# 1NC

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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

Vol. 1: 715-725 (Volume publication date November 1976)

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

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."

## off

#### Obama will solve fiscal cliff in the lame duck

Marcus, staff writer for the Washington Post, 10/27/2012

(Ruth, “How will fiscal cliff get fixed? It depends on who wins,” http://azstarnet.com/news/opinion/how-will-fiscal-cliff-get-fixed-it-depends-on-who/article\_32ad6002-981e-52fd-abbb-597f60771dec.html)

Betting on Congress to do something - anything - is, as Samuel Johnson said of second marriages, the triumph of hope over experience. Betting on a lame-duck Congress to do anything of consequence is even more foolhardy.

Yet the Congress that limped back to town after the 2010 election was surprisingly fruitful. It extended expiring tax cuts, lifted the ban on gays in the military, and ratified a nuclear arms treaty.

**Could the 2012 lame duck be similarly productive?** **I'm uncharacteristically optimistic** - especially if President Obama is re-elected.

This is not a partisan assessment. Congress' primary post-election task will be to screech to a halt **before plunging off the fiscal cliff** of expiring tax cuts and looming budgetary sequester.

If Mitt Romney is elected, the well-honed instinct of Congress will be to do what it does best: punt. Romney has already said he would not want to see the lame-duck session try to craft some kind of grand bargain on taxes and spending.

Rather, he would prefer a reprieve of some months - extending the tax cuts, postponing the sequester - to come up with his own plan. Would an exiting Obama really veto an extension? Would he have the remaining juice to force a bargain? It's hard to see either happening.

Can-kicking in the event of a Romney victory is the safest bet, and in some ways the fairest outcome. The voters will have spoken. Let the new president and the new Congress deal with the problem.

**The calculus is different if Obama is re-elected**. The composition of Congress probably won't change much; if anything, Republicans are apt to have a narrower House majority, providing **an incentive for cooperation** while the GOP retains greater leverage.

There are four pieces of evidence to support this admittedly rosy scenario:

First, a bipartisan group of senators has been working intensively to craft a deal along the lines suggested by the Simpson-Bowles debt commission, a stew of revenue increases, tax reform, spending cuts and entitlement changes.

Second, **the administration has been working on a parallel track**, **with a debt-reduction plan to be unveiled soon after Election Day**. **Obama almost made it to the mountaintop once before** with Speaker John Boehner. Whatever the reasons that deal unraveled - did Obama chicken out? did Boehner balk? - both men see a budget deal as a legacy moment.

#### Plan kills Obama

Petroleum Intelligence Weekly, 1/9/12, Obama Plays Safe on Energy Policy, Lexis

With less than a year to go **until he faces re-election**, US President Barack **Obama is trying to avoid controversial energy policy decisions**, postponing the finalization of restrictions on oil refinery and power plant emissions and delaying the approval of a major crude pipeline project. The president’s caution will prolong the status quo on issues where the industry both opposes and supports the administration’s plans, and also illustrates what's at stake for energy policy depending on whether or not Obama is given another four years in office. Most of Obama's original campaign **pledges on promoting alternatives to fossil fuels** and tackling climate change **have not passed muster with Congress**, most notably an ambitious plan for national carbon controls, a subsequent toned-down clean energy standard floated after the carbon legislation failed, and repeated efforts to repeal $30 billion-$40 billion worth of oil industry tax deductions over 10 years ( PIW May9'11 ). The one exception has been the passage of $90 billion in clean energy funding as part of an economic stimulus bill passed early in Obama's term, but **the White House has been unable to repeat** this **success in other energy policy areas** ( PIW Feb.23'09 ).

#### Successful Obama honeymoon is make or break for the economy

Newman, chief business correspondent for U.S. News & World Report, 10/26/2012

(Rick, “The Fiscal Cliff Masks an Improving Economy,” http://www.usnews.com/news/blogs/rick-newman/2012/10/26/the-fiscal-cliff-masks-an-improving-economy)

If President Barack Obama wins a second term, he may **enjoy the kind of honeymoon he didn't get the first time around**. And if Republican challenger Mitt Romney wins, he may wonder why Obama got all that gray hair.

At the moment, economists, politicos and pundits are obsessed with the looming election, to be followed by a tense lame-duck session in which Congress and the president must figure out what to do about the "fiscal cliff." If all of the tax hikes and spending cuts set to go into effect at the end of the year actually do, **it could torpedo economic growth and cause another recession**. Congress could also delay those big decisions or dicker indefinitely, **with the economy shackled to political ineptitude**.

But if Congress does its job, and legislates some kind of compromise, the prospects for the economy could brighten considerably in 2013. "Assuming the fiscal cliff is resolved in a relatively benign manner, a post-resolution rebound is likely," Bank of America Merrill Lynch advised in a recent report. There are several reasons for optimism:

Housing seems to have turned around for good. After a six-year housing bust, prices seemed to have stopped falling in most markets, and mortgage rates remain near record lows. A variety of indicators show that real estate agents, home builders and even buyers are increasingly bullish. That could turn housing from a drag on the economy into a driver of growth. "The odds are strong that housing will resume its long-absent role as a key contributor to GDP growth," says Bernard Baumohl, chief global economist of the Economic Outlook Group.

Consumers are surprisingly upbeat. Confidence surveys show an unusual divergence between business leaders, who have been getting gloomier, and ordinary people, who have been feeling better. The gap might exist because business leaders get paid to worry about problems like the fiscal cliff and the European debt crisis, while regular people may be tuning out such worries. If the economy manages to bypass the cliff, rising consumer confidence could generate a kind of self-sustaining lift.

Car sales are robust. Auto sales have become one of the stronger segments of the economy, despite higher gas prices and a weak job market. That suggests a few important things: Credit is loosening up, including subprime lending; many consumers feel confident enough to make big purchases; and the Federal Reserve's low-interest-rate policy may actually be working, at least in the car market.

Business spending is poised to pick up. CEOs have increasingly voiced their concern over political gridlock in Washington, deferring plans to invest or hire. That's probably slowing the economy today, which partly explains anemic growth of just 2 percent. But that might also indicate pent-up demand. "Corporations have accumulated profits and increased cash, suggesting they are primed for greater investment," according to Merrill Lynch. And with nearly $2 trillion of cash on hand, corporations have the means to administer quite a jolt to the economy, if their leaders choose to.

#### Extinction

Kemp 10

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

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

## off

#### Obama’s winning but it’s close

Levy, 10/26

(Polling Editor-Huffington Post, “Obama Holds Slim Lead In Ohio Polls” http://www.huffingtonpost.com/2012/10/26/ohio-polls-obama\_n\_2025563.html)

President Barack Obama, who continues to run neck-and-neck with challenger Mitt Romney in national polls, got some good news Friday in the crucial battleground state of Ohio, where three new polls showed him with a slim lead. Obama led Romney 50 percent to 46 percent among Ohio likely voters, according to a CNN/ORC poll conducted Oct. 23 through Oct. 25. That's close to where the candidates stood at the beginning of the month. Among independent voters, Obama led 49 percent to Romney's 44 percent. The CNN poll surveyed 741 likely voters, with a 3.5 percent margin of error. Two other polls in the state, from the American Research Group and Purple Strategies, also showed Obama edging Romney, in each case by two percentage points. A poll released Wednesday by Rasmussen showed the candidates tied. HuffPost Pollster's estimate gives Obama the lead in Ohio by more than two percentage points. With the margin so close, both campaigns remain focused on winning the state. Obama and Romney each held Ohio rallies this week and plan to return over the weekend.

Removing NEPA requirements causes environmentalist backlash

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

(Elizabeth Ann, 29 Pace Envtl. L. Rev. 811)

[\*833] Not all who commented on the then-pending TERA provisions wanted to limit the mandatory environmental regulations imposed on tribes. For example, Sharon Buccino, a senior attorney with the Natural Resources Defense Council, wanted to see the goals and purposes of NEPA promoted and protected through imposition of the TERA requirements on tribes. n84 Furthermore, Senator Bingaman explained that many external parties, including national and local environmental groups, the National Association of Counties, and a bipartisan group of attorneys general from several states, seemed to strongly support the imposition of mandatory environmental review provisions on tribes entering into TERAs. n85 He concluded that:

The concern expressed by those attorneys general and the counties underscores the fact that without some applicable Federal law related to the significant development activity contemplated under this section 2604, it is unclear what standard to apply.

... Tribal law can and should apply to energy development on tribal lands, but at the same time Congress has a responsibility to ensure that certain Federal parameters are in place. n86

#### Flips the election

Schnur 12

Dan Schnur, director of the Jesse M. Unruh Institute of Politics at the University of Southern California; he served as the national communications director of Senator John McCain’s presidential campaign in 2000, “The President, Gas Prices and the Pipeline,” April 9, <http://campaignstops.blogs.nytimes.com/2012/04/09/the-president-gas-prices-and-the-keystone-pipeline/>

Like every president seeking re-election, Barack Obama walks the fine line every day between the discordant goals of motivating his party’s strongest loyalists and reaching out to swing voters for their support. A few weeks ago, that pathway took him to a tiny town in Oklahoma, where, caught between the anti-drilling demands of the environmental community and the thirst for more affordable gasoline from unions, business owners and drivers, the president announced his support for building half of an oil pipeline.

The economic impact of rising energy prices in itself is considerable, but the psychological toll on voters is just as significant, as tens of millions of motorists are reminded by large signs on almost every street corner of the financial pain of filling their gas tanks. Obama and his political lieutenants are acutely aware that this growing frustration has the potential to complicate an election year that otherwise seems to be shifting in the incumbent’s favor.

As a result, Obama has been hitting the energy issue hard in recent weeks, at least as hard as a candidate can hit when forced to navigate between two almost mutually exclusive political priorities. The result is a president who talks forcefully of the benefits of wind and solar power while also boasting about the amount of oil the nation produces under his leadership.

There are times when this gets slightly uncomfortable. Obama recently called for increased exploration along the Atlantic Coast but stopped short of calling for expanded drilling in that region. This is the energy policy equivalent of admitting to an experiment with marijuana but not inhaling.

Where the issue becomes more tangible and therefore trickier for Obama is when the multiple choices become binary. The debate over the proposed XL Keystone Pipeline that would transport Canadian oil through the nation’s heartland to the Gulf of Mexico crystallizes the choices involved and forces a shades-of-gray conversation into starker hues of black and white.

Obama recognizes that the devoted environmentalists who represent a critical portion of the Democratic party base need some motivation to turn out for him in the fall. But he also understands that centrist voters who support him on a range of other domestic and foreign policy matters could be lured away by a Republican opponent who either promises relief at the gas pump or who can lay blame at the White House doorstep for those higher prices. Even more complicated is the role of organized labor, which has poured immense amounts of support into Obama’s re-election but also prioritizes the job-creation potential of the pipeline.

The result of these competing political and policy pressures brought Obama to Ripley, Okla., where he tried to satisfy the needs of these various audiences without alienating any of them. First, the president endorsed the southern portion of the Keystone project in order to relieve the glut of domestically drilled oil that is now unable to make it to refineries near the Gulf of Mexico in a timely manner. This had the effect of irritating his environmental allies but failed to mollify the project’s advocates, who pointed out that the review process that the president called for was already underway.

He then reiterated the administration’s antipathy toward the northern section of the pipeline, which would allow Canadian-drilled oil to be transported into this country. This provided some comfort to drilling opponents, but infuriated both the pro-oil forces and the Canadian government. The most likely outcome is that Canada will still build a pipeline, but rather one that goes westward to the Pacific Ocean north of the United States border and then ships Canadian oil to China instead of into this country.

#### Romney’s reaction to unpredictable crises makes nuclear war inevitable

Stein, former chairman of the American Society of Magazine Editors, predicted the run to the Iraq War in the New York Times, veteran of World War II, 10/19/2012

(Robert, <http://ajliebling.blogspot.com/2012/10/doubts-about-romneys-nuclear-trigger.html>)

**Doubts About Romney's Nuclear Trigger Finger**

At Harvard today scholars commemorate the 50th anniversary of the Cuban Missile Crisis, 13 days when the world held its breath in the shadow of a nuclear war that John F. Kennedy said could have led to “**ultimate destruction of the human race**.”

In interviews afterward, the President told me, “Too many people want to blow up the world...In Cuba, a lot of people thought we should take more drastic action. I think we did the right thing. More drastic action would have increased the possibility of nuclear exchange. The real question now is to meet conflicts year after year without having to escalate."

**Half a century later**, it still is and, even in the academic colloquy over the Missile Crisis, **doubts arise about the fitness of Mitt Romney to follow in JFK’s footsteps**.

“Of the two candidates this year,” **one Harvard scholar asks**, “does Obama or Romney have the better command of history, **coolness under pressure**, and good sense to make the right choice for all of us **when the next crisis occurs?**

“Obama has demonstrated some of these qualities in his adept isolation of Iran, his largely skillful handling of the Arab uprisings, and his bridge-building to allies and partners that has rebuilt U.S. credibility in Europe, especially.

“Romney’s big foreign policy speech...illuminated the challenge he has had in making an impact in foreign policy. His back-to-the-future evocation of American leadership seems right for the Cold War but not nearly sophisticated enough for our very different **21st-century world**.”

**As Mitt Romney blusters about confrontations with China**, **Iran and other adversaries**, his sound-bite posturing may be effective in debates, campaign ads and comic relief, but how safe would we be if he moved into the Oval Office?

Two years ago, in putting Tehran "on notice," President Obama invoked the carrot-and-stick formula JFK used and, just as Kennedy ignored military advice to "bomb Cuba back into the Stone Age," rejected the notion of "victory" in today's crisis.

"This isn't a football game," he said. "So I'm not interested in victory, I'm interested in solving the problem."

#### Obama win key to US-Russia relations

CSM 12

(“Obama asks Russia to cut him slack until reelection” By Fred Weir, Correspondent / March 26, 2012 , http://www.csmonitor.com/World/Europe/2012/0326/Obama-asks-Russia-to-cut-him-slack-until-reelection)

Russian experts say there's little doubt the Kremlin would like to see Obama re-elected. Official Moscow has been pleased by Obama's policy of "resetting" relations between Russia and the US, which resulted in the new START treaty and other cooperation breakthroughs after years of diplomatic chill while George W. Bush was president. The Russian media often covers Obama's lineup of Republican presidential challengers in tones of horror, and there seems to be a **consensus** among Russian pundits that **a Republican president would put a quick end to the Obama-era thaw in relations**. "The Republicans are active critics of Russia, and they are extremely negative toward Putin and his return to the presidency," says Dmitry Babich, a political columnist with the official RIA-Novosti news agency. "Democrats are perceived as more easygoing, more positive toward Russia and Putin." Speaking on the record in Seoul, Mr. Medvedev said the years since Obama came to power "were the best three years in the past decade of Russia-US relations.… I hope this mode of relations will maintain between the Russian Federation and the United States and between the leaders." During Putin's own election campaign, which produced a troubled victory earlier this month, he played heavily on anti-Western themes, including what he described as the US drive to attain "absolute invulnerability" at the expense of everyone else. But many Russian experts say that was mostly election rhetoric, and that in office Putin will seek greater cooperation and normal relations with the West. "Russian society is more anti-American than its leaders are," says Pavel Zolotaryov, deputy director of the official Institute of USA-Canada Studies in Moscow. "Leaders have to take popular moods into account. But it's an objective fact that the US and Russia have more points in common than they have serious differences. If Obama wins the election, it seems likely the reset will continue."

#### Great power wars

Blank 9

(Stephen, has served as the Strategic Studies Institute’s expert on the Soviet bloc and the post- Soviet world since 1989. Prior to that he was Associate Professor of Soviet Studies at the Center for Aerospace Doctrine, Research, and Education, Maxwell Air Force Base “PROSPECTS FOR RUSSO-AMERICAN COOPERATION IN HALTING NUCLEAR PROLIFERATION”, March, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB892.pdf>)

Another reason for cooperation relates to the regional rivalries between Moscow and Washington (the same can apply as we shall see to Beijing). Today, as during the Cold War, we see intensifying regional rivalries between America and Russia throughout Asia from the Middle East to the Pacific Ocean. Both these states tend to support governments which have, by their proliferation activities, intensified tensions, e.g., America’s support for Pakistan and Russia’s earlier support for North Korea and present support for Iran. The reasons for this support often have to do with quite classical concepts of national interest which in Russia’s case relate to material interests, recovering its great power status, and checking American power. For example, Gleb Ivashentsov, then Director of the Second Asia Department of the Russian Foreign Ministry, told a Liechtenstein Colloquium on Iran in 2005 that, Iran today is probably the only country in the greater Middle East that, despite all of its internal and external difficulties, is steadily building up its economic, scientific, technological, and military capability (what about Israel?—author). Should this trend continue, Iran—with its seventy million population, which is fairly literate, compared to neighboring states, and ideologically consolidated, on the basis of islamic and nationalist values; with a highly intellectual elite; with more than 11 percent of the world’s oil and 18 percent of natural gas reserves; with more than 500,000 strong armed forces and with a strategic geographic position enabling it to control sea and land routes between Europe and Asia—is destined to emerge as a regional leader. This means that the Islamic Republic of Iran will be playing an increasing role in resolving problems not only in the Middle East and Persian Gulf area but also in such regions that are rather sensitive for Russia as Transcaucasia, Central Asia, and the Caspian region. This is why dialogue with Iran and partnership with it on a bilateral and regional as well as a broad international basis is objectively becoming one of the key tasks of Russia’s foreign policy.180 Unfortunately such support for regional partners, if not allies, often ends up (as in 1914) with the greater power being drawn into the smaller partner’s conflicts because it fears it cannot afford to lose its partner or ally to the other side. The result is often heightened conflict, and today those crises often revolve around proliferation. Thus when Israel bombed an alleged North Korean-built reactor in Syria in September 2007, it reflected what could happen when states like Syria and North Korea strike out on their own in the belief that they can rely on a protector like Moscow or in Israel’s case, Washington. As Yitzhak Shichor writes, Most likely, Pyongyang had failed to consult with either Moscow or Beijing prior to its decision to engage in some kind of “illicit” strategic or nuclear cooperation with Syria, although both may have become aware of this activity at a certain point of time. This failure reflects not only North Korea’s inflated nationalism but also its belief that whatever misunderstandings and disagreements it has with Russia and China—quite a few are known— both will continue their commitment and support and the same goes for Syria.181 Furthermore, as Shichor notes, such crises are likely because such states often have no other way to pursue their vital interests other than by interesting great powers in their survival. While such support may preserve these states, it hardly advances their overall cause of changing the status quo. “Unable to use diplomacy and not allowed to hold negotiations, apparently the only way open to settle their respective conflicts is by using threats, sponsoring terrorism, and building up the infrastructure for future violence.”182 If there were more effective great power cooperation on both regional security and nonproliferation, then the scope for such provocative behaviors would be correspondingly restricted. But since there is presently no such effective cooperation either on regional security or nonproliferation, Russia also values the Iranian connection because its support for an anti-American Iran helps Moscow restrain U.S. power in the Middle East, makes it a player or “great power” in the same region, and allows it to gain influence with other Gulf states who see it as having influence on Iran. Thus, during Putin’s Februry 2007 tour of Saudi Arabia, Jordan, and Qatar, he offered all these states major energy deals, arms sales, and even nuclear power, ostensibly for peaceful purposes, but in reality signifying his efforts and theirs to balance what they all realize is Iran’s refusal to stop its nuclear program and put it under effective IAEA supervision.183 In fact, Russia is offering up to 13 Arab states nuclear technologies of one sort or another. Russia is even launching Saudi satellites and undertaking major business initiatives with Saudi Arabia, even as it assists Iran’s space program.184 This posture once again reflects Russia’s wholly instrumental approach to questions of proliferation of nuclear technologies, discerning no real threat from the spread of nuclear power in the Middle East if it checks Iran and makes it remember who its patrons are. The many reports speculating about possible Saudi nuclear ambitions evidently have made little impression upon Putin and his subordinates.

## off

Deregulating TERAs is a move towards market freedom which subjugate native interests to the invisible hand

Unger, JD Candidate – Loyola Law School (LA), ‘9

(Kathleen, 43 Loy. L.A. L. Rev. 329)

Another reason the limitation on federal liability does not need to be changed is that tribes must be willing to take responsibility when assuming control over resource development. The TERA framework envisions a process in which the Secretary no longer approves specific development agreements. n283 It is sensible not to require that the federal government be liable for damages related to such agreements. n284 More importantly, it is in tribes' own interests to accept the risks attendant to developing their resources. n285 Freedom [\*369] from government control necessarily entails forgoing some federal protection. n286 The Indian Energy Act includes several provisions to build tribal capacity to take on development projects. n287 Tribes must evaluate when their capacity enables them to use a TERA to take control over resource development. They have the ability to opt in or remain under the preexisting framework for development, with federal approval and greater federal oversight and responsibility. n288 When they do take control, they should embrace the attendant risks, because "sovereignty without such risks is a contradiction in terms." n289

#### The system’s unsustainable – only rejecting corporatism solves extinction

Shor 10

<http://www.stateofnature.org/locatingTheContemporary.html>

Fran Shor teaches in the History Department at Wayne State University. He is the author of Dying Empire: US Imperialism and Global Resistance (Routledge 2010).

Attributing the debilitation of the U.S. economy to a mortgage crisis or the collapse of the housing market misses the truly epochal crisis in the world economy and, indeed, in capitalism itself. As economist Michael Hudson contends, "the financial 'wealth creation' game is over. Economies emerged from World War II relatively free of debt, but the 60-year global run-up has run its course. Financial capitalism is in a state of collapse, and marginal palliatives cannot revive it." According to Hudson, among those palliatives is an ironic variant of the IMF strategies imposed on developing nations. "The new twist is a variant on the IMF 'stabilization' plans that lend money to central banks to support their currencies - for long enough to enable local oligarchs and foreign investors to move their savings and investments offshore at a good exchange rate." The continuity between these IMF plans and even the Obama administration's fealty to Wall Street can be seen in the person of Lawrence Summers, now the chief economic advisor to Obama. As further noted by Hudson, "the Obama bank bailout is arranged much like an IMF loan to support the exchange rate of foreign currency, but with the Treasury supporting financial asset prices for U.S. banks and other financial institutions ... Private-sector debt will be moved onto the U.S. Government balance sheet, where "taxpayers" will bear losses." [4] So, here we have another variation of the working poor getting sapped by the economic elite! In fact, one estimate of U.S. federal government support to the elite financial institutions is in the range of $10 trillion dollars, a heist of unimaginable proportions. [5] Given the massive indebtedness of the United States, its reliance of foreign support of that debt by countries like China, which has close to $2 trillion tied up in treasury bills and other investments, a long-term crisis of profitability, overproduction, and offshoring of essential manufacturing, it does not appear that the United States and, perhaps, even the capitalist system can avoid collapse. Certainly, there are Marxist economists and world-systems analysts who are convinced that the collapse is inevitable, albeit it may take several generations to complete. The question becomes whether a dying system can be resuscitated or, if something else can be put in its place. One of the most prominent world systems scholars, Immanuel Wallerstein, puts the long-term crisis of capitalism and the alternatives in the following perspective: Because the system we have known for 500 years is no longer able to guarantee long-term prospects of capital accumulation, we have entered a period of world chaos. Wild (and largely uncontrollable) swings in the economic, political, and military situations are leading to a systemic bifurcation, that is, to a world collective choice about the kind of new system the world will construct over the next fifty years. The new system will not be a capitalist system, but it could be one of two kinds: a different system that is equally or more hierarchical and inequalitarian, or one that is substantially democratic and equalitarian. [6] What Wallerstein overlooks is the possibility that a global crisis of capitalism with its continuous overexploitation and maldistribution of essential resources, such as water, could lead to a planetary catastrophe. [7] While Wallerstein and many of the Marxist critics of capitalism correctly identify the long-term structural crisis of capitalism and offer important insights into the need for more democratic and equalitarian systems, they often fail to realize other critical predicaments that have plagued human societies in the past and persist in even more life-threatening ways today. Among those predicaments are the power trips of civilization and environmental destructiveness. Such power trips can be seen through the sedimentation of power-over in the reign of patriarchal systems and an evolutionary selection for that power-over which contaminates society and social relationships. Certainly, many of those predicaments can also be attributed to a 5000 year history of the intersection of empire and civilization. Anthropologist Kajsa Ekholm Friedman analyzes that intersection and its impact in the Bronze Age as an "imperialist project..., dependent upon trade and ultimately upon war." [8] However, over the long rule of empire and especially within the last 500 years of the global aspirations of various empires, "no state or empire," observes historian Eric Hobsbawm, "has been large, rich, or powerful enough to maintain hegemony over the political world, let alone to establish political and military supremacy over the globe." [9] While war and trade still remain key components of the imperial project today and pretensions for global supremacy persist in the United States, what is just as threatening to the world as we know it is the overexploitation and abuse of environmental resources. Jared Diamond brilliantly reveals how habituated attitudes and values precluded the necessary recognition of environmental degradation which, in turn, led to the collapse of vastly different civilizations, societies, and cultures throughout recorded history. [10] He identifies twelve contemporary environmental challenges which pose grave dangers to the planet and its inhabitants. Among these are the destruction of natural habitats (rainforests, wetlands, etc.); species extinction; soil erosion; depletion of fossil fuels and underground water aquifers; toxic pollution; and climate change, especially attributable to the use of fossil fuels. [11] U.S. economic imperialism has played a direct role in environmental degradation, whether in McDonald's resource destruction of rainforests in Latin America, Coca-Cola's exploitation of underground water aquifers in India, or Union Carbide's toxic pollution in India. Beyond the links between empire and environmental destruction, unless we also clearly understand and combat the connections between empire and unending growth with its attendant "accumulation by dispossession", we may very well doom ourselves to extinction. According to James Gustave Speth, Dean of the Yale School of Forestry and Environmental Studies, the macro obsession with growth is also intimately related to our micro habituated ways of living. "Parallel to transcending our growth fetish," Speth argues, "we must move beyond our consumerism and hyperventilating lifestyles ... This reluctance to challenge consumption has been a big mistake, given the mounting environmental and social costs of American "affluenza," extravagance and wastefulness." [12] Of course, there are significant class and ethnic/racial differences in consumerism and lifestyle in the United States. However, even more vast differences and inequities obtain between the U.S. and the developing world. It is those inequities that lead Eduardo Galeano to conclude that "consumer society is a booby trap. Those at the controls feign ignorance, but anybody with eyes in his head can see that the great majority of people necessarily must consume not much, very little, or nothing at all in order to save the bit of nature we have left." [13] Finally, from Vandana Shiva's perspective, "unless worldviews and lifestyles are restructured ecologically, peace and justice will continue to be violated and, ultimately, the very survival of humanity will be threatened." [14] For Shiva and other global agents of resistance, the ecological and peace and justice imperatives require us to act in the here and now. Her vision of "Earth Democracy" with its emphasis on balancing authentic needs with a local ecology provides an essential guidepost to what we all can do to stop the ravaging of the environment and to salvage the planet. As she insists, "Earth Democracy is not just about the next protest or next World Social Forum; it is about what we do in between. It addresses the global in our everyday lives, our everyday realities, and creates change globally by making change locally." [15] The local, national, and transnational struggles and visions of change are further evidence that the imperial project is not only being contested but also being transformed on a daily basis. According to Mark Engler, "The powerful will abandon their strategies of control only when it grows too costly for them to do otherwise. It is the concerted efforts of people coming together in local communities and in movements spanning borders that will raise the costs. Empire becomes unsustainable ... when the people of the world resist." [16] Whether in the rural villages of Brazil or India, the jungles of Mexico or Ecuador, the city squares of Cochabama or Genoa, the streets of Seattle or Soweto, there has been, and continues to be, resistance around the globe to the imperial project. If the ruling elite and many of the citizens of the United States have not yet accepted the fact that the empire is dying and with it the concentric circles of economic, political, environmental, and civilizational crises, the global multitudes have been busy at work, digging its future grave and planting the seeds for another possible world. [17]

#### Reject the aff’s neoliberal ideology

#### Energy debates should focus on CRITIQUE of broad structures INSTEAD of producitivist fixes. Our ROLE OF THE BALLOT is best EVEN IF they win some truth claims – we must SHIFT THE FRAME

Zehner 12

Green illusions,

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Since this book represents a critique of alternative energy, it may seem an unlikely manual for alternative-energy proponents. But it is. Building alternative-energy infrastructure atop America's present economic, social, and cultural landscape is akin to building a sandcastle in a rising tide. A taller sand castle won't help. The first steps in this book sketch a partial blueprint for making alternative-energy technologies relevant into the future. Technological development alone will do little to bring about a durable alternative-energy future. Reimagining the social conditions of energy use will. Ultimately, we have to ask ourselves if environmentalists should be involved in the business of energy production (of any sort) while so many more important issues remain vastly underserved. Over the next several decades, it's quite likely that our power production cocktail will look very much like the mix of today, save for a few adjustments in market share. Wind and biofuel generation will become more prevalent and the stage is set for nuclear power as well, despite recent catastrophes. Nevertheless, these changes will occur over time—they will seem slow. Every power production mechanism has side effects and limitations of its own, and a global shift to new forms of power production simply means that humanity will have to deal with new side effects and limitations in the future. This simple observation seems to have gotten lost in the cheerleading for alternative-energy technologies. The mainstream environmental movement should throw down the green energy pom-poms and pull out the bifocals. It is entirely reasonable for environmentalists to criticize fossil-fuel industries for the harms they instigate. It is, however, entirely unreasonable for environmentalists to become spokespeople for the next round of ecological disaster machines such as solar cells, ethanol, and battery-powered vehicles. Environmentalists pack the largest punch when they instead act as power production watchdogs (regardless of the production method); past environmentalist pressures have cleaned the air and made previously polluted waterways swimmable. This watchdog role will be vital in the future as biofuels, nuclear plants, alternative fossil fuels, solar cells, and other energy technologies import new harms and risks. Beyond a watchdog role, environmentalists yield the greatest progress when addressing our social fundamentals, whether by supporting human rights, cleaning up elections, imagining new economic structures, strengthening communities, revitalizing democracy, or imagining more prosperous modes of consumption. Unsustainable energy use is a symptom of suboptimal social conditions. Energy use will come down when we improve these conditions: consumption patterns that lead to debt and depression; commercials aimed at children; lonely seniors stuck in their homes because they can no longer drive; kids left to fend for themselves when it comes to mobility or sexuality; corporate influence trumping citizen representation; measurements of the nation's health in dollars rather than well-being; a media concerned with advertising over insight, and so on. These may not seem like environmental issues, and they certainly don't seem like energy policy issues, but in reality they are the most important energy and environmental issues of our day. Addressing them won't require sacrifice or social engineering. They are congruent with the interests of many Americans, which will make them easier to initiate and fulfill. They are entirely realistic (as many are already enjoyed by other societies on the planet). They are, in a sense, boring. In fact, the only thing shocking about them is the degree to which they have been underappreciated in contemporary environmental thought, sidelined in the media, and ignored by politicians. Even though these first steps don't represent a grand solution, they are necessary preconditions if we intend to democratically design and implement more comprehensive solutions in the future. Ultimately, clean energy is less energy. Alternative-energy alchemy has so greatly consumed the public imagination over recent decades that the most vital and durable environmental essentials remain overlooked and underfunded. Today energy executives hiss silver-tongued fairy tales about clean-coal technologies, safe nuclear reactors, and renewable sources such as solar, wind, and biofuels to quench growing energy demands, fostering the illusion that we can maintain our expanding patterns of energy consumption without consequence. At the same time, they claim that these technologies can be made environmentally, socially, and politically sound while ignoring a history that has repeatedly shown otherwise. If we give in to accepting their conceptual frames, such as those pitting production versus production, or if we parrot their terms such as clean coal, bridge fuels, peacetime atom, smart growth, and clean energy, then we have already lost. We forfeit our right to critical democratic engagement and instead allow the powers that be to regurgitate their own terms of debate into our open upstretched mouths. Alternative-energy technologies don't clean the air. They don't clean the water. They don't protect wildlife. They don't support human rights. They don't improve neighborhoods. They don't strengthen democracy. They don't regulate themselves. They don't lower atmospheric carbon dioxide. They don't reduce consumption. They produce power. That power can lead to durable benefits, but only given the appropriate context. Ultimately, it's not a question of whether American society possesses the technological prowess to construct an alternative-energy nation. The real question is the reverse. Do we have a society capable of being powered by alternative energy? The answer today is clearly no. But we can change that. Future environmentalists will drop solar, wind, biofuels, nuclear, hydrogen, and hybrids to focus instead on women's rights, consumer culture, walkable neighborhoods, military spending, zoning, health care, wealth disparities, citizen governance, economic reform, and democratic institutions. As environmentalists and global citizens, it's not enough to say that we would benefit by shifting our focus. Our very relevance depends on it.

## off

The United States Federal Government should

--remove the federal government liability waiver for Tribal Energy Resource Agreements

--clarify that the Secretary of the Interior, when evaluating applications for Tribal Energy Resource Agreements, must defer to the tribe's determination that the agreement is in its best interest, to the maximum extent possible

--amend the Indian Mineral Development Act of 1982 by clarifying that the statutory definition of "mineral resources" includes wind and solar energy.

Changing the Secretary’s approval process solves the whole case—spurs wind development and balances self-determination with the trust doctrine

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

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

Nonetheless, there are steps that can be taken to tighten up the approval process and make it friendlier to renewable energy development. The two amendments to the IMDA proposed here [\*133] would provide that the Secretary's failure to act within the time allotted constitutes approval, and that in determining whether a minerals agreement is in the tribe's best interest, the Secretary will defer to the tribe's decision.

Under the IMDA, the Secretary has 180 days to approve or disapprove a minerals agreement, or 60 days after compliance with the National Environmental Policy Act (NEPA), whichever is later. n189 The statute specifically provides that the Secretary's failure to meet the deadline is enforceable by a mandamus action in federal court. n190 Making the Secretary's deadline mandatory is useful, but authorizing enforcement by court action is not. Civil suits proceed slowly through the federal courts, and it is unlikely that a writ of mandamus would be issued before the Secretary reached a decision on the minerals agreement. Waiting two years for the court's decision is no better than waiting two years for the Secretary's.

A better approach would borrow from the proposed statutory amendments to the TERA process. The proposed TERA amendments would replace a provision giving the Secretary 270 days to approve a TERA, with a provision that 271 days after the tribe submits its TERA application, the TERA "shall" become effective if the Secretary has not disapproved it. n191 A similar amendment to the IMDA could provide that 181 days after the tribe submits a proposed minerals agreement, or 61 days after compliance with NEPA, whichever is later, the agreement "shall" take effect if the Secretary has not disapproved it or has not provided the tribe with written findings of the intent to approve or disapprove the agreement. n192 As with the proposed TERA [\*134] amendment, this would put substantial additional pressure on the Department of the Interior to act quickly. But the benefit to tribes of knowing whether their minerals agreements have been approved, and being able to implement their agreements within a reasonable time, outweigh those concerns.

The second way to streamline the approval process for renewable energy resources is to address the substance of the Secretary's review of mineral agreements. The IMDA provides that the Secretary must determine whether a proposed agreement "is in the best interest of the Indian tribe." n193 In so doing, the Secretary "shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement." n194 The statute expressly provides, however, that the Secretary is not responsible for preparing any studies regarding "environmental, socioeconomic, or cultural effects" other than the environmental studies required by NEPA. n195

The regulations, on the other hand, require that the Secretary determine both that the minerals agreement is in the tribe's best interest and that any adverse cultural, social, or environmental impacts do not outweigh the benefits of the agreement. n196 The "best interest" standard is further defined as requiring "the Secretary [to] consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects." n197 The regulations further specify that the "best interest" standard is based on information supplied by the parties "and any other [\*135] information considered relevant by the Secretary." n198 That information may include comparisons to other contracts or offers for similar resources, "insofar as that information is readily available." n199

These standards, derived from judicial determinations that the Secretary must consider all relevant factors in reviewing mineral leases under the IMLA, n200 place considerable decision-making power with the Secretary. During the rulemaking process, in fact, the Department of the Interior rejected a commenter's suggestion that minerals agreements should be approved if the agreements were in compliance with law. The Department noted that the law itself "allows the Secretary the discretion to weigh relevant factors and requires the Secretary to make, on the basis of the Secretary's judgement, a best interest determination." n201

At the time the IMDA was enacted in 1982, federal Indian policy had only recently focused on tribal self-determination, n202 and Indian tribes were still emerging from the uncertainties and destruction of the termination era. n203 The Department of the Interior had experience with considering all relevant factors in the approval of IMLA leases, and carried that standard into the new world of minerals agreements. It took twelve years for the Department to issue IMDA regulations, but the regulations again reflected the central role of the Secretary and the importance of the Secretary's judgment call. In the 1980s and even early 1990s, the Secretary's stringent oversight may have been justified by the imbalance of knowledge and bargaining power between tribes and energy companies.

But nearly twenty years have passed since the regulations were [\*136] promulgated in 1994. Indian tribes have thirty years of experience with IMDA minerals agreements, and many of the energy tribes have become sophisticated negotiators of development deals. Certainly tribes are the best determiners of cultural and social impacts, and often of the economic impacts as well. In light of those factors, the **standards for approval** of IMDA agreements are due for amendment.

Amending the statute itself to revisit the appropriate factors may be the best choice, but a simpler and perhaps quicker fix is also available. The Department could amend the regulations to reflect modern realities. Similar to the best interests determination in the regulations for agricultural and other surface leases, the IMDA regulations could provide that in reviewing an IMDA minerals agreement, the Secretary will defer to the tribe's determination that the agreement is in its best interest, **to the maximum extent possible.** n204 Although the conditional "maximum extent possible" language preserves the Secretary's ultimate authority under the statute, the regulation would ensure that the Secretary will undertake the minerals agreement review process with due respect for the tribe's decision. Even if a deferential review is current practice, embedding it in the regulations strengthens the tribe's role in the decision making process.

VII. Conclusion

Renewable energy resources are taking on increased importance for tribal economies. While these resources are abundant in Indian country, the federal statutory authority for their development is dispersed and often problematic. Mineral development statutes may or may not apply; other statutes not originally intended for energy development fill the gap, but generally confine tribes to a passive role in renewables development. The recent energy statute solves many of the problems with the other approaches, but creates a process that is [\*137] complex and expensive enough to discourage most tribes from using it. Recent bills would tweak the energy statute and propose broader leasing authority, but none addresses the overarching problem of providing tribes with a way to take an active role in the development of renewable resources without undue expense or federal oversight.

The amendments to the IMDA and its regulations proposed here also do not solve that overarching problem entirely. They are intended to suggest steps in the direction of greater tribal self-determination in renewable energy development. They would free tribes to take more active roles in renewable energy projects, while preserving tribes' ability to use the variety of other available statutory approaches. And they would rein in the secretarial approval power by providing that federal inaction benefits the tribes and by reframing the best interests analysis. Under these proposals, Indian tribes could more easily develop their renewable energy resources, and do so with **more direct say** in the development itself.

Redefining the IMDA spurs renewable power development by circumventing TERAs

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

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

The heart of my proposal is a small and likely uncontroversial amendment to the Indian Mineral Development Act of 1982. The statutory definition of "mineral resources" should be amended to clarify that mineral resources includes all renewable energy resources. Although that is arguably the case now, the clear inclusion of renewable energy resources would remove a point of contention and confusion.

At present, the IMDA defines "mineral resources" as "oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources." n179 **Congress should amend the definition** to something like, "oil, gas, uranium, coal, other energy and nonenergy mineral resources, or any renewable energy resources including, but not [\*129] limited to, wind, solar, geothermal, biomass, and hydrologic resources." n180 Language such as this leaves no question that renewable energy resources are included in the scope of the IMDA.

Alternatively, the definition could be amended in the regulations without amending the statute itself. The regulatory definition of minerals for purposes of leases and minerals agreements expands on the statutory definition: "both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral." n181 **This definition helps to clarify the** meaning of "other" minerals in the **statute** by specifying such minerals as sand and gravel. The regulatory definition could similarly help clarify the meaning of "other energy" in the statute by specifying that it includes "both renewable and nonrenewable energy sources, including, but not limited to, wind, solar, geothermal, biomass, and hydrologic resources." n182 A statutory amendment would be preferable to a regulatory amendment, but a regulatory amendment could likely be accomplished more quickly. n183

Expanding the minerals definition of the IMDA to specify energy resources regardless of their classification **would broaden**, simplify, and normalize **Indian tribes' ability to engage in renewable energy development**. Any tribe with renewable resources could enter into any type of development agreement that suited its needs. Tribes could employ not only the current structure of leases, but joint ventures, partnerships, and business agreements of all kinds. This simple amendment would thus authorize all Indian tribes to move into more active roles in the [\*130] development of their renewables. **Tribes seeking to partner with non-Indian companies** to develop wind farms, solar collectors, or biomass feedstock operations **would no longer be confined to the passive role of lessor**. And it makes common sense. There is no reason to deny a tribe with wind resources the ability to enter into a joint venture, for example, when a tribe with coal resources may do so.

Clarifying that the IMDA may be used for renewables development could, however, impact the tribes' ability to use § 81 easements for wind and solar power development. Under current § 81 regulations, contracts and agreements that encumber Indian lands do not need secretarial approval if they are subject to approval under another statute or regulation, specifically including surface leases, agricultural leases, timber contracts, mineral leases, and minerals agreements. n184 The regulations thus appear to put those types of leases and agreements, including IMDA leases and agreements, outside § 81. If the IMDA definition of minerals is amended to specifically include renewable energy resources, then it may mean that a tribe could no longer use § 81 for renewable energy easements.

To prevent this possible unintended consequence, a further amendment to the IMDA may be necessary. The IMDA now provides that nothing in the statute "shall affect" the Indian Mineral Leasing Act "or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe." n185 An amendment to clarify that it also does not affect tribes' authority to enter into § 81 easements would preserve that option for renewable energy development. This amendment would need to be carefully worded, however, if Congress wished to preserve the current practice that § 81 contracts and agreements cannot otherwise be used to substitute for mineral leases and agreements.

It is possible that a broader amendment may be necessary to preserve tribes' options under other statutes if the IMDA definition of minerals is expanded to include renewables. The proposed expansion of the IMDA suggested here is not intended to replace any existing authorities, but to supplement them. Just as the IMDA authorization of minerals agreements did not replace [\*131] the IMLA authority to enter into mineral leases, and the TERA process for energy agreements did not replace either IMDA agreements or IMLA leases, n186 the proposed expansion of the IMDA is intended as one more option for tribes.

Under the proposed amendment to the IMDA definition of minerals, for example, a tribe seeking to construct a wind farm on tribal land could do so using a lease under § 415, an easement under § 81, a negotiated lease or other minerals agreement under the IMDA, or an agreement pursuant to an approved TERA under ITEDSA. **The tribe could weigh the advantages and drawbacks of each alternative**, **and chose the one that best suits its needs**. Including a statement in the IMDA that it is not intended to replace other existing o**ptions would preserve tribes' self-determination rights** to choose the best approach for that tribe.

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**.

#### Deregulating TERAs allows corporate exploitation of tribes—worse for 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.**

## off

The United States Federal Government should end Title V of the Energy Policy Act of 2005 Section 3504 restrictions that allow the Secretary of the Interior to block the production of wind energy.

#### Plan causes solar expansion

Sullivan, JD Candidate – University of Arizona, ‘10

(Bethany, 52 Ariz. L. Rev. 823)

There are numerous reasons to support the development of renewable-energy generation on tribal lands. Most Americans recognize that the United States is in dire need of new energy sources. n6 The federal government adopts a similar position, as indicated by President Obama's remark that "each day brings further evidence that the ways we use energy strengthen our adversaries and threaten our planet" n7 - a powerful statement on the connection between energy use, global warming, and a dependency on Middle-Eastern oil.

Additionally, studies indicate that reservation land is particularly well-suited for many kinds of alternative energy projects. The potential for wind-powered generation on the Great Plains reservations is well-documented, n8 as is the [\*826] nearly unlimited supply of sunshine in the southwest region, home to many tribal communities. n9 High biomass potential has been found on over 100 reservations. n10 Furthermore, many parcels of Indian Country are already located in **key transmission and transportation corridors** throughout the country. n11 One expert has also suggested that tribal communities can act as laboratories in the field of renewable-energy development. She postulates that tribes, due to their sovereign status and available resources, are in a **unique position** to develop innovative approaches to renewable-energy infrastructure and regulation from which other industry players - such as state governments - can learn. n12

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

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

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

## 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.

#### 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.

Removing TERA fails—reverts back to old process

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

(Elizabeth Ann, 29 Pace Envtl. L. Rev. 811)

The Committee on Indian Affairs has been informed over the year that the Secretarial approval process is often so lengthy that outside parties, who otherwise would like to partner with Indian tribes to develop their energy resources are reluctant to become entangled in the bureaucratic red tape that inevitably accompanies the leasing of Tribal resources. n21

Recognizing the importance of energy development in Indian country, the need to promote such development, and the fact that the existing structure for energy development in Indian country may actually act as a disincentive to private investors, Congress [\*817] passed the Indian Tribal Energy Development and Self-Determination Act of 2005 as part of the Energy Policy Act of 2005. n22 In relevant part, the Act allows tribes who have met certain requirements to "enter into a lease or business agreement for the purpose of energy resource development on tribal land" without review by or approval of the Secretary of the Interior, which would otherwise be required under applicable federal law. n23 In order to qualify, a tribe must enter into a Tribal Energy Resource Agreement (TERA) with the Secretary of the Interior. n24 The Secretary must approve the TERA if the tribe meets several requirements. n25 One of these requirements is of particular importance to this article. Tribes are required to "establish requirements for environmental review," n26 which must mirror the requirements of the National Environmental Policy Act (NEPA). n27 In addition, the Indian Tribal Energy Development [\*818] and Self-Determination Act of 2005 expounds upon the federal government's trust responsibility to tribes as related to TERAs. Specifically, the Act states:

Aff doesn’t solve self-determination

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

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

Nevertheless, no matter how much responsibility we assume for the redevelopment of our sovereignty, the United States remains a barrier to our forward progress. **America**, **because of its geography**, its **people**, its **culture**, **and** its **media**, **is an overwhelming influence** on the Indigenous nations located within its borders. n9 As a result, **tremendous forces inhibit** the preservation and **strengthening** of the unique fabric of **our nations** and thus form considerable obstacles to our redevelopment. n10

One of the most significant barriers to our redevelopment lies in the body of American law. Since its founding, the United States has developed an extensive body of law - so-called [\*902] "federal Indian law" - to define and regulate its relationship with the Indian nations remaining within its borders. n11 While this law may seem to have a neutral purpose, it would be more accurate to say that "federal Indian law" is really "federal Indian control law" because it has the twofold mission of establishing the legal bases for American colonization of the continent n12 and **perpetuating** American power and **control over the Indian nations**. n13 Unfortunately, in addition to this foundational problem, the law itself is not simple or uniform. Federal Indian control law **is a hodgepodge of statutes**, **cases**, **executive orders**, **and** administrative **regulations that embody a wide variety of divergent policies towards the Indian nations** since the time the United States was established. n14 Because old laws reflecting these old policies have rarely been repealed when new ones reflecting new policies have been adopted, n15 **any efforts** that might be taken by the Indian nations and the federal government **to strengthen Indian self-determination must first cut through the legal muck created by over 200 years of** prior federal **efforts to accomplish precisely the opposite** result.

As I see it, this legal minefield profoundly effects tribal sovereignty. For example, conflicting federal laws - such as those that provide for the federal government's protective trust responsibility over Indian affairs n16 and those that allow federal, [\*903] state, and private interests to interfere with tribal self-government n17 - make it impossible for the Indian nations to exercise fully their sovereign right of self-determination. As past efforts to destroy our sovereign existence continue to have their corrosive effect, so too, in my view, does the natural result of those efforts: the destruction of Indigenous culture and the eventual assimilation of Indian people into American society. n18 Inevitably, **in the absence of any affirmative efforts to decolonize** both the Indian nations and federal Indian control law, I believe that our distinct native identity will continue to erode, and with it, the existence of our nations.

Broad changes of legislative intent, not removal of specific restrictions are key to reversing paternalism

Unger, JD Candidate – Loyola Law School (LA), ‘9

(Kathleen, 43 Loy. L.A. L. Rev. 329)

[\*367] Third, the sections of the legislation and regulations relating to the trust responsibility should be modified to **better accord with the principle** of self-determination. n270 The foremost concern is that the government uses the trust responsibility to retain control of tribal resource development, contrary to the principle of self-determination. n271 The regulations regarding interested party petitions are a case in point: when an interested party brings a claim that a tribe did not comply with a TERA, the regulations allow the Secretary to **reject a tribe's resolution** of the claim. n272 This amounts to the government second-guessing tribes, even though the TERA framework and the Indian Energy Act in general purport to foster tribes' ability to control their natural resource development activities under the self-determination principle. The portions of the legislation and regulations that enable such Secretarial second-guessing should be revised to guide the Secretary instead to view the trust responsibility as a duty to protect tribes' right to self-determination. n273

In addition, changes to the legislation's trust provisions can allow the provisions to better foster self-determination. The provision related to the trust obligation with respect to physical assets allows federal assertion of control at the expense of tribal self-determination. n274 This provision should be removed or revised in order to clarify that the Indian Energy Act does not authorize such control. The provision related to the trust obligation toward individual Indians and tribes should also be revised, to direct that it should be interpreted to require federal protection and encouragement of self-determination. n275

Costs and internal disagreements prevent wind development

Sullivan, JD Candidate – University of Arizona, ‘10

(Bethany, 52 Ariz. L. Rev. 823)

The DOI's Office of Indian Energy and Economic Development (IEED) boasts current involvement with more than fifty tribal projects relating to renewable-energy generation. n46 However, its role in these projects appears largely grounded in providing information and technical expertise. n47 Additionally, while the IEED does provide loan guarantees specifically for energy projects, n48 the **total appropriations** for the DOI's entire Indian loan-guarantee program in 2008 were [\*831] only slightly over $ 6 million. n49 **This is a modest amount** considering that these appropriations must fund all types of projects in Indian Country, leaving only a small portion available for renewable-energy development. Such funding levels are inadequate when examined against the backdrop of the actual costs of renewable-energy development. In 2007, most commercial-scale wind turbines (averaging a capacity of two megawatts) cost roughly $ 3.5 million dollars each to install. n50 Solar installation costs vary; one company installing a 1.1 megawatt solar field array estimates initial costs of approximately $ 5 million, n51 while a much larger proposed project of 17.1 megawatts has forecasted installation costs of $ 60 million. n52 Commercial-scale biomass projects are also hugely expensive, with installation costs adding up to tens of millions of dollars. n53 While there is much cost variability among and within renewable-energy technologies, it is clear that the amount of investment capital needed far exceeds the federal grant money available.

Unfortunately, the IEED's TERA program has produced unsatisfactory results. Not a single tribe, as of present, has successfully attained a TERA. n54 This may partially be a consequence of the multi-step TERA application requirements, including: submission of documentation demonstrating a tribe's financial and personnel capacity to administer energy agreements and programs, establishment of a tribal environmental review process, and consultative meetings with the Director of the Indian Energy and Economic Development Office. n55 Perhaps more problematic are conflicting sentiments within tribes over distancing tribal energy development from federal government protection, an issue strongly debated among Indian law practitioners and scholars. n56 So, although tribes could arguably benefit [\*832] from the decreased federal oversight that TERAs would provide, it appears that this mechanism, on its own, is insufficient to truly stimulate renewable development.

In summary, the Act has provided for federal programs that encourage the development of tribal renewable resources, yet its policy goals of tribal economic and energy development and tribal self-determination have not yet been met. In part, this may be a function of inadequate appropriations for the Act's provisions. n57 An alternative explanation, however, is that the Act fails to address **substantial obstacles** to tribal renewable-energy development. The most significant obstacles can be generally divided into two categories: (1) tribal inability to take advantage of federal tax incentives in the renewable-energy industry and (2) unfavorable case law concerning tribal civil jurisdiction.

III. Leveling the Playing Field: Tribes' Institutional Disadvantage in the Renewable-Energy Industry

While some tribes are fortunate enough to have investment capital readily available, most tribes are not capable of financing large-scale renewable-energy projects on their own. n58 Furthermore, most tribes do not have the requisite expertise and experience in the field of renewable energy to complete these projects independently. n59 For these reasons, it is imperative for tribes to have the ability to form mutually beneficial partnerships with outside business interests. n60 Unfortunately, **the existing legal framework** in which these partnerships arise **fails** to properly incentivize non-tribal businesses to work with tribes. One specific problem area is the inability of tribes to utilize or transfer federal tax credits for [\*833] renewable energy. Additionally, inconsistent and unfavorable case law concerning state versus tribal jurisdiction creates further challenges, particularly where this case law provides for double taxation of non-Indian activities on the reservation. Although these obstacles have not entirely foreclosed tribal-non-tribal partnerships, they foster partnership agreements disadvantageous to tribal interests since tribes must compensate for these shortcomings.

A. Tribes Are Unable to Take Advantage of Federal Incentives in the Renewable Industry

Recent federal policy has expressly encouraged the development of alternative energy by providing industry participants with tax-related incentives. One of these incentives is the federal production tax credit (PTC), which provides renewable-energy generators with set tax credits for each kilowatt-hour of energy produced. n61 The PTC has been a driving force behind the growth of the wind energy industry and has also played an important role in the development of other renewable technologies. n62 Additional types of federal incentives include investment tax credits (ITC) and accelerated depreciation rates (ADR). The ITC has been used in the solar industry to provide purchasers of solar equipment with a tax credit for 30% of the up-front investment costs. n63 In contrast, ADR functions to allow earlier depreciation deductions, providing favorable tax treatment based on the time-value of money. n64 Collectively, these various forms of federal incentives have had a **major impact** on the growth of the renewable-energy sector.

Unfortunately for tribes, these tax credits put them at a competitive disadvantage with other industry players since tribal governments and tribal corporations are insulated from federal taxation. n65 Therefore, tribes are unable to utilize renewable-energy credits that would otherwise be available. This has major implications because in many of these industries, the tax incentives are central to a project's profitability. n66 Although it may seem counterintuitive that a non-taxpaying entity would be competitively disadvantaged compared to a taxpaying entity, examinations of the issue have repeatedly demonstrated this fact. n67 This is [\*834] primarily because the tax credits available to a tax-paying entity often exceed the actual taxes paid on a renewable-energy project. Any residual tax credit can then be applied to an entity's broader tax liability. Consequently, tribal alternative energy endeavors are less competitive than their private counterparts **solely on the basis of these tax credits**. n68

This creates particular problems when negotiating partnership agreements with outside businesses. Tribes generally prefer an ownership interest in renewable-energy projects to a nominal or land-lessor interest. n69 Yet it is difficult to negotiate for a high level of tribal control when every percentage of tribal ownership means a proportionate reduction in the amount of available tax credits for the business partner. n70 Alternatively, if these credits were transferable both parties could benefit: the tribe could leverage its transferable tax credits in order to receive a greater ownership interest and/or a higher percentage of the annual revenue, while the private partner could utilize all the potential tax credits for the project, reducing its broader tax liability. n71 Unfortunately, at this time, such tax credits are non-transferable.

Solutions to this problem have developed on the federal and individual level, yet have largely fallen short. The federal government attempted to level the playing field for governments (including tribes) by enacting Clean Renewable-Energy bonds (CREBs), which function as a type of interest-free loan for financing certain types of energy projects. n72 However, inadequate appropriations for these bonds have weakened the effectiveness of this measure. n73 Individual parties, meaning tribes and their potential business partners, have also formulated their own solution to this problem, primarily through "flip-agreements." This arrangement provides the business partner with almost complete ownership of the project for a set initial term (coinciding with tax credit availability) and then flips to majority ownership by the tribe for the remainder of the project. n74 The [\*835] advantage of this arrangement is that it allows the non-tribal business partner to utilize federal tax credits while these credits are still available. n75 Yet it seriously limits the ability of the tribe to control and profit from the project for a substantial length of time.

Overall, neither of these approaches rectify the tax incentive disparity in an effective and long-term manner. n76 Even if Congress provided sufficient appropriations for the Clean Renewable-Energy bonds - and that is a big if - multiple problems persist. First, if tribal energy projects are funded largely or entirely by federal monies, it would result in increased costs and delays. This is due to the added bureaucracy of channeling funds through various federal offices before they finally reach a tribe. Additionally, utilizing federal funds in this manner would undoubtedly invoke NEPA n77 compliance requirements, such as environmental impact studies that span years and often consume hundreds of thousands of dollars before completion. n78 Yet another issue with relying solely on Clean Renewable-Energy bonds is that it forecloses the opportunity for tribes to work with non-tribal private business partners, an essential mechanism for the transfer of industry knowledge and expertise as well as for enabling tribes to expand their financial resources beyond the federal government. While these problems are addressed by the alternative of flip-agreements, these agreements essentially relegate tribes to the sidelines for the first decade or so of the project, leaving tribal governments with little control over the decisions, management, and future of their on-reservation projects. n79

B. Court Decisions Have Consistently Worked Against Tribal Jurisdictional Interests

Another major roadblock in the path to tribal energy partnerships is the jurisdictional rigmarole created by the United States Supreme Court - a direct result of nonexistent federal statutory guidance. The civil jurisdiction that tribes have over non-members on the reservation is determined by a series of judicially-created tests with outcomes more reflective of the Justices' personal views of tribal sovereignty than of any underlying, coherent legal doctrine. n80 Virtually anyone [\*836] who has dealt with Indian civil jurisdiction law can attest to its notorious complexity and amorphous set of "rules." n81 Furthermore, this judicial labyrinth must be successfully navigated regardless of whether a tribe is attempting to exert its regulatory authority or exercise civil adjudicatory jurisdiction over non-members. n82 Perhaps more troublesome are the clearer aspects of civil jurisdiction in Indian Country; primarily, the Court's sanctioning of state and local government taxing authority over the same non-members for the same activities on the reservation as tribes may tax. n83 For reasons discussed below, this legal framework creates **formidable obstacles** in the eyes of many tribes and potential business partners.

# 2NC

## No Regulations – 2NC Overview

#### LITMUS TEST—can you comply? If you can, it is regulation, not restriction

Mohammed 7

 Kerala High Court Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, 1997 Equivalent citations: AIR 1997 Ker 121 Author: P Mohammed Bench: P Mohammed

 Microlight aircrafts or hang gliders shall not be flown over an assembly of persons or over congested areas or restricted areas including cantonment areas, defence installations etc. unless prior permission in writing is obtained from appropriate authorities. These provisions do not create any restrictions. There is no total prohibition of operation of microlight aircraft or hang gliders. The distinction between 'regulation' and 'restriction' must be clearly perceived. The 'regulation' is a process which aids main function within the legal precinct whereas 'restriction' is a process which prevents the function without legal sanction. Regulation is allowable but restriction is objectionable. What is contained in the impugned clauses is, only regulations and not restrictions, complete or partial. They are issued with authority conferred on the first respondent, under Rule 133A of the Aircraft Rules consistent with the provisions contained in the Aircraft Act 1934 relating to the operation, use etc. of aircrafts flying in India.

Federal Energy regs are FIVE MILLION RESEARCH HOURS

Tugwell 88

 The Energy Crisis and the American Political Economy:

Politics and Markets in the Management of Natural Resources

 Previously, Dr. Tugwell was the executive director of the Heinz Endowments of Pittsburgh, the founder and president of the Environment Enterprises Assistance Fund, and as a senior consultant for International Projects and Programs at PG&E Enterprises. He served as a deputy assistant administrator at USAID (1980-1981) and as a senior analyst for the energy program at the U.S. Office of Technology Assessment (1979-1980). Dr. Tugwell was also a professor at Pomona College and an adjunct distinguished professor at the Heinz School of Carnegie Mellon University. Additionally, he serves on the Advisory Board and International Committee of the American Council on Renewable Energy and on the Joint Board of Councilors of the China-U.S. Center for Sustainable Development. He also serves on the Board of Eucord (European Cooperative for International Development). Dr. Tugwell received a PhD in political science from Columbia University.

 Finally, administering energy regulations proved a costly and cumbersome endeavor, exacting a price all citizens had to pay. As the energy specialist Paul MacAvoy has noted: "More than 300,000 firms were required to respond to controls, ranging from the three dozen major refining companies to a quarter of a million retailers of petroleum products. The respondents had to file more than half a million reports each year, which probably took more than five mil- lion man-hours to prepare, at an estimated cost alone of $80 mil- lion."64 To these expenditures must be added the additional costs to the government of collecting and processing these reports, monitor- ing compliance, and managing the complex process associated with setting forth new regulations and adjudicating disputes. All to- gether, it seems likely that the administrative costs, private and public, directly attributable to the regulatory process also exceeded $1 billion a year from 1974 to 1980.^

## precision

#### Conditions and restrictions are distinct—key to predictability

Pashman, justice – New Jersey Supreme Court, 3/25/’63

(Morris, “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. LEXIS 479)

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. It is within these rules of construction that this policy must be construed.

Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [\*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition." A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that the word "restrictions," as used [\*\*\*12] by defendant insurers, is ambiguous. The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [\*\*472] of redevelopment work within 32 months because (1) the word is used ambiguously and must be strictly construed against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added)

#### Anell defines ‘restriction on production’—they don’t—key to predictability

Haneman, justice – Superior Court of New Jersey, Appellate Division, 12/4/’59

(J.A.D., “RUSSELL S. BERTRAND, ET AL., PLAINTIFFS-RESPONDENTS, v. DONALD T. JONES, ET AL., DEFENDANTS-APPELLANTS,” 58 N.J. Super. 273; 156 A.2d 161; 1959 N.J. Super. LEXIS 569)

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.

HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

## at: reasonability

#### Reasonability is impossible – it’s arbitrary and undermines research and preparation

Resnick, assistant professor of political science – Yeshiva University, ‘1

(Evan, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2)

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

## 2nc ov

No impact to NEPA review on tribal development OR self-determination—what their 2AC ev is about

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.

#### Sovereignty without federal liability is neo-colonial exploitation—turns the case

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.

## at: doesn’t solve energy development

IMDA empirically solves resource development

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

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

For tribes that wish to develop their fossil fuels or other traditional energy resources such as uranium, the existing federal statutory scheme offers fairly **limitless possibilities**. Tribes can enter into standard leases under the 1938 Indian Mineral Leasing Act (IMLA) n21 or into virtually any kind of negotiated lease or agreement under the 1982 Indian Mineral Development Act (IMDA). n22 The structure of an IMDA development deal is subject to negotiation between the tribe and the non-Indian entity, subject only to the approval of the Secretary of the Interior. Minerals agreements under the IMDA appear to be widely and successfully used.

 [\*97] There is, however, a definitional issue. The IMLA and IMDA apply to mineral development. The IMDA specifies that minerals include fossil fuels (oil, natural gas, coal), as well as other traditional energy resources (uranium, geothermal). n23 Those minerals named, however, are not intended to be an exclusive list. The IMDA definition includes "other energy or non-energy mineral resources," and the regulations for both statutes refer to "any other energy or non-energy mineral." n24 But the potential for mischief lies in the word "mineral."

There is no single, universally-accepted definition of what a mineral is, although most definitions include some or all of the following characteristics: inorganic, solid, usually crystalline, having a definite chemical composition, and formed as a result of geological processes. n25 The International Mineralogical Association defines a mineral as "an element or chemical compound that is normally crystalline and that has been formed as a result of geological processes." n26 Similarly, the Mineralogical Society of America provides that "[a] mineral substance is defined as a naturally occurring, homogeneous solid, inorganically formed, with a well defined chemical composition (or range of compositions), and an ordered atomic arrangement, that has been formed by geological processes, either on earth or in [\*98] extraterrestrial bodies." n27

These definitions of mineral, of course, exclude the most common "minerals" extracted from Indian lands: oil and natural gas. Neither, for example, is a solid or crystalline in structure. Nonetheless, Congress has consistently been explicit that all the fossil fuels are included within the mineral development statutes, n28 and a statutory definition trumps a scientific definition for purposes of law. Consequently, the term "mineral" in Indian law is routinely used to include oil and natural gas. n29

What, then, of the renewable energy resources - wind, solar, and biomass? They are not crystalline in structure, they have not been formed as a result of geological processes, and the one that is a solid is most definitely not inorganic. Are these energy resources "minerals" within the meaning of the IMDA?

At the time the IMDA was under consideration and drafting, no one was thinking in terms of wind energy, solar power, or biomass. The focus at the time was on traditional energy sources that had routinely been considered minerals under the IMLA: oil and gas, coal, and uranium. n30 Many of the traditional energy tribes were chafing against the bounds of the IMLA in light of the new federal policy of tribal self-determination. n31 As a result, the discussion and testimony surrounding passage of the IMDA focused on freeing the energy tribes to develop their fuel resources in ways that would benefit the tribes to a far greater degree than standard leasing ever did or could. There is thus no express statutory language about renewable energy resources. And [\*99] although the legislative history and rules of statutory construction provide clues, there is no real clarity.

First, there is essentially no discussion in the legislative history of the IMDA about what a "mineral" is, likely because everyone involved understood that "mineral" meant actual minerals plus fossil fuels. Congress did include a definition of "mineral resources" in the statute itself, a definition that tracks that common understanding: "oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources." n32 From that formulation, it appears certain that Congress intended the IMDA to apply broadly. Both the statutory and regulatory language includes "other energy" in the definition of minerals. Remarks by IMDA sponsors in the Congressional Record focused on the need for "energy" development. Senator Melcher spoke of tribal "energy development," and he, Representative Udall, and Representative Bereuter all commented on the need for increased development and production of domestic energy to meet national needs. n33

Moreover, reading the IMDA broadly to apply to all energy resources is consistent with the Indian law canons of construction. The interpretive rules for Indian legislation mandate that statutes be construed in favor of the Indians and that ambiguities be resolved in favor of the tribes. n34 Construing "other energy" in the IMDA definition of minerals broadly in favor of the tribes means that renewable energy resources such as wind, solar, and biomass would be included. If "other energy" is ambiguous, then the canons would require that "energy" be interpreted to include renewable sources in addition to traditional fuel sources. Reading the IMDA in the light most favorable to the tribes, Congress did not intend to restrict its application to traditional minerals, but to open up development alternatives for tribes.

On the other hand, the actual wording of the IMDA is "other energy or nonenergy mineral resources." Although this could be parsed as "other energy resources or other nonenergy mineral resources," that is a far more awkward reading than the assumption that the word "mineral" applies to both energy [\*100] resources and nonenergy resources. When Congress intended to include non-"minerals" within the reach of the IMDA, it specified what those resources were. Thus, oil, natural gas, and geothermal resources - none of which comes within the usual definitions of a mineral - are expressly included. Given this specificity, the typical rule of statutory construction, that the inclusion of some implies the exclusion of all others, n35 would mandate that non-"mineral" resources not included in the statutory definition be excluded.

The Supreme Court has announced, however, that "standard principles of statutory construction do not have their usual force in cases involving Indian law." n36 More specifically, the Court has rejected the use of the inclusion/exclusion principle in Indian law cases. In Bryan v. Itasca County, the state of Minnesota argued that Public Law 280, n37 providing that the "civil laws of such State" applied in Indian country, granted the state the authority to impose a personal property tax on a mobile home owned by tribal members and located on trust lands. n38 The state based its argument on a second provision of Public Law 280, which stated that nothing in that statute authorized the "taxation of real or personal property" held in trust. n39 The state thus argued that "civil laws" must include the general authority to tax within Indian country, because otherwise the specific exclusion for taxation of trust property had no meaning. n40 Under the state's approach, the state could tax non-trust personal property (such as the mobile home) because Public Law 280 excluded only taxation of trust property. The Court unanimously rejected the state's approach. Noting that the statute was ambiguous, the Court stated that "we must be guided" by the Indian law canons of construction and resolve the statutory ambiguity in favor of the Indians. n41

As strong as the preference for the Indian law canons of construction may be, however, the Supreme Court has not [\*101] hesitated to abandon these canons when it suits. n42 As a result, while the IMDA perhaps should be interpreted broadly to apply to energy resources as well as traditional minerals and fossil fuels, an interpretation favoring Indian tribes is by no means guaranteed. Thus, whether the IMDA would apply to non-"mineral" energy resources - that is, renewables other than geothermal - is uncertain. And uncertainty impedes development. n43

A good illustration of the problem that uncertainty creates is the situation that led to passage of the IMDA itself. Tribes chafing under the IMLA restrictions in the 1970s began to negotiate non-lease development deals, and between 1975 and 1980, the Secretary of the Interior approved a number of these deals, relying either on the tribe's authority to contract or on the theory that modern mineral "leases" needed to include more than the standard IMLA lease form. n44 In essence, Interior began to define "lease" in broad terms. As more and more tribes submitted negotiated agreements, however, Interior became increasingly ambivalent about its role. n45 An Assistant Secretary for Indian Affairs noted that "the most serious [problem with using the IMLA [\*102] as authority] is that it authorized development of tribal oil and gas resources only by leasing," and not by other types of ventures. n46 He added that the use of a tribal contracting statute n47 was also "inadequate," and concluded that "there is a question whether we have adequate authority to approve those nonlease ventures even by utilizing both acts." n48 That uncertainty led the Interior Solicitor to question the approval of non-lease agreements in 1980, n49 throwing the validity of existing approved agreements into doubt. It took passage of the IMDA in 1982 to resolve the issue of tribal authority to use non-lease options for mineral development.

The IMDA was a clear "fix," and it effectively grandfathered in the existing approved agreements. n50 The same thing could happen if the Secretary of the Interior were to treat solar power, say, as a mineral under the IMDA. But just as Interior became squeamish about its approach to non-lease arrangements in 1980, so Interior could react squeamishly to treating sunlight as a mineral. If that were to happen, Congress would undoubtedly enact a legislative fix (such as the IMDA for non-leases), and existing agreements would undoubtedly be grandfathered in. But the period of uncertainty between Interior's doubts and congressional action is a wasted period. It is wasted time for Indian tribes, their non-Indian partners, and domestic energy production. It is much more preferable to have appropriate legislation in place before deals are struck, removing a potential impediment to renewable energy development.

## at: doesn’t solve self-D

The logic of their solvency deficits is wrong—they leave multiple exceptions to self-determination, even within the TERA structure

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.

The CP reorients environmental review around native priorities—their author agrees that that solves

Unger, JD Candidate – Loyola Law School (LA), ‘9

(Kathleen, 43 Loy. L.A. L. Rev. 329)

Second, the environmental review requirements in the Indian Energy Act should be revised to allow tribes more discretion in how they approach environmental issues. Where the TERA framework requires more stringent review than would apply under NEPA, n259 it should be altered to allow tribes greater flexibility. Congress created the TERA environmental review requirements because of concern that tribes would not protect the environment as well as the federal government would under NEPA. n260 However, scholars of tribal attitudes toward the environment suggest that tribes generally place value on environmental protection and that tribal environmental review would likely not be weaker than NEPA review. n261 Some [\*366] tribes have already voluntarily adopted environmental policy acts comparable to NEPA. n262 Their reasons for doing so include a desire to meaningfully consider concerns about "environmental, cultural, historical, and ecological factors" and a desire to preserve the reservation land base for future generations. n263

Indeed, environmental review is best viewed as a decision-making tool rather than as a compliance hurdle. n264 For example, preparation of an environmental assessment during planning is advisable even when not required for NEPA compliance, because an assessment can help in identifying and mitigating environmental impacts. n265 Because tribes rely on their land base and resources, n266 they have strong incentives to approach environmental review in this light.

For this reason, the shift from federal environmental review under NEPA to tribal environmental review under the TERA structure would be a positive step that would improve the environmental review process and avoid the conflicts of interest inherent in federal environmental review. n267 Additionally, the principle of self-determination suggests that tribes should be able to control the procedures of environmental protection, based on their own values, while engaging in resource development on their lands. n268 But to accomplish this, the TERA framework should increase flexibility for environmental review rather than specifying the form of that review, as it presently does. n269

Environmental reviews can allow native sovereignty and serve as a site of resistance

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.

The demand of the trust doctrine is distinct from paternalism—it ensures native agency

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

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

The United States v. Navajo Nation n239 and United States v. White Mountain Apache Tribe n240 decisions together represent recognition of the importance of control, which tribal governments should seize upon in shaping their future relationships with the United States. When tribes lose a $ 600 million claim where the Secretary of the Interior acted against [\*330] the best interests of a tribe and when the critical question of damages was left undecided in a $ 14 million claim where the tribe's property was allowed to be run down, the results should not be considered victories. However, by highlighting control, the cases do offer some guidance for tribes willing to be forward-looking rather than backward-focused. The Court's unwillingness to hold the Government to its duties towards tribes that derive from its position as trustee should **inform tribal self-government.** The decisional split reflects the importance of control - actual (in White Mountain) and legal (in Navajo Nation) - that tribes need to deliberately accept or clearly place upon the Government in a manner that potentially conflicts with current understanding of the development of tribal government.

## 2nc exploitation turn

#### That exploitation is fundamentally dehumanizing – turns the aff and hands human beings over to a violent market

Mills, energy and resources group at UC Berkeley, 2011

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

Polanyi identifies two types of commodities, the genuine commodities, which are produced by humans for the purpose of exchange in markets and the fictitious commodities of land, labor and money. For centuries commodities have been bought and sold in markets while the use of land and labor have been regulated by social norms. Land is another word for nature and is therefore not a human made commodity while labor, is simply another word for employment of human beings. Polanyi argues that society is comprised of these fictitious commodities. The idea that they can be organized or self-regulated, via the price mechanism of supply and demand, is an attempt to disembed the fictitious commodities from society. Any attempt to disembed these commodities has disastrous consequences:

**To allow the market mechanism to be the sole director of the fate of human beings and their natural environment**… **would result in the demolition of society**…. [Labor] cannot be shoved about, used indiscriminately, or even left unused without affecting also the human individual who happened to be the bearer of that particular commodity. In disposing of a man’s labor power the system would incidentally, dispose of the physical, psychological, and moral entity ‘man’ attached to that tag. Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; **they would die as the victims of acute social dislocation through vice**, perversion, **crime**, **and starvation**. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted…, the power to produce food and raw materials destroyed (Karl Polanyi quoted in Block 2001, 75-6).

Polanyi argues that there is a moral impediment to disembedding the economy from society. **It is simply wrong to treat nature and human beings as objects whose value is determined entirely by the market**. Subordinating the organization of nature and human beings to market forces violates principles that have governed societies for centuries: nature and human life have almost always been recognized as having a sacred dimension (Block 2001, xvii – xxxix).

In trying to **understand the impacts of energy development on families that were directly impacted by energy development on the Navajo Nation**, a group of anthropologists in the early 1980’s applied enthoscience methods to unearth the social impacts of energy development. Instead of applying a cost benefit analysis approach whereby the economic value of the social costs were compared to the economic benefits of energy development, the researchers recognized that they must begin with a framework that allows for some costs to a way of life to not have a simple monetary value. Essentially they recognized that **what determines the quality of life in not always based on the monetary value of resources**. Instead, if energy development were to occur and cause impacts, certain mitigating steps would need to be in place to prevent severe deterioration in the way of life for families impacted by energy development. The researchers evaluated the impacts by first establishing the possible costs to the way of life. Then instead of looking at benefits to offset the costs, they evaluated possible mitigations to the costs that would be required before the impacted families could even begin to assess any benefits that would accompany energy development (Schoepfle et al. 1984, 887-8).

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

Mills, energy and resources group at UC Berkeley, 2011

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

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

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

## at: plan creates choice

Perm creates false choice—information biases act in favor of companies—only empirics

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.

## util

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

**Cummisky, 96** (David, professor of philosophy at Bates, Kantian Consequentialism, p. 131)

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

## no structural violence

#### Perm – address both

Maley 85

 Political Studies {\9%5), XXXIIl, 578-591

 Professor William Maley assumed the position of Foundation Director of the Asia-Pacific College of Diplomacy on 1 July 2003. He taught for many years in the School of Politics, University College, University of New South Wales, Australian Defence Force Academy, and has served as a Visiting Professor at the Russian Diplomatic Academy, a Visiting Fellow at the Centre for the Study of Public Policy at the University of Strathclyde, and a Visiting Research Fellow in the Refugee Studies Programme at Oxford University. He is also a Barrister of the High Court of Australia,a member of the Executive Committee of the Refugee Council of Australia, and a member of the Australian Committee of the Council for Security Cooperation in the Asia Pacific (CSCAP). In 2002, he was appointed a Member of the Order of Australia (AM)

 However, there can be sound practical reasons for favouring a particular usage, A particular usage might provide distinctions of meaning which a different usage might obliterate,^- Furthermore, it might be so well entrenched that any departure from it would be liable to cause confusion. Finally, a particular term, when used consistently to refer to one thing, may acquire irremediably favourable or unfavourable overtones, to the extent that to use it to mean anything else might give the new referent an unwarranted lustre or tarnish, A Russian anecdote reported by Vladimir Bukovsky illustrates this clearly: A Jew came to his Rabbi and asked: 'Rabbi, you are a very wise man. Tell me, is there going to be a war?' 'There will be no war,' replied the Rabbi, 'but there will be such a struggle for peace that no stone will be left standing,'-\* The difficulties in Galtung's approach can be seen clearly when one recalls his view that it is probably a disservice to man to try to see either direct or structural violence as the more important. To this it can be replied that, particularly in its most recent formulations, Galtung's idea of structural violence embraces a number of forms which scarcely anyone would regard as seriously as the crushing, tearing, piercing, burning, poisoning, evaporation, strangulation, dehydration and starvation which constitute personal somatic violence,'^ To treat being deprived of 'cultural stimuli' as an evil commensurable with being torn to pieces is a step so audacious as to demand very specific moral justification. This Galtung fails to supply, and as a result, his notion of peace is a very unsatisfactory ideal against which to evaluate a social order, Even as a descriptive term, Galtung's notion of positive peace is confused. Because the notion of structural violence has ballooned so markedly, it now sits uneasily with his use of the term 'peace' to designate social goals at least verbally agreed to by many if not necessarily by most.

#### Nuclear war comes before ‘structural’ iniquity – the alternative is meaningless

Quester 89

 International-Security Criticisms of Peace ResearchAuthor(s): George H. QuesterReviewed work(s):Source: Annals of the American Academy of Political and Social Science, Vol. 504, PeaceStudies: Past and Future (Jul., 1989), pp. 98-105Published

 George H. Quester is the J.B. and Maurice C. Shapiro Visiting Professor of International Affairs at The George Washington University's Elliott School of International Affairs. He is one of the most distinguished scholars in the field of international security studies, having published a dozen single-authored books and ten edited books and textbooks over the course of his career. He is especially noted for his work on nuclear weapons and arms control. Professor Quester has held appointments at Harvard University, Cornell University, the National War College, the United States Naval Academy, and the Center for Advanced Study in the Behavioral Sciences at Stanford University. Most recently, he was Professor of Government and Politics at the University of Maryland in College Park. Professor Quester's publications include: Deterrence Before Hiroshima (1966, reissued 1986), The Politics of Nuclear Proliferation (1973), The Future of Nuclear Deterrence (1986), Nuclear Monopoly (2000), Offense and Defense in the International System (2003, 3rd ed.), Nuclear First Strike: Consequences of a Broken Taboo (2005), and Preemption, Prevention and Proliferation: the Threat and Use of Weapons In History (2009). He is currently working on a book project, The Last Time We Were at Global-Zero, funded by the Smith Richardson Foundation for 2010-11

 MISSPECIFICATIONS OF PEACE A third major problem to be raised about some forms of peace research and peace studies, again related to what we have already discussed, arises in the tendency to define peace as much more than an absence of the organized violence of warfare, to define it indeed as the elimination also of poverty and injustice and of prejudice and tyranny, and so on-namely, to define peace simply as a synonym for what is good, for what an economist would call utility. Sometimes we are thus told that an opposition to violence must include an opposition to "structural violence,"7 with the latter phrase presumably meaning any organizational or power relationships that violate the moral standards of the beholder, or we **are also told that we** must be in favor of "positive peace," which will include all of these good things, accomplished somehow simultaneously, rather than being content with a "negative peace," limited merely to an absence of warfare. Surely there is a great deal that is lost from all of these definitional innovations, but what is there to be gained? If someone assumed, as noted previously, that consciousnesses somehow have to be raised, then it may well seem important. as an educational and motivational vehicle, to insist that peace includes an end to poverty or racism. If one assumes that there can never be an avoidance of war unless one simultaneously has an avoidance of poverty. Such an approach can apparently be traced to Johan Galtung. See his Peace and Social Structure (Copenhagen: Christian Eljiers, 1978). erty or racism or other social evils, then this causal link will also suggest a definitional link. But, if there is indeed no such one-to-one link in causal relationships and if motivation is not the entirety of the problem of war and peace, then we surely will have thrown away a great deal of clarity if we insist on calling everything bad "war" or "violence" and if we insist on referring to everything we favor as "peace." This would be a little like telling the American Cancer Society that every disease now has to be referred to as "cancer," including heart disease and cholera and meningitis. Can medicine make any progress at all if it is not allowed to use different words for different ailments? Is it really true that to use different words for war and dictatorship and poverty is to weaken our motivation or to accept the inevitability of some evils or actually to favor the existence of such evils? If one goes far enough in accepting the definitional innovations produced by some peace studies curricula, it becomes possible then to define violent attacks as peaceful, as long as they are intended to eliminate racism or injustice, because these attacks are to oppose "structural violence." At the worst, – is kind of redefinition is deliberately misleading, as war and violence are defined as being inappropriate for any cause except one's own ()

th. At a less duplicitous level, we simply have some needless confusion brought into the process, by some relatively honest and well-meaning people. THE SEARCH FOR ULTIMATE SOLUTIONS Advocates of peace research sometimes justify their approach by asserting that they alone are addressing the ultimate or root causes of conflict. Unless one eliminates injustice or racism or prejudice or tyranny, they contend, there can never be a real peace or positive peace. This argument runs the risk, however, of becoming a play on words. Real peace can mean that we approve of every step of the causal chain, going back as far as it can be traced, which might indeed be ideal; but this might hardly be so essential for someone caught in the crossfire of Beirut**, someone who is merely pleading and** praying that the shooting might stop. To imply that a termination of conventional war and an avoidance of nuclear war and an abatement of terrorism are not somehow real would be to blur our understanding of a great deal of what most men and women indeed care about. Similarly, to refer to such an absence of warfare as "negative peace"-as compared with something more positive in "positive peace"-is to use these words of our English language in a manner that substantially underrates the human priority of eliminating warfare, whatever its causes and whatever the remedy. Critics of peace studies would thus come back to argue that these ultimate and genuine reforms of human arrangements for which peace researchers claim such priority are all well and good, but that these may not be capable of being attained in anything less than several centuries. Rather than eliminating all ideological suspicions between Marxists and non-Marxists or eliminating all ethnic dislikes between Greeks and Turks, would it not be a major accomplishment in the meantime to eliminate those kinds of weapons that tend to make wars between such contending factions more likely, and to stress instead the defensive types that discourage military forces from launching attacks? Peace researchers then often reply that any such resignation to intermediate and proximate improvements implies a welcoming of permanent conflict or even a relishing of it or at least an assumption that conflict and hostility are in the natural order of things. But the real issue is surely much more one of whether certain kinds of improvements can be made over certain ranges of time.

# 1NR

## impact

#### That card quotes Nicholas Burns, who knows more about diplomacy than anyone else in America

SpeakerMix, factual description, No Date Given

(<http://speakermix.com/nicholas-burns>)

Ambassador R. Nicholas **Burns is one of America's top foreign policy experts and practitioners**. Over the course of his 27-year career in the state department, he played a key leadership role in U.S. foreign policy toward the Middle East, Europe, and South Asia. **He was the nation's top career diplomat as undersecretary from 2005-08**, and he is viewed as one of the country's most articulate spokespeople on globalization and U.S. foreign policy. He demonstrated great versatility as a diplomat and earned respect on both sides of the aisle as a nonpartisan expert on public diplomacy and world affairs. **Burns has served three presidents**--George H.W. Bush, Bill Clinton, and George W. Bush--in key positions including senior director for Russian affairs, State Department spokesman, U.S. ambassador to Greece, and U.S. ambassador to NATO. He is currently professor of the Practice of Diplomacy and International Politics at Harvard's John F. Kennedy School of Government and chair of the school's Middle East Initiative and a new program on India and South Asia. Burns speaks with candor and passion about his experiences at the forefront of American foreign policy, what works and what doesn't in America's foreign relations, and what the future holds for America's position on the world stage.

#### Foreign policy stances aren’t responsive

#### 3AM phone call outweighs all other concerns – only Obama will avoid Armageddon

Burns, professor of the practice of diplomacy and international politics at Harvard’s Kennedy School of Government, 10/10/2012

(Nicholas, “Cuban Missile Crisis holds lessons for presidential race,” The Future of Diplomacy Project, <http://belfercenter.ksg.harvard.edu/publication/22385/cuban_missile_crisis_holds_lessons_for_presidential_race.html>)

Next week marks the 50th anniversary of the Cuban Missile Crisis — arguably the most dangerous moment in modern history. During 13 harrowing days in October 1962, President John F. Kennedy and Soviet Premier Nikita Khrushchev squared off in a test of strategy and wills that nearly ended in a thermonuclear exchange. Hundreds of millions of people might have died in the United States and Soviet Union alone. At the height of the crisis, **hardliners** on both sides **argued for war**. Instead, Kennedy and Khrushchev, in a series of dramatic last-minute communications, opted for diplomacy and compromise to avoid the catastrophe of a nuclear conflagration.

What can Barack Obama and Mitt Romney learn from this crisis 50 years later? My Harvard colleague Graham Allison, who wrote the revolutionary account of what happened in his landmark 1971 book “Essence of Decision,” hosted a conference recently at the Kennedy School to reflect on the meaning of the crisis for us today. I took away two big lessons that inform the war and peace challenges our next president could face in an increasingly dangerous international environment.

First, success in diplomacy at the highest levels sometimes requires opening exit doors for your adversary so that he can save face **and avoid** the **conflict** ahead. Kennedy did just that in offering secretly to remove American Jupiter missiles in Turkey as a trade for the removal of Soviet nuclear weapons from Cuba. Will Romney and Obama take a similarly imaginative approach to negotiations with Iran? If we are to convince Tehran to halt its nuclear efforts and avoid a war, we may have to help its leaders find a way out — a compromise that will give it a public excuse to stop well short of a nuclear weapon.

Second, Kennedy concluded after the crisis that we had to think about the Soviet people in a fundamentally different way if we wanted to avoid **nuclear Armageddon**. In his greatest speech, at American University eight months after the crisis, Kennedy advocated building bridges to the Soviets, as the “human interest” of avoiding world war had to eclipse the more narrow “national interest.” He warned Americans “not to see conflict as inevitable, accommodation as impossible, and communication as nothing more than an exchange of threats.” He said we should adopt a “strategy of peace” instead. Who is better placed in our time — Obama or Romney — to find a way to move beyond our many difficulties with our modern-day rival, China, and to avoid a future conflict in the Pacific?

As we look to Nov. 6, we should **measure the** presidential **candidates** not just by their ubiquitous campaign commercials but by the qualities they possess that might **make the difference between** success or failure, **war or peace**, **life or death in a future crisis**. Kennedy demonstrated the value of restraint, good judgment, and courage in avoiding war in 1962. Of the two candidates this year, does Obama or Romney have the better command of history, coolness under pressure, and good sense to make the right choice for all of us when the next crisis occurs?

Obama has demonstrated some of these qualities in his adept isolation of Iran, his largely skillful handling of the Arab uprisings, and his bridge-building to allies and partners that has rebuilt US credibility in Europe, especially. Romney’s big foreign policy speech Monday illuminated the challenge he has had in making an impact in foreign policy. His back-to-the-future evocation of American leadership seems right for the Cold War but **not nearly sophisticated enough** for our very different 21st-century world.

This election can’t be just about which candidate gives the snappiest presentation in a debate and rattles off the most memorable one-liners. **We need a strong leader to preserve our power but one who can also avoid the rash rush to war that has**, **too often**, **been our reaction to global tests since 9/11**. President Kennedy was far from perfect. But his leadership 50 years ago saved us from disaster. The Cuban Missile Crisis reminds us that **we must prize above all the qualities of intelligence**, **leadership**, **and wisdom in our next president**.

## lame duck

#### Pro forma sessions pre-election—can pass the plan

Pete Kasperowicz, The Hill, 10/19/12, GOP again shuts down Dems' attempt to speak at pro forma session, GOP again shuts down Dems' attempt to speak at pro forma session, thehill.com/blogs/floor-action/house/262981-gop-again-shuts-down-dems-attempt-to-speak-at-pro-forma-session

Democrats have been using the twice-weekly pro forma sessions since late September to call for a resumption of work, arguing that uncertainty over tax policy and pending cuts under the sequester demand that these issues not be resolved at the last minute in December. But their pleas have not been answered by Republicans, and this status quo is unlikely to change given that there are now less than three weeks before the election. As of Friday, the GOP had completely blocked any Democrat from speaking on the House floor for the last three weeks, and this should continue for another three weeks before the House returns on Nov. 13. Democrats had more luck during the first week of pro formas in the last week of September. On Sept. 25, Rep. Donna Edwards (D-Md.) spoke for several minutes about the need for the House to return to work. And on Sept. 28, Reps. Chris Van Hollen (D-Md.) and Henry Waxman (D-Calif.) were able to reiterate those points, in part because the House was in the process of approving three non-controversial bills.

#### Plan could be passed immediately in a pro forma

Elahe Izadi, National journal, 9/28/12, House Actually Does Something During Pro Forma, influencealley.nationaljournal.com/2012/09/house-actually-does-something.php

Friday's pro forma session got just a tad bit spicy after a few Senate amendments brought up by Rep. Jerry Lewis, R-Calif., passed under unanimous consent. The amendments, one from Sen. Olympia Snowe dealing with military driver's licenses, and Sen. Daniel Akaka's Whistleblower Protection Enhancement Act, didn't face any opposition. But the only other members on the floor, Democratic Reps. Chris Van Hollen of Maryland and Henry Waxman of California, weren't about to let that be the end of it. They continued Democratic drumbeat that began at Tuesday's pro forma session, when Rep. Donna Edwards blasted Republicans for going into recess after eight legislative days and with a heavy load of bills not yet passed. "I do believe that we should adopt this measure," Van Hollen said of the whistleblower act. "I also believe that the House should reconvene to conduct the other business in the House." Waxman pushed Speaker Pro Tempore John Culberson of Texas to take up a laundry list of items, including the Violence Against Women Act, and asked whether "we can take up legislation on jobs and to avoid the fiscal cliff since we're taking up other items?" Culberson pretty much shut him down, saying that such requests were at the discretion of the chair, and then gaveled out. Before heading to recess, House Republicans essentially threw the blame back on Senate Democrats for not moving on House-approved legislation. The Senate approved a measure extending Bush-era tax cuts for those making less than $250,000, while the House version extended those cuts for all Americans. "The House passing a bill does not produce a law. That's just a way of giving an excuse to the American people that when their taxes go up, that we fought cuts," Waxman told reporters on Friday. "It does not satisfy anybody because it doesn't solve the problem. The Democrats can stop the Republicans, the Republicans can stop the Democrats. Adults, responsible people have to work together. We can't work together unless we're here, working." The do-nothing-Congress line is one that Democrats are trying to hammer home and they're doing it now with pro forma sessions, typically low-key, quick and uneventful. Waxman told the Alley that he made the trip from L.A. to D.C. to make that point. "I just came in for these few days. I'll be heading back out, and if there's no further session, that's called, I'll be there for the rest of the campaign."

## uq

#### No

Silver, 10/25

(“Oct. 24: In Polls, Romney’s Momentum Seems to Have Stopped,” http://fivethirtyeight.blogs.nytimes.com/2012/10/25/oct-24-in-polls-romneys-momentum-seems-to-have-stopped/#more-36636)

But there are other times when the notion of momentum is behind the curve — as it probably now is if applied to Mitt Romney’s polling. Mr. Romney clearly gained ground in the polls in the week or two after the Denver debate, putting himself in a much stronger overall position in the race. However, it seems that he is no longer doing so. Take Wednesday’s national tracking polls, for instance. (There are now eight of them published each day.) Mr. Romney gained ground in just one of the polls, an online poll conducted for Reuters by the polling organization Ipsos. He lost ground in five others, with President Obama improving his standing instead in those surveys. On average, Mr. Obama gained about one point between the eight polls. This is the closest that we’ve come in a week or so to one candidate clearly having “won” the day in the tracking polls — and it was Mr. Obama. The trend could also be spurious. If the race is steady, it’s not that hard for one candidate to gain ground in five of six polls (excluding the two that showed no movement on Wednesday) just based on chance alone. What isn’t very likely, however, is for one candidate to lose ground in five of six polls if the race is still moving toward him. In other words, we can debate whether Mr. Obama has a pinch of momentum or whether the race is instead flat, but it’s improbable that Mr. Romney would have a day like this if he still had momentum. The FiveThirtyEight model looks at a broader array of polls — including state polls — in order to gauge the overall trend in the race. Our “now-cast” also finds a slightly favorable trend for Mr. Obama over the course of the past 10 days or so. Mr. Romney’s position peaked in the “now-cast” on Friday, Oct. 12, at which point it estimated a virtual tie in the popular vote (Mr. Obama was the projected “winner” by 0.3 percentage points). As of Wednesday, however, Mr. Obama was 1.4 percentage points ahead in the “now-cast”, meaning that he may have regained about 1 percentage point of the 4 points or so that he lost after Denver. Mr. Obama’s chances of winning the Electoral College were up in the FiveThirtyEight forecast to 71 percent on Wednesday from 68.1 percent on Tuesday. It’s not yet clear how much of this, if any, has to do with the final presidential debate in Florida this Monday, which instant polls regarded Mr. Obama as having won. Instead, it’s been more of a slow and unsteady trajectory for him, with Mr. Obama often taking two steps forward but then one step back. It’s also not out of the question that the apparent trend just represents statistical noise. At the same time, there is more reason to take a potential change in the polls seriously if it is precipitated by a news event like the debate. The tracking polls that were released on Wednesday contained only one full day of interviews that postdated the Florida debate. If the debate moved the needle toward Mr. Obama, it should become more apparent in the coming days. The battleground state polls that came in on Wednesday were generally very close to our model’s current projections. For instance, there were three Ohio polls published on Wednesday; one showed a tied race there, while the other two showed Mr. Obama ahead by margins of two and five points.That’s pretty much what you’d expect to see out of a trio of Ohio polls if Mr. Obama’s lead there were about two points, which is where our model now has it. Some of the polls, especially the Time Magazine poll which had Mr. Obama five points ahead in Ohio, seemed to set off a lot of discussion on Twitter, as though people were surprised that Mr. Obama still held the lead there. But these polls are really nothing new. Since the Denver debate, Mr. Obama has held the lead in 16 Ohio polls against 6 for Mr. Romney. In Nevada, Mr. Obama has had the lead in 11 polls, to Mr. Romney’s 1. Mr. Obama has led in all polls of Wisconsin since the Denver debate, and he has had five poll leads in Iowa to one for Mr. Romney. Part of the confusion (and part of the reason behind the perception that Mr. Romney is still gaining ground in the race) may be because of the headlines that accompany polls. We’re still getting some polls trickling in where the most recent comparison is to a poll conducted before the Denver debate. We should expect Mr. Romney to gain ground relative to a poll conducted before Denver. (Mr. Romney may have lost a point or so off his bounce, but he has clearly not lost all of it). But it isn’t news when he does; Mr. Romney’s Denver gains had long ago become apparent, and priced into the various polling averages and forecast models. The question, rather, is whether Mr. Romney is gaining ground relative to the post-Denver polls — or if, as Wednesday’s polls seemed to imply, the race instead may have ticked back slightly toward Mr. Obama.

#### Obama winning now—their ev is posturing

Jonathan Chait, New York Magazine, 10/23/12, Romney Says He’s Winning — It’s a Bluff, nymag.com/daily/intel/2012/10/romney-says-hes-winning-its-a-bluff.html

In recent days, the vibe emanating from Mitt Romney’s campaign has grown downright giddy. Despite a lack of any evident positive momentum over the last week — indeed, in the face of a slight decline from its post-Denver high — the Romney camp is suddenly bursting with talk that it will not only win but win handily. (“We’re going to win,” said one of the former Massachusetts governor’s closest advisers. “Seriously, 305 electoral votes.”) This is a bluff. Romney is carefully attempting to project an atmosphere of momentum, in the hopes of winning positive media coverage and, thus, creating a self-fulfilling prophecy. Over the last week, Romney’s campaign has orchestrated a series of high-profile gambits in order to feed its momentum narrative. Last week, for instance, Romney’s campaign blared out the news that it was pulling resources out of North Carolina. The battleground was shifting! Romney on the offensive! On closer inspection, it turned out that Romney was shifting exactly one staffer. It is true that Romney leads in North Carolina, and it is probably his most favorable battleground state. But the decision to have a staffer move out of state, with a marching band and sound trucks in tow to spread the news far and wide, signals a deliberate strategy to create a narrative. Also last week, Paul Ryan held a rally in Pittsburgh. Romney moving in to Pennsylvania! On the offensive! Skeptical reporters noted that Ryan’s rally would bleed into the media coverage in southeast Ohio and that Romney was not devoting any real money to Pennsylvania. Romney’s campaign keeps leaking that it is planning to spend money there. (Today’s leak: “Republicans are genuinely intrigued by the prospect of a strike in Pennsylvania and, POLITICO has learned, are considering going up on TV there outside the expensive Philadelphia market.” Note the noncommittal terms: intrigued and considering.) The story also floats Romney’s belief that, since Pennsylvania has no early voting, it can postpone its planned, any-day-now move into Pennsylvania until the end. This allows Romney to keep the Pennsylvania bluff going until, what, a couple of days before the election? Karl Rove employed exactly this strategy in 2000. As we now know, the race was excruciatingly close, and Al Gore won the national vote by half a percentage point. But at the time, Bush projected a jaunty air of confidence. Rove publicly predicted Bush would win 320 electoral votes. Bush even spent the final days stumping in California, supposedly because he was so sure of victory he wanted an icing-on-the-cake win in a deep blue state. Campaign reporters generally fell for Bush’s spin, portraying him as riding the winds of momentum and likewise presenting Al Gore as desperate. The current landscape is slightly different. The race is also very close, but Obama enjoys a clear electoral college lead. He is ahead by at least a couple points in enough states to make him president. Adding to his base of uncontested states, Nevada, Ohio, and Wisconsin would give Obama 271 electoral votes. According to the current polling averages compiled at fivethirtyeight.com, Obama leads Nevada by 3.5 percent, Ohio by 2.9 percent, and Wisconsin by 4 percent. Should any of those fail, Virginia and Colorado are nearly dead even. (Obama leads by 0.7 percent and 1.0 percent, respectively.) If you don’t want to rely on Nate Silver — and you should rely on him! — the polling averages at realclearpolitics, the conservative-leaning site, don’t differ much, either. If you look closely at the boasts emanating from Romney’s allies, you can detect a lot of hedging and weasel-words. Rob Portman calls Ohio a “dead heat,” which is a way of calling a race close without saying it’s tied. A Romney source tells Mike Allen that Wisconsin leans their way owing to Governor Scott Walker’s “turnout operation.” That is campaign speak for “we’re not winning, but we hope to make it up through turnout.” Obama’s lead is narrow — narrow enough that the polling might well be wrong and Romney could win. But he is leading, his lead is not declining, and the widespread perception that Romney is pulling ahead is Romney’s campaign suckering the press corps with a confidence game.

## at: native voters

#### Not a key demographic

David Sarasohn 10-2, associate editor of the Oregonian, “Why the Native American Vote Could Win the Senate for Democrats”, [http://www.thenation.com/article/170336/why-native-american-vote-could-win-senate-democrats#](http://www.thenation.com/article/170336/why-native-american-vote-could-win-senate-democrats)

Native American voters, a small percentage of the population in the Western states, are unlikely to have much effect on either the House of Representatives or the Electoral College. But this year, with a tightly divided Senate hanging in the balance, four closely contested races—North Dakota, Montana, Arizona and New Mexico—are in states with enough tribal population to have an impact, from 5.2 percent in Arizona to 10.1 percent in New Mexico. Three of the four are outside the Obama campaign’s electoral vote hopes, but all are vital to Democratic chances of holding the Senate.

#### Native turnout is always low

Laurel Morales 10-12, reporter for KBPS, Native Vote Could Make A Difference, <http://www.kpbs.org/news/2012/oct/12/native-vote-could-make-difference/>

Also many tribal members live far away from polls or have trouble getting early ballots. Thompson said they’re disinterested in tribal politicians, who don’t have term limits, and often stay in office for decades.

Fred Solop is a political scientist at Northern Arizona University. He said people with higher levels of education and higher income tend to vote frequently. It’s just the opposite for those who are mostly uneducated and poor.

"So minority populations like Native Americans and Latinos to some extent in Arizona tend to be in these demographics," Solop said. "They just don’t participate. They’re not as involved in the system."

#### Obama’s crushing

Tex Hall 10-26, chairman of the Mandan, Hidatsa & Arikara Nation, “Why I’m Voting for President Obama”, http://indiancountrytodaymedianetwork.com/ict\_sbc/why-i%E2%80%99m-voting-for-president-obama

The year he took office, President Obama gathered tribal leaders to a historic White House meeting. When he told us, “You will not be forgotten as long as I’m in this White House,” I knew that those of us who had backed Obama in the election had made the right choice. I told my friends that they could count on him.

It’s safe to say, he has proven me right. President Obama has signed two of the most important tribal bills in a generation. First, he signed the Tribal Law and Order Act which gives tribes more authority to put criminals away, provides training and assistance to fight domestic violence and sexual assault, and opens a new path for tribes to regain jurisdiction they lost under Public Law 280. Second, he signed the Indian Health Care Improvement Act which finally made the law permanent and improves medical care, expands Medicaid coverage, and delivers assisted living and long-term care for 2 million Native Americans.

Over the past four years, President Obama has directed an unprecedented $3 billion in direct funding and bond authority to Indian country in order to create jobs, build new schools, hospitals and clinics, repair roads, start new energy projects, and strengthen tribal law enforcement. When he took office, President Obama reversed the Bush Administration’s longstanding opposition to the claims of Native American trust account holders, farmers and ranchers and settled both the Cobell and Keepseagle class-action lawsuits as well as individual tribal trust funds cases. And under Obama’s leadership, the United States endorsed the United Nations Declaration of the Rights of Indigenous Peoples.

There’s no doubt in my mind that the past four years have been some of the best that Indian country has ever experienced. His record alone is enough to convince me to say that we should stick with Obama for another term, but there’s more.

2) President Obama shares our values.

President Obama understands better than Governor Romney, who is a multimillionaire, where most of us come from. Obama understands that in Indian country, we still struggle with poverty, low life-expectancy, and dilapidated schools. He understands that many of us still have to drive dozens of miles for groceries, that our families live paycheck to paycheck, that we worry if we can afford to send our kids to college, and that we struggle everyday to put an end to intergenerational trauma.

Things are finally improving for us as a nation. While Romney’s agenda focuses on tax breaks for the rich, Obama’s agenda is focused on the middle class. But Obama has not forgotten the less fortunate and the people who believe that success is within reach for anyone who is willing to work hard for it. Obama has made the largest investments in history in Indian country’s education and health care. He has gone on the record and acknowledged the importance of our treaties and the power of self-determination.

President Obama understands the Indian trust relationship that the U.S. government has with tribal nations and Governor Romney is new to this game.

3) Indian country cannot afford to risk its future with Governor Romney.

Governor Romney says that he would repeal the Affordable Care Act on his first day in office. Not only would his actions jeopardize health care coverage for all Americans, it would also mean the end of the Indian Health Care Improvement Act. And while President Obama supports reauthorizing a Violence Against Women Act bill that would allow Indian tribes to prosecute non-Indians who assault our Indian women, Governor Romney has said he will not support expanded protections for Indian women, LGBT persons, and immigrants.

As President, Romney would also have the power to appoint new conservative Supreme Court Justices. Indian country has already been battered by the Supreme Court under Chief Justice John Roberts. The future of our tribal sovereignty depends on who gets appointed to the Court. Only President Obama is going to appoint Supreme Court justices who understand and support Indian Country like Sonia Sotomayor, the first Hispanic to serve on the Court. She not only wrote the majority opinion in the Ramah Navajo case, holding that the U.S. government must honor its contracts with Indian tribes, but she also met with high school students from Albuquerque’s Native American Community Academy and Native American law students from the University of New Mexico.

Finally, Governor Romney’s running mate, Rep. Paul Ryan, has a budget proposal that would cut the Indian Health Service’s budget by $637 million and the Bureau of Indian Affairs’ budget by $375 million. Indian country simply cannot afford budget cuts of these magnitudes. Cuts like these could devastate our tribal services to Indian families, elders, and our youth.

## apathy

Pilkington, 10/25

(Columnist-The Guardian, “Battle for Ohio: campaigns micro-target their message in state's four corners,”

http://www.guardian.co.uk/world/2012/oct/25/battle-ohio-campaigns-micro-target)

Campaign strategists in the vital battleground of Ohio are pioneering a radical new approach to the ground war in the final days of the presidential election, delivering targeted messaging to different parts of the state in an attempt drive up voter turnout on 6 November. Both Barack Obama's re-election operation, Obama For America, and Mitt Romney's campaign are using micro-targeting techniques, backed by traditional TV and radio advertising, to hone messages to the specific political concerns of different corners of the state. The heavily vaunted "battle for Ohio" is not a single battle at all – in fact it is several distinct political conflicts being waged simultaneously in a bid for the state's rich crop of 18 electoral votes out of the 270 needed to win. The strategic shift in focus down to the level of regions, counties or in some cases even neighbourhoods is revolutionising the final stages of the race, with both parties vying aggressively for votes right across the state. The localised model of campaigning being developed in Ohio this year is likely to become the template of future US presidential elections as the technology takes hold. As Chris Redburn, who chairs the Ohio Democratic party, puts it: "Four years from now it will be even more targeted as the technology improves and advances are made in how we collect information." As recently as the 2004 presidential election, Ohio was divided for campaigning purposes in half – the Democratic stronghold in the industrialised north, and the more rural and staunchly Republican south. But the advent of targeted messaging has heralded a sea-change in the way the campaigns are being run. In the final two weeks of the presidential contest, Obama will be campaigning as fiercely among the traditionally conservative Appalachian communities in the south-east of Ohio as he is in solidly blue Cleveland. "In the old days – eight years ago – we'd focus on driving up votes in the north of Ohio, then hope we'd outnumbered the conservative turnout in the south-west," Redburn said. "This year we're competing in all Ohio's 88 counties, and we are confident we will find some success in all 88 counties." Scott Jennings, Romney campaign director in Ohio, puts the same point another way: "When our database tells us that there is a household of coal miners in a certain neighbourhood, then volunteers will be calling on them talking about Mitt Romney's plan on energy." The impact of this micro-targeting revolution can be clearly seen in four parcels of Ohio, in each of which a distinct political battle is being fought: the west and south-west of Ohio, with its concentration of military bases and suppliers, where the debate revolves around defence cuts; in the north, where it is wall-to-wall auto industry; in the east and south-east, where an argument rages over coal and the future of energy; and in the central zone around the financial and university hub, Columbus, where there is much talk about Wall Street regulation and education.

## link

The link is the reason reviews exist in the first place

Miles, JD Candidate – University of Oklahoma, ‘6

(Andrea S., 30 Am. Indian L. Rev. 461)

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

#### 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.

## at: no vote switch

#### It determines the election and isn’t locked in yet

Nate Cohn, New Republic Election Expert, Part-Time Georgetown Coach -- his articles go through a TNR editing process and are available for all on his blog, he has been profiled on New York Magazine and MSNBC, 10/26/12, Why Undecided Voters Matter Less And Turnout Matters More Than Ever Before , www.tnr.com/blog/electionate/109171/why-undecided-voters-matter-less-and-turnout-matters-more-ever

Heading into the final stretch of one of the closest presidential elections in recent history, many are beginning to handicap the potential behavior of undecided voters and Obama’s vaunted ground operation. But while undecided voters could make a difference in the few tightest states, as William Galston argues elsewhere on this website, turnout is the most critical outstanding question. Although undecided voters represent 3 to 6 percent of the electorate in most swing states, they're unlikely to break overwhelmingly toward one candidate. Historically, candidates usually exceed their final share of the vote in the polls and the exits show late deciders breaking roughly evenly, at least in comparison to supposed and unsubstantiated rules about undecided voters breaking entirely for the challenger. In 2004, Bush actually performed better than the final polls, which showed Bush leading Kerry by just 1.5 points in 2004 with less than 49 percent, compared to Bush's eventual 2.4 point victory with 50.7 percent of the vote. And although the exit polls showed Kerry winning late deciders, there is a distinction between “undecided” in a final poll and deciding late in the exits. Many polls push undecided voters to enunciate their preference, and their un-polled counterparts don’t finally “make up their mind” until the final week, even though they knew their decision deep down and would have said so if they had been pushed hard enough. In this election, the number of undecided voters is so small that there are only few states where a clear break would be sufficient to flip the outcome. In Wisconsin and Nevada, Obama already exceeds 49 percent, suggesting that undecided voters could only influence the outcome if Obama supporters turn out at lower rates than the polls anticipate. One state where Romney still retains a narrow path to victory through undecided voters is Ohio, where Obama holds a very slight lead of just 2.1 points in the RealClearPolitics average, 47.9 to 45.8. But if Romney won 55 percent of undecided voters and one percentage point vote for a third party candidate, Obama would still win Ohio by a 1.6-point margin, 50.3 to 48.7. Romney would need nearly 70 percent of undecided voters to carry the state—an exceptional performance. Colorado and Virginia are the two states close enough for undecided voters to more realistically make a difference, but, even there, turnout is a more critical question. According to national polls, Obama is performing four points better among registered voters than likely voters. That’s well above the more typical 1 or 2 point gap and the main culprit appears to be strong Republican enthusiasm combined with low enthusiasm among young, Latino, and Democratic-leaning independent voters. Since Obama’s coalition is unusually dependent on low-frequency voters, Obama has more to gain from a strong turnout operation than previous candidates. Although it’s unclear whether Obama’s vaunted ground operation can rejuvenate turnout among infrequent Obama '08 voters, the difference between a modest and high turnout among young and minority Obama supporters could easily decide the election. And it's not just that turnout is important, it's that Obama's larger advantage among registered voters makes it an open question whether Obama could actually lose if minority and youth turnout rates approach '08 levels, even if undecided voters broke in Romney's direction.

## at: econ outweighs

Environment outweighs economics for environmentalists – duh

Leiserowitz et al., 2012

Anthony Leiserowitz, Ph.D. and Professor at the School of Forestry and Environmental Studies at Yale University, 3-30-2012, Yale Project on Climate Change Communication, "Public Support For Climate and Energy Policies in March 2012," [www.climatechangecommunication.org/images/files/Policy-Support-March-2012.pdf](http://www.climatechangecommunication.org/images/files/Policy-Support-March-2012.pdf)

92 percent of Americans think that developing sources of clean energy should be a very high

(31%), high (38%), or medium (23%) priority for the president and Congress. Among registered

voters, 96 percent of Democrats and Independents, and 84 percent of Republicans think clean

energy should be a priority.

• 83 percent of Americans think that protecting the environment either improves economic

growth and provides new jobs (58%) or has no effect on economic growth or jobs (25%). Only

17 percent think it reduces economic growth and costs jobs. When there is a conflict between

the two, however, 62 percent of Americans say it is more important to protect the environment,

even if it reduces economic growth, while 38 percent say economic growth is more important,

even if it leads to economic problems.

Among registered voters, 91 percent of Democrats, 77 percent of Independents, and 70 percent

of Republicans think that overall, protecting the environment either improves economic growth

and provides new jobs, or has no effect on economic growth or jobs. When there is a conflict

between the two, however, 72 percent of Democrats, 63 percent of Independents, and 45

percent of Republicans say it is more important to protect the environment than economic

growth.

#### Recent polls disprove

Finzel, 10/21

(Analyst-Waggener Edstrom, Election 2012: The Presidential Candidates, Energy Policy and Social Media, http://waggeneredstrom.com/blog/2012/10/21/election-2012-energy-policy/)

Although we may all be tired of the presidential campaign advertisements flooding the airwaves (especially if you live in a swing state), many of us are still interested in the differences between the two major party candidates on key issues. One such issue, energy, was addressed in the second presidential debate and has spurred substantive discussion online. To understand the impact on the national dialogue, Waggener Edstrom Worldwide conducted a national online survey to gauge the importance of energy to voters and analyzed social and online media to understand where conversations about energy are taking place. Our national online survey of public opinion was conducted Oct. 9–10, 2012. The results: **47 percent of respondents** said energy policy is one reason they are voting for Obama or Romney. While that number may be a bit surprising to people who don’t regularly follow energy, the social media dialogue around energy policy offers even more insight. Our research team analyzed results of more than 8 million tweets, Facebook posts and blog posts. They looked at the types of energy that were most discussed and how closely linked each candidate was to that type. As you can see in our Election 2012 infographic, President Obama was discussed online with the phrase “energy and the environment” 16 percent more than Gov. Romney, and Gov. Romney appeared 73 percent more frequently than President Obama in discussions about “energy independence.” Perhaps not surprising when you look at the candidates’ energy platforms, but you can draw your own conclusions. It’s fascinating to see where conversations about energy are taking place: according to our sample, the place to be online for wind or solar energy discussions is Twitter. Oil and coal are discussed most on Facebook. And natural gas and nuclear energy? Find a blog to read. In the presidential campaign, energy has been mostly on the sidelines, but that **doesn’t mean it isn’t important to voters** and that they aren’t talking about it online. And those conversations can certainly set up the energy policy dialogue we’ll all need to have in the months to come.