduct ―threatens or has some direct effect on the political integrity, ¶ the economic security, or the health or welfare of the tribe.‖¶ 86¶ It was formerly understood that tribes have presumptive civil authority ¶ over non-members acting on Indian trust land or Indian-owned allotted lands.¶ 87 Under that viewpoint, the Montana test only applies in circumstances where nonmembers act on non-Indian owned land held in fee simple within the reservation ¶ boundaries.¶ 88¶ Accordingly, a tribe would not doubt its authority over the often ¶ substantial portion of its reservation that qualifies as trust or Indian-held land. But¶ recent Supreme Court decisions have cast doubt upon that understanding. It is now¶ possible that Montana could apply whenever a tribe asserts civil jurisdiction over a ¶ non-member on the reservation, regardless of the ownership status of the land.¶ 89¶ The practical result of such a legal reality would be that any time a tribe attempted¶ to exert civil authority over a non-Indian—whether in order to enforce¶ environmental regulations, recoup tribal taxes, or exercise civil adjudicatory ¶ jurisdiction—the tribe‘s authority would be vulnerable to a case-by-case ¶ determination by the federal courts.¶ 90¶ This, in turn, would cast enormous doubt on ¶ the legitimacy of tribal authority and could lead to severe limitation—or, in the ¶ worst case scenario—utter paralysis of tribal governmental functions. ¶ At present, most practitioners assume that the categorical rule by which ¶ tribes may regulate non-Indians acting on tribally-held land remains intact. ¶ However, the shift in presumptions and rationales underlying Supreme Court tribal ¶ jurisdiction cases—such as the degradation of the understanding that tribes have ¶ sovereign authority over all people, Indian and non-Indian, acting on tribal land—¶ illustrates the unpredictability of this field of law and the recent trend of unfavorable decisions toward Indian sovereign interests.¶ 91¶ In the mind of a ¶ potential business partner, this situation can cultivate uncertainty as to which ¶ regulatory and adjudicative rules will apply. Such uncertainty seriously ¶ discourages the formation of tribal energy partnerships with private actors.¶ 92¶ Perhaps even more problematic than this legal uncertainty is Supreme ¶ Court case law that grants states tax authority over many business entities ¶ operating on reservation land. The Supreme Court has held that states may tax any ¶ non-Indian operating in Indian country unless the federal government has ¶ preempted the tax.¶ 93¶ This often results in the scenario of double taxation: ¶ concurrent tribal and state taxation of the same activity.¶ 94¶ Double taxation is ¶ vexatious for tribal governments because it not only deters potential outsiders from ¶ conducting business on reservations, but it serves to undermine tribal sovereignty¶ by limiting tribes‘ implementation of their own taxes.¶ 95¶ Furthermore, it is a ¶ problem that arises in many areas of the tribal economy—retail sold in onreservation malls, minerals extracted from on-reservation leaseholds, cigarettes ¶ purchased from on-reservation gas stations, and so on.¶ 96¶ While the ability of states to tax on-reservation activities is ostensibly ¶ checked by a unique type of preemption balancing test, weighted toward tribal–¶ federal interests, this check appears to have been watered down by the Court over ¶ time. Originally, Indian preemption cases balanced federal–tribal interests against ¶ state interests by focusing on whether there was extensive federal regulation of the ¶ taxed activity¶ 97¶ and whether the taxed revenue was derived from value generated on the reservation.¶ 98¶ If one or both of these criteria were sufficiently satisfied, the ¶ state tax was preempted. Cotton Petroleum Corp. v. New Mexico¶ 99¶ changed the ¶ nature of the game. There, the state of New Mexico imposed oil and gas ¶ production taxes over a non-tribal business operating on reservation land.¶ 100¶ The¶ Indian Mineral Leasing Act of 1938 already governed this activity, as did existing ¶ tribal severance taxes on gas and oil production.¶ 101¶ Furthermore, the tribal tax ¶ revenues clearly derived from value generated on the reservation, i.e., onreservation oil and gas wells. Nonetheless, the Court upheld New Mexico‘s tax, ¶ much to the bewilderment of the dissent, which found the factual record ―more ¶ than adequate to demonstrate the pre-emptive force of federal and tribal ¶ interests.‖¶ 102¶ The consequences of double taxation in tribal renewable-energy¶ development are multifold.¶ 103¶ The ability to bring in non-tribal business partners is ¶ often an essential component of renewable-energy projects,¶ 104¶ but the threat of ¶ double taxation discourages investment in reservation business ventures.¶ 105¶ In ¶ order to compensate for their partners‘ tax-related hardship, tribes often enter into agreements that are unfavorable to tribal interests.¶ 106¶ Furthermore, tribes are put in¶ an untenable position with regard to their own taxation rights. If a tribe imposes its ¶ own taxes over on-reservation businesses, it creates much needed revenue for ¶ government services. Yet it incurs the risk of discouraging outside business from ¶ operating on the reservation.¶ 107¶ Alternatively, a tribe could forgo its own taxes in ¶ order to draw in non-tribal businesses; however this would only exacerbate the ¶ funding deficits that plague tribal governmental services.¶ 108¶ In other words, tribes ¶ face a catch-22 that forces them to choose between pursuing tribal sovereignty and ¶ pursuing reservation economic development—a situation much at odds with the ¶ purported goals of the Indian Tribal Energy Development and Self-Determination ¶ Act.¶ 109

# 2NC

## Condo

**Condo Good**

**1 Interpretation- We Get 1 Conditional CP and 1 Conditional K.**

**2 Key to Neg Flex- Have to test the aff from multiple angles or the 2AC will sit on a position making it impossible to generate offense.**

**3 Education- Only 7 or 8 arguments are relevant to most competing proposals, 1 CP and K allows that many answers to be made, while hearing a variety of potential worlds.**

**4 Real World- Advocacies have to deal with discussions from multiple sides at the same time and carve out reasons their option is best, healthcare proves.**

**5 Alterantive is worse- Neg’s will read a bunch of terrible procedurals or force every debate into an impact turn killing topic education.**

**6 Community Fracture- People will only debate policy or critical options, fragments the community and is a better internal link to people leaving then my 2AC was hard.**

**7 Err Negative on theory- No uniqueness to DA’s means policy neg’s need more questionable fiat mechanisms to stay even and the aff chooses the discussion area and speaks first and last.**

## CP

### Avoids Politics and solves

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

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 reforming 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**.

#### The plan opens up the floodgates for renewables – justifies corporate exploitation – Turns the aff – recreates neo-colonial structures

Mills 11 (Andrew D, Energy and Resources Group at UC Berkeley, Wind Energy in Indian Country: Turning to Wind for the Seventh Generation,")

Broadly, the idea of dependency is summarized in the common phrase “the development of underdevelopment.” Dependency is a critique of the idea of the economic base in that underdeveloped regions become specialists in providing raw materials and resources that are used in developed regions to create manufactured goods. Substantial value is added to products in the latter stages of processing, but very little of that value is transferred to the developing region. Furthermore, when large multi-national companies control the extraction of the resources the developing region often forgoes the opportunity to build capacity in the production of the base resource. Instead, the local economy simply provides access to the resource and unskilled or semiskilled laborers (See Palma 1989 and Kay 1991). Beyond the lack of opportunity to capture value, the dependency critique argues that the success of developing a base resource can distort the structure of the regional economy. Instead of entrepreneurs developing a strong, diversified economy, the businesses that do emerge in the regional economy are oriented toward providing services to the large industrial companies that extract resources (Gunton 2003, 69). The services provided by the government can become focused on increasing the development of just one sector and income to the government becomes tied to the production of the resource. The economy of the entire region and the services provided by the government become linked to the price of the export resource. Moreover, if the resource is depleteable, the economy contracts as the resource becomes more and more difficult to extract in comparison to alternative resources. One measure of the degree of specialization in the production of energy resources is called the “oil dependency” metric. The “oil dependency” of the Navajo Nation is the ratio of the value of the energy exports (oil, coal, and gas) to the gross regional product of the Navajo Nation (Ross 2001). A rough approximation of the “oil dependency” for the Navajo Nation was found to be 1.1 using data available in the Comprehensive Economic Development Strategy of the Navajo Nation (Choudhary 2003) and energy prices from the Energy Information Agency. The most oil dependent national economy in the world is Angola (68.5). Norway, which exports a considerable amount of oil has an oil dependency of 13.5. The 25th of the top 25 most oil dependent nations has an oil dependency of 3.5 (Ross 2001). Although the Navajo Nation would not be considered as “oil dependent” as these other countries, it is also important to realize that 15- 20% of the Navajo Nation annual funds are from royalties on energy resources. If the grants from external sources like the federal government are not included in the sources of annual funds, then the share of energy resources increases to 25-50% of the Navajo Nation budget (Choudhary 2003, 65 - Table 7). Furthermore, the second largest recipient of revenues from the Navajo General Fund is the Division of Natural Resources (ibid, 64 – Table 6C). Overall these statistics indicate that the Navajo Nation is oriented toward a heavy reliance and focus on energy development. Discussions of the Navajo economy in the context of dependency often focus on the importance of the tribe being in control of energy development. By control, most authors are referring to the right to dictate the pace and laws surrounding energy development on their lands (Owens 1979, Ruffing 1980). However, gaining control of energy development is only one part of the dependency critique. The second part is that even with control over the pace and quality of energy development the Navajo government needs to steer the economy in diverse directions so that the economy does not become specialized in providing services to energy extraction companies. One could easily argue that the Navajo Nation is focusing significant efforts on increasing the level of energy development at the expense of supporting alternative development pathways (for example, the speech by Shirley and Trujillo to the World Bank, 2003). Many authors draw from dependency theories to show why the Navajo Nation is locked into an energy development pathway. One of the more important historical reasons for the orientation of the Navajo government toward energy development was that the Navajo government was first formed in 1922 by the federal government to act as a representative of the Navajo interests in signing oil leases on Navajo land. As part of organizing the relationship between the federal government, the Navajo Business Council (as it was first called) and energy developers, the Interior Department set policy such that the Navajo government would own all of the mineral resources on tribal land, rather than individual Navajo owning rights to the mineral resources (Wilkins 2002, 101-3). At the end of World War II, the still fledgling tribal government turned to economic development to improve the conditions in Navajoland in hopes that young people would not feel forced to live elsewhere (Iverson and Roessel 2002, 189). In a process LaDuke and Churchill refer to as “Radioactive Colonialism”, the driver of economic development became, with pressure from energy companies and the Bureau of Indian Affairs (BIA), revenues from leasing land for large-scale extraction of the Navajo’s mineral resources by private non-Navajo enterprises. The Vanadium Corporation of America and Kerr-McGee provided $6.5 million in uranium mining revenues and jobs for Navajo miners. The miners worked under dangerous and unhealthy conditions, but many of the jobs were the only wage employment ever brought to the southeastern part of the reservation. An oil boom in Navajoland between 1958-62 provided tens of millions of dollars in revenues to the tribal government (Iverson and Roessel 2002, 218-20). The Tribal Council used the revenues to provide services to many of the Navajo and increasingly employed Navajo in government related jobs. The government officials and workers, along with the few that obtained jobs in the capital-intensive extractive industries formed a class with similar economic interests. Their wealth and power increased with increasing energy development. LaDuke and Churchill explain: “With this reduction in self-sufficiency came the transfer of economic power to a neo-colonial structure lodged in the US/tribal council relationship: ‘development aid’ from the US, an ‘educational system’ geared to training the cruder labor needs of industrialism, and employment contracts with mining and other resource extraction concerns… for now dependent Indian citizens.”(LaDuke and Churchill 1985, 110) The relationship between economic development and energy development was further extended in the 1960’s with the development of large coalmines and power plants on Navajo lands. The federal government played numerous roles in support of connecting energy developers and the tribal government. One example that illustrates the diverse ways in which the federal government encouraged energy development with tribes was a stipulation in the contracts for cooling water for the Mohave Generating Station in Nevada that specified that the owners of Mohave could only use the Colorado River for cooling water as long as the power plant used “Indian Coal”6 (also see Wiley and Gottlieb 1982, 41-53; and Wilkinson 1996, 1999 for more of the history of coal development in the Western Navajo Nation). Recommendations for economic development in initial stages of the self-determination era focused not on how to build a diverse economy, but how to take control of energy development and ensure that the Navajo Nation received the best deal for their resources. In describing the role of policy in energy development on the Navajo Nation one author focuses on the capital-intensive nature of energy development. Whereas one recommendation might be to shift the focus to other development pathways, her recommendation was to take steps to ensure that the jobs that are created by energy development go toward tribal members. She recommended that provisions should be included in contracts for training and preference hire for tribal members with all energy development projects (Ruffing 1980, 56-7). A major transition point in the history of energy development on Navajo lands involved the Chairman of the Navajo Nation, Peter McDonald, declaring that changes needed to take place before the Navajo Nation would support continued development of energy resources on their land in the 1970’s. Two major points he stressed included making sure that energy development was being carried out for the benefit of the Navajo people and that the tribe should be given opportunities to participate in and control energy development (Robbins 1979, 116). The main critique of both these stances from dependency theory is that even with control over energy development, it is still a capital-intensive, highly technical, and tightly controlled industry (Owens 1979, 4). The Navajo Nation can participate in energy development, but not without creating distortions in the orientation of the economy and government. In this same vein, it is difficult to argue that wind energy is inherently different that other forms of energy development from the dependency perspective. While it is possible for the Navajo Nation to take steps to ensure that the tribe will obtain the maximum benefit from wind development, such as ensuring that tribal members and Navajo owned businesses have preference in hiring, it is not likely that the tribe can become a self-sufficient wind developer without severely distorting the priorities of the economy and Navajo government. The alternative is to allow a specialized, large company from off the reservation to develop the wind farm, with the possibility that a Navajo partner can take part in the ownership of the wind farm. While the Navajo Nation may now have the institutional structure in place to control wind energy development on their land, wind development is still subject to the dependency critique.

### CBA Good- For CP

**Picking least bad practical option key**

**Finnis, ‘80**

John Finnis, deontologist, teaches jurisprudence and constitutional Law. He has been Professor of Law & Legal Philosophy since 1989,1980, Natural Law and Natural Rights, pg. 111-2

**The sixth requirement** has obvious connections with the fifth, but introduces a new range of problems for practical reason, problems which go to the heart of ‘morality’. For this **is** the requirement **that one bring about good in the world** (in one’s own life and the lives of others) **by actions that are efficient** for their (reasonable) purpose (s). **One must not waste** one’s **opportunities by using inefficient methods**. One’s **actions should be judged by their effectiveness**, by their fitness for their purpose, by their utility, **their consequences… There is a wide range of contexts in which it is possible and only reasonable to calculate, measure, compare, weigh, and assess the consequences of alternative decisions**. Where a choice must be made it is reasonable to prefer human good to the good of animals. Where a choice must be made it is reasonable to prefer basic human goods (such as life) to merely instru­mental goods (such as property). **Where damage is inevitable, it is reasonable to prefer** stunning to wounding, wounding to maiming, maiming to death: i.e. **lesser rather than greater damage** to one-and-the-same basic good in one-and-the-same instantiation. **Where one way of participating in a human good includes** both **all the good** aspects and **effects of its alternative, and more, it is reasonable to prefer that way: a remedy that both relieves pain and heals is to be preferred to the one that merely relieves pain**. Where a person or a society has created a personal or social hierarchy of practical norms and orienta­tions, through reasonable choice of commitments, **one can** in many cases **reasonably measure the benefits and disadvantages of alternatives**. (Consider a man who ha decided to become a scholar, or a society that has decided to go to war.) Where one ~is considering objects or activities in which there is reasonably a market, the market provides a common de­nominator (currency) and enables a comparison to be made of prices, costs, and profits. Where there are alternative techniques or facilities for achieving definite, objectives, cost— benefit analysis will make possible a certain range of reasonable comparisons between techniques or facilities. Over a wide range of preferences and wants, it is reasonable for an individual or society to seek o maximize the satisfaction of those preferences or wants.

### A2- Permutation

#### Perm doesn’t solve the impact—the plan ensures private companies exploit indigenous communities

Awehali 6

(Brian, "# 25 Who Will Profit from Native Energy?," http://www.projectcensored.org/top-stories/articles/25-who-will-profit-from-native-energy/)

America’s native peoples may attain a modicum of energy independence and tribal sovereignty through the development of wind, solar, and other renewable energy infrastructure on their lands. But, according to Brian Awehali, it won’t come from getting into bed with, and becoming indebted to, the very industry currently driving the planet to its doom. UPDATE BY Brian Awehali I believe the topic of this article was important and urgent because sometimes all that glitters really is gold, even if the marketing copy says it’s green. The long and utterly predictable history where indigenous peoples and US government and corporate interests are both concerned shouldn’t be forgotten as we enter the brave new green era. Marketing for-profit energy schemes on Indian lands as a means of promoting tribal sovereignty is both ludicrous and offensive, as are “green” development plans intrinsically tied to the extraction of fossil fuels in the deregulated Wild West of Indian Country. Energy companies are only interested in native sovereignty because it means operations on Indian lands are not subject to federal regulation or oversight. This is why I included a discussion in my article about the instructive example of the Alaska tribal corporations and the ways they’ve mutated into multi-billion dollar loophole exploiters. (My brief examination of Alaska tribal corporations drew heavily from an excellent Mother Jones article, “Little Big Companies,” by Michael Scherer). It’s also my belief that the probably well-intentioned idea of “green tags,” carbon offset credits, and market-enabled “carbon neutrality” should be examined very closely: Why are we introducing systems for transferring (or trading) the carbon emissions of “First World” polluters to those who contributed least to global warming? I would argue that this is merely a nice-sounding way for the overdeveloped world to purchase the right to continue its pathologically unsustainable mode of existence, while doing little to address the very grave ecological realities we now face.

### A2- Counterplan = More Regs/TERA Key (Dreveskracht)

#### No link- The counterplan maintains TERA offering the same streamlined regulations that the evidence says is necessary

#### Top half of the evidence is irrelevant- assumes world where they don’t pursue TERA agreements

#### Only warrant is “Lack of experts means no approval”- Counterplan solves through the Public Law 638.

#### Your evidence assumes squo decision calculus- IE “have tribes shown that they meet expertise and responsibility”

#### Counterplan changes that decision calculus- World of the counterplan the secretary asks do I have positive evidence that they lack the expertise”. Royster evidence indicates that would overcome the major barriers and delay

### A2- Kronk Counterplan Undermines Sovereignty (Kronk)

#### The counterplan provides the perfect middle-ground between trust doctrine and tribal sovereignty- Kronk agrees

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)

\*\*\*Above suggestion = AFF\*\*\*

Should the above suggestion prove distasteful, a second recommendation for reforming the existing TERA provisions calls for reinstating federal liability so as to hopefully increase tribal participation in TERAs. This second proposal is also an improvement over the status quo in that itwill 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. This is because the language that removes the federal government from liability under the TERA provisions “’undercuts the federal trust responsibility to Tribes by providing a waiver for the federal government of all liability from energy development.’” As such, “the ability to hold the federal government liable for breach is at the heart of its trust obligation toward tribes.” The waiver of federal governmental liability would, therefore, seem to be inconsistent with the federal trust obligation to tribes. Removing such a waiver would also allay the fears of some that “private entities such as energy companies will exploit tribal resources and take unfair advantage of tribes.” 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 a federal viewpoint, such as the one expressed by Senator Bingaman as discussed above, 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 mandate**s** that the Secretary “act in accordance with the trust responsibility of the United States relating to mineral and other trust resources” and “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.” In addition to apparent consistency with the federal trust responsibility, federal liability under the TERA provisions is appropriate given 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 maintains “inherently Federal functions.” 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 that tribes must incorporate into TERAs. This 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 Interior. “According to the Preamble, the inclusion was attributable partly to the trust responsibility toward tribes and trust assets and partly to the DOI’s responsibilities, as spelled out in the Indian Energy Act, to determine a tribe’s capacity to carry out TERA activities and to undertake periodic reviews of a tribe’s TERA activities.” Given the federal government maintains a substantial oversight role under the TERA provisions (which it views as being 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 tribal “reviewer”. Under the TERA provisions, the federal government must review the tribe’s performance under the TERA on a regular basis. 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 remains 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, at the same time, reinstates the federal government’s liability. Based on the legislative history discussed above, reinstatement of the federal government’s liability would likely go a long way toward addressing many of the concerns raised by tribes in relation to the existing TERA provisions. In this way, this second proposal would also constitute an improvement over the status quo.

#### And concludes that the reforms are productive balance between the two

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)

The historical relationship between the federal government and tribes is replete with examples of abuse and exploitation.  The TERA provisions represent a rare opportunity for both the federal government and tribes to benefit from partnering together.  Yet, the TERA provisions in their current configuration fail to induce such a beneficial partnership.  By adopting one of the proposed reforms, Congress would take a significant step toward building a productive relationship with Indian country.

#### The internal link to your colonialism link is the uptake of renewables not the process of the uptake

Your Gough evidence

Gough 9—Intertribal Council On Utility Policy; paper submitted by Honor the Earth, the Intertribal Council on Utility Policy, the Indigenous Environmental Network, and the International Indian Treaty Council (Bob, Energy Justice in Native America, A Policy Paper for Consideration by the Obama Administration and the 111th Congress, [www.mynewsletterbuilder.com/email/newsletter/1409857447](http://www.mynewsletterbuilder.com/email/newsletter/1409857447))

GREEN ECONOMIES IN NATIVE COMMUNITIES: MASSIVE POTENTIAL, MAXIMUM IMPACT¶ Providing clean renewable energy development and reversing the trend from exploitation toward energy justice should be top priority in administration energy decisions. Tribes must be provided federal support to own and operate a new crop of renewable electricity generating infrastructure providing the dual benefits of low carbon power and green economic development where it is needed most. Tribes should be targeted with efficiency programs to reduce consumption of fossil fuels for heating and cooling and creating local jobs weatherizing and retrofitting buildings, helping reduce the tremendous amount of money that exits communities to import energy. ¶ Tribal lands have an estimated 535 Billion kWh/year of wind power generation potential.¶ Tribal lands have an estimated 17,000 Billion kWh/year of solar electricity generation potential, about 4.5 times total US annual generation. ¶ Investing in renewable energy creates more jobs per dollar invested than fossil fuel energy.¶ Efficiency creates 21.5 jobs for every $1 million invested. ¶ The costs of fuel for wind and solar power can be projected into the future, providing a unique opportunity for stabilizing an energy intensive economy.¶ Efforts should be made to invest locally first- from training green jobs workers locally to using local building materials to producing energy locally, closing the financial loop will help revitalize Native America’s strangled economies, making them less vulnerable to volatile external costs and maximizing the positive impact of the new green revolution.¶ A green jobs economy and a new, forward thinking energy and climate policy will transform tribal and other rural economies, and provide the basis for an economic recovery in the United States. In order to make this possible, we encourage the Obama Administration to provide incentives and assistance to actualize renewable energy development by tribes and Native organizations.

#### And your Robyn evidence cites the LaDuke evidence which is also about technology uptake- if we win our corporate takeover arguments it turns your internal link

LaDuke 7—executive director of both Honor the Earth and White Earth Land Recovery Project (Winona, Local Energy, Local Power, [www.community-wealth.org/\_pdfs/articles-publications/municipal/pdf](http://www.community-wealth.org/_pdfs/articles-publications/municipal/pdf))

Alternative energy represents an amazing social and political reconstruction opportunity, one that has the potential for peace, justice, equity, and some recovery of our national dignity. Distributed power production, matched with efficiency, is the key. According to the Department of Energy, we squander up to two-thirds of our present fossil-fuel electricity as waste; we lose immense amounts in inefficient production, heating, and transportation systems.¶ We must reduce our consumption, then create distributed energy systems, where local households and businesses can produce power and sell extra into the grid. Relatively small-scale and dispersed wind, solar, or even biomass generation provides the possibility for production at the tribal or local level without involving big money and big corporations. That, in turn, allows for a large measure of local accountability and control—pretty much the definition of democracy—and an appreciation for where we are and where we need to go.¶ Some of the largest wind projects in the country are in Minnesota, where the Plains come to the edge of the Great Woods and the winds sweep across the southern part of the state. Funding for Minnesota's renewable energy programs is largely the result of a hard-fought battle in the Minnesota legislature over a nuclear waste dump adjacent to the Prairie Island Dakota reservation. The tribe's concern over the health effects of nuclear waste next to their community led to state legislation requiring a significant investment in renewable energy, which spear–headed wind development.¶ Elsewhere, indigenous peoples have four of the nation's 10 largest coal strip mines on our territories; have been inundated and drowned for dam projects like Pick Sloan (Missouri River Basin), James Bay, Kinzua, and Columbia River; and have been irradiated by uranium mines and proposed nuclear waste dumps in Western Shoshone and Goshute communities. Native communities are ready for a change.

#### Same with the Powell evidence

Powell 6—Assistant Professor of Anthropology, Appalachian State (Dana, Technologies of Existence: The indigenous environmental justice movement, [www.cfeps.org/ss2008/ss08r/harcourt/harcourt3\_powell.pdf](http://www.cfeps.org/ss2008/ss08r/harcourt/harcourt3_powell.pdf))

These emerging practices of a social¶ movement-driven development agenda draw our¶ attention to the cultural politics, meanings,¶ histories, and conceptual contributions posited¶ by unconventional development projects. As part¶ of an emerging movement in support of localized¶ wind and solar energy production on tribal lands,¶ these projects are responses to the biopolitical¶ operations of 20th century development¶ projects. They respond to a long history of¶ removal, regulation, knowledge production, and¶ life-propagating techniques administered on¶ reservation-based peoples. The movement itself¶ addresses controversies in a way that interweaves¶ the economic, the ecological, the cultural, and¶ the embodied aspects of being and being well¶ in the world; as a member of the Indigenous¶ Environmental Network (IEN) said to me:¶ The movement is really about health and people dying y people can’t have an enjoyable life anymore.¶ The work of the movement is never about the power¶ plant itself, but about how all the EJ (environmental¶ justice) issues come together and link up to affect¶ people’s livesyits about having a good life(B Shimek,¶ 2004, personal communication).¶ Such an analysis resonates with Arturo Escobar’s¶ emphasis on a framework of a ‘political ecology¶ of difference’ and the need to consider ‘cultural¶ distribution’ conflicts in studies or other¶ engagements with natural resource issues¶ (Escobar (2006) Introduction). Concerns of ‘cultural distribution’ have become crucial work for¶ the IEJM as it seeks to resignify development as‘environmental justice’ in the context of a particular¶ history of illness and disease, environmental contamination, poverty, and place-based worldviews.¶ I argue that the way in which the IEJM has coalesced around these alternative development projects suggests that these projects are‘technologies¶ of resistance’ (Hess, 1995) to dominant forms of economic development, but also ^ and perhaps¶ more significantly ^ imaginative technologies¶ of existence, mediating a particular discourse of¶ natural resource controversies, including¶ values of a ‘good life’. As such, renewable energy¶ technologies are resignifying the politics of¶ ‘sustainability’ through the movement’s concept¶ of ‘environmental justice’, which cuts across¶ reductive interpretations of economy, ecology,¶ and culture.

#### A federal trust doctrine based on protecting Native resources prevents Native extinction.

Wood, ’94 (Oregon Assistant Law Professor, 1994 Utah L. Rev. 1471)

Since first entering into treaties with the United States, native nations have waged a 200-year struggle to maintain their autonomy against an encroaching majority society. With all too few exceptions, native interests have been overwhelmingly subjugated to the political will of the majority. Now, positioned at the threshold of the twenty-first century, tribes are still adjusting to the relatively new era of Self-Determination--an era marked by federal policy supportive of native sovereignty. Despite the comforting tenor of current federal policy, the future of tribal existence for many native nations is imperiled. While the remaining three percent of the native land base is vital to preserving tribal autonomy, **it stands to be lost in a storm of development and pollution** throughout the United States. Many native lands are severely contaminated as a result of non-Indian activities occurring off reservations, and tribes are finding it increasingly difficult to continue their traditional way of life because of unrestrained non-Indian activities that are depleting and degrading shared resources. But the threat also arises from within Indian society itself. Indian lands are increasingly eyed by the majority society to alleviate scarcity outside of Indian Country. Such lands may be developed only with the consent of the governing tribal entity--consent that is more readily given in times of economic hardship, such as the present. As this Article points out, the deep aversion of a significant portion of the native population to industrial development of their lands is largely overlooked in the face of tribal council approvals legitimized by the policy of Self-Determination. This Article has explored the federal government's role in the continuing assault on Indian lands and has examined modern governmental duties and obligations owed to tribes within a sovereign trust paradigm. The federal government's trust duty is rooted in the land cessions made by the native nations. As expressed in treaties and elsewhere, the land cessions were conditioned upon an understanding that the federal government would safeguard the autonomy of the native nations by protecting their smaller, retained territories from the intrusions of the majority society and its ambitious entrepreneurs. This promise of a viable separatism forms the heart of the federal government's continuing trust responsibility toward the native nations. The continuing entitlement of tribes to maintain a separate existence, however, has been obfuscated by a modern trend [\*1568] to address native needs through the legal structure developed for a non-Indian society--a structure consisting primarily of constitutional and statutory protections. Such legal protections, geared as they are toward non-Indian needs and values, are often inadequate to protect the distinctive sovereign character of native nations. Now, with much of the native land base and corollary resources on the verge of irrevocable deterioration, renewed attention to the trust doctrine **is critical.** This Article charted a course for the trust doctrine within the context of the Mitchell decisions and post-Mitchell precedent. It concluded that, while courts will likely remain reluctant to enforce trust obligations against Congress, trust claims against the executive branch remain viable after Mitchell in both the federal landmanagement and incidental-action contexts. In the incidental-action context, the trust doctrine allows tribes to challenge federal action which, though perhaps permissible under federal environmental law, detrimentally affects their unique way of life. In the land-management context, the trust doctrine provides important redress for tribes against governmental mismanagement of tribal lands and resources. Just as important, the trust claim may provide critical protection to tribal members seeking to safeguard their lands and resources against large-scale disposition to private interests through lease arrangements. In this latter context, the federal fiduciary duty to protect a tribe's territory against market encroachments of the majority society may sometimes outweigh the inevitable intrusion into tribal council prerogatives resulting from federal disapproval of a project. This argument recognizes the complex underpinnings of tribal sovereignty on many reservations and seeks to define the federal government's trust obligation not as a duty to automatically approve each transaction negotiated by a tribal government, but rather as a duty to safeguard the land interests of the tribe as a whole for present and future generations. To conclude, native nations in the Self-Determination era face threats to their autonomy perhaps more subversive and subtle **than those of any previous era**. While the current Self-Determination era carries pleasant overtones of tribal autonomy, in reality it may be promoting a rapid conversion of tribes from culturally autonomous, land-based societies, to substantially assimilated, corporate-like entities reflecting normative characteristics of the highly industrialized majority society that surrounds them. Undoubtedly the most dangerous aspect of the modern policy is its effective disguise of the continued pressures exerted by the majority society to sever native people from their lands and extinguish their way of life. As this Article has pointed out, Self-Determination will prove a hollow concept [\*1569] if industry and the government **exploit it to serve the interests** of the majority society at the expense of the native nations. Indeed, it will become nothing more than continued **colonialism under the banner of native sovereignty.**At a very basic level this Article has suggested a fundamental shift in the policy and law paradigm governing federal-tribal relations. The federal duty of protection, which forms the basis of the sovereign trusteeship as secured by the vast land cessions of two centuries ago, should again serve as the focal point of future dealings between tribes and the federal government. This duty of protection does not justify or authorize plenary power over sovereign native nations, but rather translates into self-restraint on the part of the majority society to refrain from taking actions injurious to native lands and resources.

#### This trust relationship shouldn’t be confused with colonialism – it is necessary to prevent exploitation of Native America.

Clinton, '93 (Former Iowa Law Prof -- Go Hawks!, 46 Ark. L. Rev. 77)

Given the chameleon-like nature of and complex roles played by the federal trusteeship doctrine over the course of American legal history, it may not be sufficient only to identify it as a legacy of colonial oppression of Indian tribes and to condemn it to the oblivion of America's colonialist past. Although the doctrine has been destructive to Indian tribes and their cultures, it also **has protected ~~tribal~~ communities by affording redressability for past wrongs**. For example, Chief Justice Marshall used the doctrine in Cherokee Nation in part to insinuate the federal government's obligation by treaty or otherwise to protect the sovereignty and lands of the Cherokee Nation from encroachment by the State of Georgia and its [\*134] citizens. Surely, this protective role, for which many tribes diligently negotiated in many of the treaties**, does not represent a legacy of colonialism**. Rather, it is a logical outgrowth of the political relationships created by such treaties and the course of dealings between the federal government and the tribes. Similarly, while colonialism certainly caused the federal government to assume the management of many Indian minerals and resources, the legal doctrines derived from the trusteeship hold the federal government legally accountable for actual mismanagement of such Indian resources, and therefore, **they should not be simplisticly condemned and eliminated as a vestige of colonialism.** Thus, dealing with the federal trusteeship in the visionary world of a decolonized federal Indian law poses significant conceptual problems. Certainly, the elements of the doctrine which justify the exercise of plenary federal authority, federal usurpation of the management of or decision making about Indian resources, or federal efforts to "enlighten" Indians by depriving them of their tribal traditions and culture represent a part of the legacy of conquest and properly should be jettisoned by a decolonized federal Indian law as relics of America's colonialist past. By contrast, a decolonized federal Indian law still might retain those elements of the trusteeship under which the federal government justified its protection of the legal autonomy of communities from the onslaught of the legal authority of the states that surrounded them or under which it has sought to provide legal redress for harms caused by its past colonialist excesses. Perhaps doctrinal labels less paternalistic than trusteeship, guardianship, wardship, or the like could be found to describe these legal theories, but, nevertheless, these elements, which historically have been associated with the federal trusteeship over Indian affairs, **should escape the scalpel of decolonization of federal Indian law.**

### A2- Trust Doctrine Bad (Cornell and Kalt)

#### Counterplan maintains sovereignty that’s the trust doctrine argument above.

#### If we win risk of the net benefit it outweighs- corporate exploitation undermines successful articulation of tribal sovereignty that’s the 1NC Mills evidence.

#### Risk is higher- world of the plan there is no legal barrier to coercive forces whereas the counterplan maintains statutory distinction between authorities.

#### Trust doctrine and the federal relationship is good in the context of the environment

1.Avoids assimilation 4. Enables increased government expertise.

2. Helps nation members. 5. Solves environmental harms that threaten Indians.

3. Causes economic self-sufficiency

DuBey, '88 (Attorney -- DuBey Law Firm, 18 Envtl. L. 449)

The tribal interests favoring precluding state hazardous waste regulation in Indian country are presented throughout this analysis. The tribal interests weighing heavily against extending state jurisdiction into Indian country include: (1) self-government, (2) tribal sovereignty, (3) tribal self-sufficiency, (4) the reservation environment, and (5) protecting the health and welfare of the reservation population. States are beginning to recognize these tribal interests. As one commentator recently noted, "[s]tates are increasingly acknowledging Native American sovereignty and showing a preference for cooperation with tribes to resolve shared environmental problems." 95 The following specific interests are served **by exclusive federal/~~tribal~~ regulation** of the reservation environment: \* Unhampered and full Indian ~~tribal~~ participation in federal environmental programs strengthens the infrastructure of ~~tribal~~ government and **avoids increased assimilation**. This is consistent with federal policy to promote Indian self-government and government-to-government relations between Indian tribes and the federal government. [\*471] \* Indian and non-Indian social and economic preferences are often at variance. Indian participation in federal environmental programs **is essential to enable Indian land use choices to be made in response to the economic priorities of people most directly affected.**  \* Indian-devised environmental programs which clearly define the on-reservation regulatory environment will serve to encourage prospective business investors. Continued jurisdictional wrangling and the consequent atmosphere of uncertainty further aggravates the existing reluctance to locate businesses on the reservation. The resulting lack of investment or economic interest by the private sector would be at variance with federal policy regarding tribal autonomy. \* ~~Tribal~~ participation in federal environmental programs will enable ~~tribal~~ members to develop technical expertise and administrative skills. Such qualities will enable the ~~tribe~~ to more effectively implement ~~tribal~~ programs and will enable the ~~tribe~~ to interact more favorably with the outside community. The more credible the tribal program, the more likely that private investment capital will be made available for on-reservation economic development. \* ~~Tribal~~ environmental protection programs provide ~~tribes~~ with the means to mitigate those **adverse environmental impacts** associated with any proposed economic development on the reservation, whether the project proponent is tribal or non-tribal. Such tribal programs thus serve to encourage economic development on the one hand while ensuring that the proposed project could be consistent with the tribal goal of maintaining a healthful reservation environment. \* The potential effects of hazardous waste on reservation groundwater quality is of particular concern to many tribes. Indian tribes depend on surface and groundwater sources, not only for economic development purposes, but also for consumption, making clean water critical to their very survival. If present in sufficient quantities, hazardous wastes pose a serious human health threat and a barrier to tribal economic development. To address each of these concerns, tribes, as sovereign governments, must be able to exercise regulatory authority under RCRA in order to protect the reservation population's health and welfare and the quality of the reservation environment.

#### Trust doctrine is reformable – solves Native sovereignty

Skibine 10 (Alexander, S.J. Quinney Professor of Law at U of Utah, “Indian Gaming and Cooperative Federalism,” Arizona State Law Journal)

I argue here that abandoning the sovereign trust branch of the doctrine may be premature. Without it, the tribes would be at the mercy of the states, let alone an anti-tribal Supreme Court.18 This is not to say that the doctrine is perfect or being perfectly implemented. Far from it. For we know that the federal government is plagued with many conflicts of interest in adequately enforcing its trust responsibilities.19 However, while the doctrine can be tinkered with, it should not be rejected out right, at least not without a constitutional amendment or some congressional legislation of a more or less equivalent permanency. So the issue here is how to improve the doctrine by getting rid of its colonial and racist baggage so that it can reemerge as a doctrine protecting tribal sovereignty and guaranteeing the place of tribes as political sovereigns within Our Federalism.

## Advantage 2

### Explotation

**Corporate wind development creates dependency – even if the plan increases tribal control**

**Mills**, energy and resources group at UC Berkeley, **2011**

(Andrew D., “Wind Energy in Indian Country: Turning to Wind for the Seventh Generation,” http://rael.berkeley.edu/sites/default/files/very-old-site/Mills-2006-Wind\_Energy\_in\_Indian\_Country.pdf)

A major transition point in the history of energy development on Navajo lands involved the Chairman of the Navajo Nation, Peter McDonald, declaring that changes needed to take place before the Navajo Nation would support continued development of energy resources on their land in the 1970’s. Two major points he stressed included making sure that energy development was being carried out for the benefit of the Navajo people and that the tribe should be given opportunities to participate in and control energy development (Robbins 1979, 116). **The main critique of both these stances from dependency theory is that even with control over energy development**, **it is still a capital-intensive**, **highly technical**, **and tightly controlled industry** (Owens 1979, 4). The Navajo Nation can participate in energy development, but not without creating distortions in the orientation of the economy and government.

In this same vein, **it is difficult to argue that wind energy is inherently different that other forms of energy development from the dependency perspective**. While it is possible for the Navajo Nation to take steps to ensure that the tribe will obtain the maximum benefit from wind development, such as ensuring that tribal members and Navajo owned businesses have preference in hiring, it is not likely that the tribe can become a self-sufficient wind developer without severely distorting the priorities of the economy and Navajo government. **The alternative is to allow a specialized, large company from off the reservation to develop the wind farm**, with the possibility that a Navajo partner can take part in the ownership of the wind farm. While

**Renewables Fail**

**Renewables fail – subject to unforeseen market developments – prefer our evidence its by qualified economic advisors**

**Lane 6/19/12** (Charles, Member of the Washington Post Editoral Board, “The U.S. Government’s Bad Bets on Energy Policy”)

U.S. energy subsidies — spending, tax breaks, loan guarantees — increased from $17.9 billion in fiscal 2007 to $37.2 billion in fiscal 2010, according to the Energy Department. Yet fossil fuels' overwhelming market advantages have produced a litany of clean-energy failures, from electric cars to Solyndra. **The subsidies ostensibly address several issues — dependence on foreign oil, job creation, international economic competitiveness and environmental degradation — but without clear priorities, much less rigorous cost-benefit analysis**. Unintended consequences and political influence abound. **The best-laid plans are vulnerable to unforeseen market developments** — **such as the boom in oil and natural gas “fracking” over the past decade,** which Obama has now embraced. To the extent that it's coherent at all, the federal energy “portfolio” represents a return to industrial policy — governmental selection of economic winners — which was fashionable in the 1970s and 1980s, before it collapsed under the weight of its intellectual and practical contradictions. **As such, current clean-energy programs are no likelier to pay off than President Jimmy Carter's Synthetic Fuels Corp**., which blew $9 billion, or President George W. Bush's $1.2 billion program for hydrogen vehicles. This isn't just my opinion or the finding of some right-wing think tank. Rather, **all of the above comes from a new paper by three certifiably centrist Brookings Institution scholars, Adele Morris, Pietro S. Nivola and Charles L. Schultze; Schultze was a senior economic adviser to Presidents Kennedy, Johnson and Cart**er. The researchers pick apart clean-energy subsidies rationale by rationale

**2NC-A2: Soverignty**

**Aff is a short-term fix – doesn’t solve sovereignty**

**Cornell and Kalt** **‘6** – Cornell – director of the Udall Center for Studies in Public Policy AND\*\* Kalt – Ford Foundation Professor of International Political Economy (Cornell. Stephen. Joseph P.Kalt. “Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t.” http://jopna.net/pubs/jopna\_2005-02\_Approaches.pdf)

That effort has taken a number of different forms over the years as the federal government tried different reservation development strategies. In the last quarter of the twentieth century, a growing number of tribes—faced with desperate economic conditions and operating under the federal policy of self-determination—also joined the effort. Many tribal governments moved economic development to the top of their policy agendas, sometimes complementing federal efforts, sometimes operating at cross-purposes. But in most cases, **a *single* approach dominated both federal and tribal activities. We call this approach the “standard” approach**. Characteristics of **the Standard Approach** This approach has five primary characteristics: it **is short-term and non-strategic; it lets persons or organizations other than the Indian nation set the development agenda; it views development as *primarily an economic problem*; it views indigenous culture as an obstacle to development; and it encourages narrowly defined and often self-serving leadership**. These are generalizations. Not every case of reservation economic development that we describe as following the standard approach follows it in its entirety. Some aspects of the approach might be apparent in some cases while others may be missing. Additionally, Indian nations seldom talk about development in exactly these terms. Nonetheless, these characteristics provide a general description of what federal and tribal development efforts, regardless of intent, frequently have looked like. Far too often, consciously or otherwise, this is how development has been done in Indian Country. Each characteristic of the standard approach deserves elaboration. 1. In the standard approach, decision-making is short-term and non-strategic. **Viewed as a single population, reservation Indians are among the very poorest Americans, with high indices of** unemployment, ill health, inadequate housing, and an assortment of other problems associated with poverty. **The need for jobs and income is enormous. In an era of self- determination, this situation puts intense pressure on tribal politicians to “get something going!” Grim social and economic conditions, combined with disgruntled and often desperate constituents, encourage a *focus* on short-term fixes instead of fundamental issues**. “**Get something going!” becomes “get *anything* going!”** **It leaves strategic questions such as “what kind of society are we trying to build?” or “How do we get there from here?” or “How do all these projects fit together?” for another day that seldom comes, overwhelmed by the need to *generate immediate results* for reservation residents**. **Short terms of elected office, common in many tribal governments, have similar effects**. With only two years in which to produce results, **few politicians have incentives to think about long-term strategies.** **They will face reelection long before most such strategies become productive**. **These same factors also encourage a focus on starting businesses instead of sustaining them**. **It’s grand openings, ribbon-cuttings, and new initiatives, not second rounds of investment or fourth- year business anniversaries, that gain media attention**, community support, and votes at election time. Newly-elected leaders who want to make their mark on the community are going to be more interested in starting something new than in sustaining what the previous administration—whom they probably opposed at election time—put in place. This means that **prospective businesses**, **whether genuinely promising or not, often get more attention from tribal leadership than established ones do**. Finally, there is a tendency to look for home-runs: where’s the killer project that will transform the local economy? **Grandiose plans take the place of potentially more effective—if less dramatic— incremental building of a broadly based economy**.

**2NC-Energy Focus Can’t solve**

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

**Cornell and Kalt** **‘6** – Cornell – director of the Udall Center for Studies in Public Policy AND\*\* Kalt – Ford Foundation Professor of International Political Economy (Cornell. Stephen. Joseph P.Kalt. “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**.

**2NC-Can’t Solve**

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

**Cornell and Kalt** **‘6** – Cornell – director of the Udall Center for Studies in Public Policy AND\*\* Kalt – Ford Foundation Professor of International Political Economy (Cornell. Stephen. Joseph P.Kalt. “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** – Cornell – director of the Udall Center for Studies in Public Policy AND\*\* Kalt – Ford Foundation Professor of International Political Economy (Cornell. Stephen. Joseph P.Kalt. “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**.

# 1NR

## Case

**At: Violence Impacts – Democracy Solves**

**Democratic safeguards prevent genocidal violence**

Rosemary H. T.  **O’Kane 1997**. Emeritus Professor of Comparative Political Theory at Keene University. “Modernity, the Holocaust, and politics”, Economy and Society, February.

**Chosen policies cannot be relegated to the position of immediate condition** (Nazis in power) **in the explanation of the Holocaust.**  **Modern bureaucracy is not ‘intrinsically capable of genocidal action’** (Bauman 1989: 106). Centralized state coercion has no natural move to terror**. In the explanation of modern genocides it is chosen policies which play the greatest part, whether in effecting bureaucratic secrecy, organizing forced labour, implementing a system of terror, harnessing science and technology or introducing extermination policies, as means and as ends.** As Nazi Germany and Stalin’s USSR have shown, furthermore, **those chosen policies of genocidal government turned away from and not towards modernity.** The choosing of policies, however, is not independent of circumstances. An analysis of the history of each case plays an important part in explaining where and how genocidal governments come to power and analysis of political institutions and structures also helps towards an understanding of the factors which act as obstacles to modern genocide. But **it is not just political factors which stand in the way of another Holocaust in modern society. Modern societies have not only pluralist democratic political systems but also economic pluralism where workers are free to change jobs and bargain wages and where independent firms, each with their own independent bureaucracies, exist in competition with state-controlled enterprises. In modern societies this economice pluralism both promotes and is served by the open scientific method.** By ignoring competition and the capacity for people to move between organizations whether economic, political, scientific or social, Bauman overlooks crucial but also very ‘ordinary and common’ attributes of truly modern societies**. It is these very ordinary and common attributes of modernity which stand in the way of modern genocides.**

**Structural Violence Declining**

**All forms of structural violence are decreasing**

**Goklany 9—**Worked with federal and state governments, think tanks, and the private sector for over 35 years. Worked with IPCC before its inception as an author, delegate and reviewer. Negotiated UN Framework Convention on Climate Change. Managed the emissions trading program for the EPA. Julian Simon Fellow at the Property and Environment Research Center, visiting fellow at AEI, winner of the Julian Simon Prize and Award. PhD, MS, electrical engineering, MSU. B.Tech in electrical engineering, Indian Institute of Tech. (Indur, “Have increases in population, affluence and technology worsened human and environmental well-being?” 2009, http://www.ejsd.org/docs/HAVE\_INCREASES\_IN\_POPULATION\_AFFLUENCE\_AND\_TECHNOLOGY\_WORSENED\_HUMAN\_AND\_ENVIRONMENTAL\_WELL-BEING.pdf, AMiles)

Although global **population** is no longer growing exponentially, it **has quadrupled** since 1900. Concurrently, affluence (or GDP per capita) has sextupled, global economic product (a measure of aggregate consumption) has increased 23-fold and carbon dioxide has increased over 15-fold (Maddison 2003; GGDC 2008; World Bank 2008a; Marland et al. 2007).4 **But contrary to** Neo- **Malthusian fears,** average **human well-being**, measured by any objective indicator, **has never been higher**. **Food supplies,** Malthus’ original concern, **are up** worldwide. Global food supplies per capita increased from 2,254 Cals/day in 1961 **to 2,810** in 2003 (FAOSTAT 2008). **This helped reduce hunger and malnutrition worldwide**. **The proportion of the population in the developing world, suffering from chronic hunger declined from 37** percent **to 17 percent** between 1969–71 and 2001–2003 **despite** an **87 percent population increase** (Goklany 2007a; FAO 2006). The **reduction in hunger** and malnutrition, **along with improvements in basic hygiene, improved access to** **safer water and sanitation, broad adoption of vaccinations, antibiotics, pasteurization and other public health measures, helped reduce mortality and increase life expectancies.** These improvements first became evident in today’s developed countries in the mid- to late-1800s and started to spread in earnest to developing countries from the 1950s. **The infant mortality rate** in developing countries **was 180 per 1,000** live births in the early 1950s; **today it is 57.** Consequently, **global life expectancy**, perhaps the single most important measure of human well-being, **increased from 31** years in 1900 **to 47 years** in the early 1950s to 67 years today (Goklany 2007a). Globally, average **annual per capita incomes tripled since 1950**. **The proportion of the world’s population outside of** **high-income** OECD **countries living in absolute poverty (**average consumption of less than $1 per day in 1985 International dollars adjusted for purchasing power parity), **fell from 84 percent** in 1820 **to 40 percent** in 1981 to 20 percent in 2007 (Goklany 2007a; WRI 2008; World Bank 2007). Equally important, **the world is more literate and better educated**. **Child labor in low income countries declined from 30 to 18 percent** between 1960 and 2003. In most countries, **people are freer politically, economically and socially to pursue their goals as they see fit**. More **people choose their own rulers, and have freedom of expression**. **They are more likely to live under rule of law, and less likely to be arbitrarily deprived of life, limb and property.** **Social and professional mobility has never been greater. It is easier to transcend the bonds of caste, place, gender,** and other accidents of birth in the lottery of life. **People work fewer hours, and have more money and better health to enjoy their leisure time** (Goklany 2007a). Figure 3 summarizes the U.S. experience over the 20th century with respect to growth of population, affluence, material, fossil fuel energy and chemical consumption, and life expectancy. It indicates that population has multiplied 3.7-fold; income, 6.9-fold; carbon dioxide emissions, 8.5-fold; material use, 26.5-fold; and organic chemical use, 101-fold. Yet its **life expectancy increased from 47 years to 77 years and infant mortality** (not shown) **declined** from over 100 per 1,000 live births to 7 per 1,000. **It is also important to note that not only are people living longer, they are healthier**. The **disability rate for seniors declined 28 percent** between 1982 and 2004/2005 and, despite better diagnostic tools, **major diseases** (e.g., cancer, and heart and respiratory diseases) **occur** 8–**11 years later** now than a century ago (Fogel 2003; Manton et al. 2006). If similar figures could be constructed for other countries, most would indicate qualitatively similar trends, especially after 1950, except Sub-Saharan Africa and the erstwhile members of the Soviet Union. In the latter two cases, life expectancy, which had increased following World War II, declined after the late 1980s to the early 2000s, possibly due poor economic performance compounded, especially in Sub-Saharan Africa, by AIDS, resurgence of malaria, and tuberculosis due mainly to poor governance (breakdown of public health services) and other manmade causes (Goklany 2007a, pp.66–69, pp.178–181, and references therein). However, **there are signs of a turnaround**, perhaps **related to increased economic growth** since the early 2000s, although this could, of course, be a temporary blip (Goklany 2007a; World Bank 2008a). Notably, in most areas of the world, the healthadjusted life expectancy (HALE), that is, life expectancy adjusted downward for the severity and length of time spent by the average individual in a less-than-healthy condition, is greater now than the unadjusted life expectancy was 30 years ago. HALE for the China and India in 2002, for instance, were 64.1 and 53.5 years, which exceeded their unadjusted life expectancy of 63.2 and 50.7 years in 1970–1975 (WRI 2008). Figure 4, based on cross country data, indicates that contrary to Neo-Malthusian fears, **both life expectancy and infant mortality improve with** the level of affluence **(economic development) and** time, a surrogate for **technological change** (Goklany 2007a). Other indicators of **human well-being** that **improve** over time and **as affluence rises** are: access to safe water and sanitation (see below), literacy, level of education, food supplies per capita, and the prevalence of malnutrition (Goklany 2007a, 2007b).

### Threats are Real

#### Threats are not socially constructed- decision makers use the most objective, rational, and accurate assessments possible- there are no bureaucratic or ideological motivations to invent threats.

Ravenal ‘9

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Quite expectedly, the more doctrinaire of the non-interventionists take pains to deny any straightforward, and therefore legitimate, security motive in American foreign and military policy. In fact, this denial leads to a more sweeping rejection of any recognizably rational basis for American foreign policy, and, even, sometimes (among the more theoretical of the non-interventionists), a preference for non-rational accounts, or “models,” of virtually any nation’s foreign policy-making.4 One could call this tendency among anti-imperialists “motive displacement.” More specifically, in the cases under review here, one notes a receptivity to any reworking of history, and any current analysis of geopolitics, that denigrates “the threat”; and, along with this, a positing of “imperialism” (the almost self-referential and primitive impulse) as a sufficient explanation for the often strenuous and risky actions of great powers such as the United States. Thus, not only is “empire” taken to be a sufficient and, in some cases, a necessary condition in bringing about foreign “threats”; but, by minimizing the extent and seriousness of these threats, the anti-imperialists put themselves into the position of lacking a rational explanation for the derivation of the (pointless at best, counter-productive at worst) policies that they designate as imperialistic. A pungent example of this threat denigration and motive displacement is Eland’s account of American intervention in the Korean and Vietnam wars:

After North Korea invaded, the Truman administration intervened merely for the purpose of a demonstration to friends and foes alike. Likewise, according to eminent cold war historians, the United States did not inter- vene in Vietnam because it feared communism, which was fragmented, or the Soviet Union, which wanted détente with the West, or China, which was weak, but because it did not want to appear timid to the world. The behavior of the United States in both Korea and Vietnam is typical of imperial powers, which are always concerned about their reputation, pres- tige, and perceived resolve. (Eland 2004, 64)

Of course, the motive of “reputation,” to the extent that it exists in any particular instance, is a part of the complex of motives that characterize a great power that is drawn toward the role of hegemon (not the same thing as “empire”). Reputation is also a component of the power projec- tion that is designed to serve the interest of national security. Rummaging through the concomitants of “imperialism,” Eland (2004, 65) discovers the thesis of “threat inflation” (in this case, virtual threat invention): Obviously, much higher spending for the military, homeland security, and foreign aid are required for a policy of global intervention than for a policy of merely defending the republic. For example, after the cold war, the security bureaucracies began looking for new enemies to justify keeping defense and intelligence budgets high. Similarly, Eland (ibid., 183), in a section entitled “Imperial Wars Spike Corporate Welfare,” attributes a large portion of the U.S. defense budget—particularly the procurement of major weapons systems, such as “Virginia-class submarines . . . aircraft carriers . . . F-22 fighters . . . [and] Osprey tilt-rotor transport aircraft”—not to the systemically derived requirement for certain kinds of military capabilities, but, rather, to the imperatives of corporate pork. He opines that such weapons have no stra- tegic or operational justification; that “the American empire, militarily more dominant than any empire in world history, can fight brushfire wars against terrorists and their ‘rogue’ state sponsors without those gold- plated white elephants.”

The underlying notion of “the security bureaucracies . . . looking for new enemies” is a threadbare concept that has somehow taken hold across the political spectrum, from the radical left (viz. Michael Klare [1981], who refers to a “threat bank”), to the liberal center (viz. Robert H. Johnson [1997], who dismisses most alleged “threats” as “improbable dangers”), to libertarians (viz. Ted Galen Carpenter [1992], Vice President for Foreign and Defense Policy of the Cato Institute, who wrote a book entitled A Search for Enemies). What is missing from most analysts’ claims of “threat inflation,” however, is a convincing theory of why, say, the American government significantly (not merely in excusable rhetoric) might magnify and even invent threats (and, more seriously, act on such inflated threat estimates). In a few places, Eland (2004, 185) suggests that such behavior might stem from military or national security bureaucrats’ attempts to enhance their personal status and organizational budgets, or even from the influence and dominance of “the military-industrial complex”; viz.: “Maintaining the empire and retaliating for the blowback from that empire keeps what President Eisenhower called the military-industrial complex fat and happy.” Or, in the same section:

In the nation’s capital, vested interests, such as the law enforcement bureaucracies . . . routinely take advantage of “crises”to satisfy parochial desires. Similarly, many corporations use crises to get pet projects— a.k.a. pork—funded by the government. And national security crises, because of people’s fears, are especially ripe opportunities to grab largesse. (Ibid., 182)

Thus, “bureaucratic-politics” theory, which once made several reputa- tions (such as those of Richard Neustadt, Morton Halperin, and Graham Allison) in defense-intellectual circles, and spawned an entire sub-industry within the field of international relations,5 is put into the service of dismissing putative security threats as imaginary. So, too, can a surprisingly cognate theory, “public choice,”6 which can be considered the right-wing analog of the “bureaucratic-politics” model, and is a preferred interpretation of governmental decision- making among libertarian observers. As Eland (2004, 203) summarizes:

Public-choice theory argues [that] the government itself can develop sepa- rate interests from its citizens. The government reflects the interests of powerful pressure groups and the interests of the bureaucracies and the bureaucrats in them. Although this problem occurs in both foreign and domestic policy, it may be more severe in foreign policy because citizens pay less attention to policies that affect them less directly.

There is, in this statement of public-choice theory, a certain ambiguity, and a certain degree of contradiction: Bureaucrats are supposedly, at the same time, subservient to societal interest groups and autonomous from society in general.

This journal has pioneered the argument that state autonomy is a likely consequence of the public’s ignorance of most areas of state activity (e.g., Somin 1998; DeCanio 2000a, 2000b, 2006, 2007; Ravenal 2000a). But state autonomy does not necessarily mean that bureaucrats substitute their own interests for those of what could be called the “national society” that they ostensibly serve. I have argued (Ravenal 2000a) that, precisely because of the public-ignorance and elite-expertise factors, and especially because the opportunities—at least for bureaucrats (a few notable post-government lobbyist cases nonwithstanding)—for lucrative self-dealing are stringently fewer in the defense and diplomatic areas of government than they are in some of the contract-dispensing and more under-the-radar-screen agencies of government, the “public-choice” imputation of self-dealing, rather than working toward the national interest (which, however may not be synonymous with the interests, perceived or expressed, of citizens!) is less likely to hold. In short, state autonomy is likely to mean, in the derivation of foreign policy, that “state elites” are using rational judgment, in insulation from self-promoting interest groups—about what strategies, forces, and weapons are required for national defense.

Ironically, “public choice”—not even a species of economics, but rather a kind of political interpretation—is not even about “public” choice, since, like the bureaucratic-politics model, it repudiates the very notion that bureaucrats make truly “public” choices; rather, they are held, axiomatically, to exhibit “rent-seeking” behavior, wherein they abuse their public positions in order to amass private gains, or at least to build personal empires within their ostensibly official niches. Such sub- rational models actually explain very little of what they purport to observe. Of course, there is some truth in them, regarding the “behavior” of some people, at some times, in some circumstances, under some conditions of incentive and motivation. But the factors that they posit operate mostly as constraints on the otherwise rational optimization of objectives that, if for no other reason than the playing out of official roles, transcends merely personal or parochial imperatives.

My treatment of “role” differs from that of the bureaucratic-politics theorists, whose model of the derivation of foreign policy depends heavily, and acknowledgedly, on a narrow and specific identification of the role- playing of organizationally situated individuals in a partly conflictual “pulling and hauling” process that “results in” some policy outcome. Even here, bureaucratic-politics theorists Graham Allison and Philip Zelikow (1999, 311) allow that “some players are not able to articulate [sic] the governmental politics game because their conception of their job does not legitimate such activity.” This is a crucial admission, and one that points— empirically—to the need for a broader and generic treatment of role.

Roles (all theorists state) give rise to “expectations” of performance. My point is that virtually every governmental role, and especially national-security roles, and particularly the roles of the uniformed mili- tary, embody expectations of devotion to the “national interest”; rational- ity in the derivation of policy at every functional level; and objectivity in the treatment of parameters, especially external parameters such as “threats” and the power and capabilities of other nations.

Sub-rational models (such as “public choice”) fail to take into account even a partial dedication to the “national” interest (or even the possibility that the national interest may be honestly misconceived in more paro- chial terms). In contrast, an official’s role connects the individual to the (state-level) process, and moderates the (perhaps otherwise) self-seeking impulses of the individual. Role-derived behavior tends to be formalized and codified; relatively transparent and at least peer-reviewed, so as to be consistent with expectations; surviving the particular individual and trans- mitted to successors and ancillaries; measured against a standard and thus corrigible; defined in terms of the performed function and therefore derived from the state function; and uncorrrupt, because personal cheating and even egregious aggrandizement are conspicuously discouraged.

My own direct observation suggests that defense decision-makers attempt to “frame” the structure of the problems that they try to solve on the basis of the most accurate intelligence. They make it their business to know where the threats come from. Thus, threats are not “socially constructed” (even though, of course, some values are).

A major reason for the rationality, and the objectivity, of the process is that much security planning is done, not in vaguely undefined circum- stances that offer scope for idiosyncratic, subjective behavior, but rather in structured and reviewed organizational frameworks. Non-rationalities (which are bad for understanding and prediction) tend to get filtered out. People are fired for presenting skewed analysis and for making bad predictions. This is because something important is riding on the causal analysis and the contingent prediction. For these reasons, “public choice” does not have the “feel” of reality to many critics who have participated in the structure of defense decision-making. In that structure, obvious, and even not-so-obvious, “rent-seeking” would not only be shameful; it would present a severe risk of career termination. And, as mentioned, the defense bureaucracy is hardly a productive place for truly talented rent-seekers to operate, compared to opportunities for personal profit in the commercial world. A bureaucrat’s very self-placement in these reaches of government testi- fies either to a sincere commitment to the national interest or to a lack of sufficient imagination to exploit opportunities for personal profit.

**Extinction O/W**

**Life should be valued as apriori – it precedes the ability to value anything else**

Amien **Kacou. 2008**. WHY EVEN MIND? On The A Priori Value Of “Life”, Cosmos and History: The Journal of Natural and Social Philosophy, Vol 4, No 1-2 (2008) 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.

**War O/W Structural Violence Impacts**

**War fuels structural violence, not the other way around**

**Goldstein 2001**. IR professor at American University (Joshua, War and Gender, p. 412, Google Books)

First, peace activists face a dilemma in thinking about causes of war and working for peace. **Many peace scholars and activists support the approach, “if you want peace, work for justice.”** Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps. among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that **causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices**.9 So, “if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. **Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too**. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, **the emphasis on injustice as the main cause of war seems to be empirically inadequate**.

## Disad

## AT Framework

#### 1 Politics Good tests a key opportunity cost to the plan, about why some issues deserve time and others don’t.

#### 2 Fairness- Only DA on the topic, means we need it to have net benefits to key CP’s.

#### 3 Not reciprocal- Really stupid advantage areas are as uneducational.

## A2: K of Politics

### Generic

#### Evaluating political costs and understanding tradeoffs key to prevent genocide

Lanz 8

(David, Mediation Support Project for Swisspeace, “Conflict Management and Opportunity Cost: the International Response to the Darfur Crisis”)

There are no simple solutions for the contradictions outlined above – they represent complicated dilemmas and tricky trade-offs. It would be naïve to call for more coordination among external actors in Darfur, as the difference of their approaches is structural and refl ects their respective interests and contexts. There are, however, two lessons that we can learn. The fi rst is that resources are scarce and effective confl ict management requires priorities. It is not possible to simultaneously run a humanitarian operation, deploy peacekeepers, try the Sudanese President in an international court, negotiate a peace agreement, and foster the democratic transition of Sudan. We need to think about what is most important and concentrate our resources – money, political capital, personnel – to achieve this objective. The second lesson is that actors working in or on confl ict, whatever approach they take, must be aware that their decisions and actions have opportunity costs and that they can “do harm.” As David Kennedy writes, “the darker sides can swamp the benefi ts of humanitarian work, and well-intentioned people can fi nd themselves unwittingly entrenching the very things they have sought voice to denounce.”30 Also, those involved in the grand scheme of managing confl ict Darfur must realise that they are in essence projecting their morals and a Western political agenda and that, consequently, their good intentions may not be perceived as such, especially in the Arab world. Indeed, moving from selfcentred and self-righteous dogmatism to a pragmatic assessment of causes and consequences would be a big step, and it would certainly improve our ability to manage conflicts in Darfur and elsewhere.

#### You should evaluate our politics DA. Their dogmatic refusal to consider political process implications is grounded in the same destructive blindness the aff criticizes.

David **Chandler**, Centre for the Study of Democracy - University of Westminster, **‘3**

(British Journal of Politics and International Relations 5.3, “Rhetoric without responsibility”)

The attention to the articulation of a political mission, beyond the petty partisanship of left and right, through foreign policy activism abroad has been an important resource of authority and credibility for western political leaders. The ability to project or symbolise unifying ‘values’ has become a core leadership attribute. George W. Bush’s shaky start to the US presidency was transformed by his speech to Congress in the wake of the World Trade Centre and Pentagon attacks, in which he staked out his claim to represent and protect America’s ethical values against the terrorist ‘heirs of all the murderous ideologies of the 20th century’ (Bush 2001). Similarly, Tony Blair was at his most presidential in the wake of the attacks, arguing that values were what distinguished the two sides of the coming conflict: ‘We are democratic. They are not. We have respect for human life. They do not. We hold essentially liberal values. They do not’ (The Guardian, 27 March 1999). Peter Hain, minister of state at the UK Foreign Office, also focused on the ‘values that the terrorists attacked’ in his call for political unity around ‘tough action’ (The Guardian, 24 September 2001). By association with the cause of the victims of international conflicts, western governments can easily gain a moral authority that cannot be secured through the domestic political process. Even general election victories, the defining point of the domestic political process, no longer bring authority or legitimacy. This was clear in the contested victory of George W. Bush in the 2000 elections, which turned on the problem of the ‘hanging’ chad in Florida. However, the problem of deriving legitimacy from elections is a much broader one, with declining voter turnouts. In the British elections in 2001 Tony Blair achieved a landslide second term mandate, but there was little sense of euphoria—this was a hollow victory on a 50 per cent turnout which meant only one in four of the electorate voted for New Labour. The demise of the framework of traditional party politics, the source of western governments’ domestic malaise, is directly associated with the search for an external source of legitimacy. This process is illustrated in Michael Ignatieff’s quote from the writings of British war reporter Don McCullin: But what are my politics? I certainly take the side of the underprivileged. I could never say I was politically neutral. But whether I’m of the right or the left—I can’t say ... I feel, in my guts, at one with the victims. And I find there’s integrity in that stance (Ignatieff 1998, 22–23). Ignatieff suggests that the external projection of legitimacy or moral mission stems from the collapse of the left/right political framework, stating that ‘there are no good causes left—only victims of bad causes’ (ibid., 23). Governments, like many gap-year students, seek to define and find themselves through their engagement with the problems experienced by those in far-off countries. This search for a moral grounding through solidarity with the ‘victims of bad causes’ has led to an increasingly moralised ‘black and white’ or ‘good versus evil’ view of crisis situations in the non-western world.10 The jet-setting UK prime minister, Tony Blair, has been much criticised for appearing to deprioritise the domestic agenda in the wake of September 11, yet even his critics admit that his ‘moral mission’ in the international sphere has been crucial to enhancing his domestic standing. The search for ethical or moral approaches emphasising the government’s moral authority has inexorably led to a domestic shift in priorities making international policy-making increasingly high profile in relation to other policy areas. The emphasis on ethical foreign policy commitments enables western governments to declare an **unequivocal** moral stance, which helps to **mitigate** **awkward** **questions** of government mission and **political** **coherence** in the domestic sphere. The contrast between the moral certainty possible in selected areas of foreign policy and the uncertainties of domestic policy-making was unintentionally highlighted when President George Bush congratulated Tony Blair on his willingness to take a stand over Afghanistan and Iraq: ‘The thing I admire about this prime minister is that he doesn’t need a poll or a focus group to convince him of the difference between right and wrong’ (UKGovernment 2002). Tony Blair, like Bush himself, of course relies heavily on polls and focus groups for every domestic initiative. It is only in the sphere of foreign policy that it appears there are opportunities for western leaders to project a self-image of purpose, mission and political clarity. This is because it is easier to promote a position which can be claimed to be based on clear ethical values, rather than the vagaries of compromise and political pragmatism, in foreign policy than it is in domestic policy. There are three big advantages: first, the object of policy activism, and criticism, is a foreign government; second, the British or American government is not so accountable for matching rhetoric to international actions; and third, credit can be claimed for any positive outcome of international policy, while any negative outcome can be blamed on the actions or inaction of the government or population of the country concerned. The following sections highlight that the lack of connection between rhetorical demands and accountability for policy-making or **policy** **outcomes** has made selected high-profile examples of ethical foreign policy-making a **strong card** for western governments, under pressure to consolidate their standing and authority at home.

#### Ignoring political tradeoffs is totalitarian

Dean Richard **Villa**, Political Theory – UC Santa Barbara, **‘96**

(*Arendt and Heidegger: The Fate of the Political*, p. 246-7)

Arendt appropriates Heidegger’s genealogy of the technical sense of action in order to highlight the tradition’s persistent attempt to overcome plurality, the politically most relevant expression of the finitude of the human condition. Subjecting *praxis* to the rule of an end-representing reason makes it possible to exchange the nonsovereign freedom of **plural political actors** for the **command** **and** **control** exercised by the artisan. The Platonic “translation” of acting into the idiom of making established the pattern for deriving action from first philosophy or theory, a pattern that offered an escape from the irreducible relativity which besets the realm of human affairs. The substitution of making for acting initiates a paradigm of correspondence that, as Lyotard notes, delimits the Western tradition of political philosophy. Within the tropological space opened by this substitution, politics is viewed as the means or techné by which “the **‘fashioning’ of a people according to the** idea or **ideal** of just being-together” is accomplished.27

So long as political philosophy sees its task as the articulation of first principles with which actions, peoples, and institutions must be brought into accord, it reiterates the Platonic schema; moreover, it perpetuates the idea that politics resembles a plastic art. Arendt’s critique of the “Platonic” tradition reveals the drive to conflate political and artistic categories at the core of Western political theory, underlining the stubborn persistence of the state as artwork/politics as *techné* tropes. The strength of these figures is measured by the fact that the closure of the tradition barely shakes the logic of justification institutionalized by the Platonic separation of theory and practice. Western political theory, as Schürmann points out, has always demanded that action be grounded in some extrapolitical first (the cosmic order, natural or divine hierarchy, Reason and natural right, History, the greatest good for the greatest number, the emancipatory interest of the discursive community).28 As a result, it never really abandons the view that politics is a kind of **plastic art**, the “fashioning,” more or less **violent**, of a people in conformity with an ideal. The persistence of this trope is explained by its **efficacy for** **reducing plurality and difference**, and by its ability to represent violence and coercive power as “right.”29

Arendt’s theory of nonsovereign, agonistic action smashes this figure, breaking the circuit of justification through the liberation of action from the rule of grounding principles and pregiven ends.30 The essentially normative function of political theory – that is, the theoretical specification of the conditions for the legitimate exercise of power – is suspended.31 In its place Arendt develops a phenomenology of action and a narrative approach to the closure of the public realm in modernity, an approach designed to keep the memory of an agonistic public sphere alive. With this bracketing of the legitimation problematic, a new appreciation of spaces and practices not typically viewed as political becomes possible.32 Moreover, the Arendtian liberation of action throws the antipolitical, not to say the *inhuman*, consequences of the tradition’s conflation of artistic and political categories into sharp relief.

The teleocratic concept of action may be seen as the primary and most enduring expression of this conflation. With the collapse of transcendental grounds for the political, the logic of correspondence and justification built into this concept turns inward. The result is that the fashioning or “fictioning” of the community in conformity with an ideal of Justice is transformed into an exercise in self-production.33 And with this transformation, the threshold of modernity is traced.

We can see this transformation at work in the emergence of the Hobbesian problematic: the construction of the “Leviathan” needed to overawe its subjects is the work of those very subjects, in their “natural,” presubjected, and radically dissociated state.14 The example of Hobbes clearly demonstrates how, once the “art” of politics is deprived of its natural ground (once *techné* can no longer be seen as the completion or accomplishment of *physis*), a paradoxical and impossible logic asserts itself. The conundrum is simply put: the people, who do not yet exist *as a people*, must somehow always already be enough of a subject in order to author or fashion themselves *qua* community. The answers to this riddle proposed by the social contract tradition – Hobbes’s pact of association, which is simultaneously a transfer of power to a designated sovereign; Locke’s presupposition of what Laslett has called “natural political virtue”; the Rousseauian mechanism of the total alienation of individual rights and powers by which a communal, sovereign power is formed – have all been unconvincing, to say the least.35 Romanticism can be seen as the attempt to escape this paradox by radicalizing it. Instituting what Jean-Luc nancy has

called an “immanentist” logic of communal self-formation, romanticism elides the distinction between process and end: the subject is redefined as work in the double sense of self-formative activity *and* product.36 As Philippe Lacoue-Labarthe notes, in the romantic vision the community at work creates and works *itself*, thereby accomplishing the “subjective process *par excellence*, the process of self-formation and self-production.”37 The aim of the community of beings becomes “in essence to produce their own essence as community.”38

With this move, a peculiarly *modern* version of the traditional conflation of art and politics is created. The *organicity* of the political, origincally laid down by Plato’s *Republic*, takes a new and extreme form: the figure of the subject who is simultaneously artist *and* work absorbs that of the aesthetically integrated state. This subjectivization of the state as artwork trope culminates in the **totalitarian** **will** **to self-effectuation**: the will to the self-creation of a people characterized by full actualization, complete self-presence.39 The only community capable of achieving such self-presence is one from which plurality, difference, mediation, and alienation have been **expunged**: a community, in other words, that is not a *political* community at all.

## AT Thumpers

### Top of the Agenda

**Cook 1-1**

Nancy is a Budget Correspondent for National Journal, “Fiscal Deal would Only Set Stage for a New Year of Mini Cliffs,” http://nationaljournal.com/fiscal-deal-would-only-set-stage-for-a-new-year-of-mini-cliffs-20121231

The biggest takeaway is that **the package shove**s many of the **tough decisions about** long-term **tax and spending policy into January and February, when lawmakers will face** not only the debt ceiling but also **the sequester**: a moment that Republicans view as ripe for an overhaul of entitlement programs. And, they're right to anticipate that this will be a time when the Democrats will give ground on spending cuts and potentially the social safety net.¶ **The clock already has started ticking on that fight**, even though the fiscal cliff saga is not even over yet. The federal government hit the debt ceiling on Dec. 31, requiring Treasury to take “extraordinary measures." Treasury Secretary Timothy Geithner has said those steps will allow the federal government to manage its payments for about two months, but the threat of a default will loom unless Congress raises the debt ceiling later this winter.¶ That is a long way of making one major point. The fiscal cliff is not just one mountain but a series of hills that the country will face over and over again in the coming months. If you thought Washington acted in a dysfunctional manner this time, give it a few more weeks. At this rate, the same drama will revive itself in time for Valentine's Day: another holiday for lawmakers to spend on Capitol Hill.¶

### Generic

**Issues don’t cost capital until they are up**

**Drum ‘10**

Kevin is a Columnist for Mother Jones, “Immigration Coming Off the Backburner,” <http://www.motherjones.com/kevin-drum/2010/03/immigration-coming-back-burner>

There's been plenty of overheated rhetoric and creative paranoia on display this year, but nativism has been, to me, the dog that didn't bark. The Tea Parties haven't been very focused on immigration, and while abortion and socialism both became major issues during health-care reform, fears that the bill would cover illegal immigrants (it won't, incidentally) never became a marquee issue.¶ Not to pick on Ezra or anything, but this attitude betrays a surprisingly common misconception about political issues in general. The fact is that **political dogs never bark until an issue becomes an active one. Opposition to** **Social Security** privatization **was** pretty **mild until 2005, when** George **Bush turned it into an** active **issue.** Opposition to healthcare reform was mild until 2009, when Barack Obama turned it into an active issue. Etc.¶ I only bring this up because we often take a look at polls and think they tell us what the public thinks about something. But for the most part, they don't.1 That is, they **don't until the issue in question is squarely on the table and both sides have spent a couple of months filling the airwaves with their best agitprop. Polling data about gays in the military**, for example, **hasn't changed** a lot over the past year or two, **but once Congress takes up the issue** in earnest and the Focus on the Family **newsletters go out,** the push polling starts, Rush Limbaugh picks it up, and Fox News creates an incendiary graphic to go with its saturation coverage — well, that's when the polling will tell you something. And it will probably tell you something different from what it tells you now.¶ Immigration was bubbling along as sort of a background issue during the Bush administration too until 2007, when he tried to move an actual bill. Then all hell broke loose. The same thing will happen this time, and without even a John McCain to act as a conservative point man for a moderate solution. The political environment is worse now than it was in 2007, and I'll be very surprised if it's possible to make any serious progress on immigration reform. "Love 'em or hate 'em," says Ezra, illegal immigrants "aren't at the forefront of people's minds." Maybe not. But they will be soon.¶ POSTSCRIPT: And keep in mind that one of the reasons the tea parties haven't (yet) taken up the immigration fight is very specific to the agenda of Dick Armey and FreedomWorks. I doubt that Armey will win this battle in the long run, though.¶ 1Granted, polls do give us a general idea of where we're starting from. If immigration reform were polling at 80%, for example, I'd feel pretty good about it since that number could deteriorate 20 points and it would still have a lot of support. But if it's polling at around 50-60% — which it is — that's dangerous territory. Once the yelling starts you can expect that number to go down a bunch, and suddenly it won't be a popular issue to tackle during an election year.

### A2: Guns

#### Biden leading on guns

NYT 12-29

“Biden is Back for 2nd Run at Gun Limits,” <http://www.nytimes.com/2012/12/30/us/politics/newtown-task-force-returns-biden-to-gun-control-arena.html?pagewanted=all>

Five years later, that same type of weapon, a Bushmaster AR-15, is at the heart of a renewed national conversation about gun laws because it was used this month by the mass killer in Newtown, Conn. For Mr. Biden, now the vice president, the moment offers a second chance as he drafts a legislative response for President Obama that would reinstate his expired assault weapons ban, while also applying lessons from the last time around to make it more effective.¶ A president intent on pressing Congress to restrict access to high-powered guns could hardly find a more seasoned figure to take charge of the effort. Mr. Biden, who owns two shotguns, brings decades of experience and plenty of scar tissue from past battles with the National Rifle Association to frame recommendations that Mr. Obama wants ready by next month.¶ “He’s basically been doing this for a little over 30 years,” said former Senator Ted Kaufman of Delaware, a longtime Biden adviser who was appointed to fill out his term. “I really do believe there isn’t anybody in America who has a better chance of getting this done by Jan. 15 than he does, not just because of his background in guns but because he’s not politically intimidated by the N.R.A., to put it mildly.”¶ As far as the N.R.A. is concerned, Mr. Biden is an ideologue whose mind is already made up about the “conversation” he is now supposed to lead.¶ “This is somebody who’s bombastic and really does think that anybody who disagrees with him is not only wrong but crazy,” David Keene, the N.R.A. president, said in an interview. “That’s his style.”

### A2 Immigration

#### Immigration reform vote wont be until June

Foley & Stein 1/2/2013

(Elise & Sam, HuffPost writers, “Obama's Immigration Reform Push To Begin This Month,” <http://www.huffingtonpost.com/2013/01/02/obama-immigration-reform_n_2398507.html> - Kurr)

It remains unclear what type of immigration policies the White House plans to push in January, but turning them into law could be a long process. Aides expect it will take about two months to write a bipartisan bill, then another few months before it goes up for a vote, possibly in June. A bipartisan group of senators are already working on a deal, although they are still in the early stages. Rep. Zoe Lofgren (D-Calif.) will likely lead on the Democratic side in the House. While many Republicans have expressed interest in piecemeal reform, it's still unclear which of them plan to join the push.

## AT Obama Useless

#### Default to issue specific uniqueness, deal happens now

#### Obama has the upper hand on debt ceiling

Yellin 1-1

Jessica is the Chief White House Correspondent for CNN, “Obama Insisted on Sequester Buy Down in Final Fiscal Cliff Deal,” <http://politicalticker.blogs.cnn.com/2013/01/01/obama-insisted-on-sequester-buy-down/?hpt=hp_t1>

Fiscal cliff negotiations between the White House and Congressional leaders involved late-night discussions in the Oval Office and an ultimate hardline from President Barack Obama, according to a source familiar with the process.¶ President Obama wanted a delay to the massive spending cuts known as the "sequester," but Republicans requested the final deal to include measures to offset what delaying those budget cuts would add to the deficit.¶ The source said it was the president who insisted the final deal include a pay down on the sequester, and a tax increase that hit individuals making at least $400,000 a year and $450,000 for households.¶ Senate Minority Leader Mitch McConnell started negotiations at $750,000, and then moved to $550,000 before giving in and agreeing to $450,000 for households.¶ The White House and Senate Democrats added the last hours to Monday’s late session figuring out the specific revenue sources and spending cuts to pay for the sequester delay.¶ On Monday, Republicans agreed to a plan that raises $620 billion in revenue over 10 years and makes a $24 billion down payment on deficit reduction through a combination of revenue and spending cuts – also a priority for the president. Those spending cuts have been pre-determined and will be evenly divided between defense and non-defense areas.¶ A source familiar with the discussions and revealing a slant on negotiations argued these deal points represented significant concessions from the GOP. This person insisted that because Republicans backed off their pledge to oppose tax rate increases for the wealthiest Americans and said this deal represents one of the most significant policy victories of the last two decades.¶ Not everyone has the same view. The progressive group moveon.org criticized the White House for moving off Obama's pledge to raise taxes for households earning $250,000 and more and took issue with the short-term nature of the sequester delay.¶ "At the end of the day, poor and middle class families deserve a better deal than more tax cuts for the rich and the potential for another hostage situation in two months," the organization said in a statement.¶ Negotiations to reach this deal ramped up after Congressional leaders met with Obama in the Oval Office on Friday.¶ Senate Republicans brought their first offer: allowing income taxes to rise for households earning $750,000 or more – significantly higher than the $450,000 threshold the Democrats won in the end; indexing Social Security to CPI; keeping the estate tax at the current rate; paying for the sequester by means-testing Medicare. The offer included no extension of unemployment insurance and no tax credits for low income people and for education, a source familiar with the discussions said. The final deal includes both.¶ Senate Minority Leader Mitch McConnell and Senate Majority Leader Harry Reid began negotiations, which then shifted to negotiations between McConnell and Vice President Joe Biden with Reid talking to the White House and the president talking to Biden. The leading Senate Democrat and Republican decided it was too difficult to turn off the sequester and would leave it out of the deal.¶ Saturday night, the vice president and the White House economic team met with the president in the Oval Office at 8 p.m. and reviewed the offers. According to this source, the president made his bright lines clear: tax cuts had to hit families at $450,000 and above, unemployment insurance had to be extended for one year and the sequester had to be addressed.¶ So Biden went back to the phone and returned to his negotiations with the Senate minority leader.¶ After a 12:45 a.m. Sunday phone call between Biden and McConnell, the president, vice president and their staffs met in the Oval Office until 2 a.m. Monday morning to go over additional details.¶ The president's legislative affairs director Rob Nabors went to Capitol Hill to meet Senate Democratic staff at 2 a.m. to begin drafting legislation and returning home to change his shirt before he returned to the White House at 7 a.m.¶ Biden and McConnell spoke again before at 7 a.m. Monday to continue discussions and much of the day Monday was spent focused on tackling the sequester, because of Obama's insistence. The White House and Senate Democratic staff went back and forth identifying areas to find revenue and spending cuts.¶ Ultimately, Republicans agreed to a plan that raises $620 billion in revenue over 10 years, makes a $24 billion down payment on deficit reduction by turning off the sequester for two months, which sources familiar with the discussions said represented significant concessions from the GOP.¶ Those concessions, which included a back down in their pledge to oppose tax rate increases for the wealthiest Americans, strengthens the Democrats' hands as both political parties brace for the upcoming debt ceiling battle.

#### Capital key- leverage the public to pressure GOP

NYT 1-2

“Lawmakers Gird for Next Fiscal Clash, on the Debt Ceiling,” <http://www.nytimes.com/2013/01/03/us/politics/for-obama-no-clear-path-to-avoid-a-debt-ceiling-fight.html?pagewanted=all>

Some people in both parties questioned why Mr. Obama would so emphatically vow not to negotiate over the debt limit, a promise he may ultimately be forced to break if necessary to avoid economic shock waves.¶ “It’s bizarre,” said one veteran Democratic senator who would not be named, citing the proven willingness of Republicans to force a fiscal crisis unless the president makes a deal for additional spending cuts.¶ Mr. Obama resolved immediately after the 2011 debt crisis, privately and publicly, that he would not be drawn again into negotiations over the borrowing limit. He has said that presidents and Congresses have a fundamental, shared responsibility to ensure that the government pays bills that it owes to its citizens and creditors.¶ In saying he will refuse to bargain over the debt limit, Mr. Obama is counting on help from the business community, given its traditional ties to Republicans. Recently, for example, the head of the Business Roundtable, John Engler, a Republican and former governor of Michigan, called for extending the debt limit for five years.¶ “You don’t put the full faith and credit of the United States’ finances at risk,” said David M. Cote, chairman of Honeywell and a Republican member of the 2010 Simpson-Bowles fiscal commission. “The whole idea of using debt ceiling that way or saying ‘I’ll do this horrible thing to all of us unless you give in’ just doesn’t make any sense for anybody. It makes me very nervous. It’s not a smart way to run the country.”¶ Mr. Obama might also take to the road again, using the power of his office in an effort to convince the public that another fight over the debt ceiling risks another economic crisis. Public polls after the last debt ceiling fight suggested that more people blamed Republicans for the threat of a shutdown.¶ “If Congress refuses to give the United States government the ability to pay these bills on time, the consequences for the entire global economy would be catastrophic — far worse than the impact of a fiscal cliff,” Mr. Obama said Tuesday.

## Econ Collapse-> War

#### Economic Decline causes War- 1NC Kemp says it leads to radical governments and terrorism

#### More Reasons:

#### A Stats and History

**Royal 2010**

Jedediah, Director of Cooperative Threat Reduction at the U.S. Department of Defense, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, pg. 213-215)

Less intuitive is how periods of **economic decline may increase the likelihood of external conflict**. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that **rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the** often **bloody transition from one pre-eminent leader to the next**. As such, exogenous shocks such as **economic crises could usher in a redistribution of relative power** (see also Gilpin. 1981) that leads to uncertainty about power balances, **increasing the risk of miscalculation** (Feaver, 1995). Alternatively, **even a relatively certain redistribution of power could lead to a permissive environment for conflict** as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that '**future expectation of trade' is a** **significant variable in understanding economic conditions and security behaviour of states**. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, **if the expectations of future trade decline**, particularly for difficult to replace items such as energy resources, **the likelihood for conflict increases**, **as states will be inclined to use force to gain access to those resources. Crises could** potentially be the **trigger** for **decreased trade expectations** either on its own or because it triggers protectionist moves by interdependent states.4 Third, **others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess** (2002) **find a strong correlation between internal conflict and external conflict, particularly during** periods of **economic downturn**. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the **presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other**. (Blomberg & Hess, 2002. p. 89) **Economic decline has** also **been linked with an increase in the likelihood of terrorism** (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. **"Diversionary theory" suggests** that, **when facing unpopularity arising from economic decline**, sitting **governments have increased incentives to fabricate external** **military conflicts to create a 'rally around the flag'** **effect**. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that **the tendency towards diversionary tactics are greater for democratic states** than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that **periods of weak economic performance in the U**nited **S**tates, and thus weak Presidential popularity, **are statistically linked to an increase in the** **use of force**. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas **political science scholarship links economic decline with external conflict at systemic, dyadic and national levels**.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

**B Diversionary Theory**

**Pickering and Kisangani 2009**

department of political science at Kansas State, citing the International Military Intervention dataset (Jeffrey and Emizet, British Journal of Political Science, 39:483-515, “The dividends of diversion”, ProQuest)

CONCLUSIONS In his seminal review of diversionary research, Jack Levy contends that most diversionary studies are mis-specified because they are unidirectional.100 Using the GMM method, **we provide properly identified models to test our argument that mature democracies are** especially **prone to use diversionary force and especially likely to receive domestic political** and economic **benefits from doing so**. Our results lend considerable support to our argument, although some caveats apply. When mature democracies are studied as a single group, **the empirical results support our argument. In our sample of 140 countries** from 1950 to 1996, **mature democracies are found to use military force for a domestic reason**, namely mass unrest, **even when we control for** the **opportunities** provided by international crises and strategic rivalries. In contrast, non-democracies use force in response to the international stimuli of crises and rivalries, but not in response to domestic variables. Mature democrats also benefit domestically when they intervene militarily abroad. Levels of elite unrest and mass unrest decline both during and up to a year after the intervention, and economic growth rates increase markedly the year of the intervention as well as the following year. In stark contrast, non-democracies see levels of mass unrest increase by as much as 45 per cent when they intervene abroad, while their economic growth rates plummet by 78 per cent. Non-democratic leaders may thus refrain from using diversionary force because they have domestic policy options that leaders of mature democracies lack, as the policy availability argument contends. They may also, however, realize that using military force abroad tends to generate negative economic and political repercussions in their societies. **Our results on democratic diversion and the domestic dividends that it generates** thus **seem unambiguous**. Analysing different types of mature democracies muddies these outcomes slightly. Contrary to our expectations, majoritarian governments appear to have a propensity for diversionary behaviour, while presidential governments do not. Most types of mature democracies reap domestic rewards for using military force abroad, but not all do. In particular, domestic economic and political difficulties seem to escalate when democracies with coalition governments intervene with military force overseas. It thus seems that only certain types of mature democracies, namely majoritarian and minority governments, have a propensity to both use diversionary force and to benefit domestically from it.101 These results indicate how important it is to ‘unpack’ regime types in analyses of diversionary force. What seems like unqualified support for our argument using a time dependent measure of mature democracy becomes more nuanced when we distinguish different democratic regime types. **The nuance also brings greater clarity**, however, **about which specific influences prompt leaders in different democratic systems to divert** and the types of domestic benefits these leaders should expect from the use of force abroad. Given the broad swath of states included in our category of non-democracies, it would also be wise to ‘unpack’ these regimes to grasp their diversionary tendencies in future research more effectively. Mark Peceny, Caroline Beer and Shannon Terry-Sanchez’s analysis of different autocratic regimes may offer a useful starting point for this type of study.102 **While diversionary behaviour** clearly **varies** among democratic regime types, **the general finding that mature democracies are more prone to use diversionary force than other states still holds**. With the exception of coalition governments, mature democracies are also more likely to gain domestic political and economic benefits when they use military force abroad than non-democracies. Therefore, our contention that the Galtieri government’s involvement in the Malvinas/Falklands War was an aberration but the Thatcher government’s was not is supported by our results. We find that majoritarian **democracies are prone to use diversionary force when they encounter domestic economic problems and elite unrest, as the Thatcher government did in 1982.** The startling rise of Thatcher’s poll numbers during and after the war also correlates well with our findings of sharply declining levels of mass unrest both the year a majoritarian democracy intervenes and the following year. Though more fine-grained research on the diversionary propensities of different types of democracies clearly needs to be undertaken, this study makes clear that the most liberal, domestically egalitarian states in the international system, mature democracies, also have the greatest predilection for using diversionary force. In fact, the incentives that leaders in certain forms of mature democracy have for using diversionary force seem to increase as the democracy ages, and democratic norms and institutions become more deeply entrenched.

## Turns Environment

#### Growth turns the environment.

**Friedman 5** (Benjamin M. Friedman, William Joseph Maier Professor of Political Economy at Harvard University, former Chair of the Department of Economics at Harvard University, holds a Ph.D. in Economics from Harvard University, 2005 (“Growth and the Environment,” *The Moral Consequences of Economic Growth*, Published by Knopf Publishing Group, ISBN 0679448918, p. 380-382)

But it does not take much traveling around the world to discover that the places where pollution is greatest and environmental blight is most readily visible are not those with the highest living standards. Whether the issue is smoke in the air or germs in the water, or even just the discarded clutter and refuse accumulated from ongoing human habitation, countries, regions, and even individual cities where living standards are high in other respects rarely have the most pollution or present the worst eyesores. Within Europe, one of the greatest shocks to many people after the collapse of the Soviet Union was the stark gap in environmental standards between the former Soviet satellites and their higher-income neighbors just to the west, with whom the newly independent countries now sought to affiliate themselves economically and politically. Not until 1990 did the first eastern European country— the Czech Republic— introduce unleaded gasoline. Four years later it became the first to require catalytic converters on new automobiles. 30

In short, scale is not all that matters. As an economy develops, and the living standard of its people rises, the composition of economic activity typically changes as well. When an agricultural economy first develops a significant manufacturing capacity, many familiar kinds of pollution, especially those that result from burning coal and oil, increase. (Agricultural expansion often brings its own forms of pollution, however, especially from burning in order to clear land or from applying fertilizers to the soil.) But the [end page 380] service industries that normally emerge as incomes rise yet further mostly involve less pollution than does manufacturing. In the forty-two countries where per capita income today is below $2,000 (after allowing for international differences in purchasing power), on average only 43 percent of the economy’s production is in services. Where per capita income is between $2,000 and $8,000, the service sector share averages 54 percent. In the $8,000 to $20,000 range, it is 60 percent, and in the countries where per capita income is above $20,000 (there are twenty-three of them), the service sector on average accounts for 69 percent of total output. 31

This shift into services as incomes rise is not just a matter of moving manufacturing facilities “offshore.” If the composition of what a society consumes remained unchanged as living standards improved, and richer countries simply shifted their manufacturing operations to distant locations and correspondingly increased their reliance on imports, their doing so might help to contain their own pollution problem but it would make no difference on a global basis. Many services are not readily transportable, however, at least not across international lines. The service sector’s share of what the United States produces, for example, is nearly identical to the share of services in what the country consumes. Moreover, the shift in American production toward “cleaner” industries in recent decades, with the advance of free trade and the tightening of anti-pollution laws, has been matched by a shift to cleaner industries in what the United States imports. 32 Throughout the world, the increase in the share of services in overall economic activity as living standards rise mostly represents a change not just in what people make but also in what they consume.

Rising living standards also influence the technology by which economies produce. For example, roughly four-fifths of the world population’s total exposure to particulates in the air takes the form of smoke from indoor cooking fires, typically fueled by wood or coal or peat. 33 For the most part, this form of pollution does not result from any externality. The families that cook their food on these indoor fires expose themselves to smoke inhalation, but typically not others. Most of them have low incomes, and live in low-income countries. If their income were greater, they could afford to cook their food using some other technology.

The same influence of rising living standards on people’s choice of technology also applies, however, in settings in which externalities are the crux of the issue, so that the choices involved are matters of collective decision making— in other words, public policy: whether to allow the use of (cheaper) leaded gasoline, whether to require cars to carry (expensive) catalytic converters, whether to ban (cheaper) high-sulfur coal, whether to [end page 381] require (expensive) stack scrubbers for factories and utility plants. In each case, altering individuals’ or firms’ behavior in ways that reduce pollution imposes a cost. Just as families who have sufficient incomes typically choose not to live with the smoke created by cooking indoors over an open fire, societies where living standards are high can afford to bear some cost for limiting pollution, and most choose to do so. As a result, their incomes as conventionally measured are usually smaller than would otherwise be the case. But because they also care about the air they breathe and the water they drink, and perhaps also about the global climate and the preservation of species, they are nonetheless better-off.\*