# 1nc

## 1

Restrictions on production must mandate a decrease in the quantity produced

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.

The plan changes how energy is produced, rather than restricting how much is produced

This conflation ruins the topic:

1. Including regulations is a limits disaster

Doub 76

 Energy Regulation: A Quagmire for Energy Policy

Annual Review of Energy

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DOI: 10.1146/annurev.eg.01.110176.003435LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street NW, Washington, DC 20036

http://0-www.annualreviews.org.library.lausys.georgetown.edu/doi/pdf/10.1146/annurev.eg.01.110176.003435

 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.

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: Only direct prohibition is a restriction – key to predictability

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."

2. It promotes multidirectionality, destroying topic coherence

McKie 84

 Professor James W. McKie, distinguished member of the economics department at The University of Texas at Austin for many years

McKie, J W

Annual Review of Environment and Resource , Volume 9 (1)

Annual Reviews – Nov 1, 1984

 THE MULTIPLE PURPOSES OF ENERGY REGULATION AND PROMOTION Federal energy policy since World War II has developed into a vast and multidirectional program of controls, incentives, restraints, and promotions. This development accelerated greatly during the critical decade after 1973, and has become a pervasive and sometimes controlling influence in the energy economy. Its purposes, responding to a multitude of interests and aims in the economy, have frequently been inconsistent, if not obscure, and the results have often been confusing or disappointing.

## 2

Domestic coal demand is increasing now due to rising gas prices

Platts 12 [Bob Matyi, “Alliance says is regaining coal customers as US gas prices rise,” December 4, http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Coal/6870003]

Rising US natural gas prices are translating into additional coal sales business for Alliance Resource Partners, a company official said Tuesday.¶ "We're seeing some of our customers coming back to us this year and asking for additional deliveries of coal," Brian Cantrell, the chief financial officer of the Tulsa, Oklahoma-based company, told the Wells Fargo Pipeline, MLP and Energy Symposium in New York.¶ In recent months, gas prices have been trending upward from historically low levels early this year, Cantrell said.¶ Analysts say that when gas hits about $3.50/MMBtu, coal becomes more competitive, encouraging electric utilities that moved to gas months ago to **switch back to coal**. NYMEX January gas futures settled at $3.539/MMBtu Tuesday.¶ While Alliance, the third-largest coal producer in the eastern US, is feeling good these days about its prospects, Cantrell said the outlook for some coal producers may be more cloudy.¶ Utilities, he said, are still choked with huge inventories, totaling as much as 185 million st to 195 million st, thanks in part to the mild winter of 2011-12.¶ "We think it will work its way through the system while demand picks up" in 2013, he said. However, much of the increased demand will be filled by existing inventory.¶ "In our case, given our contract book, we should be just fine," he said. "But if you're open for the market, 2013 will continue to be a challenge."

Ramping up renewables kills demand for domestic coal burning

UCS 12 [“Ripe for Retirement: The Case for Closing America's Costliest Coal Plants,” Union of Concerned Scientists, November 15, http://www.ucsusa.org/clean\_energy/smart-energy-solutions/decrease-coal/ripe-for-retirement-closing-americas-costliest-coal-plants.html]

A significant number of U.S. coal-fired generators are old, inefficient, dirty, and no longer economically competitive. Simply stated, they are ripe for retirement and should be considered for closure.¶ America’s coal power fleet is facing an increasingly uncertain economic future. Growing competition from cheaper, cleaner alternatives — including natural gas and renewable energy sources such as wind and solar — is making it harder for these generators to produce energy economically.¶ With appropriate planning, these outdated coal generators can be closed down while still maintaining a reliable electricity system. By ramping up underutilized natural gas plants, increasing renewable energy through existing state policies, **and reducing demand** through improved energy efficiency, every region in the country could more than replace the electricity currently produced by ripe-for-retirement generators.

Decreasing domestic demand shifts coal to an export industry

Tristan Brown, Lawyer and professor of graduate-level courses on the law and policy, economics, and global issues surrounding the biorenewables sector, 12/12/12 [“'NIMBYism' Is Unlikely To Derail U.S. Coal Exports,” Seeking Alpha, http://seekingalpha.com/article/999191-nimbyism-is-unlikely-to-derail-u-s-coal-exports]

**The first response of any natural resource industry to a decrease in domestic consumption is to increase exports, particularly when global consumption of the commodity is increasing**. These exports must also be restricted if carbon leakage is to be avoided. Treaty obligations and international relations prevent the Obama administration from directly restricting U.S. coal exports, leaving it the alternative of indirectly restricting exports by imposing restrictions on trade infrastructure bottlenecks. The U.S. is not an island nation, however, and is obliged by treaty not to restrict trade with the country that it also happens to share one of the longer land borders in the world with: Canada. Barring a complete rejection of globalization and the closure America's borders, the Obama administration will find that indirectly imposing restrictions on the export of coal via one route just causes it to follow another route. Global demand for the commodity is growing too rapidly to prevent it from being utilized.¶

Floods the Chinese market – locks in coal use and rapid warming

Thomas Power, Ph.D., Research Professor and Professor Emeritus, Department of Economics, University of Montana, February 2012, The Greenhouse Gas Impact of Exporting Coal from the West Coast, http://www.sightline.org/wp-content/uploads/downloads/2012/02/Coal-Power-White-Paper.pdf

In the previous sections of this report, we have dealt with a set of interconnected economic arguments that have been used by some to suggest that exporting Powder River Basin coal through West Coast ports will have no impact on Asian coal consumption. We have showed that that will not be the economic outcome because PRB coal can gain market share in Asia only by underselling existing suppliers including domestic Chinese coal suppliers. Firms like Arch and Peabody will have to compete against other nations currently supplying Chinese markets as well as other American coal companies who will also be seeking a share of that Asian market. That competition will put downward pressure on Asian coal prices, pushing them lower than they would otherwise have been. The lower prices and costs brought on by that competition will encourage a greater commitment to coal-fired generation in Asia and will discourage the adoption of coal- and electricity-displacing improvements in technology. Asian coal consumption will be increased over what it otherwise would have been if PRB coal was not actively competing for a share of Asian coal markets. In addition to this particular argument that PRB coal exports through West Coast ports will not have any impact on Asian coal consumption, other arguments have been made to insist that the pending coal port proposals will have trivially small environmental impacts. We now take up with those other arguments. The analysis that follows yields the following conclusions: • The impacts will be much larger than the annual capacity of the port indicates because access to this coal will encourage investments in new coal-burning facilities in Asia and their associated 30- to 50-year demand for coal. The impacts from those long-term investments will accumulate as will the burden on the global climate system. It will also lead to cumulative impacts in Wyoming and Montana where the coal will be strip-mined as well as along the routes of the coal trains and in the port cities. • It has been argued that whatever the impact associated with the state of Washington facilitating the export and burning of coal overseas, that impact will be small compared to all the coal being burned in Asia and all of the greenhouse gases being released worldwide. For that reason, those impacts can be appropriately ignored. This type of argument reflects a “free rider” mentality that can be the source of the often-discussed “Tragedy of the Commons” in which everyone ignores the relatively small impacts they have individually as they seek to get as much of the benefits as they individually can from exploiting an open access common property resource, in this case, the earth’s atmosphere. As a result, that open access resource may be over- used and damaged with the result that almost everyone is worse off. This is a serious and widely recognized economic problem. • This outcome can be avoided through a wide variety of cooperative behavior. One way individuals can indicate their interest in a cooperative solution to what otherwise could be individually destructive behavior involves individuals signaling their intentions to take their own impacts into account and take actions to reduce those impacts. That type of behavior can lay the basis, ultimately, for negotiated agreements to protect the threatened open access common property resource. • The state of Washington’s public policies on climate change and greenhouse gas reduction as well as other pollution reduction efforts can be interpreted as exactly this sort of signaling of its willingness to cooperate with others to avoid a “tragedy of the commons” outcome. Ignoring the increase in coal consumption caused by the state facilitating the export of coal to Asia could undermine Washington’s existing policies to reduce its own carbon footprint and encourage others to do the same. That would not be an insignificant outcome. 6.3 Other Coal Export Proposals in the Northwest In evaluating the impact of coal exports on Asian coal consumption, the region will not only be considering the two pending coal export plans—there are very likely to be others. In Oregon, Ambre Energy, through its subsidiary Coyote Island Terminal LLC, has entered into a one year lease option agreement with the Port of Morrow for potential coal handling.56 Other Wyoming and Montana coal mines are exploring coal exports Oregon, Washington and British Columbia. Two Washington ports that have been approached by coal exporters, Tacoma and Kalama, have decided, for now, not to open their ports to coal exports. To the extent that Washington ports begin competing with each other for coal exports, Tacoma and Kalama may reconsider. There is also evidence that other ports and counties are actively negotiating with coal exporters, including St. Helens, OR, Coos Bay, OR, and Everett, WA. The cumulative impact of these coal port proposals on coal consumption in Asia could be much larger than even that implied by the two pending proposals. If Arch, Peabody, and other western U.S. coal producers’ projections of the competitiveness of western coal in Asia are correct, facilitating the opening of the development of West Coast coal ports could have a very large impact on the supply of coal to China and the rest of Asia. Although the economic life of coal-fired generators is often given as 30 or 35 years, a permitted, operating, electric generator is kept on line a lot longer than that, as long as 50 or more years through ongoing renovations and upgrades. Because of that long operating life, the impact of the lower Asian coal prices and costs triggered by PRB coal competing with other coal sources cannot be measured by the number of tons of coal exported each year. Those lower coal costs will lead to commitments to more coal being burned for a half-century going forward. That time-frame is very important. During exactly this time frame, the next half-century, the nations of the world will have to get their greenhouse gas emission stabilized and then reduced or the concentrations of greenhouse gases in the atmosphere may pass a point that will make it very difficult to avoid massive, ongoing, negative climate impacts. Taking actions now that encourage fifty-years of more coal consumption around the world is not a minor matter. Put more positively, allowing coal prices to rise (and more closely approximate their full cost, including “external” costs) will encourage extensive investments in improving the efficiency with which coal is used and the shift to cleaner sources of energy. This will lead to long-term reductions in greenhouse gas emissions that will also last well into the next half-century.57

Extinction

**Flournoy 12** (Citing Dr. Feng Hsu, a NASA scientist at the Goddard Space Flight Center, in 2012, Don Flournoy, PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University, Citing Dr. "Solar Power Satellites," Chapter 2: What Are the Principal Sunsat Services and Markets?, January, Springer Briefs in Space Development, Book)

In the Online Journal of Space Communication, Dr. Feng Hsu, a NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010). Hsu and his NASA colleagues were engaged in monitoring and analyzing cli- mate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do noth- ing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010). As a technology risk assessment expert, Hsu says he can show with some confi- dence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010). It was this NASA scientist’s conclusion that humankind must now embark on the next era of “sustainable energy consumption and re-supply, the most obvious source of which is the mighty energy resource of our Sun” (Hsu 2010) (Fig. 2.1).

## 3

Venture capital shifting away from renewables to grid modernization now

NBC 12 [Dinah Wisenberg Brin, award-winning writer with a strong background producing financial, healthcare, government news, “Clean Tech Investing Shifts, With Lower-Cost Ventures Gaining Favor” March 1, http://www.cnbc.com/id/46222448/Clean\_Tech\_Investing\_Shifts\_With\_Lower\_Cost\_Ventures\_Gaining\_Favor]

**For many investors, that change means shifting funds from capital-intensive alternative-energy technologies**, such as solar panels, **to lower-cost ventures focused on energy efficiency and “smart grid” technologies** that automate electric utility operations.¶ “We continue to be very optimistic about things like the smart grid and the infusion of information technologies and software services” into old lines like electricity, agriculture and the built environment," says Steve Vassallo, general partner in Foundation Capital. “We’re very bullish on what I would consider the nexus of information technology and clean tech.”¶ Foundation, based in Menlo Park, Calif., reflects this in investments such as Sentient Energy Inc., a smart-grid monitoring company that allows utilities to remotely find power outages, and Silver Spring Networks, which provides utilities a wireless network for advanced metering and remote service connection.¶ Another holding, EnerNOC [ENOC 10.13 -0.22 (-2.13%) ], a demand-response business with technology to turn off noncritical power loads during peak periods, went public in 2007.¶ EMeter, a one-time Foundation investment, was recently acquired by Siemens Industry [SI 93.09 0.23 (+0.25%) ].¶ To be sure, investors have not abandoned costlier technologies with longer-term horizons, but many — put off, in part, by last year’s bankruptcy and shutdown of solar power firm Solyndra — now favor smaller infusions in businesses with a quicker potential payoff.¶ Rob Day, partner in Boston-based Black Coral Capital, says his cleantech investment firm maintains some solar holdings, but he sees a shift from an emphasis on those types of plays to more “intelligence-driven, software-driven, web-driven businesses.” These technologies can be used to improve existing businesses, he says.¶ One Black Coral smart-technology investment is Digital Lumens of Boston, which makes high-efficiency, low-cost LED lighting for warehouses and factories. Software and controls are embedded in the fixtures, which can cut lighting bills by 90 percent, providing customers a two-year payback, says Day. ¶ U.S. venture capital investment in cleantech companies hit $4.9 billion last year, down 4.5 percent in dollar terms but flat in the number of transactions, according to Ernst & Young LLP, which analyzed data from Dow Jones VentureSource. Cleantech companies raised 29 percent more capital last year than in 2009, E&Y said recently.¶ Most of that decline, however, came from less investment in sectors that were once hot.¶ Investment in energy and electric generation, including solar businesses, fell 5 percent to $1.5 billion, while that of industry products and services companies plunged 34 percent to $1 billion, according to E&Y's analysis of equity investments from venture capital firms, corporations and individuals.¶ The energy efficiency category leads the diverse industry in deals with 78 transactions worth $646.9 million. Energy-storage companies raised $932.6 million, a 250 percent increase and 47 percent deal increase.¶

Plan reverses that trend—causes capital diversion

De Rugy 12

Veronica, Testimony Before the House Committee on Oversight and Government Reform. Dr.de Rugy received her MA in economics from the University of Paris IX-Dauphine and her PhD in economics from the University of Paris 1Pantheon-Sorbonne. She is a senior research fellow at the Mercatus Center at George Mason University. Her primary research interests include the U.S. economy, federal budget, homeland security, taxation, tax competition, and financial privacy issues. Her popular weekly charts, published by the Mercatus Center, address economic issues ranging from lessons on creating sustainable economic growth to the implications of government tax and fiscal policies.

http://mercatus.org/publication/assessing-department-energy-loan-guarantee-program

3. Mal-investments Loan guarantee programs can also have an impact on the economy beyond their cost to taxpayers. Mal-investment—the **misallocation** of capital and labor—may result from these loan guarantee programs. In theory, banks lend money to the projects with the highest probability of being repaid. These projects are often the ones likely to produce larger profits and, in turn, more economic growth. However, considering that there isn’t an infi- nite amount of capital available at a given interest rate, loan guarantee programs could displace resources from non-politically motivated projects to politically motivated ones. Think about it this way: When the government reduces a lender’s exposure to fund a project it wouldn’t have funded otherwise, it reduces the amount of money available for projects that would have been viable without subsidies. This government involvement can distort the market signals further. For instance, the data shows that private investors tend to congregate toward government guarantee projects, independently of the merits of the projects, taking capital away from unsubsidized projects that have a better probability of success without subsidy and a more viable business plan. As the Government Accountability Office noted, “**Guarantees would make projects [the federal government] assists financially more attractive to private capital than conservation projects not backed by federal guarantees. Thus both its loans and its guarantees will siphon private capital away**.”[26] This reallocation of resources by private investors away from viable projects may even take place within the same industry—that is, one green energy project might **trade off** with another, more viable green energy project. More importantly, once the government subsidizes a portion of the market, the object of the subsidy becomes a safe asset. Safety in the market, however, often means low return on investments, which is likely to turn venture capitalists away. As a result, capital investments will likely dry out and innovation rates will go down.[27] In fact, the data show that in cases in which the federal government introduced few distortions, private inves- tors were more than happy to take risks and invest their money even in projects that required high initial capital requirements. The Alaska pipeline project, for instance, was privately financed at the cost of $35 billion, making it one of the most expensive energy projects undertaken by private enterprise.[28] The project was ultimately aban- doned in 2011 because of weak customer demand and the development of shale gas resources outside Alaska. [29] However, this proves that the private sector invests money even when there is a chance that it could lose it. Private investment in U.S. clean energy totaled $34 billion in 2010, up 51 percent from the previous year.[30] Finally, when the government picks winners and losers in the form of a technology or a company, it often fails. First, the government does not have perfect or even better information or technology advantage over private agents. In addition, decision-makers are insulated from market signals and won’t learn important and necessary lessons about the technology or what customers want. Second, the resources that the government offers are so addictive that companies may reorient themselves away from producing what customers want, toward pleasing the government officials.

Solves competitiveness, economic collapse, and giant blackouts

Stephen Chu, Nobel Prize is Physics, 12 [“America’s Competitiveness Depends on a 21st Century Grid,” May 30, Energy.Gov, http://energy.gov/articles/america-s-competitiveness-depends-21st-century-grid] PMA=Power Marketing Administrations

Upgrades are Key to American Competitiveness¶ The leadership of the PMAs is critically important because America’s continued global competiveness in the 21st century will be significantly affected by whether we can efficiently produce and distribute electricity to our businesses and consumers, seamlessly integrating new technologies and new sources of power.¶ Other countries are moving rapidly to capitalize on cost-saving new smart grid and transmission technologies -- and we will find ourselves at a competitive disadvantage unless we do the same. Blackouts and brownouts already cost our economy tens of billions of dollars a year, and we risk ever more serious consequences if we continue to rely on outdated and inflexible infrastructure. For example, across the country, most of the transmission lines and power transformers we depend upon are decades old and in many cases nearing or exceeding their expected lifespan.¶ Lessons of the September 2011 Blackout¶ One recent example of the challenges we face occurred in September 2011, when a relatively minor loss of a single transmission line triggered a series of cascading failures that ultimately left 2.7 million electric customers in Arizona, Southern California, and Baja California, Mexico without power, some for up to 12 hours. The customers of five utilities -- San Diego Gas and Electric (SDG&E), Imperial Irrigation District (IID), Western Area Power Administration-Lower Colorado (WALC), Arizona Public Service (APS), and Comision Federal de Electridad (CFE) -- lost power, some for multiple hours extending into the next day. ¶ Put simply, this disruption to the electric system could have been avoided. The investigation into the blackout conducted by the Federal Energy Regulatory Commission and the North American Electric Reliability Council concluded the system failure stemmed primarily from weaknesses in two broad areas: 1) operations planning and 2) real-time situational awareness. Without these two critical elements, system operators are unable to ensure reliable operations or prevent cascading outages in the event of losing a single component on the grid. **As our system ages, these situations threaten to become more frequent and even more costly.** ¶ The Role of the PMAs in Accelerating the U.S. Transition to a 21st Century Grid¶ Most of our nation’s electric transmission system is privately owned. However, the federal government directly owns and controls significant portions of the electric transmission system through its four PMAs, created to market and distribute hydroelectric power from federally owned dams. The PMAs, part of the Energy Department, are responsible for more than 33,000 miles of transmission that overlay the transmission systems of utilities in 20 states, which represent about 42% of the continental United States. The PMAs provide the federal government the ability to lead by example in modernizing and securing our nation’s power grid, or risk putting the entire system -- and America’s economy -- at risk. The benefits of action, as well as the risks and consequences of inaction, could directly or indirectly affect nearly every electricity consumer and every business in the United States. ¶ This is why my March 16th memo set forth foundational goals that DOE is considering for the PMAs. This is part of a much broader effort to transition to a more flexible and resilient electric grid and establish much greater coordination among system operators.

Competitiveness decline triggers great power wars

Baru 9 (Sanjaya, Visiting Professor at the Lee Kuan Yew School of Public Policy in Singapore Geopolitical Implications of the Current Global Financial Crisis, Strategic Analysis, Volume 33, Issue 2 March 2009 , pages 163 – 168)

The management of the economy, and of the treasury, has been a vital aspect of statecraft from time immemorial. Kautilya’s Arthashastra says, ‘From the strength of the treasury the army is born. …men without wealth do not attain their objectives even after hundreds of trials… Only through wealth can material gains be acquired, as elephants (wild) can be captured only by elephants (tamed)… A state with depleted resources, even if acquired, becomes only a liability.’4 Hence, economic policies and performance do have strategic consequences.5 In the modern era, the idea that strong economic performance is the foundation of power was argued most persuasively by historian Paul Kennedy. ‘Victory (in war),’ Kennedy claimed, ‘has repeatedly gone to the side with more flourishing productive base.’6 Drawing attention to the interrelationships between economic wealth, technological innovation, and the ability of states to efficiently mobilize economic and technological resources for power projection and national defence, Kennedy argued that nations that were able to better combine military and economic strength scored over others. ‘The fact remains,’ Kennedy argued, ‘that all of the major shifts in the world’s military-power balance have followed alterations in the productive balances; and further, that the rising and falling of the various empires and states in the international system has been confirmed by the outcomes of the major Great Power wars, where victory has always gone to the side with the greatest material resources.’7

## 4

#### Obama has political capital—that enables immigration reform in spite of budget and gun fights—but the window is narrow

Chris Weigant, Huffington Post, 1/24/13, Handicapping Obama's Second Term Agenda, Lexis

The ceremonies are all over and Congress has slunk back into Washington, meaning President Obama's second term can now truly begin. Obama laid out an impressive and optimistic agenda in his speech on Monday, which leads to the question of how much of this agenda will actually be passed into law. Obama faces a Senate with a Democratic edge, but not a filibuster-proof edge. Obama also faces a House with fewer Republicans in it, but still enough for a solid majority. From the viewpoint of the past two years, this seems to indicate that not much of what Obama wants will get done. But perhaps -- just perhaps, mind you -- things will be a little different for the next two years.

Obama, like all second-term presidents, will only have a short window of time to push his issues. There is one way this conventional wisdom could turn out to be wrong, but it is a long shot, at best. If Democrats can manage to hold their edge in the Senate and take control of the House in the 2014 midterm elections, then Obama could defy second-term expectations and actually get a lot done in his final two years in office. But, as I said, this should be seen as a remote possibility at this point. Remember 2010, in other words.

Realistically, Obama's only going to have anywhere from a few months to (at most) a year and a half to get anything accomplished. Which is why he is right to push his agenda immediately, as evidenced by his inaugural speech. But even he must realize that he's not going to get everything he wants, so it will be interesting to see what makes it through Congress and what dies an ignoble legislative death.

**There is reason for hope**. Obama begins from a position of strength, politically. His job approval ratings have been consistently over 50 percent since he was re-elected -- a range Obama hasn't seen since 2009. As mentioned, the Republican presence in both houses of Congress has shrunk. More importantly, though, the House Republicans are visibly chastened (or even "shaken") by the election's outcome.

This has already allowed Obama to rack up two early victories in the endless budget debates -- and in both, Obama got almost everything he asked for, did not give up much of anything, and held firm on some very bold negotiating tactics. Obama won the fight over the fiscal cliff, which resulted in the first rise in income tax rates in two decades, and the only thing he had to budge on was the threshold for these higher taxes. Today, the House Republicans passed a "clean" rise in the debt ceiling, after Obama swore over and over again that he "was not going to negotiate" on the issue at all. The score so far is: Obama two, House Republicans zero (to put it in sporting terms).

Of course, the Republicans only extended the debt ceiling for a few months, but this shouldn't really worry anyone, because a longer-term extension will doubtlessly be a part of any sort of grand bargain on the budget talks. The Republicans, very wisely, realized they were playing a losing game and decided to reshuffle the deadlines on the calendar. Rather than being faced with the debt ceiling crisis first, and then two budgetary crises, they have moved the debt ceiling problem to the end of the list.

Which means the next big fight Obama faces is going to be another haggle over the budget. This is going to be a tough battle, and Obama is bound to disappoint some of his supporters in the midst of it. Some sacred cows are going to wind up as hamburger, although at this point it's hard to see which ones. The real measurement of success here will be whether the House Republicans and Obama can come to terms with a budget for the next year or year-and-a-half. Long-term budget stability has been largely absent from Washington for a while now, so if any agreement can be reached perhaps it'll help the economy recover a lot faster throughout 2013 and 2014. In the long run, that will be a positive thing, no matter what such a budget agreement actually contains. One safe bet for what will be in it, though, is a long-term extension of the debt ceiling.

Budget battles are going to happen no matter what else does -- that's another safe bet. What is more interesting, though, is handicapping which of Obama's agenda items will actually see some action. There are three major initiatives that Obama is currently pushing: action on global warming, comprehensive immigration reform, and gun control. Obama did mention other issues in his speech, but these are the big three for now. Gay marriage, for instance, is in the hands of the Supreme Court right now, and no matter how they rule it's hard to see any legislative action (good or bad) happening on it immediately afterwards.

Gun control will likely be the first of these debated in Congress. Vice President Biden laid out a wide array of possible actions Congress could take on the issue, all of which Obama then backed. While the Newtown massacre did indeed shift public opinion dramatically on the overall issue, the biggest initiative is not likely to become law. An assault rifle ban is very important to some Democrats, but the way I read it is that this was included to have something to "trade away" in the negotiations. If Obama gets most of the other gun control initiatives -- closing loopholes on background checks, much better tracking of weapons, and all the other "small bore" (sorry about that pun) ideas -- then he will at least be able to say he accomplished something at the end of the day. Perhaps this is pessimistic, but the mechanics of banning "assault weapons" become very tricky, when you have to actually define what they are in legal language. And such a ban may not get universal Democratic backing anyway, so I fully expect this will be shelved at some point in exchange for support for all the other initiatives. Without such a ban, the prospects for other meaningful gun control legislation get a lot better, though, and I think that a bill will eventually pass.

The second big agenda item is immigration reform. President Obama holds virtually all the cards, politically, on this one. All Republicans who can read either demographics or polling numbers know full well that this may be their party's last chance not to go the way of the Whigs. Their support among Latinos is dismal, and even that's putting it politely. Some Republicans think they have come up with a perfect solution on how to defuse the issue, but they are going to be proven sadly mistaken in the end, I believe. The Republican plan will be announced by Senator Marco Rubio at some point, and it will seem to mirror the Democratic plan -- with one key difference. Republicans -- even the ones who know their party has to do something on the immigration problem -- are balking at including a "path to citizenship" for the 11 million[1] undocumented immigrants who are already in America.

The Republicans are trying to have their cake and eat it too -- and it's not going to work. "Sure," they say, "we'll give some sort of papers to these folks, let them stay, and even let them work... but there's no need to give them the hope of ever becoming a full citizen." This just isn't going to be good enough, though. There are essentially two things citizens can do which green card holders cannot: serve on juries, and vote. The Republicans are not worried about tainted juries, in case that's not clear enough.

Republicans will bend over backwards in an effort to convince Latinos that their proposal will work out just fine for everyone. Latinos, however, aren't stupid. They know that being denied any path to citizenship equals an effort to minimize their voice on the national political stage. Which is why, as I said, Obama holds all the cards in this fight. Because this is the one issue in his agenda which Republicans also have a big vested interest in making happen. Obama and the Democrats will, I believe, hold firm on their insistence on a path to citizenship, and I think a comprehensive immigration bill will likely pass some time this year, perhaps before the summer congressional break. The path to citizenship it includes will be long, expensive and difficult (Republicans will insist on at least that), but it will be there.

On gun control, I think Obama will win a partial victory. On immigration, I think he will win an almost-total victory. On global warming, however, he's going to be disappointed. In fact, I doubt -- no matter how much "bully pulpiting" Obama does -- that any bill will even appear out of a committee in either house of Congress. This will be seen as Obama's "overreach" -- a bridge too far for the current political climate. Anyone expecting big legislative action on global warming is very likely going to be massively disappointed, to put it quite bluntly. In fact, Obama will signal this in the next few months, as he approves the Keystone XL pipeline -- much to the dismay of a lot of his supporters.

Of course, I could be wrong about any or all of these predictions. I have no special knowledge of how things will work out in Congress in the immediate future. I'm merely making educated guesses about what Obama will be able to achieve in at least the first few years of his second term. Obama has a lot of political capital right now, but that could easily change soon. The House Republicans seem almost demoralized right now, and Obama has successfully splintered them and called their bluff on two big issues already -- but they could regroup and decide to block everything the White House wants, and damn the political consequences. Unseen issues will pop up both on the domestic and foreign policy stages, as they always do. But, for now, this is my take on how the next few years are going to play out in Washington. Time will tell whether I've been too optimistic or too pessimistic on any or all of Obama's main agenda items. We'll just have to wait and see.

#### Plan is unpopular – causes congressional fights

Kronk, Associate Professor of Law at Kansas,12 (Elizabeth Ann, Associate Professor of Law at the University of Kansas, Director, Tribal Law and Government Center, “Tribal Energy Resource Agreements: The Unintended “Great Mischief for Indian Energy Development” and the Resulting Need for Reform29 Pace Envtl. L. Rev. 811 (2012), 5-21.http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1705andcontext=pelr)

 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.

#### That contains the aging crisis

Joseph Nye, former US assistant secretary of defense and chairman of the US National Intelligence Council, 12/10/12, Immigration and American Power, www.project-syndicate.org/commentary/obama-needs-immigration-reform-to-maintain-america-s-strength-by-joseph-s--nye

While too rapid a rate of immigration can cause social problems, over the long term, immigration strengthens US power. It is estimated that at least 83 countries and territories currently have fertility rates that are below the level needed to keep their population constant. Whereas most developed countries will experience a shortage of people as the century progresses, America is one of the few that may avoid demographic decline and maintain its share of world population.

For example, to maintain its current population size, Japan would have to accept 350,000 newcomers annually for the next 50 years, which is difficult for a culture that has historically been hostile to immigration. In contrast, the Census Bureau projects that the US population will grow by 49% over the next four decades.

Today, the US is the world’s third most populous country; 50 years from now it is still likely to be third (after only China and India). This is highly relevant to economic power: whereas nearly all other developed countries will face a growing burden of providing for the older generation, immigration could help to attenuate the policy problem for the US.

In addition, though studies suggest that the short-term economic benefits of immigration are relatively small, and that unskilled workers may suffer from competition, skilled immigrants can be important to particular sectors – and to long-term growth. There is a strong correlation between the number of visas for skilled applicants and patents filed in the US. At the beginning of this century, Chinese- and Indian-born engineers were running one-quarter of Silicon Valley’s technology businesses, which accounted for $17.8 billion in sales; and, in 2005, immigrants had helped to start one-quarter of all US technology start-ups during the previous decade. Immigrants or children of immigrants founded roughly 40% of the 2010 Fortune 500 companies.

Equally important are immigration’s benefits for America’s soft power. The fact that people want to come to the US enhances its appeal, and immigrants’ upward mobility is attractive to people in other countries. The US is a magnet, and many people can envisage themselves as Americans, in part because so many successful Americans look like them. Moreover, connections between immigrants and their families and friends back home help to convey accurate and positive information about the US.

Likewise, because the presence of many cultures creates avenues of connection with other countries, it helps to broaden Americans’ attitudes and views of the world in an era of globalization. Rather than diluting hard and soft power, immigration enhances both.

Singapore’s former leader, Lee Kwan Yew, an astute observer of both the US and China, argues that China will not surpass the US as the leading power of the twenty-first century, precisely because the US attracts the best and brightest from the rest of the world and melds them into a diverse culture of creativity. China has a larger population to recruit from domestically, but, in Lee’s view, its Sino-centric culture will make it less creative than the US.

That is a view that Americans should take to heart. If Obama succeeds in enacting immigration reform in his second term, he will have gone a long way toward fulfilling his promise to **maintain the strength of the US.**

#### Uncontrolled aging crisis causes nuclear war

**Howe and Jackson 9**, researchers at the Center for Strategic and International Studies and co-authors of "The Graying of the Great Powers: Demography and Geopolitics in the 21st Century," (Neil and Richard, “ The World Won't Be Aging Gracefully. Just the Opposite.” January 4, <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/02/AR2009010202231.html>)

The world is in crisis. A financial crash and a deepening recession are afflicting rich and poor countries alike. The threat of weapons of mass destruction looms ever larger. A bipartisan congressional panel announced last month that the odds of a nuclear or biological terrorist attack somewhere in the world by the year 2014 are better than 50-50. It looks as though we'll be grappling with these economic and geopolitical challenges well into the 2010s.

But if you think that things couldn't get any worse, wait till the 2020s. The economic and geopolitical climate could become even more threatening by then -- and this time the reason will be demographics.

Yes, demographics, that relentless maker and breaker of civilizations. From the fall of the Roman and the Mayan empires to the Black Death to the colonization of the New World and the youth-driven revolutions of the 20th century, demographic trends have played a decisive role in precipitating many of the great invasions, political upheavals, migrations and environmental catastrophes of history. By the 2020s, an ominous new conjuncture of these trends will once again threaten massive disruption. We're talking about global aging, which is likely to have a profound effect on economic growth, living standards and the shape of the world order.

For the world's wealthy nations, the 2020s are set to be a decade of hyperaging and population decline. Many countries will experience fiscal crisis, economic stagnation and ugly political battles over entitlements and immigration. Meanwhile, poor countries will be buffeted by their own demographic storms. Some will be overwhelmed by massive age waves that they can't afford, while others will be whipsawed by new explosions of youth whose aspirations they cannot satisfy. The risk of social and political upheaval and military aggression will grow throughout the developing world -- even as the developed world's capacity to deal with these threats weakens.

The rich countries have been aging for decades, due to falling birthrates and rising life spans. But in the 2020s, this aging will get an extra kick as large postwar baby boom generations move into retirement. According to the United Nations Population Division (whose projections are cited throughout this article), the median ages of Western Europe and Japan, which were 34 and 33 respectively as recently as 1980, will soar to 47 and 52, assuming no miraculous change in fertility. In Italy, Spain and Japan, more than half of all adults will be older than the official retirement age -- and there will be more people in their 70s than in their 20s.

Graying means paying -- more for pensions, more for health care, more for nursing homes for the frail elderly. Yet the old-age benefit systems of most developed countries are already pushing the limits of fiscal and economic affordability. By the 2020s, political warfare over brutal benefit cuts seems unavoidable. On one side will be young adults who face declining after-tax earnings, including many who often have no choice but to live with their parents (and are known, pejoratively, as twixters in the United States, kippers in Britain, mammoni in Italy, nesthocker in Germany and freeters in Japan). On the other side will be retirees, who are often wholly dependent on pay-as-you-go public plans. In 2030, young people will have the future on their side. Elders will have the votes on theirs. Bold new investments in education, the environment or foreign assistance will be highly unlikely.

Aging is, well, old. But depopulation -- the delayed result of falling birthrates -- is new. The working-age population has already begun to decline in several large developed countries, including Germany and Japan. By 2030, it will be declining in nearly all of them, and in a growing number, total population will be in steep decline as well. The arithmetic is simple: When the average couple has only 1.3 children (in Spain) or 1.7 children (in Britain), depopulation is inevitable, unless there's massive immigration.

The economics of depopulation are grim. Even at full employment, real gross domestic product may decline, because the number of workers will be falling faster than productivity is rising. With the size of markets fixed or shrinking, businesses and governments may try to lock in their positions through cartels and protectionist policies, ushering in a zero-growth psychology not seen since the 1930s. With each new birth cohort smaller than the last, the typical workplace will be top-heavy with graybeards. Looking for a flexible, creative, entrepreneurial labor force? You'll have come to the wrong address. Meanwhile, with the demand for low-wage labor rising, immigration (assuming no rise over today's rate) will double the percentage of Muslims in France and triple it in Germany. By 2030, Amsterdam, Marseille, Birmingham and Cologne are likely to be majority Muslim.

In Europe, the demographic ebb tide will deepen the crisis of confidence reflected in such best-selling books as "France is Falling," by Nicolas Baverez; "Can Germany Be Saved?" by Hans-Werner Sinn; or "The Last Days of Europe," by Walter Laqueur. The media in Europe are already rife with dolorous stories about the closing of schools and maternity wards, the abandonment of rural towns and the lawlessness of immigrant youths in large cities. A recent cover of Der Spiegel shows a baby hoisting 16 old Germans on a barbell with the caption: "The Last German -- On the Way to an Old People's Republic." In Japan, the government half-seriously projects the date at which there will be only one Japanese citizen left alive.

An important but limited exception to hyperaging is the United States. Yes, America is also graying, but to a lesser extent. We are the only developed nation with replacement-rate fertility (2.1 children per couple). By 2030, our median age, now 36, will rise to only 39. Our working-age population, according to both U.N. and census projections, will continue to grow throughout the 21st century because of our higher fertility rate and substantial immigration -- which we assimilate better than most other developed countries. By 2015, for the first time ever, the majority of developed-world citizens will live in English-speaking countries.

America certainly faces some serious structural challenges, including an engorged health-care sector and a chronically low savings rate that may become handicaps as we age. But unlike Europe and Japan, we will still have the youth and fiscal resources to afford a major geopolitical role. The declinists have it wrong. The challenge facing America by the 2020s is not the inability of a weakening United States to lead the developed world. It is the inability of the other developed nations to be of much assistance -- or indeed, the likelihood that many will be in dire need of assistance themselves.

A major reason the wealthy countries will need strong leadership are the demographic storms about to hit the developing world.

Consider China, which may be the first country to grow old before it grows rich. For the past quarter-century, China has been "peacefully rising," thanks in part to a one-child policy that has allowed both parents to work and contribute to China's boom. But by the 2020s, as the huge Red Guard generation born before the country's fertility decline moves into retirement, they will tax the resources of their children and the state. China's coming age wave -- by 2030 it will be an older country than the United States -- may weaken the two pillars of the current regime's legitimacy: rapidly rising GDP and social stability. Imagine workforce growth slowing to zero while tens of millions of elders sink into indigence without pensions, without health care and without children to support them. China could careen toward social collapse -- or, in reaction, toward an authoritarian clampdown.

Russia, along with the rest of Eastern Europe, is likely to experience the fastest extended population decline since the plague-ridden Middle Ages. Amid a widening health crisis, the Russian fertility rate has plunged and life expectancy has collapsed. Russian men today can expect to live to 59, 16 years less than American men and marginally less than their Red Army grandfathers at the end of World War II. By 2050, Russia is due to fall to 20th place in world population rankings, down from fourth place in 1950. Prime Minister Vladimir Putin flatly calls Russia's demographic implosion "the most acute problem facing our country today." If the problem isn't solved, Russia will weaken progressively -- raising the nightmarish specter of a failed state with nukes. Or this cornered bear may lash out in revanchist fury rather than meekly accept its demographic fate.

Of course, some developing regions will remain extremely young in the 2020s. Sub-Saharan Africa -- which is afflicted with the world's highest fertility rates and ravaged by AIDS -- will still be racked by large youth bulges. So will several Muslim-majority countries, including Afghanistan, Iraq, the Palestinian territories, Somalia, Sudan and Yemen. In recent years, most of these countries have demonstrated the correlation between extreme youth and violence. If that correlation endures, chronic unrest and state failure could persist through the 2020s -- or even longer if fertility fails to drop.

Many fast-modernizing countries where fertility has fallen very recently and very steeply will experience an ominous resurgence of youth in the 2020s. It's a law of demography that when a population boom is followed by a bust, it causes a ripple effect, with a gradually fading cycle of echo booms and busts. In the 2010s, a bust generation will be coming of age in much of Latin America, South Asia and the Muslim world. But by the 2020s, an echo boom will follow -- dashing economic expectations, swelling the ranks of the unemployed and perhaps fueling political violence, ethnic strife and religious extremism.

These echo booms will be especially large in Pakistan and Iran. In Pakistan, the number of young people in the volatile 15- to 24-year-old age bracket will contract by 3 percent in the 2010s, then leap upward by 20 percent in the 2020s. In Iran, the youth boomerang will be even larger: minus 31 percent in the 2010s and plus 30 percent in the 2020s. These echo booms will be occurring in countries whose social fabric is already strained by rapid development. One teeters on the brink of chaos, while the other aspires to regional hegemony. One already has nuclear weapons, and the other seems likely to obtain them.

All told, population trends point inexorably toward a more dominant U.S. role in a world that will need us more, not less. For the past several years, the U.N. has published a table ranking the world's 12 most populous countries over time. In 1950, six of the top 12 were developed countries. In 2000, only three were. By 2050, only one developed country will remain -- the United States, still in third place. By then, it will be the only country among the top 12 with a historical commitment to democracy, free markets and civil liberties.

Abraham Lincoln once called this country "the world's last best hope." Demography suggests that this will remain true for some time to come.

## 5

#### CP—The judicial branch should rule that state and federal taxation of Indian country is unconsitutational and grant exclusive taxation authority to tribal governments.

#### Removing federal and state taxation boundaries is key to generating revenue and protecting native sovereignty

EagleWoman 8

(Associate Professor of Law and James E. Rogers Fellow in American Indian Law at the University of Idaho College of Law, “Tribal Values of Taxation within the Tribalist Economic Theory”, Indigenous Nations Journal, Vol. 6, No. 1)

In conclusion, the concept of taxation fits within the values of Tribal Nations as a contribution to serve the tribal community and within the tribalist economic theory. Tribal taxation is a necessary form of revenue generation for tribal government. The greatest obstacle to realizing substantial returns from tribal taxation has been the **imposition of U.S. federal and state taxes** within the tribal domain. The exemptions that the United States Supreme Court has carved out of the tribal taxing authority leaves Tribal Nations as **involuntarily subsidizing the United States**. The United States continues to engage in practices carrying out the colonial mentality of depleting the resources of Tribal Nations without contributing back to tribal governments for governmental services and resources provided. In this vein, the United States is a neighboring nation to Tribal Nations with much to learn. Since the mid-1800s, the United States has used military force and threat to try to subjugate tribal peoples. Two centuries later, Tribal Nations are still crying foul and seeking to remind the United States that the resources being stripped by the U.S. are 29those protected by indigenous nations in prior generations and promised to the future seven generations of native peoples. Within the framework of the tribalist economic theory, Tribal Nations are seeking to right the balance in mid-North America and govern according to traditional values including the value of generosity now embodied in the concept of tribal taxation. As Tribal Nations assert themselves as the exclusive taxing authority within the tribal territory, balance is restored by providing that native people are no longer left to languish in poverty while their homeland resources are drained by a colonizing force. Tribal values are necessary to govern development on this continent as these are the values that allowed this land to flourish and represent an oasis to the newcomers from Europe and elsewhere.

## 6

#### The United States federal government should:

#### :substantially increase funding for decentralized and tribally-owned solar and wind energy production. Funding and training should be directed to tribal colleges and be made available to all residents of Indian country that wish to undertake solar and wind energy projects. The United States federal government should offer to provide financial backing to proposed projects that are exclusively owned by tribal residents.

#### : provide technical assistance to tribes for securing Secretary of Interior approval of Tribal Energy Resource Agreements of wind and solar energy and provide the Interior with additional resources to process applications.

#### :remove the federal government liability waiver for Tribal Energy Resource Agreements

#### Building tribal capacity solves

LaDuke, 9

(Executive Director of Honor the Earth & Former Green Party VP Candidate, “Helping the Prez, Greening the Rez,” http://www.loe.org/shows/segments.html?programID=09-P13-00003&segmentID=3)

CURWOOD: When it comes to U.S. energy policy and Native Americans, the record's pretty poor. Uranium and coal mining have brought pollution to native communities and lands - but relatively few jobs - and rising sea waters due to fossil fuel consumption are forcing native villages in Alaska to abandon their coastal lands. But now that Barack Obama has brought his promise of a lean, clean economy to the White House, many tribes are feeling hopeful. So hopeful, in fact, that a green policy statement representing more than 200 tribes and tribal organizations has been submitted to the Obama team. Winona LaDuke is a rural development economist and writer - you might know her as Ralph Nader's running mate on the Green Party ticket in the 2000 presidential elections. She now directs Honor the Earth, a non-profit that helped draw up the green petition, which outlines what Native America needs from the Obama administration, and what the Obama administration needs from Native America. LADUKE: We have this vast potential for renewable energy. The best potential in the whole country comes from Indian tribes and Indian tribal communities. We have been the most impacted by the last energy economy of anyone. And what we need to do is to capitalize the next energy economy in Indian country on terms that are just and are fair. So that we aren't selling our wind rights out to major corporations, you know, and just receiving a pittance. I'm relatively aware of the fact that 1) the Obama administration has inherited a huge mess and 2) the Obama administration is full of vital energy to make a change. So we have infused our strategy, saying that you want a green economy? This is what a green economy looks like in Indian Country, and this is how you would do it. CURWOOD: So what is it that you're asking the Obama administration to do? LADUKE: What we are asking the Obama administration to do is 1) **increase tribal capacity in training to create a work force that is able to move into renewable energy through financing. We are asking them for energy assistance**, efficiency work, because most of our homes are trailers on our reservations, and, in addition to that, homes that are already up are highly inefficient. So in order to reduce fuel poverty in Indian country, we have to have efficient homes. We are asking for renewable production refund for tribal projects that can't utilize tax credits in order to ensure that tribal governments are able to capitalize renewable energy in Indian Country. We are asking for access to the federal grid in ways that will address tribal ability to bring our projects online at a level that is meaningful both for tribal economies and to address climate change. CURWOOD: Now, your organization also made it very clear that you don't want to see the U.S. pursuing nuclear energy and what's been called clean coal. Why is that? LADUKE: Well clean coal doesn't exist. You can't wash it enough, you can't – strip mining or blowing off the top of a mountain is not clean. There's no way to clean up coal. And so, we just think that we shouldn't waste our time and the billions or trillions of dollars that it would take to try to sequester something for forever – because that is what you would have to do is for forever. So just leave it in the ground. Nuclear power – our tribes have been heavily impacted and are presently impacted by uranium mining. We are fighting uranium mining out in South Dakota and in Nebraska and all through the north. You know we have thousands of abandoned uranium mines and thousands of people who are impacted by radiation exposure. Nuclear is expensive, is dangerous and is not the answer to climate change. There is no way you can bring enough nuclear power plants on line in time to address climate change disasters. What we need to do is we need to put the money that would be wasted on clean coal and wasted on nuclear power into a full scale efficiency, renewable economy that treats people with dignity and doesn't treat people as second class citizens and assume that we can dump our waste in third world countries or in Indian reservations. CURWOOD: So, let's look at some specifics here Winona LaDuke. I understand about a hundred tribes have already done some feasibility studies to look at what could be done in terms of wind and solar energy generation. What are those numbers? What kind of potential are we looking at here? LADUKE: So the United States needs to produce about 185,000 megawatts of green power in the next decade in order to address climate change. That is the reality. Tribal communities are probably in a position to produce about 120,000 megawatts of that. Between wind potential, they're saying that our tribal communities have the potential to produce about one third of present installed U.S. electrical capacity to massive solar projects that are, you know, tribal projects and have the potential to feed into the present grids and create a green energy that will help this country address climate change. So, we are the people of color with land and natural resources, that's what distinguishes us, aside from other things, from other communities of color. And on that land, we have some of the windiest places in the country. Go figure how that happened – but the northern plains – you know, even in my reservation we have very high wind potential. I just finished last week putting up the foundation for a wind turbine at my office in Callaway, Minnesota. It's a 75 kilowatt wind turbine. My tribe is looking at – and other tribes in our area are looking at about four more megawatts of power coming online probably within the next two to three years. CURWOOD: Certainly the need for economic development on Native lands is really as impressive as the renewable energy potential that you have with your very high unemployment rates. And I think, in fact, a lot of reservation households don't even have electricity. So to what extent do you think that green jobs, green infrastructure, green energy is gonna get those figures turned around, to make change that has yet to come to Indian Country some two hundred plus years into the life of this country? LADUKE: I am very hopeful. That is to say, I look at my own reservation the White Earth reservation in northern Minnesota – on my reservation, one quarter of our money is spent on energy. All of that money basically goes to off reservation vendors whether it is for electricity or whether it is for fuel. You know a quarter of our income is a substantial economy for our reservation and for any reservation. And so our strategy is to replicate what we are doing in White Earth, you know, nationally, and say instead of outsourcing, we can re-localize a good portion of our energy economy. But we need the jobs in our communities. We need joint ownership or **ownership of the wind power production and the solar power productions so that the revenues return to our tribal communities.** We need to be employed in those, because we have 60% unemployment on my reservation, and, you know, the average age of a Native person is, you know, like 20, 21 years of age and you could either send my young man off to jail or you could employ him or send him to the military. CURWOOD: Winona LaDuke, you once very famously said, and I quote “I would like to see as many people patriotic to a land as I have seen patriotic to a flag.” How do you feel about this being the time for that sort of patriotism? LADUKE: I think that the present time is good. My youngest son, his name is Gwaconamont Gasko (sp). And Gwaconamont in our language means when the wind shifts. And that is what is happening now; the wind is shifting. And we have a chance to do something great for the generations that have not yet arrived here. You know, we've battled for years to create a society which is not based on conquest, but is based on survival. And the Obama administration, with the intersection between the realities of a shrinking, unsustainable economy, climate change, fuel, poverty and peak oil, we have the chance to make an economy that will reaffirm a relationship to the land. And so, I'm very optimistic. The next economy will not affect our sacred sites, our rivers, our lakes, our mountains, because the next economy will not require their consumption.

#### Weakened environmental review causes exploitation by companies interested in profiting from native renewable resources

Land Letter, 5

(New federal law encourages tapping of Indian resources, 12/1, Lexis)

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

#### Removing environmental review allows tribal governments to pursue projects against the will of the people---turns sovereignty

Wood, 94

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

More often, however, the complaint is simply that many IRA tribal councils cater to corporate development interests to the detriment of traditionalist values. n387 On one level, the criticism may simply reflect the often conflicting preferences between traditionalist and more assimilated groups within any given tribe. But on another level, the claim places responsibility on the federal government for creating conditions which vest tribal leadership authority in development-oriented individuals who may fail to represent broader tribal interests. n388 The contention is that the modern structure of the IRA government is an outgrowth of earlier periods of Indian policy, in which the federal government hand-picked spokesmen for tribes who were willing to negotiate away vast quantities of tribal resources. n389 Some commentators edge a step fur- [\*1557] ther and attribute the development-oriented policies of many IRA councils directly to undue and inappropriate pressures emanating from the federal government. n390 ***(\*\*\*insert footnote\*\*\*)***n387 See supra note 377; see also Morrison & Howe, supra note 75, at 376 ("**Tribal governments, which in theory, represent the collective interest of the tribe, often do not speak for all individual tribe members.**"); Churchill & LaDuke, supra note 12, at 244-46 (describing tribal councils' development-oriented viewpoints); LaDuke, Forest Activism, supra note 12, at 23 (describing conflicts "all across Indian Country" between native organizations seeking to protect Indian forestlands and tribal councils which favor more intense harvest); Littman, supra note 39 (similar). See generally Mander, supra note 375, at 277-84. Mander provides this harsh assessment of tribal councils: **[The tribal councils are] not Indian institutions. They're American institutions. They were put there by the U.S., created in that form for the very purpose of doing what they're doing: exploiting the land and the minerals. Those so-called Tribal Councils are really just extensions of the U.S. bureaucracy. Putting Indians off the land to get minerals and grazing rights makes perfect sense in American corporate logic . . . but if you want to ask about Indians, you've got to turn to the old people, the traditionals, and the large numbers of young people who are joining forces with them now**. Id. at 283 (quoting Dan Bomberry, Founder, Seventh Generation Fund). n388 See, e.g., Mander, supra note 375, at 278-79 (contending Navajo Tribal Council was, "until recently[,] . . . little more than a rubber stamp for the BIA," and willingly approved U.S. development policies on the reservation); see also Tribal Government, A Key Issue, Indian Historian, Summer 1979, at 25 [hereinafter Tribal Government] (describing tribal decision-making process that **may lead to disenfranchisement of general tribal membership**). n389 See Mander, supra note 375, at 277-78 (describing BIA policy of "literally creating fictitious tribal councils for the specific purpose of approving a lease"); Edward H. Spicer, Cycles of Conquest 351-52 (1962); Clinton, supra note 4, at 98 (describing establishment of nonrepresentative tribal governments as component of colonial expansion); Morrison & Howe, supra note 75, at 371 ("By attempting to 'trade' tribal land usage for money and a small number of jobs . . . American Indian leaders are behaving not unlike their historical counterparts who attempted to consolidate their power base. . . ."); Robert A. Williams, Jr., Large Binocular Telescopes, Red Squirrel, Pinatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World, 96 W. Va. L. Rev. 1133, 1159-60 (1994) (describing San Carlos Apache Tribal Government and Mt. Graham Controversy); see also Esber, supra note 375, at 216 ("In the past, the Bureau of Indian Affairs made arrangements for the exploitation of Indian resources without ever obtaining tribal consent. Now that these economic activities have been institutionalized, they continue with Indian participation in management."). But see Laurence, supra note 77, at 320 (criticizing characterization of tribal governments as "Vichy-like, propped up by corporate America for the good of the whites"). n390 " [A tribal] community's desire to exercise self-determination is hindered by pressures from national and private interests whose eyes are fixed on the resources of the reservation. . . . The role of the United States in pressing for the development of capitalistic, entrepreneurial tribal governments cannot be ignored." Esber, supra note 375, at 216; see also Russell, supra note 364, at 39 (noting federal agencies, particularly BIA, offer sizable financial inducements to encourage corporations to develop reservations). Others have alleged impropriety on the part of the BIA, suggesting that some BIA officials improperly act as consultants to private companies seeking to develop reservation resources. n391 Whatever the social, economic, and political dynamics that prompt development-oriented decisions by many tribal councils, a significant portion of the tribal membership often perceives these decisions as **highly destructive to the tribe's present and future welfare**. n392 ***(\*\*\*to footnote\*\*\*)***n392 See Churchill & LaDuke, supra note 12, at 255 (cautioning **that tribal council adoption of short-term development proposals may lead to "self-liquidation" or "auto-genocide" in long term**).

In some cases, the development may contravene the traditional laws of the tribe. Members may not be allowed to vote on significant development projects, n393 or where voting takes place it may be demographically skewed. For example, tribal members residing off the reservation may desire the per capita payments resulting from development, while the members living on the reservation may oppose the development because it would affect them directly. While the distribution of per capita benefits may be evenly spread across the tribal membership, the distribution of costs in terms of lifestyle and cultural impacts may be vastly disparate, giving rise to serious policy concerns. All of these considerations indicate that tribal sovereignty rests on a complex set of circumstances which merit attention in the trust analysis. [\*1558] 2. The Federal Approval Authority as a Tool of Majority Restraint, Not Dominion The decisions of many tribal governments to develop reservation lands for permanent, non-Indian industrial use over the objections of a substantial part of the tribal population raise difficult questions concerning the federal government's trust responsibility in approving tribal land transactions and a court's duty in reviewing the federal decision. n394 On the one hand, conflict over development is not uncommon in other governments, and the existence of conflict alone may not justify judicial interference. Self-determination can flourish on reservations only if the federal government leaves tribes to set their own priorities. The tribal governments carry the mantle of authority, and while their actions may meet with dissension within the tribe, part of the price of sovereignty may be improper or unwelcome management by tribal governments. Federal intrusion of any kind may be fundamentally incompatible with tribal sovereignty. On the other hand, several considerations counsel in favor of judicial review of federal approval decisions. First, while the trust responsibility should support self-determination, **that goal is illusory if it results from a compromised process or undue federal manipulation**. n395 If the IRA system of government, which is essentially a federal construct, is perpetuating exploitation of native lands, then judicial review of federal approval decisions allows groups within the tribe, who may have been illegitimately excluded from the process, to challenge the outcome of the governing body's decision. n396 The redress available in a federal judicial forum may offset, however imperfectly, the systemic or particularized effects of previous federal control. Second, federal approval and subsequent judicial review may provide **the only avenue for examining the environmental impacts associated with land development**. The National Environmental Policy Act ("NEPA"), which requires that environmental information [\*1559] be prepared for certain federal actions, is triggered by the federal approval step. n397 **Absent federal approval, NEPA does not apply, and tribal members may often be left with a limited range of environmental information concerning the consequences of the proposed development**. Third, in considering the federal government's role in reviewing tribal council action, it is important to distinguish between matters involving long-term or permanent disposition of lands or resources and decisions affecting non-property matters, such as tribal membership and rules governing social or economic conduct. While there are compelling reasons justifying complete federal abstention in the latter context, n398 the consequences flowing from tribal council decisions **are magnified when a tribe's land base is at stake**. The federal government's fiduciary obligation to protect tribal lands and resources runs to present and future members of the tribe, and these obligations arguably **carry as much weight as the governance interests of a tribal council.** Public trust law supports this position. Courts have recognized the judiciary's obligation to safeguard critical parcels of land for the public even if that requires overriding the legislature's express actions in transferring such property to private interests. In Illinois Central R.R. v. Illinois, n399 the Court held that a grant of shoreline property by the state of Illinois to a private railroad company was encumbered by a "public trust" and revocable if the land was used in a manner inconsistent with the public's interest. n400 The willingness of the Court to override a state legislature's decision was apparently prompted both by an awareness that legislatures are temporary and vulnerable to political influence, and a concern for the critical importance of the land in question. n401 [\*1560] Similar reasoning might guide courts in reviewing federal approval of tribal decisions that place long-term tribal land interests in jeopardy. n402 Indeed, **the mere prospect of trust litigation may encourage internal governing processes to function in a manner more responsive to the broader tribal membership.** n403 Many tribes have in fact changed their position on critical land-use matters, whether due to a change in the individual makeup of a tribal council, n404 the revelation of negative consequences of the proposed development, n405 **or simply due to pressure from dissenting voices within the tribe**. n406 [\*1561] Fourth, continuing the federal check on the potentially overwhelming force of non-Indian private enterprise is **diametrically opposite from the government's past role in facilitating exploitation of the vast natural resources on reservations**.n407 This distinction is highlighted when objections to development proposals come from tribal members who are themselves beneficiaries of the trust responsibility. A negative approval, whether emanating from the BIA or a court reviewing the BIA's decision, represents **less of a directive on how the tribe should use its land and more of a restraint on the particular private firm seeking to access the reservation's resourc**es. n408 In this regard, historical experience should inform modern policies. Even in the earliest dealings with Indian nations, the trust obligation encompassed the duty to preserve the Indian land base from market encroachments by the majority society. The Nonintercourse Act was passed to prevent wholesale disposition of Indian lands to private, non-Indian interests n409 --a result that, as history bears out, is inevitable when there is no operative restraint on the sale of Indian lands. n410 The Act's restriction against purchase of Indian lands was viewed not as an intrusion into tribal sovereignty, but rather as a restraint on the majority society n411 --particularly [\*1562] its hungry entrepreneurs--designed to preclude destruction of the tribal entity and homeland through predictably irresistible forces of capitalism. Such a restraint was, and arguably still is, an integral part of a separatist paradigm. The unremitting offers from private corporations today bear striking similarity to the conditions that prompted passage of the Nonintercourse Act nearly 200 years ago. For instance, Indian lands are increasingly targeted by private firms for disposal of the mounting quantities of waste from the majority's industrialized society. n412 But the internal dissension over such offers is often muted in the outside policy realm by an overall appearance of tribal willingness created by the tribal government's own sponsorship of the waste proposal. Even where federal disapproval is warranted to protect the tribal lands and population from environmental degradation and adverse health conditions, there remains a troubling perception that such disapproval undercuts basic tribal sovereignty. Ironically, intense market pressure to accept the waste of an industrialized society is denounced as toxic colonialism when directed to thirdworld nations, n413 and as toxic racism when directed to domestic minority populations. n414 Yet the same market pressure to site landfills in Indian Country is often endorsed in the name of tribal sovereignty. n415 [\*1563] Many native commentators, however, have denounced the practice as an abuse of sovereignty. n416 ***(\*\*\*insert footnote\*\*\*)*** n416 See, e.g., Littman, supra note 39, at A8 ("'The new-found **self-determination and authority being granted to the tribes in many cases is being used and abused against our own people**.'" (quoting Northwestern Minnesota Chippewa Tribe member)

Interestingly, international law largely prohibits the export of toxic waste to other countries, n417 but that prohibition is hardly viewed as an intrusion into the sovereignty of the receiving nation's government. By the same token, federal disapproval of such projects in Indian Country should appropriately be viewed as a necessary check on the majority society's more powerful and destructive market forces. n418 Many believe that without a continuing restraint on transfer of Indian lands, tribal lands and resources will ultimately convert to assets in the portfolios of non-Indian firms. n419 For the most part, the compelling historical reasons underlying the inalienability of Indian land continue to be recognized as legitimate within the modern policy framework. But such policy concerns have yet to catch up with the changing business and transactional framework surrounding the development of tribal lands and resources. The modern-day disposition of native lands and resources is achieved through creative business structuring such as leases and joint ventures, which avoid outright sale. The federal approval requirement may be the only external check against the transfer of native lands to private parties through these types of business transactions. The approval authority in this context is a direct outgrowth of the same concerns which prompted passage of the Nonintercourse Act two centuries [\*1564] ago. n420 In today's Self-Determination era, the restraint against transfer of Indian lands has been rendered much less significant because of the BIA's overriding policy of approving decisions made by tribal councils regardless of the effect on the reservation land base or other attributes of sovereignty. What often amounts to **an automatic deference to tribal councils effectively eliminates any restraint against transfer of Indian lands and resources**. Taken to its extreme, **this policy may resurrect the specter of Termination under the more palatable banner of Self-Determination.** Against this context, the judicial role in **reviewing federal approval for consistency with the trust responsibility may be vital in protecting the remaining native land base.** In sum, there are legitimate concerns regarding the role of the trust doctrine in the federal approval context. Any judicial reversal of a decision made in the first instance by a tribal government implicates tribal sovereignty concerns. But as the discussion above demonstrates, such concerns are multifaceted and complex. In the final analysis, federal disapproval of leases or other transactions which present a long-term conversion of Indian land to non-Indian use reflects the type of market buffer that was envisioned in the Trade and Intercourse Acts. Such federal action was not historically viewed as an intrusion into tribal sovereignty, and there are compelling reasons for not considering it as such today.

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**.

## case

#### Util

Harries, 94 – Editor @ The National Interest

(Owen, Power and Civilization, The National Interest, Spring, lexis)

Performance is the test. Asked directly by a Western interviewer, “In principle, do you believe in one standard of human rights and free expression?”, Lee immediately answers, “Look, it is not a matter of principle but of practice.” This might appear to represent a simple and rather crude pragmatism. But in its context it might also be interpreted as an appreciation of the fundamental point made by Max Weber that, in politics, it is “the ethic of responsibility” rather than “the ethic of absolute ends” that is appropriate. While an individual is free to treat human rights as absolute, to be observed whatever the cost, governments must always weigh consequences and the competing claims of other ends. So once they enter the realm of politics, human rights have to take their place in a hierarchy of interests, including such basic things as national security and the promotion of prosperity. Their place in that hierarchy will vary with circumstances, but no responsible government will ever be able to put them always at the top and treat them as inviolable and over-riding. The cost of implementing and promoting them will always have to be considered.

#### Status quo solves---tons of federal policies and resources are used to spur native renewable energy development now

LeBeau, 12

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

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

#### Conditions for Native Americans improving—Obama has committed significant funding for the economy and health care

Vitale, 10/24

(Freelance Columnist focusing on Native American Issues, “Obama has worked for Native Americans,” http://theonefeather.com/2012/10/obama-has-worked-for-native-americans/)

Native Americans have had few friends in the White House, but in recent history Native Americans **have had no better advocate than** President **Obama**. “One Who Helps People Throughout the Land”, his adopted Crow name, is symbolic of how seriously he is committed to taking action on Indian issues. He included $3 Billion in stimulus money directly targeted for Indian Country. It included money for job creation, renovation of schools, improved health services, police, and improved housing. The Affordable Care Act signed into law in March of 2010, permanently authorized the Indian Health Care Improvement Act. This comprehensive health care service will directly help 1.9 million Native peoples to receive better health care. The Obama administration has provided $300 million dollars for Tribal controlled Colleges and Universities, and has promoted Native Language restoration. An Annual White House Tribal Nations Conference has been held every year since President Obama took office, and he has appointed a Native American as Senior Policy Advisor for Native American Affairs.

#### War turns structural violence

Bulloch 8

Millennium - Journal of International Studies *May 2008* vol. 36 *no. 3 575-595*

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 He is currently completing his PhD in International Relations at the London School of Economics, during which time he spent a year editing Millennium: Journal of International Studies

 But the idea that poverty and peace are directly related presupposes that wealth inequalities are – in and of themselves – unjust, and that the solution to the problem of war is to alleviate the injustice that inspires conflict, namely poverty. However, it also suggests that poverty is a legitimate inspiration for violence, otherwise there would be no reason to alleviate it in the interests of peace. It has become such a commonplace to suggest that poverty and conflict are linked that it rarely suffers any examination. To suggest that war causes poverty is to utter an obvious truth, but to suggest the opposite is – on reflection – quite hard to believe. War is an expensive business in the twenty-first century, even asymmetrically. And just to examine Bangladesh for a moment is enough at least to raise the question concerning the actual connection between peace and poverty. The government of Bangladesh is a threat only to itself, and despite 30 years of the Grameen Bank, Bangladesh remains in a state of incipient civil strife. So although Muhammad Yunus should be applauded for his work in demonstrating the efficacy of micro-credit strategies in a context of development, it is not at all clear that this has anything to do with resolving the social and political crisis in Bangladesh, nor is it clear that this has anything to do with resolving the problem of peace and war in our times. It does speak to the Western liberal mindset – as Geir Lundestad acknowledges – but then perhaps this exposes the extent to which the Peace Prize itself has simply become an award that reflects a degree of Western liberal wish-fulfilment. It is perhaps comforting to believe that poverty causes violence, as it serves to endorse a particular kind of concern for the developing world that in turn regards all problems as fundamentally economic rather than deeply – and potentially radically – political.

#### Their conception of violence is reductive and can’t be solved

Boulding 77

 Twelve Friendly Quarrels with Johan Galtung

Author(s): Kenneth E. BouldingReviewed work(s):Source: Journal of Peace Research, Vol. 14, No. 1 (1977), pp. 75-86Published

 Kenneth Ewart Boulding (January 18, 1910 – March 18, 1993) was an economist, educator, peace activist, poet, religious mystic, devoted Quaker, systems scientist, and interdisciplinary philosopher.[1][2] He was cofounder of General Systems Theory and founder of numerous ongoing intellectual projects in economics and social science.

 He graduated from Oxford University, and was granted United States citizenship in 1948. During the years 1949 to 1967, he was a faculty member of the University of Michigan. In 1967, he joined the faculty of the University of Colorado at Boulder, where he remained until his retirement.

 Finally, we come to the great Galtung metaphors of 'structural violence' 'and 'positive peace'. They are metaphors rather than models, and for that very reason are suspect. Metaphors always imply models and metaphors have much more persuasive power than models do, for models tend to be the preserve of the specialist. But when a metaphor implies a bad model it can be very dangerous, for it is both persuasive and wrong. The metaphor of structural violence I would argue falls right into this category. The metaphor is that poverty, deprivation, ill health, low expectations of life, a condition in which more than half the human race lives, is 'like' a thug beating up the victim and 'taking his money away from him in the street, or it is 'like' a conqueror stealing the land of the people and reducing them to slavery. The implication is that poverty and its associated ills are the fault of the thug or the conqueror and the solution is to do away with thugs and conquerors. While there is some truth in the metaphor, in the modern world at least there is not very much. Violence, whether of the streets and the home, or of the guerilla, of the police, or of the armed forces, is a very different phenomenon from poverty. The processes which create and sustain poverty are not at all like the processes which create and sustain violence, although like everything else in 'the world, everything is somewhat related to everything else. There is a very real problem of the structures which lead to violence, but unfortunately Galitung's metaphor of structural violence as he has used it has diverted attention from this problem. Violence in the behavioral sense, that is, somebody actually doing damage to somebody else and trying to make them worse off, is a 'threshold' phenomenon, rather like the boiling over of a pot. The temperature under a pot can rise for a long time without its boiling over, but at some 'threshold boiling over will take place. The study of the structures which underlie violence are a very important and much neglected part of peace research and indeed of social science in general. Threshold phenomena like violence are difficult to study because they represent 'breaks' in the systenm rather than uniformities. Violence, whether between persons or organizations, occurs when the 'strain' on a system is too great for its 'strength'. The metaphor here is that violence is like what happens when we break a piece of chalk. Strength and strain, however, especially in social systems, are so interwoven historically that it is very difficult to separate them. The diminution of violence involves two possible strategies, or a mixture of the two; one is Ithe increase in the strength of the system, 'the other is the diminution of the strain. The strength of systems involves habit, culture, taboos, and sanctions, all these 'things which enable a system to stand lincreasing strain without breaking down into violence. The strains on the system 'are largely dynamic in character, such as arms races, mutually stimulated hostility, changes in relative economic position or political power, which are often hard to identify. Conflicts of interest 'are only part 'of the strain on a system, and not always the most important part. It is very hard for people ito know their interests, and misperceptions of 'interest take place mainly through the dynamic processes, not through the structural ones. It is only perceptions of interest which affect people's behavior, not the 'real' interests, whatever these may be, and the gap between percepti'on and reality can be very large and resistant to change. However, what Galitung calls structural violence (which has been defined 'by one unkind commenltator as anything that Galitung doesn't like) was originally defined as any unnecessarily low expectation of life, on that assumption that anybody who dies before the allotted span has been killed, however unintentionally and unknowingly, by somebody else. The concept has been expanded to include all 'the problems of poverty, destitution, deprivation, and misery. These are enormously real and are a very high priority for research and action, but they belong to systems which are only peripherally related to 'the structures whi'ch produce violence. This is not rto say that the cultures of violence and the cultures of poverty are not sometimes related, though not all poverty cultures are cultures of violence, and certainly not all cultures of violence are poverty cultures. But the dynamics lof poverty and the success or failure to rise out of it are of a complexity far beyond anything which the metaphor of structural violence can offer. While the metaphor of structural violence performed a service in calling attention to a problem, it may have d'one a disservice in preventing us from finding the answer.

#### Nuclear war is likely

Perkins, 7 – Staff Writer @ My Wire (Sid, [http://www.mywire.com/a/ScienceNews/Sudden-chill-even-limited](http://www.mywire.com/a/ScienceNews/Sudden-chill-even-limitednuclear/2906831?page=2)

[nuclear/2906831?page=2](http://www.mywire.com/a/ScienceNews/Sudden-chill-even-limitednuclear/2906831?page=2))

"While there's a perception that a nuclear build down by the world's major powers in recent decades has somehow resolved the global nuclear threat, a more accurate portrayal is that we're at a perilous crossroads," says Brian Toon, an atmospheric scientist at the University of Colorado at Boulder and one of the researchers who first floated the idea of a nuclear winter. Today's threat stems from a variety of factors, Toon and his colleagues say. Nations are joining the nuclear club with unnerving regularity, others are suspected of having ambitions to do so, and dozens more have enough uranium and plutonium on hand to build at least a few Hiroshima-size bombs. The leaders of some of these nations may have no qualms about using such weapons, even against a nonnuclear neighbor. Increasingly, people are living in large cities, which make tempting targets. Finally, the results of today's climate simulations--which are much more sophisticated than those that were available in the 1980s--suggest that even a nuclear exchange of just a few dozen weapons could cool Earth substantially for a decade or more. The current combination of nuclear proliferation, political instability, and urban demographics "forms perhaps the greatest danger to the stability of human society since the dawn of man," warns Toon. Recognizing this danger, on Jan. 17, the Bulletin of the Atomic Scientists moved the minute hand on its "doomsday clock" 2 minutes closer to midnight. "It's been 60 years since nuclear weapons have been used in war, but the psychological barriers that have helped limit the potential for the use of nuclear weapons in this country and others seems to be breaking down" says Lawrence M. Krauss, a member of the group and a physicist at Case Western Reserve University in Cleveland. JOIN THE CLUB In 1950, there were two nuclear powers--the United States, whose Manhattan Project developed the bombs dropped on Hiroshima and Nagasaki at the end of World War II, and the Soviet Union, which conducted its first nuclear test in August 1949. By 1968, when the Treaty on Non-Proliferation of Nuclear Weapons was proposed, France, the United Kingdom, and China had joined the pack. Outside that treaty from its beginning, India, Pakistan, and North Korea have developed weapons and conducted tests. Also, Israel is widely suspected of possessing nuclear weapons. A handful of nations once possessed nuclear weapons but abandoned them. Belarus, Ukraine, and Kazakhstan inherited warheads when the Soviet Union fell apart in 1991 but have since transferred those weapons to Russia. South Africa has admitted constructing, but later disassembling, six nuclear devices, possibly after one test, says Toon. In total, he says, at least 19 nations are now known to have programs to develop nuclear weapons or to have previously pursued that goal. Many more nations, through their power-generating and research nuclear reactor programs, have the raw materials for constructing nuclear devices, he and his colleagues reported in December 2006 at a meeting of the American Geophysical Union in San Francisco. Those raw materials aren't scarce: At least 40 nations have enough uranium and plutonium on hand to construct substantial nuclear arsenals. Disturbingly, some of the nations with abundant bomb material have or have recently had strained relations with their neighbors. At the end of 2003, for example, Brazil probably had enough plutonium on hand to make more than 200 Hiroshima-size bombs, while its former rival Argentina could have produced 1300 such bombs. Although North Korea probably has enough nuclear material to fabricate only a handful of the devices, South Korea has enough plutonium to construct at least 4,400. Pakistan could make 100 or more nuclear bombs, and its neighbor India could put together well over 10 times as many, the researchers estimate. Today, at least 13 nations operate facilities that enrich uranium, plutonium, or both, says Toon. Altogether, 45 nations are known to have previous nuclear weapons programs, current weapons stockpiles, or the potential to become nuclear states.

# 2NC

## AT: Unger/Royster-No Link/Choice

####  ‘Choice’ favors corporations—resource disparities and empirics

Getzan, 4

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

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

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

Lacey 4

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

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

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

#### Fair negotiation impossible in tribal energy context

Rosser, professor of law – Loyola University New Orleans, ‘5

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

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

#### Asymmetric info favors businesses

Royster, Co-Director – Native American Law Center @ University of Tulsa, ‘8

(Judith V., 12 Lewis & Clark L. Rev. 1065)

Moreover, helping to ensure that tribes negotiate on a level field requires the Secretary to do more than provide assistance as requested and feasible. It also requires that the Secretary refrain from providing information to energy companies that is withheld from the tribes. In the egregious case of Navajo Nation coal leases in the 1980s, the Secretary of the Interior supplied crucial information to the coal company which he did not supply to the tribe. n116 The coal company then used that information in negotiating a new royalty rate on coal leases, a royalty rate that ultimately cost the tribe some $ 600 million in lost revenues. n117 Despite the overt breach of a common-law trustee's duties, n118 the U.S. Supreme Court ruled that the Secretary's action did not constitute a breach of trust under the Indian Mineral Leasing Act and its implementing regulations, and held therefore that the Navajo Nation could not recover for its losses under that statute. n119 So long as the [\*1086] Secretary's **legal obligations** to tribes do not prevent this type of dealing, tribes cannot be sure that the negotiating field is indeed level.

## AT: No Solve Self-D

Neither do they—they are an INSTANCE of self-D, they don’t create complete self-determination.

Bradford ‘5 - Chiricahua Apache and Associate Professor of Law, Indiana University School of Law

Beyond Reparations: An American Indian Theory of Justice, WILLIAM BRADFORD, Chiricahua Apache and Associate Professor of Law, Indiana University School of Law, OHIO STATE LAW JOURNAL, VOLUME 66, NUMBER 1, 2005, Lexis Law Reviews

Although Indian tribes are separate sovereigns in retention of all rights and powers not explicitly ceded to the U.S. by treaty, n196 or abrogated by explicit legislative intent, n197 U.S. Indian policy has been generally hostile to the right of Indian tribes to self-govern as politically distinct communities. n198 If the theme of the nineteenth century was eradication of Indians and the seizure of their land, the motif of the twentieth century was the destruction by law of tribal sovereignty. With the passage of the IRA, Indian tribes, traditionally hyperdemocratic and consensus-driven institutions, n199 were reconstituted and subjected to the veto power of the Secretary of the Interior; n200 subsequent legislative and judicial action [\*39] has stripped Indian tribes of control over their form, property, and powers. n201 Relations with post-IRA Indian tribes, rather than proceed as if between mutual sovereigns, are conducted largely through a welter of executive agencies. n202 As a result, the terms and conditions of Indian existence are frequently dictated by Washington, rather than debated on the reservations. n203 Federal agencies to which Congress delegates power smother tribes under a blanket of regulation n204 that, although it provides the means of subsistence, suppresses traditional modes of social control and value allocation, and the Secretary of the Interior looms large over every aspect of tribal life. n205 A dawning recognition that Indians are entitled to self-govern has spurred calls to end the fundamental asymmetry of U.S.-Indian relations. Nevertheless, decades after introduction of the federal policy of "Indian Self- Determination," n206 tribes remain politically subordinate to, and thus economically dependent upon, the U.S. n207[\*40]¶ \*\*\*Footnote 207 Begins\*\*\*¶ 207 Empirical evidence suggests that, for Indian tribes, political domination produces economic dependence. See ANDERSON, supra note 198, at 245 ("Economy follows sovereignty in Indian Country . . . The most striking characteristic of . . . successful tribes . . . is that they have aggressively made the tribe itself the effective decision maker . . . ."). Nonetheless, economics and politics exert reciprocal influence, and economic dependence precludes the free exercise of Indian sovereignty. See John C. Mohawk, Indian Economic Development: An Evolving Concept of Sovereignty, 39 BUFF. L. REV. 495, 499 (1991) ("Indian economic development may be less about creating wealth than it is about creating the conditions for political power . . . .").¶ \*\*\*Footnote 207 Ends\*\*\*¶ c. Ethnodevelopmental Suppression¶ Despite significant resource endowments, n208 many Indian tribes n209 remain ensnared in a web of economic dependence, n210 institutionalized domination, n211 [\*41] geographic dislocation, and gross undercapitalization.. n212 Although the non-legal obstacles to Indian economic independence, the first and foremost goal of tribal governments, n213 are very real, the constraints imposed by federal Indian law are even more formidable. To wit, the U.S. holds trust title to Indian lands and resources, n214 and Indians cannot sell, lease, or borrow against their property without the express approval of the Secretary of the Interior. n215 As the very question of secretarial approval introduces political uncertainty, n216 trust-based [\*42] land-tenure constraints diminish the relative output-values of land-intensive enterprises such as agriculture, ranching, and resource development. n217 Moreover, U.S. management of Indian resources grants the U.S. paternalistic control over Indian economic destiny. n218 Although the U.S. is under a moral obligation to husband Indian resources, diligently advance Indian land claims against the States, secure adequate funding for Indian social services, n219 and enhance the economic well-being of Indian people, n220 federal agencies have withheld basic subsistence, n221 mismanaged tribal resources, n222 and violated the animating [\*43] principles of the trust with near-impunity. ¶ \*\*\*Footnote 222 Begins\*\*\*¶ n222 The paternalistic policies of a non-Indian majority, violative of the moral and legal imperatives arising under the trust doctrine, add the insult of impoverishment to the injury of expropriation: the BIA arranges Indian leases, and collects their royalties and usufructuary benefits for their "protection." See Atkinson, supra note 44, at 404-05, 408. Moreover, because all tribal land is held in trust, leases of more than one year are prohibited without permission of the Secretary of the Interior, and funds generated from such leases cannot be used to purchase land. U.S. mismanagement of Indian resources is of epic proportions. See, e.g., S. Rep. No. 101-216, at 105-29, 140 (1989) (documenting a century of theft of Indian oil and gas). In the most recent case, a federal court, finding the U.S. in breach of a common law fiduciary obligation due to its "long and sorry history" of gross mismanagement of over $ 500 million in 300,000 individual Indian Money Accounts, retained jurisdiction to enforce an accounting but stopped short of ordering further remedies unauthorized by statute. Cobell, 91 F. Supp. 2d at 7. Although the Secretary of the Interior concedes the issue of gross federal mismanagement, the means proposed as the most cost-effective to make an accounting-statistical sampling-would cost Indian claimants at least $ 70 million: whether relief will ever be afforded is uncertain, although the court maintains jurisdiction and defendants are currently required to file reports as to trust reform activities. Id.; see also Assiniboine and Sioux Tribe of the Fort Peck Indian Reservation v. Norton, 211 F. Supp. 2d 157, 158, 160 (D.D.C. 2002) (finding that the case at bar presented the same questions of law and fact as Cobell, and refusing to refer the case at bar, and other related tribal cases, to the Calendar Committee). ¶ \*\*\*Footnote 222 Ends\*\*\*¶ Only in very recent years has the trust doctrine charged the U.S. with judicially enforceable obligations apart from those incorporated in specific treaties, statutes, or executive orders. n223 Although the protective dimensions of the trust doctrine have broadened, n224 aggrieved Indian beneficiaries still lack effective legal recourse for its breach. n225

The logic of their solvency deficits is wrong—they don’t remove multiple obstacles to siting

Royster, Co-Director – Native American Law Center @ University of Tulsa, ‘8

(Judith V., 12 Lewis & Clark L. Rev. 1065)

The first concern is the limitation on the resources to which ITEDSA applies. Enacted as an energy development measure as well as a tribal self-determination measure, n106 ITEDSA does not apply to all tribal mineral resources. The statute itself contains no definition of energy [\*1083] resources, but the regulations define them as "both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources." n107 Tribes' ability to **exercise** greater practical **sovereignty** over their mineral resources thus does not extend to such minerals as clay or sand and gravel. This artificial division of tribal mineral resources into energy and non-energy resources means that instruments for the development of non-energy minerals must still go through a secretarial review process even for tribes that enter into TERAs. Consigning sand and gravel development to a more onerous process than, say, uranium or coal development makes little sense. Amending ITEDSA to apply to the full range of mineral resources covered by the Indian Mineral Development Act n108 would not only harmonize the two statutes, but ensure that tribes could address all their mineral resources in the same manner.

## AT: Doesn’t Solve Renewables

#### We link turn any solvency deficit---the aff allows for a wave of cheap and massive projects led by corporate interests—that’s Land Letter and Raftery. The CP may be slower or fewer renewables, but there’s no impact to that distinction. Only allowing natives to take the lead through capacity building solves

Lacey 4

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

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

While there may be many possible solutions to the problem of soft-selling reservation lands, the obvious first step is to recognize that current environmental policy is anything but neutral in terms of the plight of Indian heritage lands. From the Colonial era efforts to force Native Americans to adapt to westernized notions of property, to the Dawes era integration and exploitation of surplus lands, to the unmanaged pressures of the post-Reorganization "free market," little has changed in America's management of tribal heritage lands.

Some critics have argued that it is not possible to have both environmental equity and Native American sovereignty. n215 The whole concept of acting as "trustee" for "non-consummated" native-owned lands seems paternalistic and racist. Nevertheless, this is the legal definition of Native American sovereignty our nation inherited from Chief Justice John Marshall and the labyrinth of statutes, executive orders, and judicial opinions that followed. Whether the federal government intends to end this trustee relationship or continue it, the approach should be the same: Native Americans should receive the economic and political aid that would place them at an equal bargaining position with the rest of American society. Sovereignty without resources is nothing more than exploitation. The story of the Shoshone-Bannock Tribe shows that sovereignty is not the solution, but rather, the root of the problem of toxic waste on Indian reservations. The limitations placed on land uses, the selective sovereignty, and the laissez-faire approach to tribal environmental policies have effectively continued the exploitation of Indian lands in an uninterrupted conquest.

No impact to NEPA review on tribal development OR self-determination

Royster, Co-Director – Native American Law Center @ University of Tulsa, ‘8

(Judith V., 12 Lewis & Clark L. Rev. 1065)

There is no question that the environmental review process under a TERA will be costly, and it will undeniably have the potential to delay implementation of tribal resource decisions. n150 **Nonetheless**, **the TERA provisions for environmental review** of specific tribal development decisions **are not necessarily incompatible with practical sovereignty**. n151 First, like NEPA, the environmental review provisions of ITEDSA mandate a process rather than a substantive outcome. n152 Tribes must identify and evaluate significant environmental effects, identify proposed mitigation measures, and include appropriate mitigation measures in specific instruments. n153 Nothing in this process contemplates a particular substantive decision, but rather that decisions are made in light of full environmental information. The intent, as with NEPA, is that more information leads to more informed, and therefore "better," decision making. n154

Second, public notice and comment on environmental matters has long been a feature of tribal mineral development decisions, by way of the NEPA process. Under current mineral development statutes other than ITEDSA - the Indian Mineral Development Act of 1982 and the Indian Mineral Leasing Act of 1938 - the Secretary must approve each specific lease or development agreement. The Secretary's approval, in turn, constitutes "major federal action," which triggers the environmental review process of NEPA if the action significantly affects the quality of the human environment. n155 Virtually all mineral development has significant enough effects to require an environmental impact statement. n156 An [\*1092] environmental impact statement for tribal mineral development, whether undertaken by the Bureau of Indian Affairs or another federal agency, n157 is subject to public notice and comment in draft form, n158 and the federal agency is required to consider and respond to substantive comments in preparing the final statement. n159

There are at least two important differences between public notice and comment as part of the NEPA process and as part of the TERA process. Like other aspects of the TERA environmental review process, the costs of notice and comment will be borne by the tribe rather than the Bureau of Indian Affairs or other federal governmental agency. This cost-shifting places a significant burden on the tribes. On the other hand, the consideration of and response to comments will be undertaken by the tribe rather than a federal agency. Although tribes have substantial input at the NEPA comment stage, n160 the consideration of all comments and the response to them are matters for the federal agency. **The shift to a tribal environmental review process ensures that comments will be reviewed in light of tribal values**, **priorities**, **and decisions**, **rather than filtered through a federal lens**.

Third, although the environmental review process introduces the requirement of public comment on the environmental effects of a proposed instrument, and the requirement that the tribe respond to relevant and substantive comments before it approves the instrument, this type of public participation can serve important tribal interests. n161 First, it allows input by tribal citizens; although tribal members have indirect influence through their voting powers for tribal government officials, public comment allows more direct participation in tribal government. In addition, the public comment provision allows nonmembers who may be affected by the tribe's decisions an opportunity to have their say, and to have the tribe respond directly to their substantive environmental concerns. Not only does that address legitimate interests of reservation residents and neighbors who have no direct say in tribal government, but it helps alleviate the often still-lingering perception that tribal governments are not responsive to valid [\*1093] non-tribal concerns. n162 On the other hand, of course, there is little question that the public comment process also allows those who oppose or fear tribal actions generally to make their misgivings part of the record. Nonetheless, the values of public participation may outweigh the concerns those types of comments can pose.

In addition, some tribes pursuing a TERA may already have a tribal environmental review process in place. Tribal environmental policy acts (TEPAs) have long been advocated, n163 and in 2000 the Tulalip Tribes published a guide for Indian tribes interested in developing TEPAs. n164 Tribes that have chosen to develop TEPAs generally cite the importance of "proper and meaningful consideration of environmental, cultural, historical, and ecological factors" before development occurs, n165 and the need "to protect and preserve" the reservation and "to provide a safe and habitable homeland" for the generations. n166 It is difficult to determine how many tribes have TEPAs currently in place, n167 but of those tribal TEPAs readily available online, at least some provide either a public notice and comment process or some method of public participation in [\*1094] the environmental review process. n168 Although those tribes have chosen to include public participation in the environmental review process, and tribes entering into TERAs are required by federal law to do so, there is no indication that such provisions have proven problematic for the tribes that adopted them.

#### Incentives solve small-scale renewables—there’s no impact to bigger ones—their author

Kronk, 10

(Assistant Professor of Law-Texas Tech, “Alternative Energy Development in Indian Country: Lighting the Way for a Seventh Generation,” 46 Idaho L. Rev. 449, Lexis)

Not only do alternative energy projects have a strong likelihood of success, as explained above, but there **are many incentives** for alternative energy development in Indian country. Moreover, as discussed, many tribal communities are uniquely situated to take advantage of alternative energy development opportunities because these communities may be flush with renewable energies. Alternative energy development in Indian country offers a new hope for some tribal communities, because "[w]ith Tribal communities economically hamstrung by inadequate infrastructure, no tax base, and population growth outpacing infrastructure growth, energy and infrastructure development . . . will not just provide new revenue streams but also attract capital investments in manufacturing . . . [and] new sustainable employment." n58 The Honorable Steve Herrera, a Southern Ute Indian Tribal Council Member, also indicated that Native Nations may be interested in taking greater control over alternative energy development, because "[o]ne persistent theme reflected in the last thirty years of our tribe's history is the notion that ultimately we are the best protectors of our own resources and the best stewards of our own destiny." n59 Even if a Native Nation should determine that a large-scale commercial development of alternative energy resources is not plausible because of the obstacles discussed later in this article, it may be advantageous for the Native Nation to consider alternative energy development to support the energy needs of its own people, such as the Blackfeet nation did. n60 Small scale wind projects, for example, can be relatively affordable for **most Native Nations**. n61 While not presenting [\*459] the same financial incentives of the large-scale alternative energy projects, these smaller alternative energy projects still offer Native Nations an opportunity to provide free or affordable energy for their citizens, and also to provide some employment opportunities. n62 Additionally, because of their potentially smaller impact on the environment, small-scale alternative energy projects may avoid the extensive environmental impact assessment requirements the National Environmental Policy Act imposes on larger projects. n63

That’s key to the radical potential of renewable energy—their author

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/article-laduke.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.

#### More aff authors

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))

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.

===NU’S CARD ENDS===

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.

## 2NC Corporate Colonialism DA

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

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

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

The legislation would also **waive Interior’s trust responsibility** to the tribes in energy dealings. This trust relationship means the federal government must ensure that tribes get a fair shake when their land is leased for mining, grazing, logging or drilling. In recent years, Indians have sued the Interior Department, accusing the agency of mismanaging billions of dollars it collected from those leases (HCN, 5/12/03: Missing Indian money: Piles or pennies?).

But some tribal leaders and environmental groups say there aren’t enough financial and human resources in Indian Country to ensure that tribal energy resources are developed in an environmentally responsible way. They fear that the legislation, dubbed the “Native American Energy Development and Self-Determination Act” before being rolled into a larger, catchall Senate energy bill, would leave tribes vulnerable to exploitation by energy companies.

Historically, when tribes have tried to assert their authority over corporations, “they’re challenged at every turn,” says David Getches, a professor of natural resource law at the University of Colorado and one of the founders of the Native American Rights Fund. “When you’re talking about things like power plants, where there are millions of dollars involved, you will see some of the most vigorous challenges ever to tribal sovereignty.”

“I think a better name for this legislation would be the ‘Native American Self-Termination Act’,” says Robert Shimek, special projects director for the Indigenous Environmental Network and a member of the Chippewa Tribe. “The way it’s proposed, it reopens the door for dirty projects — projects that nobody else wants.”

Shimek is wary of a return to the days when the federal government endorsed projects like the Black Mesa coal mine on the Navajo reservation in northeastern Arizona. In the 1960s, the Peabody Coal Company strip-mined 17,000 acres of tribal lands, and the still-active operation has been blamed for depleting the aquifer and drying up the Hopi Tribe’s sacred springs.

“(Tribal lands) were essentially energy colonies for the rest of the country,” says Lester.

When the Senate resumes debate on the energy bill this summer, Campbell is expected to offer an amendment addressing some of critics’ concerns, including retaining Interior’s trust responsibility and **laying out requirements** that tribes would have **to follow when conducting environmental reviews.**

#### Bigger internal link to self-determination

Di Giovanni, 3

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

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

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

Awehali, 6

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

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

## AT: Cornell/Builds Accountability

#### Lack of capacity ensures no accountability

Sislin, 10

(Esq., Advocacy Director for Women's Earth Alliance 4/28, Sovereignty versus stewardship, http://www.hcn.org/hcn/greenjustice/blog/sovereignty-versus-stewardship)

Last month, Sen. Byron Dorgan (D-N.D.) released the draft of a bill intended to “unlock the potential of Indian energy resources.” The bill would amend the Energy Policy Act of 1992 to ease restrictions on extractive industry’s activities on tribal lands, including the elimination of federal drilling fees, the reduction of federal environmental oversight, and the exemption of tribes from non-federal taxes on energy development projects. Through these marked limitations on federal environmental regulation of tribal energy projects, and the concomitant promotion of a “one-stop-shopping” federal permitting process for energy companies seeking to exploit tribal energy resources, the bill pits tribal sovereignty against environmental stewardship. All of this is in service of prolonged reliance on fossil fuel energy resources. Under section 204(b) of Dorgan’s draft bill, “Environmental Review,” the federal government effectively divests itself of environmental review responsibility, turning that resource-intensive and expertise-dependent task over to tribal governments. This provision, which allows the Secretary of the Interior to “delegate to any participating Indian tribe the responsibility to carry out any environmental review, decision making, or other activity pursuant to the National Environmental Policy Act” provokes the concern among some citizens that tribal leaders – relatively unprepared to review energy project proposals, and interested in obtaining sorely-needed funds from those projects to build tribal economies – **may rush to approve environmentally-harmful projects on tribal lands.**

## 2NC Land DA/AT: Sovereignty

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

Wood, 94

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

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

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

Aronsen, 11

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

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

Specifically environmental impact statements allow native sovereignty and serve as a site of resistance---the plan undermines that

Bosworth, graduate student – Department of Geography @ U Minnesota, ‘10

(Kai, "Straws in the Wind: Race, Nature and Technoscience in Postcolonial South Dakotan Wind Power Development,” Honors Projects, Paper 7, <http://digitalcommons.macalester.edu/envi_honors/7>)

Chapter 5 takes a detailed look at public representations of Native Americans and wind power, including a guide to Native American wind development produced by the Department of Energy, videos examining the Rosebud efforts to build a wind turbine, and other web images and narratives. I argue that dominant images of the Ecological Indian fail to interrogate colonialism, while homogenizing Native American experience under essentializing and romantic notions of indigenous people as closer to nature. Finally, in Chapter 6, I examine the Environmental Assessment produced for the Owl Feather War Bonnet wind farm. The report, compiled by Rosebud Tribal Utility employee and project developer Ken Haukaas, is the messy product of an assemblage of human and nonhuman actions. I argue that the Environmental Assessment shows the ways in which Haukaas and others contextualized wind power technology and inserted local politics into its pages. The technoscientific process of evaluating the impact of wind power was an emergent site for the negotiation of meaning, providing space for different articulations of indigeneity, colonialism, and the value of nonhumans.

## AT: Paternalism/Trust Doctrine Bad

#### Critiques of paternalism don’t apply to our counterplan

Wood, 94

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

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

## AT: NEPA Not Key

#### NEPA review key to solve---builds in tribal community participation that can check the most egregious forms of development

Miles, 6

(JD-Oklahoma Law, TRIBAL ENERGY RESOURCE AGREEMENTS: TOOLS FOR ACHIEVING ENERGY DEVELOPMENT AND TRIBAL SELF-SUFFICIENCY OR AN ABDICATION OF FEDERAL ENVIRONMENTAL AND TRUST RESPONSIBILITIES?, 30 Am. Indian L. Rev. 461)

NEPA Review and TERA Tribes Opponents, including some environmental groups, have expressed concern that Title V will eliminate the federal guarantees of public participation and environmental review from energy development decisions in Indian Country. n78 Further, opponents state that the "language also **undercuts the federal trust** [\*471] **responsibility** to Tribes by providing a waiver for the federal government of all liability from energy development." n79 Additionally, "other governments - state, local and foreign - are not required to conduct a NEPA review of actions they approve." n80 Some claim that the bill releases the federal government from its traditional trust responsibility to ensure the protection of the health, environment, and resources of Tribes and undermines federal environmental laws such as NEPA for energy development projects on Indian lands, resulting in a rearrangement of the federal- tribal relationship. n81 For example, during a congressional oversight hearing on NEPA, Zuni tribal member Calbert Seciwa stated "that NEPA was a vital tool in the Zuni Salt Lake Coalition's successful fight to block development of a coal mine near the sacred lake south of Gallup." n82 Environmentalists also criticize the new language. The National Resources Defense Council argued that the provisions remove the federal guarantee of environmental review and public participation. n83 Sharon Buccinio, an attorney for the NRDC argues Title V could remove the application of federal laws, such as NEPA and the National Historic Preservation Act, from energy development decisions on tribal lands. The bill affects land both on and off the reservation. It provides that once the Secretary of the Interior approves a [TERA] providing a process for making energy development decisions, individual energy projects would proceed without federal approval. Since no federal action would occur, the existing guarantees of environmental review and public participation under NEPA would be lost**. Concerned tribal community members and communities adjacent to the project would lose the mechanism that they now have to make their voices heard.** n84 [\*472] Because of the ongoing concern that TERA tribes could ignore NEPA, Congress added a tribal environmental review process to the TERA. n85 The environmental review process must provide for the identification and evaluation of all significant environmental effects, including effects on cultural resources, identify proposed mitigation measures, and incorporate these measures into the TERA agreement. n86 In addition, the Tribe must ensure that the public is informed of and has the opportunity to comment on the environmental impacts of the proposed action, provide responses to relevant and substantive comments before tribal approval of the TERA agreement, provide sufficient administrative support and technical capability to carry out the environmental review process and allow Tribal oversight of energy development activities by any other party under any TERA agreement to determine whether the activities are in compliance with the TERA and applicable federal environmental law. n87 The environmental review requirements arguably could be considered contrary to the twin-goals of fostering tribal self-determination and promoting the efficient development of minerals. n88 The NEPA-like requirements of Title V seek to balance environmental concerns with mineral resource development in a way that is potentially more efficient than the federal NEPA process. Title V and the Federal - Indian Trust Relationship Some Native Americans worry that Title V and its provisions could damage the trust relationship between the United States and Indian Tribes. n89 Opponents state that some tribes do not have the institutional and enforcement mechanisms needed to guarantee that tribal resources will be developed responsibly. n90 Although the Act includes clear language upholding the federal government's trust responsibility, Clayton Thomas-Muller, Native Energy Organizer at the Indigenous Environmental Network, stated that **under the guise of tribal sovereignty**, Title V puts the responsibility of environmental [\*473] review of policy and regulations in the hands of tribal governments. n91 Thomas-Muller further stated that some tribes"have the capacity to do what they need to do - but there are hundreds that don't and are being set up to fail." n92

## sq solves

#### Existing DOE training programs solve

LeBeau, 12

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

We announced the START initiative in December 2011 at the White House Tribal Nations Conference, with an application deadline of January 15, 2012. We received 24 applications for Alaska, and 22 applications for the lower 48 states. We currently are reviewing those applications. Tribal Leader Training. The Tribal Leader Energy Education Initiative is the DOE Office of Indian Energy's training program and curriculum for tribal leaders on renewable energy project development and financing, including how to build a framework for tribal project development and ways to identify likely projects. We piloted initial curriculum at the National Congress of American Indians Annual Convention in November 2011, and we continue to provide training to Tribes online via webcasts and in person at tribal conferences. In addition to the training curriculum, we also initiated a series of Tribal Leader Forums to bring tribal leaders, federal agencies, and industry together to have in-depth discussions about particular aspects of energy development. We have already held two forums--one on solar energy development in the southwest and one on transmission and clean energy integration. We are planning several more, including a conventional energy forum and a forum on investment and project finance opportunities. Education and Capacity Building. In addition to the tribal leader training curriculum, we are expanding our curriculum to address the need for expanded understanding by tribal financial officers, attorneys, and executives on project development and project finance. This in-depth training is designed to build capacity for the tribal professionals who support tribal leaders in making the key decisions on energy development projects. We also have an effort underway to create a document library and to put more of our training and education programs online and make them available on demand. Transmission and Electrification. Understanding the transmission grid, interconnection issues, and issues related to distribution of electricity also are critical for successful development of energy projects, whether commercial or community scale. We are working with our partners in DOE to ensure tribal participation in the transmission planning efforts DOE funds and participates in. Our transmission technical assistance program is designed to assist Tribes with preparing for participation in transmission planning, which will help them identify opportunities for their own clean energy development. As I mentioned above, we have already hosted a forum on transmission and clean energy development. We had more than 30 Tribes in attendance, with presentations from utilities, transmission planning authorities, WAPA, BPA, DOE, and other industry experts. We plan to continue to provide assistance to Tribes on transmission through a program that will focus on: \* Coordinating tribal input with national transmission planning initiatives; \* Collaborating with Office of Electricity Delivery and Energy Reliability (OE) and WAPA on a Pilot Tribal Transmission 101 Workshop; \* Collaborating with the Tribal Energy Program, OE, and WAPA through a webinar series on Transmission Basics Training for Tribal Decision Makers; and \* Working with OE and WAPA to map and create baseline studies of transmission in Indian Country, and we also will update information in a 2000 EIA report on electrification issues in Indian Country. We also participate on the White House Rapid Response Team for Transmission (RRTT), an effort to improve the overall quality and timeliness of electric transmission infrastructure permitting, review, and consultation by the federal government on both federal and non-federal lands. Tribal Energy Program The DOE Office of Energy Efficiency and Renewable Energy's Tribal Energy Program was established under the Energy Policy Act of 1992 to implement DOE's responsibilities under that act. Since 2005, the program has been implementing the Office of Indian Energy's EPAct Title V grant authority and has been providing funding related to renewable energy and energy efficiency. In addition to competitive grants, the **Tribal Energy Program offers financial and technical assistance for renewable energy feasibility studies and the initial steps toward developing renewable energy** and energy efficiency projects, including strategic planning, energy options analysis, human capacity building, and organizational development planning. Since 1994, **DOE has funded a total of 210 tribal energy projects and invested over $45 million.** These grants primarily have funded resource assessment, feasibility studies, and strategic energy planning. Recently, grants have been awarded for pre-development, deployment planning, and energy efficiency projects. In FY 2011, the program awarded $5.6 million to 30 tribal energy assessments and initiatives to audit more than 200 tribal buildings and initiate strategies for the reduction of 30% in energy use in another 13 tribal buildings. These funds also will assist Tribes in training tribal members, assessing clean energy options, and building energy organizations. The program also offers free technical assistance to Tribes (up to 40 hours) which has focused much of its efforts on energy strategic planning, and also funds WAPA to conduct a limited number of pre-feasibility studies on transmission capacity. The Tribal Energy Program has conducted annual workshops on energy development and energy efficiency, as well as regional workshops. Finally, the program has an annual conference for tribal grantees to showcase and discuss their projects that have been funded by DOE. **Indian Country is bustling with energy development activity**. Much of this activity is in the early phases and stages of development where Tribes are trying to determine next steps, understand their resources, negotiate with developers, work within their communities to develop support for energy development, and educate themselves. Some Tribes have been very successful at developing strategic energy plans and have some well-formed plans for energy development. Many also have begun actual deployment. Examples of how DOE has helped some Tribes include: \* Strategic energy planning with the Mescalero Apache and Gila River Tribal communities provided by DOE's Sandia National Laboratories. \* Forest County Potawatomi Tribe facility-scale development through the Community Renewable Energy Deployment grant funded by DOE through the American Reinvestment and Recovery Act of 2009 (Recovery Act) and the Energy Efficiency and Conservation Block Grant (EECBG). \* Delaware Nation facility-scale development through EECBG and DOE state funds. \* Oneida Nation of Wisconsin Seven Generations waste-to-energy project -- in Green Bay with DOE state energy funding (and Bureau of Indian Affairs loan guarantee).

#### Too many programs to list

LeBeau, 12

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

Recovery Act Funding Through the Recovery Act, Congress appropriated billions of dollars for energy development and energy efficiency efforts. The largest effort was funding $3.4 billion dollars for the EECBG program. **By statute, there is 2% set aside for Tribes** within the EECBG formula grants. **Under this set-aside DOE awarded $54 million in grants to more than 533 Tribes to create long-term energy plans, reduce energy use, and install clean energy projects** within their communities. Original estimates from the Tribes indicate that under these 3-year projects, these funds will support more than 2,129 building retrofits, the installation of 1.4 MW of new wind and solar energy generation, and the development of more than 140 energy strategies. In addition, **Tribes received Recovery Act funding through other programs**. For example, the Forest County Potawatomi Tribe (mentioned earlier) received $2.5 million through the DOE Community Renewable Energy Deployment effort to help communities implement long-term renewable energy technologies, create jobs, and provide examples for replication by other local governments, campuses, and small utilities. The Forest County Potawatomi Tribe was the first community to complete their project --a rooftop solar photovoltaic installation on the Tribe's administration building in Milwaukee. It now serves as a showcase not only for Indian Country, but for other communities across the nation. Two Tribes--Pyramid Lake Paiute Tribe in Nevada and Pueblo of Jemez in New Mexico-- received $5 million in grants under DOE's geothermal program. Both Tribes are using these funds to explore geothermal potential on their lands. Finally, the Navajo Tribal Utility Authority received a $6 million Smart Grid grant from OE to implement smart meters and upgraded grid technology. Other DOE Office Support As stated earlier, one of our primary goals is to leverage existing DOE resources to promote and implement energy development in Indian Country. To that end, we have started coordinating discussions with several DOE offices and entities. For example, we currently are working with the Office of Energy Efficiency and Renewable Energy to incorporate Tribes into the Solar America Communities and Wind Powering America programs. We hope this coordination enables us to leverage the considerable technical assistance mechanisms developed by these programs for government and community leaders. These programs also have created educational materials by working with and learning from government leaders on implementing renewable energy policies and programs at the community level. It is our goal to leverage those lessons and best practices in Indian Country, so that we do not have to recreate the wheel and can apply proven techniques and technical assistance. To further support Tribes in clean energy and infrastructure development, WAPA and BPA continue to provide technical assistance and make training opportunities available to the Tribes in their regions. In conjunction with the DOE Office of Indian Energy and the Tribal Energy Program, WAPA is conducting a series of webinars that promote tribal energy sufficiency and foster economic development and employment on tribal lands through the use of renewable energy and energy efficiency technologies. The webinars will: \* Discuss methods for Tribes to evaluate and develop their renewable energy resources; \* Help Tribes build the knowledge and skills essential for sustainable energy projects; \* Outline a process of strategic energy planning for Tribes interested in improving their energy sovereignty and local economy; \* Provide renewable energy and energy efficiency information for tribal decision makers; and \* Offer ways for Tribes and utilities to partner in renewable energy and energy efficiency development. Through funding support from the Tribal Energy Program, WAPA also provides technical assistance to Tribes that request pre-feasibility studies on transmission capacity for potential commercial-scale development. WAPA also has worked with more than 100 tribal preference customers, receiving a total of 1.2 million MWh in generated electricity annually, ranging from 60 MWh to 182,000 MWh for different Tribes. WAPA has conducted two studies to specifically help Tribes overcome barriers to receiving federal allocation and integrate wind generation. BPA provides technical assistance to Tribes in the northwest. It has hosted Electric Utility System Operations training for regional Tribes that are developing tribal utility departments, marketing tribal energy resources, or developing tribal strategic energy plans. BPA also partners with Tribes to host a fall and spring tribal weatherization workshop to provide technical training assistance and networking opportunities for tribes who participate in the BPA low-income weatherization and energy efficiency program. Tribes who are served by public utility customers of BPA are eligible to participate. In June 2011, DOE announced a unique multi-year partnership between the American Indian Higher Education Consortium and the American Indian Science and Engineering Society (AISES) to bring science, technology, engineering, and mathematics (STEM) research and education funding to students at our nation's tribal colleges and universities (TCUs) and mainstream institutions. This partnership will provide a record-high amount of funding from the DOE to Indian students and tribal college faculty. DOE and its national laboratories' science resources will be integrated into the national American Indian STEM educational infrastructure, providing a significant contribution to the science education experience of American Indian students, particularly those pursuing careers in disciplines relevant to the DOE and its national laboratories. Through this 3-year program, American Indian students will be recruited to join student/faculty teams to participate in community energy projects on tribal lands, with the mentorship of DOE's national laboratories. Courses and workshops will be offered through a new 2-week Energy Institute hosted by TCUs and the national laboratories, and a mentor pool of national laboratory personnel will be on hand to guide American Indian Research and Education Initiative (AIREI) faculty and student participants on education, research, and career topics. Each year for 3 years, AIREI will fund two student teams from TCUs and two student teams from mainstream institutions with active AISES chapters to work with DOE's national laboratories on energy research projects. The National Nuclear Security Administration's (NNSA) national laboratories have utilized their expertise to partner in scientific education initiatives and research projects in collaboration with tribal government partners. Just last week, Lawrence Livermore National Laboratory (LLNL) entered into a Memorandum of Understanding (MOU) with the Navajo Nation to provide technical assistance on the nation's efforts to develop renewable energy resources, clean coal technology, and carbon sequestration.

#### Status quo solves—development now

Kronk, 10

(Assistant Professor of Law-Texas Tech, “Alternative Energy Development in Indian Country: Lighting the Way for a Seventh Generation,” 46 Idaho L. Rev. 449, Lexis)

In addition to increasing interest from outside investors, federal initiatives have spurred interest in alternative energy development in Indian country. As a result of the incentives offered through the Energy Policy Act of 1992, several Native Nations developed alternative energy projects on their lands. For example, "[t]he Blackfeet tribe installed a wind turbine at its community college near Browning, Montana." n67 Likewise, "[t]he Spirit Lake Sioux tribe of North Dakota installed a wind turbine to supply electricity to the tribal casino. They are seeking to create a tribal utility powered by renewable energy." n68 Additionally, the Department of Energy (DOE) has tools available to help encourage the development of alternative energy in Indian country, but many of these tools, such as the Office of Indian Energy Policy and Programs, have yet to be fully and effectively funded. n69 Similarly, there is statutory language designed to encourage federal agencies to purchase renewable energy, and especially renewable energy developed within Indian country. However, to date, few federal agencies have purchased alternative energy produced in Indian country. n70 As suggested previously, there is significant political interest in developing alternative energy resources. The recently passed American Recovery and Reinvestment Act (ARRA) may be used to help foster alternative energy development in Indian country. This is because [\*461] [t]he ARRA included $ 16.8 billion for "Energy Efficiency and Renewable Energy," a broad category that includes $ 3.2 billion for Energy Efficiency and Conservation Block Grants. The ARRA also provided $ 5 billion for the Weatherization Assistance Program, and $ 4.5 billion for Electricity Delivery and Energy Reliability. This latter program is related to expenses necessary to electricity delivery and energy reliability of the energy infrastructure energy storage research and development, demonstration and deployment, and facility recovery. In addition, $ 100 million is allocated for "worker training." n71 There are therefore tools in place that, although perhaps not yet fully funded or implemented at the federal level, should ultimately help spur alternative energy development in Indian country. III. NATIVE NATIONS CAN DO IT! PRESENT-DAY ALTERNATIVE ENERGY DEVELOPMENT IN INDIAN COUNTRY Recognizing the importance of combating climate change and taking advantage of many of the incentives discussed above, some Native communities are already participating in alternative energy projects. By reducing the dependence on fossil fuels through "clean" energy generation, renewable energy projects help combat climate change. n72 Common renewable energy sources include: wind, hydroelectric, solar, landfill gas, geothermal, and biomass. Many of these renewable energy sources have a limited impact on the environment but the potential for substantial benefits for Native Nations. In addition to the wide array of renewable energy projects available to Native Nations, Native Nations have many choices as to how to finance alternative energy projects. n73

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## yes escalate

#### Aging the great exception to their no war arguments – it’s a predictable inevitability that will collapse great powers and make US strength more important than it is today – we turn all their warrants why the squo is stable because only more immigration maintains international ties

**Hass 8**, assistant professor in the department of political science and the Graduate Center for Social and Public Policy at Duquesne University. He formerly was a National Security fellow at the Olin Institute for Strategic Studies and an International Security fellow at the Belfer Center for Science and International Affairs, both at Harvard University, (Mark, “Pax Americana Geriatrica,” July 14, <http://www.miller-mccune.com/culture-society/pax-americana-geriatrica-4416/>)

The Ulyanovsk initiative is just a part of Russia’s efforts to fight a looming demographic crisis that hovers over much of the world. Simply put, the world’s great powers are growing old. Steep declines in birthrates over the last century and major increases in life expectancies have caused the populations of Britain, China, France, Germany, Japan, Russia and the United States to age at a substantial rate. In Russia, declining birthrates and other factors are not just aging the society but actually shrinking the country’s population.

This phenomenon will have critical effects on America’s international-security interests in coming decades. Most important, global aging will be a potent force for the continuation of American military and economic dominance. Aging populations are likely to result in the slowdown of states’ economic growth at the same time that governments face pressure to pay for massive new expenditures for elderly care. This double economic dilemma will create such an austere fiscal environment that the other great powers will lack the resources necessary to overtake the United States’ huge power lead. This analysis applies even to China, which most analysts point to as America’s most likely future rival. China’s aging problem will be particularly dramatic over the next 40 years, which will make it difficult for it to challenge American international supremacy.

Meanwhile, America also seems likely to face fewer threats from terrorism based in Islamic countries. If current demographic trends continue, many Islamic states — now in the throes of “youth bulges” — will be aging as societies in coming decades. As active and disaffected young people have aged in other parts of the world, they have become a source of political stability and economic development. There is reason to believe this pattern will hold in Iraq, Pakistan, Saudi Arabia and other Muslim states as their youth slip into middle age.

Although the United States is also growing older, it is doing so to a lesser extent and less quickly than the other great powers. Consequently, the costs created by aging will be significantly lower for the U.S. than for potential competitors. Global aging is therefore likely not only to extend U.S. dominance (because the other major powers will lack the resources necessary to overtake the United States’ economic and military power lead) but also to deepen it as these other states are likely to fall even farther behind the United States. By inhibiting the other powers from challenging American primacy, global aging increases the odds in favor of continued peaceful relations among these states. Pax Americana is therefore likely to extend well into the 21st century.

Although the United States is in better demographic shape than the other great powers, it, too, will confront massive new costs created by an aging population. The U.S. will be more secure from great-power rivalry than it is today, but it (and its allies) will be less able to realize other key international objectives, including preventing the proliferation of weapons of mass destruction, funding nation building and engaging in humanitarian interventions, among the many costly conflict-resolution and prevention efforts it now undertakes. To protect America’s future international interests, it is vital that the country’s current leaders adopt policies designed to strengthen its demographic advantages. In the future, America’s ability to pay to care for its elderly citizens will become a matter not just of compassion but of national security.

Something New Under the Sun

The scope of the aging process in the great powers — a result of historically low fertility rates and expanding life expectancies —is unprecedented. By 2050, at least 20 percent of the citizens in Britain, China, France, Germany, Japan, Russia and the U.S. will be over 65, according to United Nations projections. In Japan, more than one of every three people will be over this age. In 2050, China will have more than 329 million people over 65, a total approximately equal to the entire current populations of France, Germany, Japan and the United Kingdom combined. As aging progresses over the next half-century, the populations in Germany, Japan and Russia are expected to shrink significantly. Russia’s population is already decreasing by nearly 700,000 people per year, and Japan, too, is experiencing population decline. Russia’s aging problem is so severe that, in 2006, The New York Times quoted President Vladimir Putin calling demography “Russia’s most acute problem today.”

The aging of the world’s great powers is also happening quickly. It took France 115 years for the size of its 65-and-over age group to double from 7 to 14 percent of its population. The U.S. took 69 years to do so. China will experience this transformation in 27 years, or roughly one generation. China, in fact, will age at a pace and extent scarcely before witnessed in human history.

It is worth stressing that the predictions for global aging are very unlikely to be wrong. The reason for this certainty is simple: The elderly of the future are already born. Consequently, absent some global natural disaster, disease pandemic or other worldwide calamity (all extremely rare historically), the number of people in the world who are over 65 will increase dramatically in coming decades. Only major increases in immigration rates or fertility levels will prevent this inevitable rise in the number of elderly from resulting in significant increases in median ages in these states.

Such outcomes are unlikely. Over the next 50 years, immigration rates in the great powers would have to be orders of magnitude higher than historical levels to prevent population aging. Not only do the sheer numbers work against such an outcome, but some countries are becoming more hostile to immigration, despite its benefits for social aging. Both Japan and Russia passed laws in 2006 that will restrict immigration to these states, and right-wing parties have been on the rise across Europe since the 1990s, spurred largely by hostility toward immigrants.

Significant increases in fertility are also unlikely. Such an outcome would require a reversal of a centuries-long trend in the industrialized world, and one that has existed in many states despite the existence of pro-fertility governmental policies (perhaps the most direct of these being Russia’s “sex days”).

Aging in the most powerful actors in the international system is, in short, a virtual inevitability.

The Costs of Growing Old

In its most basic formulation, a state’s gross domestic product is a product of the number of workers and overall productivity. When a country’s work force shrinks as more people enter retirement than enter the labor market, so, too, will its GDP, unless productivity levels rise sufficiently to compensate for the loss. Japan’s and Russia’s working-age populations (ages 15 to 64) are expected to shrink by 34 percent by 2050, Germany’s by 20 percent, France’s by 6 percent and China’s by 3 percent. To prevent these work force reductions from translating into overall GDP decline, states’ productivity must increase proportionally. Although productivity will likely increase in most industrialized countries, work force contraction will still act as a substantial brake on economic growth in coming decades.

We are already witnessing this dynamic. Even though China is the youngest of the great powers, it is experiencing labor shortages that are threatening economic growth. These shortages are due in large part to the aging of China and reductions in the number of 15- to 35-year-olds there. Experts predict that shrinkage in China’s working-age population will result in a loss of 1 percent per year from this state’s GDP growth by the 2020s. The economic forecasts are even more dire for France, Germany and Japan, where massively contracting labor forces could result in overall annual GDP growth of roughly 1 percent in coming decades.

Significant societal aging may also limit productivity growth. The elderly are likely to be more conservative with their investments than younger people. The more risk averse a society’s investment portfolio is, the less entrepreneurship will be funded and, thus, the lower the gains in productivity. National savings rates may also shrink in aging states as seniors spend down their savings. The Japanese government has already reported that national savings rates are down substantially due to social aging. Reduced savings may lead to rising interest rates and ultimately to reduced rates of productivity increases.

An even more important economic effect of societal aging is the strain that it places on governmental resources. All governments in the industrialized world have made commitments to pay for substantial portions of the retirement and health care costs of their elderly citizens. Social aging increases these obligations in two principal respects. First, the older a society is, the greater the number of retirees and senior citizens for which a particular government is responsible. Second, the elderly, on average, require significantly more resources than working-age adults. Studies have shown that seniors use three to five times more medical care than younger people, for example.

The pension systems across the industrialized world will be particularly taxing on governments’ fiscal policies. The public pensions in all of the great powers are “pay as you go,” meaning that current workers are taxed to support current retirees. This type of system does not place a significant strain on a state’s economy as long as relatively high numbers of workers contribute to the system in relation to retirees. This will not be the case for much longer across the industrial world, and, in some cases, it is not true even today. France, Germany, Japan and Britain have roughly only four working-age adults per senior citizen. By 2050, only America among the great powers will have more than three working-age adults per elderly person.

The projected increases in governmental spending for the elderly in coming decades are sobering. Annual public pension and health care benefits to the elderly as a percentage of GDP are predicted to rise in 2040 by 15 percent in Japan (to an overall percentage of 27); by 13 percent in France (to an overall percentage of 29); by 11 percent in the United States (to an overall percentage of 20); by 10 percent in Germany (to an overall percentage of 26); and by 6 percent in Britain (to an overall percentage of 18).

These costs will be an increase of hundreds of billions of dollars to governments’ annual expenditures for many decades. To give some perspective on their magnitude, consider the following: Roughly 35 years from now, the annual amount of money that the great powers will have to spend on elderly care is going to increase by many times what these states currently spend on their militaries, even after adjusting for inflation. By 2040, Germany will have to increase its annual spending on elderly care by more than seven times what it currently spends on defense. France will have to spend more than five times as much and Japan more than 15 times as much.

Pax Americana Geriatrica

Population aging in the great powers will help prolong U.S. power dominance in the 21st century for three primary reasons. First, the massive costs created by aging populations, especially in combination with probable slowdowns in economic growth, will inhibit other major powers from significantly increasing military expenditures; these factors are even likely to push many of these states to reduce military spending from current levels. Second, with aging populations and shrinking work forces, other great powers will be forced to decide whether to spend increasing percentages of their defense budgets on personnel costs and military pensions, at the expense of the most technologically sophisticated weaponry. The third factor reinforces both of the previous points: Although the U.S. population is aging, it is doing so to a lesser extent and less quickly than those of the other great powers. The pressures pushing for the crowding out of military spending in favor of elderly care and the increasing substitution of labor for capital within defense budgets will be considerably smaller for the U.S. than for potential great-power competitors. By inhibiting the other powers from challenging America’s huge power lead, global aging will increase the likelihood of continued peaceful relations among these states.

We are, in fact, already witnessing in some states the crowding out of military spending for elderly care. Japan reduced military spending in the 2005 and 2006 budgets explicitly to pay for costs created by its rapidly aging population. The Japanese government has stated that over the next decade, general expenditures will have to be cut by 25 to 30 percent to address this problem. Similar pressure for cuts in defense spending to finance elderly-care costs is building in France and Germany.

The decision to cut military spending to pay elderly-care costs is likely to repeat itself in the state that is aging faster than any of the great powers: China. Rising longevity in China and the “one-child policy,” which has helped lower dramatically China’s fertility levels, have made China a rapidly aging society. By 2050, according to the U.N., China’s median age is predicted to be nearly 45, one of the oldest in the world. (The oldest country in the world today, Japan, has a median age of just under 43). The ratio of working-age adults to elderly will shrink from just under 10 in 2000 to 2.5 by 2050. China today has roughly 100 million citizens over the age of 65. This number will double in 20 years. Roughly 30 years from now, it is expected to triple.

Despite the effects of the one-child policy on China’s median age, China’s leaders are unlikely to repeal it in the near future. The New York Times reports that the Chinese government significantly increased the fines this year for wealthy couples who violate the law and have more than one child. Although some Chinese officials talk about reconsidering this law, any changes that do occur will most likely be incremental. The longer the one-child policy stays in effect, the more quickly China will age.

China is particularly unprepared to pay for the costs of its rapidly aging population. China’s elderly have very little savings. Nearly 80 percent of Chinese urban households with individuals aged 55 and over today have less than one year of income saved, and only 5 percent have more than two years of income in savings, according to Center for Strategic and International Studies and Asian Development Bank research. The Chinese government has also failed to set aside over the decades sufficient money to pay for elderly-care costs. Three-quarters of all Chinese workers are without any pension coverage, yet independent estimates have found a potential shortfall between China’s governmental obligations to the elderly and saved assets to be as much as 150 percent of its GDP.

China will not be able to “grow” its way out of this dilemma. Despite China’s very high levels of economic growth since the 1990s, it will become the first country to grow old before becoming an advanced industrial state. Even if China’s economy continues to grow in coming decades at rates similar to those it has experienced in recent years, by 2035, its median age will reach the levels of France, Germany and Japan today but at GDP-per-capita levels significantly lower than these states currently possess.

China has traditionally relied on the family unit to provide for elderly care in lieu of adequate public and private resources. But as The New York Times has noted, increasing rates of divorce, urbanization (and related migration) and female work force participation will place significant strain on this tradition. Decreasing family size will prove especially problematic for preserving elderly welfare within the context of the family. Demographers refer to a rapidly growing “4-2-1″ phenomenon in China, in which one child is responsible for caring for two parents and four grandparents.

Within 15 years, China’s leaders will be faced with a difficult choice: Allow growing levels of poverty within an exploding elderly population, or provide the resources necessary to avoid this situation. The Chinese government’s assumption since 2000 of unfunded pension liabilities of state-owned enterprises reveals the political and moral pressure working for the latter outcome. This pressure to significantly expand and deepen China’s welfare system will only grow as its aging crisis becomes increasingly acute in the decades to come. In this context, the crowding out of military and other discretionary expenditures will be likely, to the great benefit of America’s relative power position.

Aging is also likely to push militaries to spend more on personnel and less on other areas, including weapons development and procurement. This is important because no nation will be able to challenge U.S. military dominance without the ability to wage highly technologically sophisticated warfare. When states are forced to spend more of their military budgets on personnel than research, development and weapons procurement, the odds of continued U.S. military primacy increase substantially.

The oldest of the great powers are already devoting significantly more resources to military personnel than weapons purchases and research. Over the last 10 years, both France and Germany have dedicated nearly 60 percent of their military budgets to personnel. Germany spends nearly four times as much on personnel as weapons procurement; France, Japan and Russia roughly 2.5 times more. The U.S., in contrast, dedicates only 1.15 times more money to personnel than weapons purchases.

Population aging is a key cause of increasing military personnel costs for two main reasons. First, as societies age, more people exit the work force than enter it. Increasing numbers of retirees in relation to new workers are likely to create labor shortages relative to previous levels of employment. The result will be increased competition among businesses and organizations —including the military — to hire workers. Consequently, if states’ militaries want to be able to attract and keep the best employees in vital areas of operation — especially those in high-tech fields who usually have the most employment options and can command high salaries in the private sector — they are going to have to pay more to do so. If militaries do not increase their outlays for personnel, their effectiveness will diminish. A 2006 report endorsed by EU defense ministers made precisely these points, stating that the aging of Europe’s people will “inevitably” lead to rising military personnel per capita costs if European forces are to remain effective.

Similarly, to keep military salaries on par with wages in its expanding economy, China — even though its armed forces are conscripted — has had to raise military wages sharply in recent years. According to the Chinese government, growing personnel expenses are the most important factor behind the growth of China’s defense budget in the last decade.

The great powers’ pension obligations to retired military personnel are also considerable. Russia spends significantly more on military retirees than on either weapons procurement or military research and development, according to its 2006 defense budget.

Pensions for military retirees are not one-time costs but go on for decades, doing nothing to increase states’ power-projection capabilities. Every dollar spent on retirees is one less dollar that can be spent on weapons, research or active personnel. Consequently, every dollar spent in this area by the other great powers increases the likelihood of continued U.S. primacy.

U.S. Aging: Bad, But Better Than the Rest

At a gala event held at the National Press Club in Washington, D.C., on Oct. 15, 2007, Kathleen Casey-Kirschling, who was born one second after midnight on Jan. 1, 1946, became the first baby boomer to file for Social Security. Over the next 20 years, 76 million Americans from the age cohort born between 1946 and 1964 will join her.

The costs created by America’s aging population are staggering. The Congressional Budget Office projects that by 2015, spending on the elderly will total almost $1.8 trillion, nearly half of the anticipated federal budget. Health care costs, in particular, are the United States’ biggest problem regarding societal aging. The United States spends more than twice as much per capita in this area than any other industrial great power (though it ranks 48th in the world in life expectancy). According to conservative estimates – absent reforms – the costs of Medicare alone will be at least $2.6 trillion in 2050, after adjusting for inflation, which is roughly the size of the current U.S. federal budget.

Despite these expected cost increases, the United States is in significantly better shape to address the challenges created by its aging population than the other powers. The U.S. is the youngest of all the G-8 nations. Because it has the highest fertility and immigration rates of these countries, it will maintain, even strengthen, this position in coming decades. In 2050, the United States’ median age will be the lowest of any of the great powers, in most cases by a substantial extent. (China’s median age will surpass the United States’ by 2020.) Perhaps most important, while the working-age populations in all the other great powers are predicted by 2050 to either decline (China, France, Germany, Japan and Russia) or increase modestly (Britain), this demographic group is expected to increase by 31 percent in the U.S.

The United States’ relatively youthful demographics will help greatly with the fiscal challenges created by aging. The growing U.S. labor force over the next 50 years will contribute to an expanding economy, thereby providing the government with additional revenue without it having to increase taxes, borrow more money or cut other spending. In addition, the United States has a relatively well-funded pension system (especially in relation to China, France, Germany and Russia); its public welfare commitments to the elderly are relatively modest compared with those of other industrialized powers; its citizens work many more hours per year and significantly later in life than the average individual in the other powers; and its tax burden is low compared with those of other powers.

American expectations are also comparatively favorable. In a 2008 Harris Interactive poll of citizens in the United States, Britain, France, Germany, Italy and Spain, Americans had the highest predictions of when they would retire (67.2 years old) and the lowest expectations — by far — regarding governmental support of their retirement. (Only 27 percent of Americans believed that the national government should bear most of their retirement costs; this percentage ranged from 45 to 72 in European countries.) These expectations reveal that U.S. citizens are much more amenable to entitlement reforms and benefit cuts than are most Europeans.

Again, the preceding facts do not mean that the U.S. will escape the fiscal burdens created by aging or that this phenomenon will not create negative ramifications for U.S. security. Rather, as burdensome as the public costs of aging will be for the United States, the public benefits owed to U.S. seniors as a percentage of GDP will likely remain substantially lower than in most of the other great powers. Moreover, the U.S. will be better positioned to pay for these costs than the other major actors. Global aging will therefore be a powerful force for the continuation of the relative power dominance of the United States.

 Population Aging and the ”War on Terrorism”

Numerous studies have shown that there is a strong, positive relationship between so-called youth bulges — a disproportionately high number of young people in a society — and political violence, including civil conflict and terrorism. Developing states’ economies frequently have difficulty creating enough jobs to accommodate the exploding work forces in very young societies. Not surprisingly, the region that has the most youth bulges in the world — the Middle East and North Africa —also has, by far, the highest unemployment rates among young adults: 26 percent in 2006.

High levels of unemployment inevitably create strong grievances against existing political and economic policies, and, thus, a large pool of potential recruits for violent political change. The young tend to be particularly idealistic, which inclines members of this demographic group to believe that major political and social change can and should be made, even if this objective requires the use of force. The young are less likely to be married, have established careers or possess prominent positions in the community. As a result, young people, especially in the context of economic deprivation and political oppression, frequently feel that they have little to lose by engaging in violent acts designed to change the status quo.

Given the relationship between youth bulges and political violence and radicalism, it is no surprise that Islamic states in general — and Saudi Arabia, Iraq, Palestine (aka the occupied territories), Afghanistan and Pakistan in particular — have been hotbeds for domestic violence and international terrorism in recent years. In 2000, at least 45 percent of all adults in these countries were in the 15-to-29 age range.

The potential good news for the U.S. is that population aging may help alleviate, albeit slowly, the deleterious effects of youth bulges in many Islamic states. If current trends in fertility rates continue, by 2030, the youth bulges in Iraq, Pakistan and Saudi Arabia will all have receded. Population aging and the diminishment of youth bulges have been a source of political stability and economic development in many other countries over the last half-century, including in East Asia and Europe. There is little reason to believe that this pattern will not hold true in Islamic states, even though the transformation will require several generations.

Demography may ultimately hold the key for winning the “war on terrorism.”

The Bad News

Although global population aging is likely to create substantial security benefits for the U.S. in coming decades, the same phenomenon is also likely to threaten U.S. international interests in important ways.

First, the negative impact on the other great powers’ economic growth and military spending is, in some respects, a double-edged sword. On the one hand, these outcomes will mean that no state will be able to overtake the United States’ position of economic and military dominance. The same factor, though, will also reduce the amount of economic or military aid that other states will be able to contribute toward the realization of common international interests. Instead of increasing “burden sharing” with key allies, the United States will have to pay even more of the costs of its international goals than it does today.

Second, while the U.S. should expect less international aid from its allies, it, too, is likely to experience the slowing of economic growth and the crowding out of military expenditures for elderly care. America will in all likelihood have to scale back the scope of its international policies. The United States’ current position of unprecedented power allows its leaders to pursue highly extensive global commitments. The U.S. has military personnel in more than 140 countries in the world, and over the last 15 years, the U.S. has engaged in nearly 50 military interventions, more than any other state, by far, in the system. The primary motivation in at least four of these operations — Somalia, Haiti, Bosnia and Kosovo — was humanitarian.

In the aftermath of many of these interventions, the U.S. devoted considerable resources to help create stable political and civil institutions (so-called nation building). America also plays the dominant role in facilitating international trade and has borne the primary costs in trying to prevent “rogue” states — including Iraq, Iran, North Korea and Libya — from acquiring weapons of mass destruction. The economic effects of an aging population will deny the U.S. the fiscal room necessary to maintain the extent of its current global position, let alone adopt major new international initiatives. In the face of the exploding costs for elderly care and retirement, the crowding out of other spending will occur even for the richest country in the history of the world, to the likely detriment of American security.

America’s Golden Years?

The policy choices that flow from this article’s analysis are clear. Internationally, America’s long-term objective should be to help reduce fertility rates in developing countries. This outcome will likely reduce the problems created by youth bulges, including international terrorism. Policies that increase women’s rights and educational and employment opportunities, as well as those that provide better access to birth control, are key means to this end. International development aid designed to increase states’ GDP-per-capita levels should also be high among America’s foreign-policy priorities. The U.S., though, dedicates relatively few resources toward these goals. A December 2005 report issued by the Council on Foreign Relations with bipartisan leadership notes that demographics continued to be a neglected area of U.S. foreign policies. This important oversight needs to be corrected, and quickly.

In terms of domestic policies, U.S. leaders need to be proactive in maintaining America’s enviable demographic position. Specifically, America should reduce Social Security and Medicare payments to wealthier citizens, maintain largely open immigration policies that help keep its median age relatively low and restrain the rising costs of its health care system.

## econ turns case

Economic decline destroys momentum for self-determination

Porter 98, Director – Tribal Law and Government Center @ U Kansas, ‘98

(Robert B., 31 U. Mich. J.L. Reform 899)

As recently as in the 1980s, the United States and the Indian nations dependent upon the federal trust responsibility faced a difficult fiscal crisis. n291 Accordingly, the federal government made items of discretionary spending subject to cutbacks. n292 Even as the American economy has grown stronger, the Indians, one of the **poorest and weakest voices** within the United States, stand to lose, as we always have. n293 Even worse, the policies that might be developed to help guide future conduct may be too heavily influenced by this competition for scarce resources. Unless deliberate action is taken to resist this pressure, Congress may be tempted at some time in the future to once again resolve America's troubles on the backs of the Indigenous peoples located within its borders. n294

## link

NEPA is the THIRD RAIL for ECO-GROUPS

Carver 12

<http://www.theunderdome.net/site-map/territory/network/expanded-infrastructures>

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Government projects must go through a process of public review under the 1969 National Environmental Policy Act. A critic of this process, Vishaan Chakrabarti argues: "The rubber really hits the road on this when you talk to people in Washington about why there wasn't more infrastructure placed into the stimulus bill. And the answer is really simple: they tried. Actually, the White House did take a run at NEPA early on and was completely beat back by the environmental lobby in Congress who said, “You cannot. It is a sacred cow. You can't touch it.

NEPA uniquely key to eco-lobby

Katz and Manson 12

<http://thf_media.s3.amazonaws.com/2012/EnvironmentalConservation/Chapter5-The-National-Environmental-Policy-Act.pdf>

Heritage Foundation analysts

Since its passage in 1969, NEPA has remained largely unaltered despite dramatic changes in America’s economic, social, political, and environmental landscapes. This continuity reflects, in part, the reverence bestowed upon the statute by the environmental lobby. It was NEPA, to a large extent, that signaled the launch of environmental regulation—the precursor to the Environmental Protection Agency and virtually all of the nation’s environmental laws. It also provides activists with a powerful means of obstructing transportation, energy, and natural resource projects they oppose.

NEPA dereg sparks backlash and doesn’t get support

Holder 7

Environmental Assessment:

Law, Policy and Custom (Google eBook)

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Environmental Assessment: The Regulation of Decision Making (Oxford

University Press, 2004) and Environmental Protection, Law and Policy

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Centre for Law and the Environment and the Centre for European Law and

Governance, both at the Faculty of Laws, UCL.

Karkkainen provides a number of helpful lenses through which debates about the value of NEPA's impact assessment provisions can be looked at, and concludes his chapter with an assessment of proposed deregulatory reforms to streamline NEPA, both on cost grounds and to counteract its use as a delaying tactic. These general reform proposals have been attacked by the environmental lobby and have as yet failed to command legislative support.18

Environmentalists will abandon Obama if he de-Nepas

Rocky Flats 12

<http://blog.rockyflatsfacts.com/?p=661>

I began this blog and associated website to share a book about the Rocky Flats Plant in Colorado. The reputation of the Plant decayed from the early days when it was thought to be an important part of national defense. I watched the workers at the Plant strive to do everything they could to safely and responsibly complete the mission assigned by our nation’s leaders. Unfortunately, our neighbors were reading and watching stories that gave a very different impression.

Federal law requires that government projects be subjected to detailed environmental impact studies under the National Environmental Policy Act (NEPA). NEPA approval was given to Keystone XL after three years of study found the project would not have an adverse environmental impact. However, the powerful Environmental lobby hates the idea of the project and threatened to not support the Obama reelection campaign if he approved the project.

## wind ptc

#### Will pass—top of the docket—overwhelms their pounders

Mike Lillis, The Hill, 1/25/13, Republicans shift gears on immigration ahead of reform debate with Obama, thehill.com/homenews/house/279221-gop-girds-for-immigration-debate-with-obama

The issue of immigration reform has been a third rail of Washington politics for years, but November's elections — which saw more than 70 percent of Hispanic voters supporting President Obama — has created a new appetite for reform on Capitol Hill, as GOP leaders are scrambling to ensure that the Democrats' advantage with Latinos doesn't become a permanent one.

Obama has made immigration reform a top priority of 2013, and Congress is lining up behind that effort. Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) has said he'll hold hearings on the issue in February. And Goodlatte's House panel has slated a hearing for early next month, according to a GOP aide briefed on the schedule.

“We are a nation of immigrants and our immigration system has contributed to the greatness of the United States," Goodlatte said Thursday in an email. "However, we are also a nation of laws. It is clear that our immigration system is in desperate need of repair and is not working as efficiently and fairly as it should be."

Fueling the push, Sen. Marco Rubio (R-Fla.), a rising star in the Republican Party, is advocating targeted immigration reforms that have already won the endorsement of conservative standard-bearer Rep. Paul Ryan (R-Wis.).

Sensing the shift in tone, Rep. Luis Gutierrez (D-Ill.), Congress's loudest immigrant-rights advocate, gave up his seat on the Financial Services Committee this year in favor of a temporary Judiciary Committee spot that will bring him to the center of the debate.

The outspoken Democrat had predicted the Republicans "would get religion" after the election numbers came in, and he's scrambling to ensure Congress doesn't fritter away the rare political opportunity to enact sweeping reforms.

#### Obama has priced in the rest of his agenda and will get immigration done – a new contentious topic ruins his strategy

Zeleny, writer for International Herald Tribune, 1/24/2013

(Jeff, “For Obama, an ambitious agenda faces ticking clock,” Lexis)

The State of the Union address that Mr. Obama will deliver to Congress on Feb. 12 will offer the most definitive road map yet for how the White House will set priorities in his second term as well as how it intends to **avoid becoming mired in a heated debate over one contentious topic** to the detriment of the full agenda.

''There's no doubt you want to get off to a strong start, and we've got a pretty big dance card,'' said David Plouffe, a senior adviser to Mr. Obama who is leaving the White House this week. He ticked through a list of agenda items that included guns, immigration and fiscal issues, but he disputed the suggestion that one item would overtake the others.

**''We clearly have this moment where we can get immigration done**,'' Mr. **Plouffe added**. ''If we don't get it done, then shame on us. We've got to seize this opportunity.''

## uq

#### Framing issue—capital gets it through—the plan drains his capital and destroys his agenda prioritization

Chris Cillizza, WaPo, 1/21/13, President Obama’s second term starts today. It ends sooner than you think., www.washingtonpost.com/blogs/the-fix/wp/2013/01/21/president-obama-second-term-starts-today-it-ends-in-sooner-than-you-think/

At the moment, President Obama is at the height of his political influence. He is less than three months removed from a convincing reelection victory and freed from concerns about ever having to run for office again. He is coming off of two straight legislative wins — fiscal cliff and debt ceiling — and has a huge polling edge over his congressional Republican adversaries.

That means that now is the time for Obama to move on his major legislative priorities — the first of which appears to be winning some sort of tightening of existing gun laws in the wake of the Newtown, Conn., tragedy. Obama also seems likely to push on immigration. And then there is the triple-headed economic monster: sequestration, a potential government shutdown and the debt ceiling.

The president must choose carefully how hard he pushes on each of his priorities — and for how long. Much of his first term — and the political capital he brought into it — was spent on fights over the economic stimulus package and his health-care plan. **While** both of those legislative **initiatives became law, it was at** considerable political cost to Obama and his party — and at the expense of other priorities like energy, for example.

No matter what pieces of the Obama agenda mentioned above make it through Congress as spring turns to summer in 2014, the attention of the political world will turn away from legislative fights and to the coming midterm campaign. (Prepare to hear a lot about the so-called “six-year itch” election.) In expectation of that election, Congress will avoid any sort of major legislative action from the summer on as both parties seek to avoid exposure as they make their case to voters in the fall.

Once the midterms end, the 2016 presidential race, which is already showing signs of getting started, will burst out into the open with a few candidates likely declaring their intent to run by the close of 2014. With the race expected to be open on both sides — assuming Vice President Biden decides not to run — the level of interest in the contest to come will be substantial. (Human nature dictates that we love the next big thing more than the current big thing.)

Add it all up and what you get is this: By the start of 2015, Obama’s power to drive his legislative agenda will be significantly less than it is today. What his second term meant (or didn’t) will have already be largely determined by then.

The president has 18 months, then — give or take a few months — to build out his political legacy. Which means he needs to get moving as quickly as possible **or run the risk of running out of political power before he can get done** even most of **what he hopes** will round out his presidency in this second term.

#### Passage likely—bipartisan agreement now

Rosalind Helderman, 1/25/13, Senators nearing agreement on broad immigration reform proposal, www.washingtonpost.com/politics/senators-nearing-agreement-on-broad-immigration-reform-proposal/2013/01/25/950fb78a-6642-11e2-9e1b-07db1d2ccd5b\_print.html

A working group of senators from both parties is nearing agreement on broad principles for overhauling the nation’s immigration laws, representing the most substantive bipartisan effort toward comprehensive legislation in years.

The six members have met quietly since the November election, most recently on Wednesday. Congressional aides stressed there is not yet final agreement, but they have eyed next Friday as a target date for a possible public announcement.

The talks mark the most in-depth negotiations involving members of both parties since a similar effort broke down in 2010 without producing a bill.

“We have basic agreement on many of the core principles,” Senate Majority Whip Richard J. Durbin (D-Ill.), a member of the group, said this week. “Now we have to draft it. It takes time.”

“The group we’ve been meeting with — and it’s equal number of Democrats and Republicans — we’re real close,” added Sen. Charles E. Schumer (D-N.Y.), another member of the group.

The accelerated pace signals that immigration reform is expected to be one of Congress’s highest priorities, and it comes as the White House prepares to launch its own public campaign on the issue.

President Obama will travel to Las Vegas on Tuesday to speak about the need to “fix the broken immigration system this year,” the administration announced, an appearance in a state with a rapidly growing number of Hispanic voters, who overwhelmingly supported his reelection. Obama also met with members of the Congressional Hispanic Caucus on Friday, and aides said he vowed that immigration will be his “top priority.”

“What has been absent in the time [since] he put principles forward is a willingness by Republicans to move forward with comprehensive immigration reform,” White House press secretary Jay Carney said Friday. “He hopes that dynamic has changed and there are indications what was once a bipartisan effort to push forward. . .will again be a bipartisan effort to do so.”

Past efforts begun amid similarly high hopes have sputtered. But members of both parties increasingly see changes to the nation’s troubled **immigration system as an area most likely to draw bipartisan agreement at a time when Congress is deeply divided on gun control, spending and taxes.**

The optimism is spurred by the sense that the political dynamics have shifted markedly since the last two significant bipartisan efforts failed. In 2007, a bill crafted in the Senate died after failing to win support of 60 members despite backing from then-president George W. Bush. Many Republicans, and some centrist Democrats, opposed that effort because it offered a path to citizenship for illegal immigrants.

In 2010, extended negotiations between Schumer and Sen. Lindsey O. Graham (R-S.C.) broke down without producing legislation.

Sen. John McCain (R-Ariz.), a veteran of the 2007 effort who is part of the current working group, said Republican attitudes have dramatically shifted since the party’s defeat at the polls in November. Obama won more than 70 percent of the vote among Latinos and Asians, and a growing number of GOP leaders believe action on immigration is necessary to expand the party’s appeal to minority groups.

“Obviously, it’s had a very distinct impression,” said McCain, who lost his own bid for the White House in 2008. “It’s time to move forward on this.”

But he added, “I don’t claim that it’s going to be easy.”

#### Democratic unity is key to steamroll Republicans

Chowdhury, writer for the Daily Times, 1/24/2013

(Sabria Balland, “Obama: second term and potential Republican opposition,” Lexis)

**Immigration promises to be a significant issue in Obama's second term**. One constituency, the Latin community which supports President Obama overwhelmingly on issues such as gun control and the debt ceiling would like for there to be quick reforms on immigration issues.

Due to a record amounts of deportations, many in the Latin community felt that they had been forgotten in the first term. The steps the president did take however on stopping the deportation of illegal immigrants who entered the country as children are most probably not going to gain tremendous support from the Republicans.

These and some other issues where the president knows that there will be fundamental ideological divides are some of the reasons that the **unity in the Democratic Party will help to serve his agenda against the now divided Republican Party**.

During his first term, Obama and his aides made many efforts to negotiate at length with the Republican Party. All the efforts proved futile. During the presidential campaign, it was suggested by Obama and his aides that the Republican insistence and determination to oppose him would gradually dissipate if he was re-elected. That has not happened. However, there is rising confidence in the Democratic Party that it can prevail, as it did over the fiscal cliff battle over tax rates in December.

#### No fallback option—negotiation failure means no bill

Elizabeth Dwoskin, 1/21/13, A Hard Line on Immigration Reform Lurks in Obama's Inaugural Speech, www.businessweek.com/articles/2013-01-21/the-hard-line-on-immigration-hidden-in-obamas-inaugural-speech

On the surface, there’s nothing controversial about that. Increasing the number of visas for highly-skilled immigrants is one of the few policy goals Obama and the GOP agree on. That reflects a big change in Republican thinking in recent months, as party leaders saw support among Hispanics drop in the face of tough anti-immigrant rhetoric. When Mitt Romney talked about immigrants during the Republican primaries, he focused on undocumented workers, suggesting they should “self-deport.” By the summer, he had softened his tone, saying he wanted to “staple a green card to the diplomas” of all foreign math and science grads who study at U.S. universities.

If visas for highly -skilled workers were the only issue on the table, Democrats and Republicans could solve it fairly quickly. The GOP would need a little time to convince the staunchest conservatives to sign on. Democrats would have to win over unions, but that might not be too difficult because most science and engineering grads work in fields with few union jobs, anyway.

But that’s not the way it’s going to happen. What Obama didn’t say in his speech, and the thing Republicans will latch onto in the days ahead, is that he wants to tie the popular idea of raising visas for skilled workers to making broader changes in immigration laws—to which that Republicans strongly object.

Last week, administration officials—speaking anonymously, of course—”leaked” to reporters some of the details of Obama’s immigration plan. For the first time, the White House made clear that the president won’t agree to raise the visa caps for highly skilled immigrants unless it’s part of an overall reform plan that includes a path to citizenship for many of the estimated 11 million immigrants living illegally in the U.S.

These immigrants aren’t the “bright young” future job-creators Obama lauded in his speech. Most work dirty jobs for low wages, and many lack high-school diplomas. They’re the undocumented workers that Republican governors in Arizona, Georgia, Alabama, and other states have driven away with tough anti-immigration laws.

Obama’s insistence on an everything-at-once approach puts Republicans in a difficult position as the party struggles to settle on a policy that its different factions can rally around. For many House Republicans from Southern and border states, such words as “legalization” and “citizenship” are non-starters. But increasingly, party leaders and other prominent conservatives—House Speaker John Boehner (R-Ohio), Senator Marco Rubio (R-Fla.), Charlie Spies, counsel for the pro-Romney Restore Our Future super PAC, even Bill O’Reilly–are advocating for a compromise—yet to be defined—between “throw them out” and “let them stay.”

This means that skilled would-be immigrants hoping for the door to open could be in for a long wait. They’ve become the essential bargaining chip in what will likely be a tense, protracted negotiation—not just between Democrats and Republicans, but among Republicans themselves.

#### Political capital necessary for deal-making and arm twisting (Dem & GOP) opposition—that’s key to passage

Michael Shifter, Inter-American Dialogue, 12/27/12, Will Obama Kick the Can Down the Road?, www.thedialogue.org/page.cfm?pageID=32&pubID=3186

Not surprisingly, Obama has been explicit that reforming the US’s shameful and broken immigration system will be a top priority in his second term. There is every indication that he intends to use some of his precious political capital – especially in the first year – to push for serious change. The biggest lesson of the last election was that the “Latino vote” was decisive. No one doubts that it will be even more so in future elections. During the campaign, many Republicans -- inexplicably -- frightened immigrants with offensive rhetoric. But the day after the election, there was talk, in both parties, of comprehensive immigration reform.

Despite the sudden optimism about immigration reform, there is, of course, no guarantee that it will happen. It will require a lot of negotiation and deal-making. Obama will have to invest a lot of his time and political capital -- twisting some arms, even in his own party. Resistance will not disappear.

## case

#### Existing incentive structure solves tribal renewables

DOE, 12

("Energy Department Issues Tribal Renewable Energy Purchase Guidance and Project Development Resources" 12/5, http://energy.gov/articles/energy-department-issues-tribal-renewable-energy-purchase-guidance-and-project-development)

WASHINGTON – At the White House Tribal Nations Conference today, **the Energy Department announced two new initiatives aimed at driving increased energy production and sustainable economic development in Indian Country**. As part of the Energy Department’s efforts to support Tribal renewable energy production, Energy Secretary Steven Chu issued a policy statement and guidance that gives preference to Indian tribes when its facilities contract to purchase renewable energy products or by products, based on authorities under the Energy Policy Act of 2005. The Energy Department also announced today new training and education resources to help America’s Tribal Nations advance local renewable energy project financing and development. “Developing energy resources on our Tribal Lands continues to be an important part of the Obama Administration’s all-of-the-above strategy to deploy every available American resource,” said Energy Secretary Steven Chu. “The development of these resources has – and will continue to be – important to many Tribes. By working together on important energy issues, we can grow our economies and create good jobs, while increasing our security and protecting the planet.” The Energy Department’s Office of Indian Energy Policy and National Renewable Energy Laboratory recently issued an updated estimate of renewable energy potential on Indian lands. While American Indian land comprises about two percent of all U.S. land, this analysis found that Indian lands contain five percent of total U.S. renewable energy resource potential, including high generation potential for solar, wind and hydropower among other renewable resources. Renewable Energy Procurement Guidance for Energy Department Facilities As part of the Energy Department’s efforts to cut red tape for Tribal energy development and meet its own sustainability goals, Secretary Chu has issued a policy statement and guidance to give preference to Indian tribes when the Department’s facilities contract to purchase renewable energy products or by products, including electricity, fuel sources and renewable energy certificates. Under this policy, Energy Department facilities can utilize this purchase preference when a Tribal nation holds a majority ownership position in a renewable energy project and the cost is no more than the prevailing market rate, pursuant to the Department’s authorities under the Energy Policy Act of 2005. **This procurement policy will help spur the development of untapped renewable energy resources on Indian lands near Energy Department facilities and help tribes capture the economic benefits of their own resources**. Find more information on the purchase preference guidance HERE.

#### Federal training and assistance programs spur renewables now

ICT 12

(Indian Country Today, 12/6, "Energy Department Issues Guidelines and New Resources to Help Tribes Advance Renewable Energy Projects," http://indiancountrytodaymedianetwork.com/article/energy-department-issues-guidelines-and-new-resources-help-tribes-advance-renewable-energy)

Also at the Tribal Nations Conference, the Energy Department announced new training and education resources to help tribes advance local renewable energy project financing and development. “Developing energy resources on our tribal lands continues to be an important part of the Obama Administration’s all-of-the-above strategy to deploy every available American resource,” said Energy Secretary Steven Chu. “The development of these resources has—and will continue to be—important to many tribes. By working together on important energy issues, we can grow our economies and create good jobs, while increasing our security and protecting the planet.” Based on information gleamed from conversations through the Energy Department’s Indian Country Energy & Infrastructure Working Group over the past two years about solutions to the energy challenges faced by tribal nations, **the Department has created a new renewable energy education and training program. It ensures tribal leaders and staff have all the resources they need to obtain financing for the development of community-scale and commercial projects.**

# 2NR

## new cards

#### Self-determination doesn’t build accountability—they take cash instead

Wood 95

Mary Christina Wood, Oregon Law Professor, 1995, Utah L. Rev. 109, Lexis

Some have persuasively argued that many modern Indian development schemes are designed to enrich non-Indian market interests at the expense of native economic sustainability. The allegation is made forcefully by Ward Churchill and Winona LaDuke in an article describing the domestic "colonialism" still waged against tribes under the guise of promoting tribal economic development and sovereignty. n183 The authors analyze the historic transition of [\*155] some native economies to industrial economies, focusing in large part on the role of anglo-style tribal governments formed under the Indian Reorganization Act of 1934 ("IRA"). n184 Closely accountable to the BIA in their early years, the tribal councils often acceded readily to the development requests of the government, n185 and as the authors describe, operated as "classic vehicle[s] of neocolonialism." n186 The authors suggest that on many reservations federal policies extinguished subsistence-based, self-sufficient native economies, n187 and established in their place a new socioeconomic structure primed for industrial exploitation: a dependent Indian population desperate enough to meet the "cruder labor needs of industrialism," combined with tribal governments willing to negotiate the reservations' future through leasing contracts. n188 With these components, the industrial model gained a firm foothold in the Southwest, enabling mineral companies to reap vast quantities of reservation resources. n189 As the authors note, the industrial experience devastated many [\*156] tribes. n190 A repeating pattern of toxic contamination across many of the Southwest reservations n191 left large-scale environmental damage that, for all practical purposes, often precluded any return to a subsistence, land-based economy. n192 The work force, trained for no other type of employment, was often left adrift. The health effects on Indian workers resulting from daily encounters with toxic elements were substantial and often lethal, resulting in an exploding demand for health and social services on the reservation. n193 Rarely were private interests held accountable for their environmental and economic damage. n194 The entire scenario--depletion of raw natural resources, use of reservation populations for dangerous, unskilled work, and the unchecked proliferation of toxins into the surrounding ecosystem--does indeed suggest exploitation on a grand scale and calls into question whether the industrial paradigm is beneficial to tribes over the long term. n195 For many, however, even posing the question may be inappropriate. In the era of Self-Determination, no development occurs without tribal council approval, and there is a prevailing assumption that tribal councils approve only those projects that benefit the tribal economy without risking other important values. Secondguessing [\*157] tribal council decisions, even in a broad policy context, may affront contemporary notions of tribal sovereignty. Although the concern is valid, nevertheless, the constraints faced by tribal councils in making economic decisions warrant inquiry, particularly in the context of trust analysis. The notion of tribal self-determination rests on a basic presumption that decisions are freely made throughout the full arena of tribal decision-making. At least in the economic realm this assumption ignores the constraints facing tribes in the modern economy. Many tribes lack the basic economic freedom which is the presumed hallmark of the United States' capitalist system of free enterprise. Impoverished and sometimes desperate for any source of income, some tribal councils will accept unfavorable--and in some cases repugnant--corporate offers of development, regardless of the consequences to their society. n196 Many tribes entertain offers of strip mining, uranium production, and waste disposal despite the severe health, safety, environmental, social, and economic effects, simply because there is no other perceived alternative. n197 Lack of economic freedom is a familiar mark of exploitation, n198 yet it persists [\*158] in Indian Country behind a cheerful veil of tribal self-determination. n199 Because of severe economic dependency, tribes may find their options unreasonably, if not coercively, dictated by the preferences of economically dominant non-Indian parties. n200 The confluence of these social and economic forces creates an imposing predicament for Native America as a whole--and one which forms an important backdrop against which to analyze the federal trust responsibility. As Churchill and LaDuke note: "The results of [tribal councils' decisions] will undoubtedly shape the futures of American Indian peoples irrevocably." n201 In view of the enormous stakes, redefining the federal trust obligation to support reservation economies is critical. The executive branch exerts a heavy influence over tribal economic development on all reservations through both its land management functions and its role in managing shared resources, such as water and wildlife, which still form the basis of many subsistence economies today. The next section explores the basis in Indian law for employing the trust doctrine to protect Indian economic autonomy as a legitimate beneficiary interest. The subsequent section then suggests factors courts should use in applying the trust doctrine to promote, rather than stifle, tribal economies in light of the troubling context described above.