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#### The United States Federal Government should end restrictions that allow the Secretary of the Interior to block production of wind and solar energy in Tribal Energy Resource Agreements.

#### Federal paternalism in TERA deters investment in renewables

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

Mirroring this desire, many tribes are also becoming interested in energy development opportunities:¶ Perhaps more importantly, tribes are beginning to perceive renewable energy development in a positive light, as something [\*816] that is consistent with tribal culture and values. Many tribal leaders now see renewable energy as a vehicle for economic development in areas that may no longer be (or never were) suitable for agricultural development. Some also see this as a way for tribes to play a positive role in the nation's energy future. n20¶ Accordingly, energy development in Indian country is attractive to the federal government. It both advances the federal interests discussed above, and provides some tribes a method to achieve economic diversification, promote tribal sovereignty and self-determination, and provide employment and other economic assistance to tribal members.¶ Despite the foregoing, extensive energy development within Indian country has yet to happen. Former Senator Campbell explained why this may be the case:¶ The answer lies partly in the fact that energy resource development is by its very nature capital intensive. Most tribes do not have the financial resources to fund extensive energy projects on their own and so must partner with private industry, or other outside entities, by leasing out their energy resources for development in return for royalty payments... . The unique legal and political relationship between the United States and Indian tribes sometime makes this leasing process cumbersome.¶ ... .¶ 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:¶ Nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive orders, or agreements between the United States and any Indian tribe. n28¶ However, the Act goes on to provide that "the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement." n29 The Act's mandated environmental review, statement on the federal government's trust responsibility, and general waiver of the federal government's liability will all be discussed in much greater detail below as they relate to why tribes have not taken advantage of the Act's TERA provisions.¶ From the text of the Act, it may be inferred that Congress hoped to promote energy development in Indian country by "streamlining" the bureaucratic process (i.e., removing the requirement of Secretarial approval for tribes that enter into a TERA with the Department of Interior). In 2003, Senator Domenici confirmed this conclusion, explaining the purpose of the then-proposed TERA provisions as follows:¶ The Indian people of the United States are the proprietors of large amounts of property. On this property and in this property lie various assets and resources ... .¶ ¶ The purpose of this bill will be to say to our Indian people, if you want to develop resources in the field of energy that lie within your lands, we are giving you the authority to do so and hopefully in a streamlined manner so that it will not be forever bogged down in the red-tape and bureaucracy of Indian lands [\*819] being subject to the Federal Government's fiduciary relationships. n30¶ Tribal representatives initially indicated support for the TERA provisions, as the TERAs allowed for increased tribal self-determination and also encouraged efficiency in energy development in Indian country. n31¶ In addition to tribal and federal governmental interests in the TERA provisions, third party investors may also be interested in TERAs, because "if a TERA is properly structured, a mineral developer should gain greater certainty and efficiency in the development of energy resources on tribal lands." n32 In this way, the TERA provisions represent a rare instance in the history of tribal-federal relations where both tribes and the federal government may benefit from a partnership. However, despite [\*820] this possibility, not a single tribe has taken advantage of the "streamlining" opportunity presented by the TERA provisions.¶ Despite the attractiveness of increased energy development in Indian country, tribes have failed to take advantage of the existing TERA provisions because they represent a mixture of federal paternalism, oversight, and limited liability that is not attractive to tribes. This article examines more deeply why tribes have, to date, failed to take advantage of the TERA provisions and then makes recommendations as to how TERA might be reformed in order to increase tribal participation. Accordingly, Section II examines the underlying purpose of the TERA provisions and associated legislative history. Three categories of tribal concerns related to the TERA provisions emerge following a review of the applicable legislative history. Each of these categories is explored in depth. Next, Section III discusses the general ability of tribes to develop their energy resources. This Section also discusses why such development may be generally attractive to tribes. The Section concludes that some tribes have both the capacity to, and economic interest in, developing their energy resources. Given the foregoing, Section IV theorizes that tribes have failed to enter into TERA agreements due to the concerns represented in the related legislative history. As a result, Section V presents two alternative proposals for reform, arguing that should either proposal be adopted by Congress, the likelihood that tribes would be willing to enter into TERA agreements would increase. Ultimately, this article concludes that adoption of either of the proposed TERA reforms will spur tribal promulgation of TERAs with the Secretary of Interior.

#### TERA regulations deter investment and stifle Native control over energy development---reform is necessary to boost Native sovereignty and effective renewable energy production

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Many tribes are currently engaged in some form of energy development. n112 A long history of energy development and [\*843] natural resource extraction exists in Indian country. n113 Within the past decade, tribes have increasingly tested their ability to branch out from their historical practice of providing access to energy resources through leases to third parties by self-development and management of energy resources. Moreover, those outside of Indian country have increasingly expressed a need for and interest in energy development within Indian country. n114 The list of existing and proposed tribal energy projects extends from the proposed Navajo-owned wind farm project in Arizona n115 to the proposed coal-to-liquids and biomass-to-liquids Many Stars Project on the Crow Reservation in Montana. n116 As a result of their historical and modern experiences, tribes have a demonstrated record of energy development. Today, many tribes are able to accomplish such energy development in a sustainable manner, thereby reducing further environmental degradation. n117¶ Ultimately, energy development in Indian country is attractive to many tribes because of the potential benefits to the [\*844] tribal community, as well as the ability to help the entire nation meet its energy goals. n118 Yet, despite the potential benefits and the demonstrated ability to engage in energy development, not a single Indian tribe has yet taken advantage of the "streamlining" benefits available under the TERA provisions of the Energy Policy Act of 2005, as discussed above. Tribal governments' lack of interest in the TERA provisions of the Energy Policy Act of 2005 is perplexing. The ability of tribal governments to exercise their sovereignty in a meaningful and stable manner increases the likelihood of tribal economic development, n119 something that is crucial to tribal governments. Moreover, "TERAs offer the potential to significantly improve investor confidence and enhance the development of renewable energy projects on tribal lands." n120¶ IV. A THEORY: THREE FACTORS DISCOURAGE TRIBAL ADOPTION OF TERAS¶ Given the potential benefits to Indian country available to tribes through utilization of the TERA provisions, the fact that tribes have not taken advantage of this opportunity is perplexing. [\*845] The fact that tribes apparently requested streamlined procedures from the federal government, n121 but yet have failed to take advantage of the streamlined provisions of TERAs n122 compounds the oddness of this turn of events. According to the Department of the Interior, "several tribes have expressed interest in obtaining information about Tribal Energy Resource Agreements (TERAs) and the TERA regulatory process, but that as of [December 1, 2010], no tribes had submitted a request to the Department to enter into a TERA." n123 On May 7, 2012, a representative of the Bureau of Indian Affairs confirmed that "to date the Secretary has received no TERA applications and no TERAs have been approved." n124 Moreover, the stated purpose of Title V of the Energy Policy Act, which contains the TERA provisions, was to attract energy development to Indian country, n125 but it has failed to do so. As exemplified by the [\*846] legislative history detailed above, it appears that tribes may have declined to enter into TERAs because of concerns associated with the federally-mandated environmental review program and the potential impact of the waiver of federal government liability, n126 which in turn may have implications related to the federal trust relationship.¶ The waiver of federal liability is itself somewhat of a conundrum, as the Secretary is directed to "act in accordance with the trust responsibility" and "act in good faith and in the best interests of the Indian tribes." n127 The Act provides that nothing contained within it "shall absolve the United States from any responsibility to Indians or Indian tribes." n128 Yet, at the same time, the provisions state that "the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms" of an agreement entered into under the tribe's TERA. n129 Although perhaps not directly contradictory, these provisions are not entirely consistent with one another, as demonstrated by many of the comments highlighted above. As was explained by President Joe Shirley, Jr. of the Navajo Nation, the general waiver provisions of TERA are inconsistent with the federal trust responsibility and "is an abdication of the federal trust responsibility that is patently unfair to tribes." n130¶ [\*847] Furthermore, under the existing TERA provisions, tribes are increasingly seeing the cost of energy development being shifted to themselves. n131 This issue dovetails into concerns associated with the federally mandated environmental review provision, which places additional regulatory burdens on tribes without providing financial resources.¶ Accordingly, given that the above aspects of the TERA likely serve as impediments to tribes entering into TERAs, reform is necessary to address these concerns. In considering potential revisions to the TERA provisions, one should keep in mind the perspectives of Senators Bingaman and Campbell discussed above. The options for reform may be reflective of the perspectives articulated by Senators Bingaman and Campbell, one of which represents a vision that encompasses a stronger role for the federal government in Indian country and the other which represents a vision that encompasses a stronger opportunity for tribes to express their sovereignty and self-determination. Both of these options are discussed below.¶ V. PROPOSED SOLUTIONS TO SPUR TRIBAL ENERGY DEVELOPMENT UNDER TERAS¶ Notably, the Obama Administration may be receptive to potential options to reform the TERA provisions. The current Administration has generally been open to hearing previous calls for reform from Indian country. n132 As explained in Section II of this paper, America needs to diversify its energy portfolio, and Indian country will likely play a role in increased domestic production of energy. However, as President Joe Shirley, Jr. explained, tribes are unlikely to "opt in" to the existing TERA [\*848] provisions, for the reasons articulated above. n133 Even Congress seems to recognize the necessity of reform. In 2009, Senator Bryon Dorgan (D-ND), Chairman of the Senate Committee on Indian Affairs, and Senator John Barrasso (R-WY), Vice Chairman of the Committee, released a concept paper on energy development and efficiency within Indian country. n134 In recognizing the need for reform, the concept paper identified "outdated laws and cumbersome regulations for tribal energy development and programs" as one of the three areas where reform was necessary. n135 Ultimately, following the release of the concept paper and numerous follow-up hearings, legislation was proposed to amend the TERA provisions; however, none of this legislation was enacted. n136 As a result, reform is still very much needed. n137¶ [\*849] The discussion below offers two suggestions for reform. These options, though somewhat contradictory, would both improve upon the existing TERA regulations. Whether one proposal is found more persuasive than the other may turn "partly on how one conceptualizes the trust doctrine. It can be seen as a federal duty to protect tribes' right of self-governance and autonomy, or as a way to justify federal power and control over tribal affairs." n138 Senators Bingaman's and Campbell's comments on the then-pending TERA provisions exemplify this difference of viewpoint on the federal government's trust responsibility to federally-recognized tribes.¶ The first proposal approaches the federal trust responsibility from the perspective of promoting tribal sovereignty and self-determination: the TERA regulations maintain federal decision-making authority over energy development in Indian country, which is unnecessary and perhaps even detrimental to the overarching goal of tribal self-determination and energy development. Alternatively, the second proposal for reform adopts a "federal" or "paternalistic" perspective of the federal trust responsibility: the federal government maintains a significant role in energy development in Indian country and therefore should be liable for decisions made under TERA (presumably to protect the economic stability of tribal governments). In considering these proposals, one must be mindful of the fact that the role of the federal government in tribal decision-making is a hotly contested issued. n139 Moreover, these two options for reform are presented in recognition of the existing trade-offs between the tribal trust responsibility and full tribal sovereignty. As Professor Ezra Rosser explained, "the challenge for Indian scholars and leaders alike is recognizing that the future of tribal progress will involve a trade-off between self- [\*850] determination and the trust duties of the federal government." n140 Interestingly, the Navajo Nation made similar recommendations to the Senate Committee on Indian Affairs in comments submitted in 2003. n141¶ A. One Potential Avenue for Effective Reform: Empower Tribal Governments to Make Decisions Regarding Energy Development Without Intervention from the Federal Government¶ If Congress truly wishes the federal government to be free from liability with regard to certain types of energy development within Indian country, the TERA provision waiving federal government liability may remain. However, to maximize energy development within Indian country and truly promote tribal self-determination as is the stated goal of the Act, the federal government should remove some or all federal "conditions" on such development. n142 This is consistent with the viewpoint expressed by Senator Campbell and discussed above; if tribes are to be sovereign, they must have control over regulation within their territories and also bear the liability for tribal decision-making. n143 This means that federal mandates, such as the [\*851] mandates listed in the existing TERA provisions related to environmental review, should be removed. n144 Moreover, under the current provisions, "the government's significant involvement in the approval process could be interpreted as an infringement on tribal self-sufficiency and sovereignty." n145 As previously discussed, many tribes and tribal representatives expressed strong concerns about federally-mandated environmental review provisions that would potentially disrupt tribal governance and subject tribal governments to standards not applicable to the states. n146 Such reform would empower tribes to become the true decision-makers with regard to energy development under the TERA provisions. The proposed reform offers several benefits. First, tribes empowered as true decision-makers tend to perform better. n147 Acting as decision-makers allows tribes to exercise their sovereignty, which as discussed above is tied to the overall likelihood of tribal economic success. In order for a tribe to exercise its sovereignty as a "true" decision-maker, the federal government must play a lesser role in making decisions affecting [\*852] development within Indian country. n148 In fact, scholars have deduced that "federal control over economic decision-making is "the core problem in the standard approach to development and a primary hindrance to reservation prosperity'." n149¶ Tribes that have undertaken increased decision-making roles have a demonstrated record of success, as exemplified by tribal forest management under Public Law No. 638. Under P.L. 638, tribes may enter into contracts and self-governance compacts to assume administration of federal Indian programs, and may use the 638 program to gain significant control over natural resources development. For example, a statistical analysis of seventy-five forestry tribes showed that in the 1980s, forty-nine of the tribes used the 638 program to take some degree of management over their forest resources. The study concluded that "tribal control of forestry under P.L. 638 results in significantly better timber management." n150 When tribes took complete management over their forest resources under 638, output rose as much as forty percent with no increase in the number of workers, and the tribes received prices as much as six percent higher than they had when the forest resources were managed by the Bureau of Indian Affairs. n151 Empirical proof exists that, at least in the context of forest management (which is analogous to energy development given both involve the development of natural resources), tribes have demonstrated the ability to excel when allowed to exercise increased decision-making authority. As Professor Royster concludes, "tribal control of federal programs is thus better than federal control, but a clear second-best to tribal choices of what programs and development opportunities." n152 By eliminating the [\*853] requirement that tribes entering into a TERA come into compliance with a federally-mandated environmental review process, tribes would, therefore, have increased decision-making authority, which in turn increases practical sovereignty that has been shown to increase the likelihood of success of a project.¶ Furthermore, reduction of the federal government's role in energy development within Indian country correlates with the federal government's goal to promote tribal self-determination. n153 Although some tribes may not be in a position to take an increased role in decision-making within their territories, those that are in the position should be encouraged to take an increasingly active role, thereby empowering the appropriate tribes to be self-determinating. n154 The failure of the federal government to recognize that many tribes are capable of independent decision-making would see tribal nations "frozen in a perpetual state of tutelage." n155

#### Federal restrictions allow for arbitrary interference in Native energy projects and are antithetical to Native sovereignty

Unger 10—Clerk, Hon. Ferdinand Fernandez , U.S. Court of Appeals for the Ninth Circuit, JD Loyola Law School, MA - Linguistic Anthropology, University of Texas at Austin (Kathleen, CHANGE IS IN THE WIND: SELF-DETERMINATION AND WIND POWER THROUGH TRIBAL ENERGY RESOURCE AGREEMENTS, http://www.tribesandclimatechange.org/docs/tribes\_24.pdf)

The decision not to transfer responsibility to the tribe can be made during the consultation process if an activity is truly the province of the federal government (for example, an activity that binds the federal government to take a particular action). 257 Protecting the federal government’s sphere of action is a legitimate concern, but the government’s default posture should be to grant control to tribes to better fulfill the self-determination principle. 258 Removing the “inherently Federal functions” provision will help shift the presumption from the federal government retaining control over resource development to tribes taking over that control.¶ 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, 259 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. 260 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. 261 Some tribes have already voluntarily adopted environmental policy acts comparable to NEPA. 262 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.263¶ Indeed, environmental review is best viewed as a decisionmaking tool rather than as a compliance hurdle. 264 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. 265 Because tribes rely on their land base and resources, 266 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. 267 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. 268 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. 269¶ 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. 270 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. 271 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. 272 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. 273 ¶ 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. 274 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. 275¶ As the foregoing discussion indicates, the concerns expressed about the government abdicating its trust obligation 276 are unwarranted—the government has more of a tendency to use the trust doctrine to retain control over tribal resource development. TERA advocates who emphasize that TERAs are voluntary recognize the importance of focusing more on the opportunity for self-determined resource development than on the security afforded by the federal trust obligation. 277 Thus, the provision limiting federal liability does not require revision, 278 for two main reasons.¶ One reason revision is not needed is that the Indian Energy Act’s explicit recognition of the trust responsibility offers assurance that this responsibility remains intact. 279 The Act can be compared with the Indian Mineral Development Act of 1982. 280 Professor Judith V. Royster asserts that in that Act, Congress intended to sustain the trust responsibility despite the inclusion of a similar limitation on federal liability. 281 Though Professor Royster expresses some reservations based on differences between the Indian Mineral Development Act and the Indian Energy Act, she ultimately concludes that the concerns about the trust responsibility are unfounded. 282¶ 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. 283 It is sensible not to require that the federal government be liable for damages related to such agreements. 284 More importantly, it is in tribes’ own interests to accept the risks attendant to developing their resources. 285 Freedom from government control necessarily entails forgoing some federal protection. 286 The Indian Energy Act includes several provisions to build tribal capacity to take on development projects. 287 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. 288 When they do take control, they should embrace the attendant risks, because “sovereignty without such risks is a contradiction in terms.” 289¶ A fourth change that should be made to the TERA structure is that it should be reworked to encourage direct tribal participation in development projects. Though the Indian Energy Act’s asserted aim is to allow tribes to take control of development on their lands, in reality the TERA legislation is geared more toward having tribes take over the regulatory role of the federal government, while private development is still the most likely medium through which resource development will take place. 290 Because research has suggested that economic development is more successful when tribes are actively involved, 291 this model should be rethought. In part, rethinking the tribe-as-regulator model will involve considering whether the TERA framework works to enable truly self-determined resource development by tribes. The framework has been called a “guarded effort” to allow tribes to determine the course of resource development on their lands. 292 But a guarded effort may not be enough to foster real self-determination.¶ In fact, the TERA legislation and regulations specify in great detail the provisions that a tribe’s TERA and its subsequent development agreements must contain. 293 This high level of federal regulation appears logically inconsistent with real tribal control over economic and resource development. 294 The issue at the heart of self-determination is tribes’ right to make their own laws and govern themselves. 295 When the federal government dictates the terms under which tribes can take control over resource development, this right remains unfulfilled. ¶ As noted previously, much of the concern over TERAs for natural resource development arose in the context of mineral resources, because of the high potential for adverse impacts resulting from their development. 296 But because wind power does not share this potential, 297 it can provide an opening for a less rigid structure than the present TERA framework allows. Given the imperative to develop wind power, now may be the perfect time to consider this possibility.¶ VII. CONCLUSION¶ Indian tribes and the DOI should view the TERA framework as providing an opportunity for tribes to take charge of resource development when their capacity is sufficiently advanced. Because of its lesser environmental impacts, wind power provides a significant opportunity for tribes to use TERAs to step into an active development role.¶ Not only do the characteristics of wind power make it particularly well suited for use of the TERA structure, but wind power is also particularly appropriate for development by a tribal energy resource development organization made up of several tribes. Allowing a tribal energy resource development organization to enter into a wind power TERA would enable the development of this renewable resource through large-scale projects that can help meet the nation’s energy needs in a sustainable way and also help meet tribes’ needs for sustainable economic development.¶ In addition, a wind power TERA provides an opportunity for tribes to have an ownership interest in the development of their resources rather than remaining only regulators of development undertaken by others. 298 This ownership enables tribes to take greater control over development projects, thereby furthering the goal of self-determination.¶ Finally, TERAs enhance self-determination by giving tribes the power of choice over development decisions. 299 Because the TERA stru cture is a voluntary framework for development, tribes can choose to use this tool or to forgo it in favor of the preexisting, more protective framework. Moreover, TERAs allow tribes to choose tribal control, and thus self-determination, in place of federal protection under the trust doctrine. 300 There may be less need for a robust trust doctrine after the past several decades, in which the self-determination principle has influenced federal Indian policy and has led to greater tribal autonomy—and through the choice TERAs offer, they can be seen as harmonizing the trust obligation with that present reality.301¶ However, it is worth considering whether the TERA framework goes far enough in fostering self-determination. Making some changes to the TERA structure, as this Note suggests, can help tribes achieve the goal of developing wind power in a self-determined way. But now may be the time to make broader changes to the federal legal framework that governs tribal resource development, to truly unleash the power of tribal wind.

#### The status quo allows for cycles of structural violence to occur on Native lands---sovereign development of renewable energy is necessary to combat fossil fuel colonialism

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

A just nation-to-nation relationship means breaking the cycle of asking Native America to choose between economic development and preservation of its cultures and lands; renewable energy and efficiency improvements provide opportunity to do both simultaneously. A green, carbon-reduced energy policy has major national and international human rights, environmental and financial consequences, and we believe that this administration can provide groundbreaking leadership on this policy. The reality is that the most efficient, green economy will need the vast wind and solar resources that lie on Native American lands. This provides the foundation of not only a green low carbon economy but also catalyzes development of tremendous human and economic potential in the poorest community in the United States- Native America. ¶ HISTORY OF EXPLOITATION AND ENERGY INJUSTICE¶ The history of resource exploitation, including conventional energy resources, in Indian Country has most recently been highlighted by the Cobell lawsuit against the Department of the Interior on behalf of individual Indian land owners, which requires both accountability of the federal trustees and a just settlement for the Indian plaintiffs. The programmatic exploitation of conventional energy resources has run an equally long and often deadly course in Indian Country, with a distinctly colonial flavor where tribes have supplied access to abundant natural resources under trust protection at rock bottom prices in sweetheart deals promoted by the federal government, yet often go un-served or underserved by the benefits of such development. Even the most recent federal energy legislation and incentives are still designed to encourage the development of tribal resources by outside corporate interests without ownership or equity participation of the host tribes. ¶ The toxic legacy left by fossil fuel and uranium development on tribal lands remains today and will persist for generations, even without additional development. Mines and electrical generation facilities have had devastating health and cultural impacts in Indian country at all stages of the energy cycle- cancer from radioactive mining waste to respiratory illness caused by coal-fired power plant and oil refinery air emissions on and near Native lands. Native communities have been targeted in all proposals for long-term nuclear waste storage. ¶ Compensation for uranium miners and their families has not been fulfilled from the last nuclear era, and every tribal government with uranium resources has opposed new uranium mining developments, including in the Grand Canyon, as an immoral and untenable burden for Native American communities. In addition, energy-related deforestation has serious climate change and human rights impacts for Indigenous communities globally. Approximately 20% of climate change-inducing emissions come from deforestation and land use, often from unsustainable energy projects, biofuel (agrofuel) and other monocrop development fueled by a need to satisfy tremendous foreign and World Bank debt obligations. On an international level, the US has yet to sign onto the United Nations Declaration of the Rights of Indigenous Peoples, we believe signing onto this important agreement is an essential early step in the context of the administration’s dealings with Native America. ¶ When considering energy and climate change policy, it is important that the White House and federal agencies consider the history of energy and mineral exploitation and tribes, and the potential to create a dramatic change with innovative policies. Too often tribes are presented with a false choice: either develop polluting energy resources or remain in dire poverty. Economic development need not come at the cost of maintaining cultural identity and thriving ecosystems. Providing incentives to develop further fossil fuels and uranium in Indian country will only continue the pattern of ignoring the well-being of tribes and Alaska Native villages in favor of short-sighted proposals that exploit the vulnerabilities of poor, politically isolated communities. ¶ ‘Clean coal’ is an oxymoron; mining coal is never ‘clean,’ coal plant emissions add to climate change impacts, carbon capture and sequestration technology is unproven financially and technically. Coal expansion on and near Native lands should not be incentivized by the administration.¶ Nuclear power is not a solution to climate change: from mining to nuclear waste, the nuclear cycle is far from carbon neutral and disproportionately impacts Native communities. Nuclear power is also economically unfeasible, and will not address climate change at the speed required to mitigate the devastation ahead. ¶ Oil drilling in sensitive Arctic regions, including the off shore Outer Continental Shelf areas of the Beaufort and Chukchi Seas, threatens Alaska Natives’ way of life, and perpetuates the nation’s addiction to oil and GHG emissions. It is of utmost importance to institute a federal time-out on the proposed offshore development within the Outer Continental Shelf areas in Alaska. It has not been proven whether or not cleaning up spills in broken ice conditions is possible, the implications to subsistence ways of life and human health of coastal communities have not been reviewed extensively and impacts to Polar Bears and other threatened and endangered Arctic marine species have not been studied.¶ Importing 80% of the Alberta Canada tar/oil sands crude oil to feed US energy needs encourages unprecedented ecological destruction in Canadian Native communities and the use of a fuel far more carbon intensive than conventional oil. This tar sands expansion has been called the tip of the nonconventional fuels iceberg. This iceberg includes oil shale, liquid coal, ultra-heavy oils and ultra-deep off shore deposits. Extraction of these bottom-of-the-barrel fuels, emits higher levels of greenhouse gases and creates ecological devastation.¶ Unchecked expansion of biofuels (agrofuels) production and agricultural monocrops threaten biodiversity and food security and contribute to climate change and the destruction of rainforests, impacting Indigenous communities worldwide. ¶ Impacts of climate change are greatest in Native communities because of the close cultural relationship with the land and subsistence farming, hunting and fishing. In Alaska, the entire Indigenous village of Shishmaref will need to relocate (at a cost of $180 million) because rising temperatures have caused ice to melt and rapid erosion of the shoreline. Shishmaref is one of some 180 villages that will either move, at an estimated cost of $1.5 million per household or be lost. All of these burdens fall on tax payers, although one Alaskan Native Village- Kivalina has sued 14 oil companies for the damages.¶ Our Native organizations and the communities and tribes we serve believe the Obama Administration should request the new Congress and direct the departments of interior, energy and treasury to review all energy subsidies that go to coal, gas, oil and nuclear industries which have climate or toxic waste impacts on Native communities and to redirect the billions in subsidies to actualize clean sustainable energy development in Native America. Subsidies for the nuclear, coal, gas and oil industry should be rapidly phased out with a proportional ramp up of subsidies for renewable technologies and locally administered conservation/efficiency improvements. ¶ In particular, we believe that any climate change legislation should not allocate funds for nuclear or clean coal technologies, and proposals to provide liability guarantees to nuclear plants, and capitalize research on uranium in situ mining practices must be eliminated. ¶ NATIVE AMERICA: IN NEED OF GREEN ECONOMIC DEVELOPMENT¶ Ironically, whiles some Native Nations and their reservation communities have borne the brunt of destructive energy development that has reaped massive profits for some, they are the poorest in the country, with high unemployment rates and inadequate housing.¶ The unemployment rate on Indian reservations is more than twice the national rate.¶ The median age in Indian Country is about 18 years, with a young and rapidly growing population in need of both jobs and housing. ¶ The poverty rate for Native Americans is 26%; more than twice the national average.¶ More than 11% of Indian homes do not have complete plumbing. About 14% of reservation households are without electricity, 10 times the national rate. ¶ In rural Alaska where Alaska Natives predominately reside, 33% of the homes lack modern water and sanitation facilities. ¶ Energy distribution systems on rural reservations are extremely vulnerable to extended power outages during winter storms threatening the lives of reservation residents. ¶ Reservation communities are at a statistically greater risk from extreme weather related mortality nationwide, especially from cold, heat and drought associated with a rapidly changing climate. ¶ Reservations are waiting on more than 200,000 needed new houses. ¶ About 1/3 of reservation homes are trailers, generally with completely inadequate weatherization.¶ Inefficient homes are a financial liability, leaving owners vulnerable to energy price volatility.¶ Fuel assistance programs provide millions of dollars of assistance to tribal communities. While necessary in the short term, they do nothing to address the cycle of fuel poverty due to leaky inefficient homes, and the need for a localized fuel economy. ¶ Internationally, the present levels of deforestation and climate-related disasters are creating huge populations of environmental refugees. It is anticipated that within 20 years, we will be spending some 20% of world GDP on climate change related mitigation and disasters.¶ Unemployment rates, poverty and the need for efficiency improvements and renewable energy provide an ideal opportunity on tribal reservations and Alaska Native villages for maximizing the impact of a green jobs initiative. Local jobs weatherizing buildings, constructing, installing and maintaining renewable energy technology could be created. This has huge financial implications for rural economies, and for the overall US economy. ¶ The Obama Administrations’ economic stimulus plans that incorporates a green economy and green jobs portfolio must include provisions for access of these resources by our Native Nations, our tribal education and training institutions and Native organizations and communities. ¶ GREEN ECONOMIES IN NATIVE COMMUNITIES: MASSIVE POTENTIAL, MAXIMUM IMPACT¶ Providing clean renewable energy development and reversing the trend from exploitation toward energy justice should be top priority in administration energy decisions. Tribes must be provided federal support to own and operate a new crop of renewable electricity generating infrastructure providing the dual benefits of low carbon power and green economic development where it is needed most. Tribes should be targeted with efficiency programs to reduce consumption of fossil fuels for heating and cooling and creating local jobs weatherizing and retrofitting buildings, helping reduce the tremendous amount of money that exits communities to import energy. ¶ Tribal lands have an estimated 535 Billion kWh/year of wind power generation potential.¶ Tribal lands have an estimated 17,000 Billion kWh/year of solar electricity generation potential, about 4.5 times total US annual generation. ¶ Investing in renewable energy creates more jobs per dollar invested than fossil fuel energy.¶ Efficiency creates 21.5 jobs for every $1 million invested. ¶ The costs of fuel for wind and solar power can be projected into the future, providing a unique opportunity for stabilizing an energy intensive economy.

#### Localized wind and solar offer an opportunity to move beyond conventional biopolitical models of development that exploit Indigenous culture and land and have resulted in the systematic extermination of Native Americans

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In her work with the indigenous movement in Ecuador, Catherine Walsh speaks of the movement’s building of local alternatives as ‘the resignifying in meaning and practice of ‘development’ (Walsh, 2002: 7). Development, with its long history of top-down, state-driven, regulatory, and often export- and expert-oriented goals, is being increasingly challenged by indigenous social movements in the Americas seeking to decentralize and gain local control over various aspects of governance, economic growth, cultural projects, and natural resources. Not completely unlike the Ecuadorian Pachakutik movement Walsh describes, the movement for ‘environmental justice’ in indigenous communities in the US is experimenting with alternative strategies to restructure the production of power to advance democracy and sovereignty for indigenous communities. This essay addresses the possible resignification of development being produced by the practices and discourses of a particular indigenous movement in the US, which addresses controversies over natural resource management on reservation lands. In particular, I consider the emergence of renewable energy projects within the movement as new modes of economic, ecological, and cultural development, countering the history of biopolitical regimes of natural resource extraction, which have marked indigenous experience in North America since Contact. I argue that these emerging technologies not only resist but also propose alternatives to the dominant models of energy production in the US.¶ Background¶ The Indian Self-Determination and Education Act of 1975 enabled American Indian tribes for the first time to self-determine their own resource policies and regulatory agencies, overseeing tribal programs, services, and development projects. In 1988, the Indian Gaming Regulatory Act opened the way for the development of casinos on reservations as a new mode of tribal economic development, and today 34% of all federally recognized tribes run full-scale (class III) casino gambling, although only a minute fraction of these represents the soaring economic success of places like the Foxwoods Casino and Resort on the Mashantucket Pequot reservation. These and other approaches to economic development ^ especially natural resource extraction and casino gaming ^ have become issues of intense debate among scholars and activists (LaDuke, 1999; Gedicks, 2001; Blaser et al., 2004; Cattelino, 2004; Hosmer and O’Neill, 2004), as well as among tribal governments, federal agencies, and within the general population. In the cacophony of competing moral claims and recommended approaches elicited by these various controversies, the voices with alternative proposals are sometimes lost. Against these two dominant approaches, there is another trend in tribal economic development beginning to emerge, connected to the indigenous environmental justice movement (IEJM) in North America and critical of neo-liberal development models. Drawing upon an historical conflict over resource extraction on reservation lands (see Figure 1), this movement is turning towards what David Korten has called an ‘emergent alternative wisdom’ of development practice (Korten, 2005).¶ This trend, embedded in a broader network of environmental justice projects in Native America, is a move towards renewable energy technologies on reservations: wind power and solar power in particular. While these projects engage wider energy markets, global discourses on climate change and the ‘end of oil’, and funds from federal agencies, they also embody an alternative knowledge grounded in an historical, indigenous social movement in which economic justice for indigenous peoples is intimately intermeshed with questions of ecological wellness and cultural preservation. As such, wind and solar technologies are being presented and implemented as alternative approaches to dominant practices of economic development and carry with them a history of centuries of struggle, as well as the hope for a better future.¶ These emerging practices of a social movement-driven development agenda draw our attention to the cultural politics, meanings, histories, and conceptual contributions posited by unconventional development projects. As part of an emerging movement in support of localized wind and solar energy production on tribal lands, these projects are responses to the biopolitical operations of 20th century development projects. They respond to a long history of removal, regulation, knowledge production, and life-propagating techniques administered on reservation-based peoples. The movement itself addresses controversies in a way that interweaves the economic, the ecological, the cultural, and the embodied aspects of being and being well in the world; as a member of the Indigenous Environmental Network (IEN) said to me:¶ The movement is really about health and people dying … people can’t have an enjoyable life anymore. The work of the movement is never about the power plant itself, but about how all the EJ (environmental justice) issues come together and link up to affect people’s lives … its about having a good life (B Shimek, 2004, personal communication).¶ Such an analysis resonates with Arturo Escobar’s emphasis on a framework of a ‘political ecology of difference’ and the need to consider ‘cultural distribution’ conflicts in studies or other engagements with natural resource issues (Escobar (2006) Introduction). Concerns of ‘cultural distribution’ have become crucial work for the IEJM as it seeks to resignify development as ‘environmental justice’ in the context of a particular history of illness and disease, environmental contamination, poverty, and place-based worldviews. I argue that the way in which the IEJM has coalesced around these alternative development projects suggests that these projects are ‘technologies of resistance’ (Hess, 1995) to dominant forms of economic development, but also ^ and perhaps more significantly ^ imaginative technologies of existence, mediating a particular discourse of natural resource controversies, including values of a ‘good life’. As such, renewable energy technologies are resignifying the politics of ‘sustainability’ through the movement’s concept of ‘environmental justice’, which cuts across reductive interpretations of economy, ecology, and culture.¶ Development as a biopolitical operation¶ In analysing development as a biopolitical operation, I follow other feminist scholars and development critics who have considered the biopolitical effects of particular development discourses on women’s bodies and movements (Harcourt, 2005) and labour and corporations (Charkiewicz, 2005). As they argue, the post World War II model of development as a project driven by Western states to modernize other ‘emerging’ states and bring them into a geopolitical sphere of economic control is, at its base, an exertion of biopower on particular (gendered, raced, labouring) bodies. Michel Foucault described biopower as the power of the state ‘to make live and let die’, in contrast to the disciplinary power of monarchical states, which exerted a sovereign’s power ‘to make die and let live’ (Foucault, 2003). In other words, the king controlled his subjects by the threat (and occasional enactment) of killing some and letting others live, in order to maintain control, whereas the modern state makes less of a spectacle out of individual killings and exerts its force over populations instead, managing the species through techniques of regulating birth, mortality, biological disabilities, and the effects of the environment. The significant shift to a regime of biopower is the new target of control: the population. When viewed as a biopolitical operation, development programs of the post-war model (which has lingered and reproduced itself in various forms on into the 21st century) are revealed as schemes to control populations ^ in particular, ‘Third World’ populations defined by the West as political problems and scientific problems, as well as economic opportunities.¶ A similar history runs through Native America, as this ‘Fourth World’ population was a target of regulation, management, and biological speculation from the moment of Contact, over 500 years ago. Indigenous populations worldwide have experienced the effects of biopower, especially in terms of the management and extraction of natural resources (including bodies and, more recently, genetic information), but in the Americas the situation is geo-historically particular, given the sweeping catastrophe of disease, decimating what some have estimated to be 95 per cent of the pre-Contact population. Another particularity of the North American situation is that, over the long history of occupation since 1492, tribal populations have been alternately exterminated, removed, recombined, relocated, and politically reorganized by state institutions, often under the guise of care and patrimony. In the 19th and early 20th centuries, tribes as populations were regulated and made to live through land enclosures, creating spatial patterns of security, on frontier lands considered undesirable to European colonists. This desirability was, however, based on the visible alone; the resources that laid beneath the surface of the often barren, dry reservations would emerge in the 20th century as some of the most coveted commodities on earth (Figure 2).¶ In sum, thinking of the history of development as a biopolitical operation to manage the life of populations of indigenous peoples in the Americas allows us to see the regulatory operations of the state, sometimes glossed as integrationist policies, as has been the trend in Latin America with the history of indigenismo (Sawyer, 2004), and sometimes framed as patrimony and treaty responsibility, as in the United States, with the ‘Indian New Deal’ in the 1930s (Collier, 1938). Moreover, it provides a way of understanding the history of state-driven development models as regimes of controlling, regulating, and organizing particular bodies and environments ^ the antithesis of the liberal, humanitarian projects these regimes have often claimed to be. Finally, as I move to discuss the IEJM and the emergence of wind and solar power projects on reservations, these technologies of resistance and existence can be thought of as counter-projects to the biopower of 20th century models of development, which have exacted significant ecological and cultural costs from tribes, in service of a reductive, disembedded view of economic growth.¶ Emergence of wind and solar power projects in the IEJM¶ In 2003, the first utility scale, indigenous-owned and operated wind turbine in the US was installed on the Rosebud Sicangu Lakota reservation in South Dakota. The project took eight years of organizing, fundraising, and coordinating among the tribal government, the Intertribal Council on Utility Policy (ICOUP), the Department of Energy, local activists and indigenous non-governmental organization Honour the Earth (HTE). Rising to 190ft tall, the 750kW, Danish-manufactured wind turbine was installed with ceremony and great expectation as the first of many to come. As the closest structures to the turbine site, the Rosebud casino and its adjacent hotel will consume the wind’s power until new lines are constructed to carry it deeper into the reservation to individual homes. The turbine at Rosebud was installed as the first among several emerging wind energy projects on Native American reservations from the Dakotas to Montana and Colorado. Bob Gough of ICOUP explains that this technology is being used to promote a wider campaign for renewable energy on other reservations:¶ This turbine could have been simply a stand-alone project and the tribe would have been pleased enough. This is really a show horse. It’s there at the casino to get high visibility ^ we’re going to have information kiosks to teach people about it. But this project was also designed to take us through all the steps we need to learn to build more of these. There’s a lot more than just putting up a wind turbine and connecting a few wires. With wind turbines you’re connecting into the North American electricity grid, the largest machine in the world, which involves a lot of rules and policies.We’ve used this as an opportunity to learn how to do this on a larger scale, and we are sharing that with any of the other tribes that are interested (Tidwell, 2003: 3).¶ Situated within the broader IEJM in North America, these projects mark a shift towards wind energy activism within the movement, which traces its own history of resistance to the recent action of the 1960s and 1970s, but more deeply to the resistance that has always been a part of the colonial experience of being occupied and ‘developed’. The Rosebud turbine is a community based development project imagined and executed by local and regional activists and engineers, but funded by a combination of national foundations and federal agencies, including the Environmental Protection Agency, the Department of Energy, Department of Interior and US Department of Agriculture, making for complex and contradictory alliances between tribes and the state. The project is also situated within the context of environmental and political debates on energy development around the state of South Dakota, where plans are underway to develop 2000 MW of coal-fired power by the end of 2010 (LaDuke, 2004). The wind turbine is moving to centre stage as a potential solution to many of movement’s primary concerns: climate and ecological change, natural resource conflicts, cultural preservation, globalization, and tribal sovereignty.¶ Twenty years earlier and1100 miles south, Hopi engineers, activists, and tribal leaders began to install solar photovoltaic panels on rooftops of residential homes, bringing electricity to families who had been living off the grid, without electricity Projects on the Hopi and Navajo reservations have proliferated over the past two decades, with the Hopi solar business NativeSun and engineer Debby Tewa leading the way. In recent years, these projects have connected with the emerging wind power projects in the Plains region, through the work of the national Native NGOs, HTE, and the IEN, and have become central to these groups’ common visions and overlapping strategies of environmental justice and sustainable development on tribal lands. In the last two years, these two national networks have collaborated with grassroots environmental and cultural protection organizations to install additional technologies on Newe Segobia, or Western Shoshone territory, on the Pine Ridge Lakota reservation, and on the Navajo reservation. These installations have become intermeshed with ongoing indigenous environmental justice campaigns focused on conflicts centring primarily on aspects of energy production, such as the recent conflicts over the proposed mining of the sacred Zuni Salt Lake; the proposed federal nuclear waste storage sites on the Skull Valley Goshute reservation and at Yucca Mountain, Nevada; and uranium mining on the Navajo and Hopi reservations. In several of these cases, the environmental justice activists are challenging tribal governments’ contracts with regional utilities and/or federal agencies. Without a long digression into the history and politics of natural resource use and development on reservation lands, suffice to say it is not always but is often a site of intense internal debate and conflict for tribes themselves.¶ The significance of the relatively recent emergence of wind and solar technologies as tribal development projects is that tribes are increasingly connecting into this network of renewable energy activism as a means of economic growth, ecological protection, and cultural preservation. Seemingly an oxymoron ^ to preserve ‘tradition’ with the use of high-tech machines ^ advocates of wind and solar power emphasize that cultural preservation is itself about flexible practices, change, and honouring worldviews in which the modernist distinction between nature and culture is nonsensical. In other words, when some of the most important cultural resources are the land itself (i.e., mountains for ceremonies, waters for fishing, soils for growing indigenous foods), to protect nature is also to protect culture. As Bruno Latour has also argued, this natures-cultures epistemology is also ontology ^ a different way of knowing, inhabiting and engaging the world (Latour, 1993, 2005). Wind turbines and solar photovoltaic panels are articulating with this worldview, and at the same time articulating with many tribes’ desires to move beyond fossil fuel extraction as a primary means of economic development, and towards natural resource practices that are more ‘sustainable’. The wind and the sun introduce new elements of common property to be harnessed for alternative development projects and increased decentralization and ownership over the means of power production.¶ Technologies of existence¶ This recent emergence of renewable energy technologies on reservations inspires analysis of natural resource conflicts to move beyond models of resistance in understanding controversies and social struggles over resource management and energy production to seeing the ways in which concepts such as ‘sustainability’ are being resignified through the introduction of what I argue are imaginative technologies of existence. I stress existence over resistance not to obscure the contestations of federal, tribal, and utility consortium proposals for natural resource development, which have been importantly detailed elsewhere (Gedicks, 2001), but to emphasize the creative, imaginative work of the movement in envisioning and enacting alternative ways for tribes to self-sustain and grow healthy economies, ecologies, cultures, and bodies in an integrated manner. There are other technologies of existence engaging particular, situated natural resource conflicts within the movement: recovery of customary foods and harvesting practices, coalition-building around water rights and resources, restoration of salmon and sturgeon populations, and projects involving information and film media as a means of preserving and producing the ‘natural’ resource of culture itself. This constellation of resources ^ energy, food, water, and culture ^ are of central concern to the IEJM and creating sustainable methods of generating each advances the ‘good life’ towards which the movement’s work strives. ¶ In this sense, wind and solar projects on reservations are not technologies of existence to ‘make live’ in the biopolitical sense of a population’s ensured biological survival and micro-practices of regulation, but technologies that articulate with desire, history, localization, imagination, and being in a way in which the meaning of ‘existence’ exceeds a definition of continued biological survival or reproduction. These technologies are about a particular quality of existence that speaks to the late Latin root of the word, existentia, which comes from the earlier Latin exsistere, meaning ‘come into being,’ itself a combination of ex ‘out’ þ sistere ‘take a stand’ (O.A.D., 2001). Thus, when ‘existence’ recovers the notions of coming into being, externality, and taking a stand, what it means to live and to grow is inherently active and perhaps even risky. Sustainability, then, in the context of the IEJM, is a bold existence and set of practices informed by a particular history of struggle and oriented towards a future of well-being, in which the economic, the ecological, and the cultural are interdependent and mutually constitutive.¶ The movement’s concept of ‘environmental justice’conveys such a non-reductive understanding of sustainability as a certain quality of existence. The concept proliferates and circulates through the geographically dispersed installations of wind turbines and solar panels (among the other technologies of existence) and is reinforced at national and transnational gatherings of HTE and the IEN. As an enunciation of sustainability, ‘environmental justice’ recalls specific cases of contamination on indigenous lands, articulates with broader environmental and anti-racist movements worldwide, and critiques dominant approaches to development by posing concrete alternatives. This is a critical, alternative knowledge being produced through the networked practices of a specific social movement. It is not the sustainability of the ‘triple bottom line’ in neo-liberal theory that self-congratulates its attention not only to capital but also to pre-figured notions of the environment and society; though it is also not a romanticized ‘traditional’ wisdom of indigenous people, endowed with some sort of essentialist knowledge and protective role for the natural world. It is, instead, a sophisticated hybrid concept ^ in which knowledges of wider energy and trade markets, science and engineering, local resource management issues, global processes of climate change and wars for oil, and the relational knowing that comes with enacted attachments to place, converge to inform and generate a call for ‘environmental justice,’ implemented through specific material technologies.

#### Advocating for Native renewable energy development is necessary to create epistemological fissures that can begin to rectify historical traumas of energy exploitation

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In this paper, we explore how non-governmental political action on the Navajo Nation, and environmental activism, in particular, is organized around the perennial question of development, and the ontological frictions that produce and continue to shape these debates. At the same time, we suggest that these ontological differences are never complete or total, but in fact are the result of historical processes of lived experience, as much dependent upon the circulations of “outside” forces such as popular culture, higher education, global pan-Indigenous movements, and the traveling discourses of environmentalism, climate change, and environmental justice, as upon anything inherently Diné. The effects of such global forces work to produce political actors who very often move and operate across the boundaries of well-worn categories such as “tradition” and “modernity,” “grassroots” and “governmental.” The experience of indigeneity itself is forged in and through encounters, always a relational, unpredictable, and “open-ended process,” as others have shown (see de la Cadena and Starn 2007). The result is a process of frictions, fractures, and flows of political action, in which differing senses of what the world is and should be (what we herein call “ontologies”) generate an opening for exploring how a sense of unique identity (what it means to be specifically Diné) is being worked out through environmental activism and contested interpretations of ethics, “nature” and “culture.” In this sense, social movement actors are contributing in an active and meaningful way to local, regional, and national debates on the future of particular extractive industries (in this case, mining) on indigenous territories. The knowledge they bring forth and mobilize is, we will show, integral to the Nation-wide debates on the future of energy for the tribe and the region. Through this paper, we aim to contribute to the interdisciplinary fields of social movements studies and development studies, which have largely overlooked, as Bebbington points out, “the roles of rural social movements in mediating the effects of large scale capital investment on rural livelihoods and territorial change” (Bebbington et al 2008: 4). Like others (see Escobar 1998 and Hess 2005), we view the work of social movements to be crucial in shaping the discourse, knowledge, and future of not only how development technologies are implemented (or not) in particular places, but how the very conceptual framework of “development” itself is thought, spoken, and transformed. 3¶ [Continues]¶ In conjunction with the FLD, tribal members have used other Diné ethical principles such as dóó nal yee dah to support their call for the prohibition on uranium mining and milling on and around Diné territory. Dóó nal yee dah, which roughly translates to “certain substances within the Earth that are harmful to the People should not be disturbed,” was derived from consultations by environmental groups with medicine people and other tribal elders with traditional/historical knowledge. Once introduced, use of similar customary principles and concepts have taken hold and proliferated in other struggles. More recently, the group Diné CARE (Diné Citizens Against Ruining our Environment) issued a report on economic and energy alternatives to a proposed 1500-megawatt coal-fired power plant on the Navajo Nation known as the Desert Rock Energy Project, using FLD and other related Diné ethical principles as the basis of their argument in a 200-page report laying out economic and energy alternatives to the proposed coal plant. 10 The report’s Introduction cites the 2005 Diné Natural Resources Protection Act (DNRPA) and its use of FLD as an authoritative basis and point of departure for their own argument:¶ “DNRPA and its incorporation of Diné Fundamental Laws to ban uranium activities make evident the need for Navajo energy development and economy to be “rebalanced” through the traditional concept of Alch’i Silá (“they face/relate each other”), rectifying the historical trauma of energy development and mining with sustainable renewable technology in accordance with foundational principles” (Diné CARE 2008).¶ Building on this call for “rebalancing” through new and different technologies, the report continues to draw upon Diné worldview and values to argue for investment in solar and wind power on the Navajo Nation, instead of coal-fired power. Stressing core Diné ethics of hozhó (“beauty, or balance”), k’e (“relations”), and áná’áál’ii’ nitl’iiz niná’nil (“atonement by putting things in place”) and also explicating the technicalities of concentrated solar power technology, the report stands out in its unique usage of Diné ontology and epistemology combined with technical knowledge and renewable energy expertise. 11¶ Also drawing on Diné Natural Law and ontological difference, other non-governmental Navajo groups have sustained long term public campaigns challenging development projects in areas outside of reservation geopolitical boundaries, but in places that are considered part of their historic territory and sacred to the Diné (as well as other Native peoples of the region). In several recent cases, activists have mounted challenges to development activity on what are considered to be holy mountains that play an important role in Navajo cosmology, as sites of the birth and resting places of specific and central deities such as Changing Woman, and her twin sons, Monster Slayer and Born-for-Water. These mountains are sacred in Navajo belief and are the geographic, historical boundaries for Dinétah, the Navajo territory. An example of one such struggle is the “Save The Peaks” movement, centered in Flagstaff, Arizona, one of the larger Navajo and nonNative “border towns” of the reservation. The Flagstaff-based Black Mesa Water Coalition (BMWC), a coalition of Navajo and Hopi organizers, along with non-Native allies opposed the city’s plan to use recycled effluent, or city wastewater to create “snow” for the Arizona Snowbowl Ski Area. This ski area was slated as a tourist attraction on the mountain known, in English, as the San Francisco Peaks. This mountain, known as Dook’sliid by the Diné, is the westernmost of their four sacred mountains. In their campaigns, BMWC and the affiliated organizations used the FLD and other traditional/historical principles as a central organizing ethic for their “environmental justice” work. Interestingly, in this particular campaign – as in the campaign that culminated in the moratorium on uranium mining – the Navajo Nation Council has aligned with non-governmental actors against the developers, also deploying FLD and invoking cultural preservation as the basis for protecting these landscapes. ¶ Admittedly, use of customary principles serves as a pragmatic legal strategy, but there remains strong use of these concepts within the meaning-making work that goes on within Diné non-governmental politics. In fact, it is precisely the contested meanings of FLD that fuel the debates over various development technologies, as evidenced in all ten of the public hearings for the Draft Environmental Impact Statement on the Desert Rock Energy Project (coal fired power plant) during the Summer of 2007. The meaning-making work of these social movement actors is crucial to their political subjectivities and epistemologies, which are significant products of the cultural politics they are engaged in. In other words, their efficacy and agency cannot be measured only in terms of “political opportunities” or directly causal factors, but operates as well at the level of knowledge production and resignification. 12 What’s more, many of Navajo non-governmental actors express extreme dissatisfaction with the decision-making processes currently operating in the Navajo Nation government, while at the same time stressing the central importance of tribal sovereignty, self-determination, and good governance. ¶ Significantly, leaders within environmental justice organizations critique the structure of the tribal government as a systemic cause for dissonance between industrial/extractive development and traditional notions of environment. These organizations argue (as do many scholars, see Iverson) that because the Navajo Nation government was created by the federal Bureau of Indian Affairs in 1923 as an instrument of extended colonial rule and relations between the U.S. federal government and the Navajo people in the interests of extractive industry, the current government is both non-traditional, colonial, and structured to act more in the interests of large corporations than in the interests of the Navajo people. In other words, grassroots organizations question the legitimacy of formal political institutions on the Navajo Nation, now in existence for only 80 years, while using historical Diné knowledge, which, although it has evolved over time, has a much longer history. As such, the politics of authenticity and heritage is forged where ethical teachings engage modern institutions, implicating and generating a diverse array of Diné identities. This sort of contentious social practice yields shifting personal and collective identifications, often through these contested ontologies and epistemologies. Following Holland and Lave (2001), relationships between enduring struggles (such as contested modes of governance) and historical subjectivities (the activists, the council members, and others) are mediated through local, situated practice, such as the debate over existing and proposed development projects. And the sides of the debate on which specific actors will fall is never fully foreseeable.

#### Obsession with short-time frame impacts obscures ongoing violence that doesn’t fit neatly within conventional temporal frames

Nixon 10 (Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pp 1-14)

When Lawrence Summers, then president of the World Bank, advocated thai the bank develop a scheme to export rich nation garbage, toxic waste, and heavily polluting industries to Africa, he did so in the calm voice of global managerial reasoning.' Such a scheme. Summers elaborated, would help correct an inefficient global imbalance in toxicity. Underlying his plan is an overlooked but crucial subsidiary benefit that he outlined: offloading rich-nation toxins onto the world's poorest continent would help ease the growing pressure from rich-nation environmentalists who were campaigning against garbage dumps and industrial effluent thai they condemned as health threats and found aesthetically offensive. Summers thus rationalized his poison-redistribution ethic as offering a double gain: it would benefit the United States and Europe economically, while helping appease the rising discontent of rich-nation environmentalists. Summers' arguments assumed a direct link between aesthetically unsightly waste and Africa as an out-of-sighl continent, a place remote from green activists' terrain of concern. In Summers' win win scenario for the global North, the African recipients ot his plan were triply discounted: discounted as political agents, discounted as long-term casualties of what 1 call in this book "slow violence," and discounted as cultures possessing environmental practices and concerns of their own. I begin with Summers' extraordinary proposal because it captures the strategic and representational challenges posed by slow violence as it impacts the environments and the environ-mentalism of the poor.¶ Three primary concerns animate this book, chief among them my conviction that we urgently need to rethink—politically, imaginatively, and theoretically what 1 call "slow violence." By slow violence 1 mean a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all. Violence is customarily conceived as an event or action that is immediate in time, explosive and spectacular in space, and as erupting into instant sensational visibility. We need, I believe, to engage a different kind of violence, a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales. In so doing, we also need to engage the representational, narrative, and strategic challenges posed by the relative invisibility of slow violence. Climate change, the thawing cryosphere, toxic drift, biomagnification, deforestation, the radioactive aftermath s of wars, acidifying oceans, and a host of other slowly unfolding environmental catastrophes present formidable representational obstacles that can hinder our efforts to mobilize and act decisively. The long dyings the staggered and staggeringly discounted casualties, both human and ecological that result from war's toxic aftermaths or climate change are underrepresented in strategic planning as well as in human memory.¶Had Summers advocated invading Africa with weapons of mass destruction, his proposal would have fallen under conventional definitions of violence and been perceived as a military or even an imperial invasion. Advocating invading countries with mass forms of slow-motion toxicity, however, requires rethinking our accepted assumptions of violence to include slow violence. Such a rethinking requires that we complicate conventional assumptions about violence as a highly visible act that is newsworthy because it is event focused, time bound, and body bound. We need to account for how the temporal dispersion of slow violence affects the way we perceive and respond to a variety of social afflictions from domestic abuse to posttraumatic stress and. in particular, environmental calamities. A major challenge is representational: how to devise arresting stories, images, and symbols adequate to the pervasive but elusive violence of delayed effects. Crucially, slow violence is often not just attritional but also exponential, operating as a major threat multiplier; it can fuel long-term, proliferating conflicts in situations where the conditions for sustaining life become increasingly but gradually degraded.¶ Politically and emotionally, different kinds of disaster possess unequal heft. Palling bodies, burning towers, exploding heads, avalanches, volcanoes, and tsunamis have a visceral, eye-catching and page-turning power that tales of slow violence, unfolding over years, decades, even centuries, cannot match. Stories of toxic buildup, massing greenhouse gases, and accelerated species loss due to ravaged habitats arc all cataclysmic, but they are scientifically convoluted cataclysms in which casualties are postponed, often for generations. In an age when the media venerate the spectacular, when public policy is shaped primarily around perceived immediate need, a central question is strategic and representational: how can we convert into image and narrative the disasters that are slow moving and long in the making, disasters that are anonymous and that star nobody, disasters that are attritional and of indifferent interest to the sensation-driven technologies of our image-world? How can we turn the long emergencies of slow violence into stories dramatic enough to rouse public sentiment and warrant political intervention, these emergencies whose repercussions have given rise to some of the most critical challenges of our time?¶ This book's second, related focus concerns the environ mentalism of the poor, for it is those people lacking resources who are the principal casualties of slow violence. Their unseen poverty is compounded hy the invisibility of the slow violence that permeates so many of their lives. Our media bias toward spectacular violence exacerbates the vulnerability of ecosystems treated as disposable by turbo-capitalism while simultaneously exacerbating the vulnerability of those whom Kevin Bale, in another context, has called "disposable people."2 It is against such conjoined ecological and human disposability that we have witnessed a resurgent environmentalist!! of the poor, particularly (though not exclusively) across the so-called global South. So a central issue that emerges is strategic: if the neoliberal era has intensified assaults on resources, it has also intensified resistance, whether through isolated site-specific struggles or through activism that has reached across national boundaries in an effort to build translocal alliances.¶ "The poor" is a compendious category subject to almost infinite local variation as well as to fracture along fault lines of ethnicity, gender, race, class, region, religion, and generation. Confronted with the militarization of both commerce and development, impoverished communities are often assailed by coercion and bribery that test their cohesive resilience. How much control will, say, a poor hardwood forest community have over the mix of subsistence and market strategies it deploys in attempts at adaptive survival? How will that community negotiate competing definitions of its own poverty and long-term wealth when the guns, the bulldozers, and the moneymen arrive? Such communities typically have to patch together threadbare improvised alliances against vastly superior military, corporate, and media forces. As such, impoverished resource rebels can seldom afford to be single-issue activists: their green commitments are seamed through with other economic and cultural causes as they experience environmental threat not as a planetary abstraction but as a set of inhabited risks, some imminent, others obscurely long term.¶ The status of environmental activism among the poor in the global South has shifted significantly in recent years. Where green or environmental discourses were once frequently regarded with skepticism as neocolo-nial. Western impositions inimical to the resource priorities of the poor in the global South, such attitudes have been tempered by the gathering visibility and credibility of environmental justice movements that have pushed back against an antihuman environmenialism that too often sought (under the banner of universalism) to impose green agendas dominated by rich nations and Western NGOs. Among those who inhabit the front lines of the global resource wars, suspicions that environmentaUsm is another guise of what Andrew Ross calls "planetary management" have not. of course, been wholly allayed.1 But those suspicions have eased somewhat as the spectrum of what counts as environmenialism has broadened. Western activists are now more prone to recognize, engage, and learn from resource insurrections among the global poor that might previously have been discounted as not properly environmental.' Indeed, 1 believe that the fate of environ mentalism—and more decisively, the character of the biosphere itself—will be shaped significantly in decades to come by the tension between what Ramachandra Guha and Joan Martinez-Alier have called "full-stomach' and "empty-belly" environmenialism.'¶ The challenge of visibility that links slow violence to the environmen-talism of the poor connects directly to this hook's third circulating concern—the complex, often vexed figure of the environmental writer-activist. In the chapters that follow 1 address not just literary but more broadly rhetorical and visual challenges posed by slow violence; however, 1 place particular emphasis on combative writers who have deployed their imaginative agility and worldly ardor to help amplify the media marginalized causes of the environmentally dispossessed. I have sought to stress those places where writers and social movements, often in complicated tandem, have stralcgized against attritional disasters that afflict embattled communities. The writers I engage arc geographically wide ranging—from various parts of the African continent, from the Middle East. India, the Caribbean, the United States, and Britain—and work across a variety of forms. Figures like Wangari Maathai. Arundhati Roy. lndra Sinha. Ken Saro-Wiwa, Abdulrah-man Munif. Njabulo Ndebcle, Nadine Gordimer, Jamaica Kincaid, Rachel Carson, and June Jordan are alive to the inhabited impact of corrosive transnational forces, including petro-imperialism. the megadam industry, outsourced toxicity, neocolonial tourism, antihuman conservation practices, corporate and environmental deregulation, and the militarization of commerce, forces that disproportionately jeopardize the livelihoods, prospects, and memory banks of the global poor. Among the writers 1 consider, some have testified in relative isolation, some have helped instigate movements for environmental justice, and yet others, in aligning themselves with preexisting movements, have given imaginative definition to the issues at stake while enhancing the public visibility of the cause.¶ Relations between movements and writers are often fraught and fric-tional. not least because such movements themselves are susceptible to fracture from both external and internal pressures.\* That said, the writers I consider are enraged by injustices they wish to see redressed, injustices they believe they can help expose, silences they can help dismantle through testimonial protest, rhetorical inventiveness, and counterhistories in the face of formidable odds. Most are restless, versatile writers ready to pit their energies against what Edward Said called "the normalized quiet of unseen power."" This normalized quiet is of particular pertinence to the hushed havoc and injurious invisibility that trail slow violence.¶ In this book, I have sought to address our inattention to calamities that are slow and long lasting, calamities that patiently dispense their devastation while remaining outside our flickering attention spans—and outside the purview of a spectacle-driven corporate media. The insidious workings of slow violence derive largely from the unequal attention given to spectacular and unspectacular time. In an age that venerates instant spectacle, slow violence is deficient in the recognizable special effects that fill movie theaters and boost ratings on TV. Chemical and radiological violence, for example, is driven inward, somatized into cellular dramas of mutation that—particularly in the bodies of the poor—remain largely unobserved, undiagnosed, and untreated. From a narrative perspective, such invisible, mutagenic theater is slow paced and open ended, eluding the tidy closure, the containment, imposed by the visual orthodoxies of victory and defeat.¶ Let me ground this point by referring, in conjunction, to Rachel Carson's Silenl Spring and Frantz Fanon's The Wretched of the Earth. In 1962 Silent Spring jolted a broad international public into an awareness of the protracted, cryptic, and indiscriminate casualties inflicted by dichlorodiphenyltrichlo-roethane (DDT). Yet. just one year earlier, Fanon. in the opening pages of Wretched of the Earth, had comfortably invoked DDT as an affirmative metaphor for anticolonial violence: he called for a DDT-filled spray gun to be wielded as a weapon against the "parasites" spread bv the colonials' Christian church." Fanon's drama of decolonization is, of course, studded with the overt weaponry whereby subjugation is maintained {"by dint of a great array of bayonets and cannons") or overthrown ("by the searing bullets and bloodstained knives") after "a murderous and decisive struggle between the two protagonists."' Yet his temporal vision of violence—and of what Aime Cesaire called "the rendezvous of victory"—was uncomplicated by the concerns thai an as-yet inchoate environmental justice movement (catalyzed in part by Silent Spring) would raise about lopsided risks that permeate the land long term, blurring the clean lines between defeat and victory, between colonial dispossession and official national self determination.11 We can ccr lainly read Fanon, in his concern with land as property and as fount of native dignity, retrospectively with an environmental eye. But our theories of violence today must be informed by a science unavailable to Fanon, a science that addresses environmentally embedded violence that is often difficult to source, oppose, and once set in motion, to reverse.¶ Attritional catastrophes that overspill clear boundaries in time and space arc marked above all by displacements temporal, geographical, rhetorical, and technological displacements that simplify violence and underestimate, in advance and in retrospect, the human and environmental costs. Such displacements smooth the way for amnesia, as places are rendered irretrievable to those who once inhabited them, places that ordinarily pass unmourned in the corporate media. Places like the Marshall Islands, subjected between 1948 and 1958 to sixty-seven American atmospheric nuclear "tests," the largest of them equal in force to 1.000 I liroshima-sizcd bombs. In 1950 the Atomic Energy Commission declared the Marshall Islands "by far the most contaminated place in the world," a condition that would compromise independence in the long term, despite the islands' formal ascent in 1979 into the ranks of self-governing nations." The island republic was still in pan governed by an irradiated past: well into the 1980s its history of nuclear colonialism, long forgotten by the colonizers, was still delivering into the world "jellyfish babies"—headless, eyeless, limbless human infants who would live for just a few hours.11¶ If, as Said notes, struggles over geography are never reducible to armed struggle but have a profound symbolic and narrative component as well, and if, as Michael Watts insists, we must attend to the "violent geographies of fast capitalism." we need to supplement both these injunctions with a deeper understanding of the slow violence of delayed effects that structures so many of our most consequential forgetting\*." Violence, above all environmental violence, needs to be seen—and deeply considered—as a contest not only over space, or bodies, or labor, or resources, but also over time. Wc need to bear in mind Faulkner's dictum that "the past is never dead. It's not even past." His words resonate with particular force across landscapes permeated by slow violence, landscapes of temporal overspill that elude rhetorical cleanup operations with their sanitary beginnings and endings.1'1¶ Kwamc Anthony Appiah famously asked. "Is the 'Post-' in "PostcoloniaF the 'Post-' in 'Postmodern'?" As environmentalists wc might ask similarly searching questions of the "post" in postindustrial, post Cold War, and post-conflict." For if the past of slow violence isnevcrpast. so too the post is never fully post: industrial particulates and effluents live on in the environmental elements wc inhabit and in our very bodies, which cpidcmiologically and ecologically are never our simple contemporaries.'" Something similar applies to so-called postconflict societies whose leaders may annually commemorate, as marked on the calendar, the official cessation of hostilities, while ongoing intcrgcncrational slow violence (inflicted by, say. uncxplodcd landmines or carcinogens from an arms dump) may continue hostilities by other means.¶ Ours is an age of onrushing turbo-capitalism, wherein the present feels more abbreviated than it used to—at least for the world's privileged classes who live surrounded by technological time-savers that often compound the sensation of not having enough lime. Consequently, one of the most pressing challenges of our age is how to adjust our rapidly eroding attention spans to the slow erosions of environmental justice. If, under ncoliberalism, the gult between enclaved rich and outcast poor has become ever more pronounced, ours is also an era of enclaved time wherein for many speed has become a sell justifying, propulsive ethic that renders uneventful" violence (to those who live remote from its attritional lethality) a weak claimant on our time. The attosecond pace of our age, with its restless technologies of infinite promise and infinite disappointment, prompts us to keep flicking and clicking distractedly in an insatiable and often insensate — quest for quicker sensation.¶ The oxymoronic notion of slow violence poses a number of challenges; scientific, legal, political, and representational. In the long arc between the emergence of slow violence and its delayed effects, both the causes and the memory of catastrophe readily fade from view as the casualties incurred typically pass untallied and unremembered. Such discounting in turn makes it far more difficult to secure effective legal measures for prevention, restitution, and redress. Casualties from slow violence are moreover, out of sync not only with our narrative and media expectations but also with the swift seasons of electoral change. Politicians routinely adopt a "last in, first out" stance toward environmental issues, admitting them when limes are flush, dumping them as soon as times get tight. Because preventative or remedial environmental legislation typically targets slow violence, it cannot deliver dependable electoral cycle results, even though those results may ultimately be life saving. Relative to bankable pocket-book actions—there'll be a tax rebate check in the mail next August—environmental payouts seem to lurk on a distant horizon. Many politicians—and indeed many voters—routinely treat environmental action as critical yet not urgent. And so generation after generation of two- or four-year cycle politicians add to the pileup of deferrable actions deferred. With rare exceptions, in the domain of slow violence "yes, but not now, not yet" becomes the modus operandi.¶ How can leaders be goaded to avert catastrophe when the political rewards of their actions will not accrue to them but will be reaped on someone else's watch decades, even centuries, from now? How can environmental activists and storytellers work to counter the potent political, corporate, and even scientific forces invested in immediate self-interest, procrastination, and dissembling? We see such dissembling at work, for instance, in the afterword to Michael Crichton's 2004 environmental conspiracy novel, Slate of Fear, wherein he argued that we needed twenty more years of daia gaihcringon climate change before any policy decisions could be ventured.1\* Although the National Academy of Sciences had assured former president George W. Bush that humans were indeed causing the earth to warm. Bush shopped around for views that accorded with his own skepticism and found them in a private meeting with Crichton, whom he described as "an expert scientist.\*'¶ To address the challenges of slow violence is to confront the dilemma Rachel Carson faced almost half a century ago as she sought to dramatize what she eloquently called "death by indirection."'" Carson's subjects were biomagnification and toxic drift, forms of oblique, slow-acting violence that, like climate change, pose formidable imaginative difficulties for writers and activists alike. In struggling to give shape to amorphous menace, both Carson and reviewers of 5ilcn( Spring resorted to a narrative vocabulary: one reviewer portrayed the book as exposing "the new, unplottcd and mysterious dangers wc insist upon creating all around us,"" while Carson herself wrote of "a shadow that is no less ominous because it is formless and obscure."10 To confront slow violence requires, then, that we plot and give figurative shape to formless threats whose fatal repercussions are dispersed across space and time. The representational challenges are acute, requiring creative ways of drawing public attention to catastrophic acts that are low in instant spectacle but high in long-term effects. To intervene representation-ally entails devising iconic symbols that embody amorphous calamities as well as narrative forms that infuse those symbols with dramatic urgency.¶ Seven years after Rachel Carson turned our attention to ihe lethal mechanisms of "death by indirection," Johan Gaining, the influential Norwegian mathematician and sociologist, coined the term "indirect or structural violence."'' Gakung's theory of structural violence is pertinent here because some of his concerns overlap with the concerns that animate this book, while others help throw inio relief the rather different features I have soughi to highlight by introducing the term "slow violence." Structural violence, forGaltung, stands in opposition to the more familiar personal violence thai dominates our conceptions of what counts as violence per sc." Galtung was concerned, as I am, with widening the field of what constitutes violence. He soughi to foreground ihe vast structures thai can give rise to acts of personal violence and constitute forms of violence in and of themselves. Such structural violence may range from the unequal morbidity that results from a commodificd health care system, to racism itself. What I share with Gal-tung's line of thought is a concern with social justice, hidden agency, and certain forms of violence that are imperceptible.¶ In these terms, for example, we can recognize that the structural violence embodied by a neoliberal order of austerity measures, structural adjustment, rampant deregulation, corporate megamergers, and a widening gulf between rich and poor is a form of covert violence in its own right that is often a catalyst for more recognizably overt violence. For an expressly environmental example of structural violence, one might cite Wangari Maathai's insistence that the systemic burdens of national debt to the IMF and World Bank borne by many so-called developing nations constitute a major impediment to environmental sustainability.JI So. too, feminist earth scientist Jill Schneiderman, one of our finest thinkers about environmental time, has written about the way in which environmental degradation may "masquerade as inevitable."14¶ For all the continuing pertinence of the theory of structural violent t and for all the modifications the theory has undergone, the notion bears the impress of its genesis during the high era of structuralist thinking that tended toward a static determinism. We see this, for example, in Gakung's insistence that "structural violence is silent, it does not show—its is essentially static, it is the tranquil waters."1\* In contrast to the static connotations of structural violence, I have sought, through the notion of slow violence, to foreground questions of time, movement, and change, however gradual. The explicitly temporal emphasis of slow violence allows us to keep front and center the representational challenges and imaginative dilemmas posed not just by imperceptible violence but by imperceptible change whereby vio lence is decoupled from its original causes by the workings of time. Time becomes an actor in complicated ways, not least because the temporal tern plates of our spectacle-driven, 24/7 media life have shifted massively since Galtung first advanced his theory of structural violence some forty years ago. To talk about slow violence, then, is to engage directly with our contemporary politics of speed.¶ Simply put. structural violence is a theory that entails rethinking different notions of causation and agency with respect to violent effects. Slow violence, by contrast, might well include forms of structural violence, but has a wider descriptive range in calling attention, not simply to questions of agency, but to broader, more complex descriptive categories of violence enacted slowly over time. The shift in the relationship between human agency and time is most dramatically evident in our enhanced understanding of the accelerated changes occurring at two scalar extremes—in the life-sustaining circuits of planetary biophysics and in the wired brain's neural circuitry. The idea of structural violence predated both sophisticated contemporary ice-core sampling methods and the emergence of cyber technology. My concept of slow violence thus seeks to respond both to recent, radical changes in our geological perception and our changing technological experiences of time.¶ Let me address the geological aspect first. In 2000, Paul Crutzen. the Nobel Prize-winning atmospheric chemist, introduced the term "the Anthropo-cene Age" (which he dated to James Watt's invention of the steam engine). Through the notion of "the Anthropocene Age." Crutzen sought to theorize an unprecedented epochal effect: the massive impact by the human species, from the industrial era onward, on our planet's life systems, an impact that, as his term suggests, is geomorphic, equal in force and in long-term implications to a major geological event.\* Crutzen's attempt to capture the epochal scale of human activity's impact on the planet was followed by Will Steffen's elaboration, in conjunction with Crutzen and John McNeill, of what they dubbed the Great Acceleration, a second stage of the Anthropocene Age that they dated to the mid-twentieth century. Writing in 2007. Steffen ct al. noted how "nearly three-quarters of the anthropogenically driven rise in COt concentration has occurred since 1950 (from about 310 to 380 ppm), and about half of the total rise (48 ppm) has occurred in just the last 30 years."-7 The Australian environmental historian Libby Robin has put the case succinctly: "We have recently entered a new geological epoch, the Anthropocene. There is now considerable evidence that humanity has altered the biophysical systems of Earth, not just the carbon cycle . . . but also the nitrogen cycle and ultimately the atmosphere and climate of the whole globe."" What, then, are the consequences for our experience of time of this newfound recognition thai we have inadvertently, through our unprecedented biophysical species power, inaugurated an Anthropocene Age and are now engaged in (and subject to) the hurtling changes of the Great Acceleration?¶ Over the past two decades, this high-speed planetary modification has been accompanied (at least for those increasing billions who have access to the Internet) by rapid modifications to the human cortex. It is difficult, but necessary, to consider simultaneously a geologically-paced plasticity, however relatively rapid, and the plasticity of brain circuits reprogrammed by a digital world that threatens to "info-whelm" us into a state of perpetual distraction. If an awareness of the Great Acceleration is (to put it mildly) unevenly distributed, the experience of accelerated connectivity (and the paradoxical disconnects that can accompany it) is increasingly widespread. In an age of degraded attention spans it becomes doubly difficult yet increasingly urgent that we focus on the toll exacted, over time, by the slow violence of ecological degradation. We live, writes Cory Doctorow, in an era when the electronic screen has become an "ecosystem of interruption technologies.''" Or as former Microsoft executive Linda Stone puts it, we now live in an age of "continuous partial attention.?" Fast is faster than it used to be, and story units have become concomitantly shorter. In this cultural milieu of digitally speeded up time, and foreshortened narrative, the intergenerational aftermath becomes a harder sell. So to render slow violence visible entails, among other things, redefining speed: we see such efforts in talk of accelerated species loss, rapid climate change, and in attempts to recast "glacial"-once a dead metaphor for "slow-as a rousing, iconic image of unacceptably fast loss. Efforts to make forms of slow violence more urgently visible suffered a setback in the United States in the aftermath of 9/11, which reinforced a spectacular, immediately sensational, and instantly hyper-visible image of what constitutes a violent threat. The fiery spectacle of the collapsing towers was burned into the national psyche as the definitive image of violence, setting back by years attempts to rally public sentiment against climate change, a threat that is incremental, exponential, and far less sensationally visible. Condoleezza Rice's strategic fantasy of a mushroom cloud looming over America if the United States failed to invade Iraq gave further visual definition to cataclysmic violence as something explosive and instantaneous, a recognizably cinematic, immediately sensational, pyrotechnic event. The representational bias against slow violence has, furthermore, a critically dangerous impact on what counts as a casualty in the first place. Casualties of slow violence-human and environmental-are the casualties most likely not to be seen, not to be counted. Casualties of slow violence become light-weight, disposable casualties, with dire consequences for the ways wars are remembered, which in turn has dire consequences for the projected casualties from future wars. We can observe this bias at work in the way wars, whose lethal repercussions spread across space and time, are tidily bookended in the historical record. Thus, for instance, a 2003 New York Times editorial on Vietnam declared that" during our dozen years there, the U.S. killed and helped kill at least 1.5 million people.'?' But that simple phrase "during our dozen years there" shrinks the toll, foreshortening the ongoing slow-motion slaughter: hundreds of thousands survived the official war years, only to slowly lose their lives later to Agent Orange. In a 2002 study, the environmental scientist Arnold Schecter recorded dioxin levels in the bloodstreams of Bien Hoa residents at '35 times the levels of Hanoi's inhabitants, who lived far north of the spraying." The afflicted include thousands of children born decades after the war's end. More than thirty years after the last spray run, Agent Orange continues to wreak havoc as, through biomagnification, dioxins build up in the fatty tissues of pivotal foods such as duck and fish and pass from the natural world into the cooking pot and from there to ensuing human generations. An Institute of Medicine committee has by now linked seventeen medical conditions to Agent Orange; indeed, as recently as 2009 it uncovered fresh evidence that exposure to the chemical increases the likelihood of developing Parkinson's disease and ischemic heart disease." Under such circumstances, wherein long-term risks continue to emerge, to bookend a war's casualties with the phrase "during our dozen years there" is misleading: that small, seemingly innocent phrase is a powerful reminder of how our rhetorical conventions for bracketing violence routinely ignore ongoing, belated casualties.

#### Reforming TERA is key to outside investment and Native ownership

Royster 12—Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law (Judith, Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures, 31 Stan. Envtl. L.J. 91)

The non-minerals statutes that might be used for renewable energy development share a pair of significant disadvantages. First, like the minerals statutes, they generally require the approval of the Secretary of the Interior for each development deal. And [\*113] second, they restrict Indian tribes to a passive role in the development of tribal renewable resources.¶ Almost all of the nonminerals statutes require the approval of the Secretary of the Interior for the specific lease, agreement, or sale. n102 Just as the Secretary must approve all IMLA leases and all IMDA agreements for traditional mineral development, n103 the Secretary must also approve all § 415 leases, n104 all easements lasting seven years or longer, n105 all open-market sales of forest products, n106 and all agricultural leases. n107¶ This instrument-by-instrument approval process introduces both delay and potential federal override of tribal decisions. First, the process itself is time-consuming. Federal approval may take years, n108 potentially inflating the costs of a project as well as increasing the likelihood that non-Indian partners and investors will look elsewhere. n109 Second, in exercising the approval power, [\*114] the Secretary is generally obligated to determine whether the proposed lease, agreement, or sale is "in the best interest of" the Indian tribe. n110 The determination of best interest involves an exercise of the trust responsibility on the one hand and federal paternalism on the other. While the approval process may have saved more than one tribe from an improvident deal, n111 it also allows the federal government to override a tribe's determination of tribal needs and priorities. In the current era of tribal self-determination and increased tribal sophistication in negotiating with energy companies, federal disapproval of proposed energy deals may be rare, n112 but the potential nonetheless exists for the federal government to reject a deal that a tribe has chosen to undertake. Thus, even where the Secretary is obligated to defer to tribal choices, that deference is tempered by the federal oversight responsibility. n113¶ The second major disadvantage with the approaches discussed in this Section is that none allows Indian tribes to take on the active role in development that is authorized in IMDA minerals agreements. As noted earlier, tribes using the IMDA for mineral [\*115] development may enter into negotiated leases or "any joint venture, operating, production sharing, service, managerial ... or other agreement" with a non-Indian company. n114 Tribes may choose any role that best suits their needs, from the relatively passive lessor through the partnership of a joint venture to a service contract in which the tribe merely hires a company to perform the mining activities. n115 Moreover, tribes are not confined to the types of agreements listed in the IMDA, n116 and many minerals agreements have been hybrid arrangements. n117¶ By contrast, as noted throughout the discussion above, none of the nonminerals statutes envisions an active tribal role in development. Tribes may either bypass the statutes altogether and develop their renewable energy resources themselves, or serve as lessors, servient estate holders, or sellers. n118 Unlike the IMDA, none of these statutes provides for the vast middle ground of tribal partnerships with non-Indian energy companies. And that vast middle ground is crucial. Tribes with some ownership component in energy projects not only retain a more significant say in the project itself, but may realize greater revenues, increased professional opportunities for tribal members, and the ability to "create a management team with a long-term stake in the community." n119¶ [\*116] Tribes that want a more active role in renewable energy development must use more creative means. One example is Koda Energy, a limited liability company formed under Delaware law between the Shakopee Mdewakanton Sioux Community as majority partner and Rahr Malting, a non-Indian company. n120 At present, Koda Energy operates a heat and power plant that burns biomass, located a few miles from the Shakopee Mdewakanton Reservation. But if Koda Energy were, for example, to lease tribal lands for wind farm purposes, then the tribe would act not only as lessor, but also as developer through its stake in the energy company. While an arrangement like this puts tribes in a more active role, it does so indirectly and with some potential drawbacks. As a state corporation engaged in off-reservation activities, Koda Energy is subject to state law and state courts. Even if it were acting on tribal lands, it might still be subject to state law and might not enjoy tax advantages available to tribes entering into direct agreements with energy partners. n121 Clear statutory authority for [\*117] tribes to enter into non-lease arrangements for renewable energy resources would allow tribes a more direct route to participate in renewable energy development.¶ IV. ITEDSA: The Solution That Isn't¶ Perhaps the solution is one nice neat statutory package that would authorize a tribe to develop any or all of its energy resources - without regard to whether those resources constitute "minerals" or not - using whatever type of development deal the tribe believes is best. And one exists. Under the Indian Tribal Energy Development and Self-Determination Act (ITEDSA) of 2005, n122 tribes may enter into leases or agreements of any kind for the development of any energy resource. ITEDSA solves many of the problems noted here with the scattershot statutory approach.¶ First, it unambiguously applies to all energy resources. Although the statute does not contain a definition of energy resources, the implementing regulations define energy resources as "both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrological resources." n123 There is simply no question, as there is with the minerals statutes, that renewable energy sources are covered along with traditional energy minerals.¶ Second, ITEDSA normalizes the lease and agreement term. With the exception of oil and gas leases, which may be entered into for the standard ten years and so long thereafter as the oil or gas is produced in paying quantities, n124 all leases and agreements run for a maximum of thirty years, with an option to renew at the discretion of the tribe. n125 Having a single term applicable to all energy development eliminates the confusion of twenty-five years [\*118] for surface leases, ten years for agricultural leases, and five years to accomplish forest products harvesting. Moreover, the thirty-year term is sufficiently long, especially with a thirty-year renewal option, to justify the necessary investments by the non-Indian parties.¶ Third, ITEDSA adopts the best innovation of the 1982 IMDA: it opens up the tribal role beyond that of passive lessor or seller. Tribes are authorized to enter into leases or business agreements, without limitation on the kind or structure, "for the purpose of energy resource development on tribal land." n126 Business agreements are broadly defined in the regulations as "any permit, contract, joint venture, option, or other agreement that furthers any activity related to locating, producing, transporting, or marketing energy resources on tribal land," and "any other business agreement entered into or subject to administration under a TERA [tribal energy resource agreement]." n127 A tribe would thus be free, for example, to enter into a joint operating agreement for the construction and operation of solar collectors, something that is unavailable, or at best uncertain, under current statutory authority. The IMDA allows joint ventures, but its applicability to renewable energy resources is questionable: § 415 allows the placement of solar panels and collectors on tribal land, but it is restricted to leases only. ITEDSA eliminates the problems inherent in using these statutes for renewable energy production by authorizing non-lease arrangements for alternative energy production.¶ Fourth, ITEDSA goes a leap beyond most current statutes, and eliminates the cumbersome step of secretarial approval for every lease and business agreement. Under ITEDSA, tribes may enter into these instruments on their own authorization, without involving the Secretary of the Interior. n128 This provision eliminates one of the drawbacks of the existing development statutes - mineral, surface, forest, and agricultural. As discussed earlier, those statutes generally require the approval of the Secretary of the Interior for each lease, agreement, or sale, with its attendant time delays and the possibility that the Secretary could deny development desired by the tribe.¶ ITEDSA thus presents a solution to the problems with other [\*119] development statutes discussed in Parts II and III. So what is the drawback? The drawback to ITEDSA is that an Indian tribe, to enter into energy leases and agreements without specific secretarial approval, must first enter into a tribal energy resource agreement (TERA) with the Secretary of the Interior. n129 The development of a TERA requires a tribe to meet a number of statutory criteria, develop an extensive tribal environmental review process for each energy development project, and demonstrate to the Secretary that the tribe has "sufficient capacity to regulate the development" of its energy resources. n130 At present, only a handful of tribes even potentially meets the last requirement. Although several tribes have expressed interest in developing a TERA, n131 by mid-2011 no tribe had submitted a TERA application. n132¶ This signifies that ITEDSA, designed as a solution, in fact is not one for the vast majority of tribes with energy resources. The front-end costs of time, money, and staffing to develop a TERA and shepherd it through the approval process are substantial, if not prohibitive. n133 The back-end costs of providing an environmental review process and addressing public input into tribal decisions and compliance are similarly substantial. These costs mean that ITEDSA may ultimately be useful to only a small cadre of tribes with considerable energy resources to develop. n134 For a tribe [\*120] seeking to place a few solar collectors on tribal land or harvest forest residues as biomass, however, the TERA process may be more of a barrier than an opportunity. n135

#### The policy possibilities for native peoples are prefigured by western epistemological frames of reference for decision-making that are dominated by elite interests bent on resource exploitation – we should rethink the value structure implied by western epistemologies that systematically eliminate native people’s interests from politics – affirming reciprocity, holistic tribal knowledge, and the perspective of future generations within our decision frames is necessary for survival of the whole environment

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As we begin to examine the relationship between American Indians and environmental justice, it is important to note that American courts have many times in the past criminalized, whether consciously or not, traditional knowledge. Indian people who have challenged multinational corporate giants and the government through political activism in an effort to halt environmentally destructive projects on their lands have been criminalized and arrested to silence their claims. Leaving traditional knowledge out of environmental policy is a grave injustice because it is socially injurious to Native peoples and, in effect, all people, not only in the United States but worldwide.¶ When writing about Indigenous peoples, the exclusion of environmental issues also establishes an injustice because it does not recognize the origins of social institutions among all human beings. Therefore, everything in American Indian culture is associated with an environmental perspective, even issues that filter through the American court system. As will be examined, Native peoples today are using their sophisticated traditional knowledge, combined with militant strategies in some cases, to effect change. Providing equitable justice for Indigenous people establishes an important precedent that can put social institutions like criminal justice in a context where the connection between society and the environment is recognized.¶ American Indian institutions originate within Native cultures in ways that associate policies with natural principles and natural laws defined by traditional cultural perspectives. The following represents a reflection of this understanding.¶ The Native peoples of the Americas represent a wide variety of cultures and social organization strategies. The diversity of Native cultures and kinds of social organizations which developed through time represent a high degree of social/political complexity and are varied according to the demands and necessities of the environment. For example, American Indian nations organized at the band level of social/political development have used effective strategies to [End Page 198] take advantage of marginal habitats such as the Arctic and deserts of the Americas where resources were limited.¶ Winona LaDuke, a member of the Anishinabe Nation, author, activist, and scholar of environmental and Indigenous issues, writes that "sustainability in these marginal habitats did not simply rely on a matter of 'luck.'" For thousands of years, American Indian people maintained a sustainable way of life based on the concept of reciprocity or reciprocal relations. Reciprocity, based on natural law, defines the relationship and responsibility between people and the environment. All parts of the environment—plants, animals, fish, or rocks—are viewed as gifts from the Creator. These gifts should not be taken without a reciprocal offering, usually tobacco or saymah, as it is called in the Ojibwa language. 1¶ Colonial-style policies and practices concerning the environment and sustainability were formulated with false assumptions that the people of the Americas were primitive uncivilized savages who impeded the growth of technology and progress. If we put aside our fascination with technology and material wealth, we find that for many people in today's modern society, life is primitive and stunted in terms of family values, spiritual life, commitment to the community, and opportunities for rewarding work and creative self-expression. These are the very areas most richly developed in the traditional communities of the Americas.¶ In her research, LaDuke argues that social and economic systems based on this type of life are usually decentralized, communal, and self-reliant. These societies live closely with and depend on the life contained in that particular ecosystem. This way of living enabled Indigenous communities to live for thousands of years in continuous sustainability. 2¶ Through colonial-style practices, Native peoples worldwide have been denied equal access to economic power today and in the past. Examples of exclusion of Native peoples throughout the world in formulating important environmental policy abound. Indigenous peoples and the wealth of sustainable knowledge they possess have been excluded from decision-making processes concerning the environmental impact of colonialism, capitalism, and modern-day corporate intrusion upon their lands.¶ Louise Grenier is a scholar working in the realms of international development and environmental and Indigenous issues through utilizing Indigenous knowledge. Grenier writes that¶ Indigenous knowledge (IK) refers to the unique, traditional, local knowledge existing within and developed around the specific conditions of women and men indigenous to a particular geographic area.... The development of IK systems, covering all aspects of life, including management [End Page 199] of the natural environment, has been a matter of survival to the peoples who generated these systems. Such knowledge systems are cumulative, representing generations of experiences, careful observations, and trial-and-error experiments. 3¶ Since the very survival of Native peoples depended on their being able to utilize knowledge in balance with the natural environment, one could make the argument that Indigenous Knowledge is technology. Grenier writes that¶ Indigenous knowledge is stored in peoples' memories and activities and is expressed in stories, songs, folklore, proverbs, dances, myths, cultural values, beliefs, rituals, community laws, local language and taxonomy, agricultural practices, equipment, materials, plant species, and animal breeds. Indigenous knowledge is shared and communicated orally, by specific example, and through culture. Indigenous forms of communication and organization are vital to local level decision making processes and to the preservation, development, and spread of Indigenous knowledge. 4¶ In her researchers' guide for working with Indigenous knowledge, Grenier writes about an example of Native knowledge exclusion which comes from American anthropologist Richard Wilk in his article on sustainability and technology transfer. 5 Grenier writes about Wilk's discussion of a folder of material containing twenty-five separate project proposals, feasibility studies, implementation plans, and project assessments covering a period of one hundred years. All these studies were concerned with commercializing the production of edible palm oil from a tree native to the Belizean rainforest. Technologies developed for use in other tropical palm oil industries were tried. Even with government subsidies and easy access to dense, high-yield tree stands, every one of the projects failed while, at the same time, the Indigenous people continued production of edible oil by using a variety of simple, local technologies based on knowledge passed down for generations.¶ Indigenous technology is defined as "hardware (equipment, tools, instruments, and energy sources) and software (a combination of knowledge, processes, skills, and social organization) that focus attention on particular tasks." 6 This definition describes the technology utilized by the Indigenous people presented in Wilk's story and prompts Grenier to ask several important questions: Did anyone bother to ask local people the who, how, where, when, and why of their local palm oil production system? Could costly failures have been avoided if the entrepreneurs had bothered to learn about the local production system? If a combination of Indigenous and foreign inputs had been tried, could hybrid technologies have yielded successful ventures? The most important question [End Page 200] Grenier raises is, "what would have been the outcome had any of these proponents worked with Indigenous knowledge?" 7¶ Until recently, those seeking to exploit Indigenous lands did not consider drawing upon the vast wealth of Indigenous knowledge. Specifically within the United States, loss of power and autonomy through the process of colonialism relegated Indigenous peoples to a position on the lower end of the hierarchical scale in U.S. society. The legacy of fifteenth-century European colonial domination placed Indigenous knowledge in the categories of primitive, simple, "not knowledge," or folklore. It comes as no surprise then that through the process of colonization Indigenous knowledge and perspectives have been ignored and denigrated by the vast majority of social, physical, biological and agricultural scientists, and governments using colonial powers to exploit Indigenous resources.¶ Colonization is more than just a convenient economic domination of one group by another. In its present-day form, colonization continues to undermine the political, military, social, psycho-culture, value systems, and knowledge base of the colonized and imposes on them the values and culture of the colonizer. For the sake of economic control—the main impetus behind any colonization—the colonizer must constantly devise new means of oppressing the colonized. 8¶ Colonialism continues today, but with different foreign powers than in the past, that is, banks, corporations, speculators, governments, and various development agencies. Today Indigenous peoples are on the frontline of contemporary colonial struggles. They are sitting on resources the rest of the world wants at the lowest possible cost. Their territories are still considered frontier lands, un-owned, underutilized, and, therefore, open to exploitation. Because Indigenous populations are small, politically weak, and usually physically isolated, their vast environmental knowledge base is, for the most part, denigrated by these new colonizers, making Indigenous populations easy targets as resource colonies. Central to the concept of resource colonization is, as John Bodley emphasizes in his work, Victims of Progress, "that the prior ownership rights and interests of the aboriginal inhabitants are totally ignored as irrelevant by both the state and the invading individuals." 9¶ When two different groups of people come together in the process of colonization, lives are changed, sometimes for the better but often for the worse. The Europeans' search for gold, precious metals, and fossil fuels demonstrates how such meetings adversely transformed regions and peoples through social conflict; these situations still occur today. The history between the colonizers and the colonized has led to the perception of the latter as an exploitable group or disposable resource.¶ In retrospect, the historical relationship that evolved between colonizer and [End Page 201] colonized lends insight to the reason why exploitation continues to occur today. Most American Indian tribes, for example, believe in the principle of a strong sense of balance. Before the first Europeans came, the Great Lakes region of the Chippewa was a vast land mass. The trees, earth, and the sense and sight of the environment itself influenced the intellect and thinking process of the Indian people living in that area in the creation of the notion of balance. This precarious balance still exists, and the relationship between plants, animals, the elements, the air, water, wind, and earth are all equally and evenly placed within the whole. For many American Indians even today, their way of life revolves around the environment. One does not, and indeed cannot, own the other if a healthy balance is to be maintained. Rather, only what is necessary to survive is taken from one another. 10¶ As it is with balance, the spiritual connection with the natural world is sacred. There is a balance of knowledge and power between humans, animals, all of the environment, the heavens, and earth. All these pieces tied together make up the whole. Spirituality, or The Way, guides the balance.¶ The incongruence in the values and in the understanding of progress between these very different cultures helps explain the lack of inclusion of Indigenous knowledge. For many American Indian people, values are expressed by the strong relationship between family members, kinship ties, the environment, and the knowledge of the unity of all these things. European values allowed land and environment to be viewed as commodities to be exploited, and these colonizers imposed their will upon the land with little thought of the consequences. The knowledge and values of the Indians from the Great Lakes region emerged from their woodland cultures and spirituality. There was a timeless value placed on all things. Native values are circular with all things being related as revealed from the outer world and their religion. This idea will be developed in the rest of the article.¶ An example of woodland culture spirituality comes from the Anishinabe (Chippewa) people who developed a code of ethics and a value system which guides the behavior of many in accordance with natural law—or mino bimaatisiiwin—translated as the good life or continuous rebirth. LaDuke writes that mino bimaatisiiwin "guides behavior toward others, toward animals, toward plants and the ecosystem, and it is based on tenets of reciprocity and cyclical thinking." 11¶ In contrasting the value system and knowledge base of the Chippewa with capitalistic values, it is reciprocity or reciprocal relations that define responsibilities and ways of relating between humans and the world around them. This, in turn, affects the technology used by Indigenous groups, such as the Chip pewa, by ensuring methods of harvesting resources that will not deplete supplies needed for survival. LaDuke writes: [End Page 202]¶ Within this act of reciprocity is also an understanding that "you take only what you need and leave the rest." Implicit in the understanding of Natural Law is also the understanding that most of what is natural is cyclical: whether our bodies, the moon, the tides, seasons, or life itself. Within this natural cycling is also a clear sense of birth and rebirth, a knowledge that what one does today will affect us in the future, on the return.¶ These tenets, and the overall practice of mino bimaatisiiwin imply a continuous inhabiting of place, an intimate understanding of the relationship between humans and the ecosystem, and the need to maintain balance. For the most part, social and economic systems based on these values are decentralized, communal, self-reliant, and very closely based on the land of that ecosystem. This way of living has enabled Indigenous communities to live for thousands of years upon their land as, quite frankly, the only examples of continuous sustainability which exist on Turtle Island (North America). We hope there will be more. 12¶ The contrasting views of the value and technology system of the Chippewa versus the European-American capitalistic values of power, materialism, economic efficiency, and immediacy have led to confusion and misunderstanding about other people and their ways. European-American views toward family and religion are different than the views of many American Indians. While not all European-Americans are of the Christian religion, much of the knowledge contained in the exploitive dynamics of the Christian religion are closely tied to the concepts of our capitalistic society and are not connected to the earth or environment as is the spirituality of The Way of American Indians. 13 The result is a culture conflict in which both sides see their values and methods of looking at life as the only correct way. In this context, the unequal balance and hierarchical social structure produced by the expansionary needs of capitalism are, to many American Indian people, highly destructive to their perception of the need for balance between physical and spiritual worlds.¶ The sharp contrast between these two sets of cultural views is a major point of contention between dominating cultures and Indigenous peoples today. These differences could also be a contributing factor to changes that are beginning to take place in many Indigenous communities. Native peoples who have not been included in decision-making concerning the potentially environmentally devastating impact of corporate intrusion upon their lands are critically thinking about, assessing, and demanding that their voices be heard and not discounted or ignored as in times past.¶ In exploring the concept of critical thinking, criminologist Richard Quinney writes that "[W]ithout critical thought we are bound to the only form of social life we know—that which currently exists. We are unable to choose a [End Page 203] better life; our only activity is in further support of the system in which we are currently a part and which continues to exploit us." 14 Nowhere is this more true than with multinational corporations who engaged in colonial-style projects on many reservations with disastrous results for the people and the environment. As the effects of these disasters emerged, Indian people on other reservations targeted for corporate exploitation began to take notice. Armed with knowledge about the environmental stability of their homelands, many tribes decided that the inevitable destruction caused by corporate exploitation was not worth the price of letting their resources be taken from the earth. By utilizing their knowledge about environmental devastation and not accepting the colonial-style offers of multinational corporations at face value, the tide on reservations is beginning to turn. Today, Native peoples are calling for inclusion in these decisions by challenging powerful corporations and governmental institutions through a critical perspective on power and control.¶ As Indigenous peoples continue to challenge the power structure of multinational corporations and the state, and assert their sovereignty rights as First Nations to control the natural resources within their territories according to treaties, the question of power and control over resources is beginning to change. This change can be seen in the relatively recent phenomenon of cooperation between some tribal groups and environmentalists. During the late 1960s and early 1970s, mainstream environmental groups and Indian tribes were usually at odds with each other over issues of concern such as natural resources and fishing and hunting rights. 15 When the Sokaogon Chippewa Indians began their long fight against Exxon's plans to mine next to their reservation in 1976, it was as if the death knell for the tribe had sounded with no hope of staving off this multinational giant. However, many environmentalists began to realize that "we all live downstream" and saw the importance of Indians' assertion of treaty rights as an integral part of environmental protection strategy. In 1976 the Sokaogon became engaged in a battle not only to preserve their wild rice subsistence culture and the treaty-protected waters flowing through their reservation, but for their economic and cultural survival as well. The Sokaogon's very cultural and economic survival depended on their ability to protect and defend the environment. The two could not be separated. 16¶ Through this decade-long struggle against the formidable resources of Exxon and the state of Wisconsin, the Chippewa were able to garner support from some non-Indian neighbors, people in the tourist industry who also stood to lose their livelihoods if the fishing streams were hopelessly polluted by mining, and people in the environmental community. "By the time Exxon finally withdrew from the project in 1986, the Chippewa had assembled a broad-based Indian-environmentalist coalition that included every mainstream environmental organization in Wisconsin." 17 When Exxon and other [End Page 204] multinational corporations regroup and return with other mining projects it will not be easy to get their projects underway. One important coalition known as the Anishinaabe Niiji (Friends of the Chippewa) that developed from the ten-year struggle between Exxon and the Sokaogon is now an established political force with powerful resources and the ability to take positive action to ensure that Indigenous voices are heard as the resource wars in Wisconsin continue into the new century.¶ An extremely important strategy that will continue to be used in the protection of natural resources is that of asserting treaty rights. According to LaDuke, one of the most important aspects of Indian treaty rights "is the power of the treaties to clarify issues which would otherwise be consigned to nation-state apologists to the realm of 'opinion' and 'interpretation.' The treaties lay things out clearly, and they are matters of international law." 18 Being victimized by a long history of exploitation has taught American Indian leaders new ways to defend the natural resources on their lands by using the law and trust relations with the United States as weapons in federal court.¶ By recognizing that a trust relationship exists between the United States and Indian tribes, and that this relationship binds the federal government to a set of responsibilities to tribes, courts and laws are being used to ensure that those responsibilities are met. Important lessons learned in the environmental battles of the 1970s include using trust status to the tribes' maximum advantage to protect their natural resources and lands, as well as reminding the federal government of its obligations as they have been established in treaties. 19¶ To understand this trust relationship, the definition of "trust" must be considered. Trust is "a right in property held by one person, called the trustee, for the benefit of another, called the beneficiary, or cestui que trust." 20 The federal government has been active as trustee in this relationship by carrying out its trust responsibilities through the Bureau of Indian Affairs and the Department of the Interior. This occurred amidst criticism from the tribes for paternalism and ineffectiveness. 21¶ Through battles fought over the years, tribes have come to realize that they need to acquire and apply legal expertise to effectively deal with these struggles. In bringing matters regarding resources to court, tribes have had to shift their perspective from looking at their lands in a communal "traditional" way to viewing their properties as "real estate." Imitating the capitalistic attitudes and strategies of corporations and demanding their legal, sovereign rights within the "white" justice system has become an effective and essential defensive tactic in defending tribal resources. 22 Through these conflicts in the U.S. court system, tribes will continue to develop their own judicial and economic strengths in establishing tribal control over their own natural resources.¶ In a society built upon hierarchical power such as the United States, however, [End Page 205] establishing tribal control over natural resources will meet with resistance. Sociologist Stephen Pfohl has written extensively about deviant behavior, social control, and power from a critical perspective. 23 He argues that if we examine the current situation through the lens of a critical perspective, we find that the control of resources is governed by the interests of those most privileged by power. Using Pfohl's critical perspective in examining the situation of American Indians, I would argue that Indian people have been, throughout history, ritually stripped of their power, except for treaty rights. Resistance of Indian people through assertion of treaty rights to keep their land base and protect their resources threatens the privilege and control of powerful multinational corporations and the state.¶ In the previous example of the Sokaogon's resistance to Exxon, as they fought (and continue to fight) to hold on to their way of life, many Chippewa in Wisconsin have fiercely resisted the destruction of the environment and the destruction of their treaty rights by multinational corporations and the state. The Chippewa of Wisconsin, along with several grassroots organizations, are no longer willing to submit to the corporations' ongoing war of aggression against Native peoples and the natural world. 24 The Chippewa's unwillingnessto acquiesce to the most powerful institutions in the world has been met with various institutional sanctions, including criminalizing those who dare to resist.¶ In order to maintain control over the land and resources of others, (in this case, the Chippewa of Wisconsin) corporate/state actors must effectively neutralize the efforts of those who would oppose this control. As a tactic to mobilize public opinion in favor of corporations, American Indians who have resisted the environmentally destructive corporate mega-projects on tribal lands have been portrayed by the media as deviant and un-American because they are supposedly impeding progress. We need only to look to past examples of American Indians as victims of ethnocide and ethnoviolence. 25 American Indians, as a whole, have been systematically portrayed as deviant since first contact with Europeans, and later, European-Americans who have engaged in deculturating and redefining them as inferior beings. 26 Historic rituals of embedding in the Anglo mind images of Native peoples as "savages," "backward," "uncivilized," and "unintelligent," justified the continued repression of traditional ways and forced assimilation into the dominant culture through violence when deemed necessary. 27¶ Their construction as the "deviant other" along with political and economic disempowerment provides the context for multinational corporations and the state of Wisconsin to wage a war of aggression against the Chippewa for their natural resources. This can be seen in the intense racial conflicts between the Chippewa and non-Indians experienced in Wisconsin for the past twenty [End Page 206] years. These conflicts are a relevant political fact. Since off-reservation treaty rights allowing the Chippewa to spearfish outside reservation boundaries were reaffirmed by the Supreme Court in the 1983 Voigt case, many northern communities in Wisconsin have been bitterly divided. 28 Sportfishers and hunters find the traditional practices of spearing, gill-netting, and "shining" (night hunting) used by the Chippewa concerned with following their traditions rather than sport, objectionable. Opponents of the court's decision consider it "unjust" for the Chippewa to have "special privileges" denied to other Wisconsin residents—like longer hunting seasons and the right to shoot deer from vehicles—just because of some "old treaties." 29 Limited by very strict state regulations, many sportfishers were upset that the efficient Chippewa methods of harvesting fish for subsistence were not available to non-Indians. The opposition started in small groups protesting the regained Chippewa treaty rights. As the groups enlarged, the controversy turned into racial slurs and violence. Bait shops in northern towns sold "Treaty Beer" with labels protesting Indian spearfishing and claiming to be the "True Brew of the Working Man," while many restaurants and taverns displayed and dispensed literature attacking spearfishing and called for the abrogation of Chippewa treaties. 30 Victimizing the Chippewa also included hurling rocks, insults, racial epithets like "timber niggers," waving effigies of speared Indian heads like props from a horror movie, displaying signs with slogans like "Save Two Walleye, Kill a Pregnant Squaw," and using large motorboats trailing anchors to capsize Indian boats. 31¶ The intense racism experienced by the Chippewa prompted Archbishop William Wantland of the Episcopalean Diocese of Eau Clair, Wisconsin, to state that "of all the states I've lived in this Union, Wisconsin is the most racist. I grew up in the South. And I said that before the Voigt Decision was handed down. It's obvious—the racism, the hatred, the bitterness, the prejudice." 32 Wantland's reflection on the hostility and racism toward the Chippewa since the court's decision in 1983 is particularly telling: "I felt I was caught in a time warp this spring in Wisconsin. I thought I saw the '50s and '60s. I thought I saw Selma and Little Rock and Montgomery." 33¶ None of the racism described here is unrelated to multinational corporations and the ongoing war of aggression against Native peoples and natural resources. Even though the Supreme Court made its position on the Voigt Decision abundantly clear when the it refused to hear the state of Wisconsin's appeal, and even though the U.S. Constitution states that treaties are the supreme law of the land, Governor Tommy Thompson criticized the Chippewa for exercising their treaty rights. It is important to note that every study conducted on the impact of Chippewa spearfishing, from both the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wild life Commission, [End Page 207] to the most recent report commissioned by Congress, has failed to find any evidence to support the accusations that the Chippewa are threatening the fish resource. 34 This gives one pause to wonder why Thompson and the corporate CEOs would hide behind false hysteria.¶ The mass media effectively assisted the anti-treaty movement by fueling the fires with sensationalism surrounding the treaty controversy and almost completely ignored the economic and political contexts of the issue. 35 Plans to institute a mining district in the ceded territory of the Wisconsin Chippewa, actively pursued by the executive branch of the state of Wisconsin, has the potential to cause serious long-term damage to the resource and economic bases of northern Wisconsin. Behind the veil of the racist rhetoric of the spearfishing controversy¶ lies the essential and inseparable connection between the political assault against Indian treaties and the corporate assault on the environment in the 1990s. By focusing on the issue of resource control in the ceded territory, it is possible to see the convergence between the anti-Indian movement, represented by groups like Protect Americans' Rights and Resources (PARR) and Stop Treaty Abuse (STA), and the pro-mining policy of the Thompson administration in Wisconsin. 36¶ Through effective use of the mass media and by using the convenient excuse that spearfishing was a drain on fish resources, it became easy for those in positions of power to portray the Chippewa as deviants who were "raping the resources," resisting mining, and therefore impeding pursuit of the capitalistic American Dream.¶ Criminologist Raymond Michalowski has written extensively on the subject of state-corporate crime and the political economy of crime. His work on the dynamic relationship between the capitalist economic model and the hierarchical workings of the state helps analyze resistance as deviance. Michalowski writes that "it is the political economy of a society in connection with its cultural history that determines the definition of what acts are adaptive, rebellious, or maladaptive." 37 Michalowski points out that¶ to understand the "criminality" of any particular individual or group [in this case resistance by the Chippewa] requires critical examination of the objective yet dynamic connections between individual experience and the historically specific character of material and social relations. 38¶ In applying Michalowski's analysis to the scenario occurring between the Chippewa and the corporate/state actors in Wisconsin, it is important to recognize that identity is always socially constructed and that relationships of power play an important role in this construction. From this perspective, being [End Page 208] Indian in America is not merely a static condition or state defined by some constellation of perceived physical differences but is a set of social and material relations between American Indians and white Americans that extend back to the time the first treaties were made. Indigenous peoples have existed within and adapted to a set of material and controlling social relations that provides others with greater access to wealth than themselves. Resistance as deviance and social control is located in recurrent historical struggles to control material existence. A critical view of these hierarchical social structures argues that these historical creations do not exist naturally; they are synthetic. The age-old structures between powerful institutions and the Chippewa are reproduced over and over again as part of the everyday struggles of people. A critical approach to the events occurring between the Chippewa and corporate/state institutions provides a framework for challenging these recurrent historical struggles, the hierarchical structure of government, and its application of law. 39 Indigenous peoples have existed within and adapted to a set of material and controlling social relations that provides others with greater access to wealth than themselves.¶ Social control is always an exercise of power. Linear colonial logic argues that those who are "less civilized" (that is, Indigenous peoples who have different ways of utilizing knowledge) are unable to properly exploit the land and its resources, so therefore, those deemed to be "civilized" (the colonizers) would make decisions about the land and decide on the "who" and "why" when making the laws concerning that land and the environment. Ward Churchill is a well-known scholar, activist, and coordinator of American Indian studies with the Center for Studies of Ethnicity and Race in America at the University of Colorado at Boulder. Churchill and LaDuke have written extensively on issues of Native peoples worldwide. In discussing issues of social control and land they write,¶ land has always been the issue of greatest importance to politics and economics in this country. Those who control the land are those who control the resources within and upon it. No matter what the resource issue at hand is, social control and all the other aggregate components of power are fundamentally interrelated. 40¶ The many stories of resistance are not solely about Indian resistance, but involve an environmental social movement that is able to counteract corporate power as well. The assertion of Native land rights takes place in the context of an environmental movement willing to accept other ways of "knowing" and "understanding," to appreciate the knowledge Native people have about the environment, and to accept Native leadership in environmental battles. As has been demonstrated in previous examples, Native peoples today are challenging [End Page 209] the most powerful institutions of a large nation-state by using their capabilities to blend assertion of treaty rights with innovative forms of environmental activism.¶ The state and multinational corporations have consistently used their historically structured hierarchical positions of power to keep Indian people powerless and in a position of relative disadvantage in the past. Clearly, when the efforts of those privileged by power have been blocked by resistance based in treaty rights, unethical practices in dealing with the tribes have occurred which have caused them injury and harm. Those in powerful positions have countered Indian resistance by using the force of racism. Sociologist Robert Bullard argues that "[W]hether by conscious design or institutional neglect, communities of color in urban ghettos, in rural 'poverty pockets,' or on economically impoverished Native-American reservations face some of the worst environmental devastation in the nation." 41 The struggle engaged in by the Chippewa to protect their natural resources from the state of Wisconsin and huge multinational corporations is but one such example.¶ Environmental racism experienced by the Chippewa is evident in the systematic efforts put forth to exclude them from participation in the decision-making process. In an effort to "neutralize" the opposition, corporations have narrowly defined issues that can be raised in environmental impact statements and have ignored the objections of those opposed to the destruction caused by mining. And, as we have seen, with the increasing power of mining opponents, other methods of "neutralizing" the opposition must be found by the state and corporations. As illustrated earlier in this article, the state government and corporations have resorted to using the climate of race hatred to weaken and divide potential coalitions active against their multinational corporate vision of industrial development.¶ Examining these situations from a critical perspective helps facilitate an understanding of the way in which those in power are participants in creating an environmentally harmful atmosphere which maintains current hierarchical positions of power. The critical perspective presented here can be applied to deconstruct the unequal relationship between the state/corporate entities and those who are less powerful, to reconstruct a better form of balance.¶ As mentioned earlier, balance is a very old and important concept to almost all Indian people and affects every facet of life. Today, it is widely recognized that our environment is drastically out of balance. We are in a state of environmental deterioration that requires alternative approaches to economic survival. Underneath the rhetoric of the environmental problem lies the inseparable issue of power and what Stephen Pfohl describes as powerful rituals of control, which affect human rights as a whole. 42 The point is not only to [End Page 210] understand the problem, but also to solve it. The common denominator is direct action aimed against the status quo. With the assertion of Native rights comes a firm rejection of business-as-usual. Structured arrangements of power within our society have given us images of those who deviate from the dominant order. In a world constructed as much by symbolic action as physical behavior, being a person who has disparate political beliefs or has skin of a different color may be reason enough to call in forces of control. This "natural" or commonsensical character of a social order is really not natural at all but synthetic, artificial, and feigned.¶ This historically established synthetic order is now being questioned and, in the case of many American Indian tribes as previous examples in this article have shown, truly challenged. This is a good start, but more is needed. No single movement or group of related movements can succeed in offsetting present situations only through a shared rejection of injustices. They must also fight for their perception of justice by putting forward a unified vision of the alternatives.¶ As tribes continue to challenge state and corporate power, new definitions of who they are as Indian people and the role they play economically will emerge. Circular ways of viewing profitable business by utilizing environmentally sustainable methods will assist in redefining the ways Indian people, corporations, and the state do business and will redefine relationships between these groups. New and different ways to take what is needed from the environment without causing total environmental devastation must be examined in the future. Decreasing the environmental deterioration occurring today will require alternative approaches to economic security through sustainable land use practices. Sharing the knowledge that American Indian people have in this area will place the focus on cooperation rather than on hierarchical control. Rearranging this focus will have enormous impacts in the area of policy implementation.¶ Policy Implications¶ Policy is built on a variety of philosophical and epistemological arguments, ultimately grounded in subjective choice, and developed using the political skills of strategy and persuasion. Based on this, the central question becomes: What philosophical and epistemological frame of reference is best suited for developing and initiating policy leading to environmental justice and power relations that are based on reciprocity rather than hierarchical domination? The critical perspective used here stresses the significance of values in rethinking how environmental policy should be dealt with and is tested by placing [End Page 211] views about the environment into an American Indian, specifically Chippewa, way of life. In other words, there is a need to reconceptualize neocolonial values deemed to be authoritative. When making decisions, policy should be grounded in doctrines and principles that stress reciprocal power and a holistic way of viewing the environment.¶ For most of this century, positivist philosophies dominated social science with the belief that questions and problems posed in the social world could be understood and solved using the same techniques as those applied to the physical world. Some have come to question the ability of positivist approaches to deal with complex social issues like those considered in U.S. policy. 43 The basic problem with the positivist approach is its inability to provide a way to transcend political interest in order to obtain policy knowledge.¶ What is suggested here is how policy analysis might benefit from a methodology which acknowledges that scientific knowledge is dependent upon the normative assumptions and social meanings of the world it explores. John Dryzek is one of the leading political scientists in policy analysis in the United States. Dryzek suggests that policy analysis should address ethics and normative theory and the apparent normative basis of the status quo in the decision-making process; that is, the values and interests represented in the existing regime and policy process. 44¶ Along the same lines, political scientist Mary Hawkesworth argues that in order to effectively examine policy, the underlying values which drive decision making must be acknowledged. Most importantly, for Hawkesworth, sources of power must be critically examined. Indeed, the critical study of any subject should take into account the hierarchies of power that are inherent in our society. 45¶ The critical perspective proposed here challenges policy analysts to place themselves within an environmental justice framework which would attempt to uncover the underlying assumptions that may contribute to and produce unequal protection. A framework such as this addresses the ethical and political questions of "who gets what, why, and how much." 46 Addressing ethical and political questions such as these is important because one frame of reference by itself does not inform the whole of the problems associated with negative environmental impacts on people of color and low income groups.¶ The critical perspective challenges the policy analyst to choose among social values, and, because values underlie decisions, the policy analyst should recognize that by choosing only one framework, their frame of reference is culturally bound and dependent. This point is made by critically examining the values and lifestyle of American Indians. [End Page 212]¶ A Way of Life¶ A critical perspective offers a new frame of reference for policy-making grounded in the doctrines and principles of many American Indian people regarding the environment. This perspective demands critical thinking about the policies of both private and public sectors developed by those privileged with power in response to environmental issues. The critical perspective questions the assumptions upon which current policies are based, examines traditional solutions, and advocates new ways of thinking about the environment. While not perfect by any means, this perspective allows for different realities and reciprocal relations of power based upon mutual respect and insists that these different realities should be reflected in decisions and policies made to include Indigenous peoples.¶ Formulating environmental policies from a critical perspective includes taking into consideration questions about responsibilities toward the environment and how these responsibilities ought to be reflected in the policies adopted by the government, in the private sector, and in the habits of the population as a whole.¶ As we begin to view our history and future as Native people from a critical perspective, we can reinterpret the values and validity of our own traditions, teachings, and culture within a contemporary context. With this in mind, there are many things that are possible to share with our global society. One of the most important of these from a Native as well as a non-Native perspective, is the reestablishment of a land ethic that is based upon the sound experience of our heritage. Some of these values may be transferable to the whole of society now that we are beginning a new century. Native philosophies of the land generally demonstrate an ethic that presents the earth as vital because we are all born of the earth and require its resources for our very survival. From this perspective it is also possible to see how the relationships that we form with nature are of essential importance. This is one of the elemental teachings that originate generally from within Native culture that expresses our relatedness to nature, creation, and each other. It is important to understand that we must begin, as a global society, to realize this wholeness or relatedness.¶ To illustrate, for many Ojibwa/Chippewa people, the environment is not an issue. It is a way of life. As with other tribes, the Ojibwa consider themselves inseparable from the natural elements of their land, placing environmental sustainability at the forefront. Environmental sustainability is the ability of a community to utilize its natural, human, and technological resources to ensure that all members of present and future generations can attain a high degree of health and well-being, economic security, and a say in shaping their future [End Page 213] while maintaining the integrity of the ecological systems upon which all life and production depends. The most important aspects of sustainability include economic security, ecological integrity, democracy, and community. 47¶ As expressed by our ancestors, we are part of nature and must begin to express an idea of community rather than conquest. Native teachings can help us understand our relationship with life and creation as well as expand our awareness of nature and natural cycles. We can begin to see that the earth is a resource for all our needs, in fact, our only resource. As human beings, it becomes increasingly valuable for us to recognize this relationship so that we may benefit by using the gifts of creation effectively and efficiently. By utilizing the environment and eliminating waste in appropriate ways, we begin to establish a way of seeing the future from the perspective of generations to come; not only with respect to oil and luxury items, but by placing value on clean air, water, and soil in ways that will sustain us and our societies into the future. Such an awareness of life can begin to have a profound effect on our whole global society. As a community sharing life with the earth, we can see our dependence with, not independence from, nature. Through the realization that holistic Indigenous knowledge concerning the environment is important and essential to our survival as a whole, the teachings that Native peoples of the Americas present to our global society can be utilized in many ways, if given the chance.

## 2AC

### 2AC T Restrictions Lift Prohibitions not Regulations

#### A) “Restriction” are limitations on the use of property

Texas Supreme Court ’10

CAUSE NO. 08-01-18,007-CV-A, Final Judgment, http://www.supreme.courts.state.tx.us/ebriefs/12/12046401.pdf

"Restriction" is defined and commonly used to mean "[a] limitation (esp. in a deed) placed on the use or enjoyment of property." BLACK'S LAW DICTIONARY 1054 (7th ed. 2000).

#### b) Restrictions are the equivalent of conditions on action

Plummer 29 J., Court Justice, MAX ZLOZOWER, Respondent, v. SAM LINDENBAUM et al., Appellants Civ. No. 3724COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT100 Cal. App. 766; 281 P. 102; 1929 Cal. App. LEXIS 404September 26, 1929, Decided, lexis

The word "restriction," when used in connection with the grant of interest in real property, is construed as being the legal equivalent of "condition." Either term may be used to denote a limitation upon the full and unqualified enjoyment of the right or estate granted. The words "terms" and "conditions" are often used synonymously when relating to legal rights. "Conditions and restrictions" are that which limits or modifies the existence or character of something; a restriction or qualification. It is a restriction or limitation modifying or destroying the original act with which it is connected, or defeating, terminating or enlarging an estate granted; something which defeats or qualifies an estate; a modus or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate may be either defeated, enlarged, or created upon an uncertain event; a quality annexed to land whereby an estate may be defeated; a qualification or restriction annexed to a deed or device, by virtue of which an estate is made to vest, to be enlarged or defeated upon the happening or not happening of a particular event, or the performance or nonperformance of a particular act.

#### Best Interpretation:

#### A) Captures the benefits of outright prohibition by including statutory restrictions that make production more difficult but that are limited to those that include the possibility of complete prohibition

U.S. Code ‘5

25 U.S.C. § 3504 : US Code - Section 3504: Leases, business agreements, and rights-of-way involving energy development or transmission, 2005,

An Indian tribe may grant a right-of-way over tribal land for a¶ pipeline or an electric transmission or distribution line without¶ review or approval by the Secretary if -¶ (1) the right-of-way is executed in accordance with a tribal¶ energy resource agreement approved by the Secretary under¶ subsection (e);¶ (2) the term of the right-of-way does not exceed 30 years;¶ (3) the pipeline or electric transmission or distribution line¶ serves -¶ (A) an electric generation, transmission, or distribution¶ facility located on tribal land; or¶ (B) a facility located on tribal land that processes or¶ refines energy resources developed on tribal land; and¶ (4) the Indian tribe has entered into a tribal energy resource¶ agreement with the Secretary, as described in subsection (e),¶ relating to the development of energy resources on tribal land¶ (including the periodic review and evaluation of the activities¶ of the Indian tribe under an agreement described in subparagraphs¶ (D) and (E) of subsection (e)(2)).¶ (c) Renewals¶ A lease or business agreement entered into, or a right-of-way¶ granted, by an Indian tribe under this section may be renewed at¶ the discretion of the Indian tribe in accordance with this section.¶ (d) Validity¶ No lease, business agreement, or right-of-way relating to the¶ development of tribal energy resources under this section shall be¶ valid unless the lease, business agreement, or right-of-way is¶ authorized by a tribal energy resource agreement approved by the¶ Secretary under subsection (e)(2).¶ (e) Tribal energy resource agreements¶ (1) On the date on which regulations are promulgated under¶ paragraph (8), an Indian tribe may submit to the Secretary for¶ approval a tribal energy resource agreement governing leases,¶ business agreements, and rights-of-way under this section.¶ (2)(A) Not later than 270 days after the date on which the¶ Secretary receives a tribal energy resource agreement from an¶ Indian tribe under paragraph (1), or not later than 60 days after¶ the Secretary receives a revised tribal energy resource agreement¶ from an Indian tribe under paragraph (4)(C) (or a later date, as¶ agreed to by the Secretary and the Indian tribe), the Secretary¶ shall approve or disapprove the tribal energy resource agreement.¶ (B) The Secretary shall approve a tribal energy resource¶ agreement submitted under paragraph (1) if -¶ (i) the Secretary determines that the Indian tribe has¶ demonstrated that the Indian tribe has sufficient capacity to¶ regulate the development of energy resources of the Indian tribe;¶ (ii) the tribal energy resource agreement includes provisions¶ required under subparagraph (D); and¶ (iii) the tribal energy resource agreement includes provisions¶ that, with respect to a lease, business agreement, or right-of-¶ way under this section -¶ (I) ensure the acquisition of necessary information from the¶ applicant for the lease, business agreement, or right-of-way;¶ (II) address the term of the lease or business agreement or¶ the term of conveyance of the right-of-way;¶ (III) address amendments and renewals;¶ (IV) address the economic return to the Indian tribe under¶ leases, business agreements, and rights-of-way;¶ (V) address technical or other relevant requirements;¶ (VI) establish requirements for environmental review in¶ accordance with subparagraph (C);¶ (VII) ensure compliance with all applicable environmental¶ laws, including a requirement that each lease, business¶ agreement, and right-of-way state that the lessee, operator, or¶ right-of-way grantee shall comply with all such laws;¶ (VIII) identify final approval authority;¶ (IX) provide for public notification of final approvals;¶ (X) establish a process for consultation with any affected¶ States regarding off-reservation impacts, if any, identified¶ under subparagraph (C)(i);¶ (XI) describe the remedies for breach of the lease, business¶ agreement, or right-of-way;¶ (XII) require each lease, business agreement, and right-of-¶ way to include a statement that, if any of its provisions¶ violates an express term or requirement of the tribal energy¶ resource agreement pursuant to which the lease, business¶ agreement, or right-of-way was executed -¶ (aa) the provision shall be null and void; and¶ (bb) if the Secretary determines the provision to be¶ material, the Secretary may suspend or rescind the lease,¶ business agreement, or right-of-way or take other appropriate¶ action that the Secretary determines to be in the best¶ interest of the Indian tribe;¶

#### Ending federal oversight is a financial incentive for energy development

Brown 10 -- AP (Matthew, Indian tribes to Congress – Streamline energy development, [www.buffalopost.net/?p=8525#more-8525](http://www.buffalopost.net/?p=8525#more-8525))

American Indian leaders on Thursday asked Congress to streamline the development of energy projects on tribal lands by curbing some federal oversight and providing incentives for companies to strike deals with reservations.

Reservations from Oklahoma to Montana and Alaska sit atop large amounts of oil, natural gas and coal. Others in wind-swept regions of the Northern Plains and on the West Coast have huge renewable energy potential.

But existing government rules make it easier for energy companies to pursue projects on non-tribal land, some members of Congress and tribal leaders say. As a result, tribes often miss out on the chance to develop their natural resources.

“Tribes in some of the poorest counties in America have vast renewable energy resources that can help them overcome poverty,” said Joe Garcia, Chairman of the All Indian Pueblo Council of New Mexico.

Garcia and other tribal representatives want the Senate Indian Affairs Committee to intervene through legislation proposed by Sen. Byron Dorgan, the North Dakota Democrat who chairs the committee.

The tribes want to eliminate federal drilling fees, pare down the Interior Department’s bureaucracy, and shield tribes from state and local taxes on energy projects.

Dorgan’s bill has yet to be introduced.

The tribal leaders’ requests were welcomed Thursday by both Democrats and Republicans.

“Energy development means jobs,” said Sen. John Barrasso, a Wyoming Republican. “It means income for families. It means paying the heating bill.”

Nationwide, energy royalties paid to tribes through the federal government totaled more than $334 million in 2008, the most recent year with figures available. That was down sharply from 2007, driven largely by a drop in oil and gas prices.

More than 2 million acres of tribal land have been developed for oil, gas and coal, according to the government. Estimates show 15 million acres more have the same potential, with additional land suited for wind, solar and other renewable energy projects.

In 2005, Congress tried to promote development by making it easier for tribes to enter agreements with private companies.

Witnesses at Thursday’s hearings said those changes weren’t enough. They also criticized changes instituted since 2005, such as a $4,000 fee for drilling on public lands – including reservations, which are held in federal trust.

### CP

#### The CP triggers a slew of federal regulations that kill solvency---TERA’s key

Dreveskracht 11—Associate at Galanda Broadman PLLC, of Seattle, an American Indian majority-owned law firm. His practice focuses on representing businesses and tribal governments in public affairs, energy, gaming, taxation, and general economic development (Ryan, The Road to Alternative Energy in Indian Country: Is It a Dead End?, http://www.wsba.org/Legal-Community/Sections/Indian-Law-Section/~/media/Files/Legal%20Community/Sections/Indian%20Law/Indian%20Newsletters/Summer%202011%20Vol%2019%20No%202.ashx)

Yet, as of February 2011, only one commercial scale renewable energy project is operating in Indian country. 9 What gives?¶ On April 1, 2011, the U.S. House of Representatives, Committee on Natural Resources, set out to find the answer. 10 In his opening statement, Committee Chairman Don Young set the tone for testimony to follow: “[B]ecause of outdated or duplicative federal regulations and laws, tribes often feel that the federal government is treating them unfairly…. These rules and policies often slow energy development and discourage businesses to invest on tribal lands.” 11 Tribal officials identified the following impediments:¶ • Erroneous Bureau of Indian Affairs (BIA) records, which cause significant delay in the preparation of environmental documents and overall land records necessary for the approval of business transactions. 12¶ • A lack of BIA staffing necessary to review and approve the required instrumentalities within a timely fashion. 13¶ • The inability to enter into long-term fixed price contracts necessary to underpin the commercial framework needed for long-term projects. 14¶ • A lack of standardization and coordination between Department of the Interior (DOI) offices. 15¶ • A lack of DOI communication with state and local governments – with tribes bearing the brunt of the cost via legal attacks on their sovereignty. 16¶ • General apprehension to issue National Environmental Protection Act (NEPA) compliance decisions at the Environmental Protection Agency, likely due to fear of litigation. 17¶ • BIA delays in approving Rights-of-Way. 18¶ • The practical inability to tax non-Indian energy developments on leased lands due to state and local governments in many instances already taxing the project. 19¶ • Tribes’, as owners, inability to take advantage of the production/investment tax credits and accelerated depreciation incentives available to non-Indian project investors. 20¶ Stripped down, many the hindrances referred to in Hearing testimony are a direct result of the federal approval process. Pursuant to 25 U.S.C. § 415, transactions involving the transfer of an interest in Indian trust land must be approved by the BIA. 21 But even where the tribe structures the project without leasing its land, 25 U.S.C. § 81 requires that the BIA approve contracts that could “encumber” Indian lands for a period of seven or more years. 22 Secretarial approval is also necessary for rights of-way on Indian lands. 23 In these instances the BIA approval process constitutes a “federal action,” which triggers a slew of federal laws that the BIA must comply with. 24 This includes NEPA, the National Historic Preservation Act, and the Endangered Species Act, among others. Compliance with NEPA alone can take over 12 years to complete and can generate millions of dollars in additional cost 25 – not to mention the inevitable litigation that will ensue. 26 Although there has been some headway in removal of the outdated tribal energy regime, according to recent congressional testimony there is much work to be done.¶ The Road to Nowhere¶ Congress began to address the development of renewables in Indian country in the early nineties. Such legislation included the EPAct of 1992, 27 which authorized the Department of Energy (DOE) to provide grants and loans to tribes wishing to develop solar and wind energy; the Indian Energy Resource Development Program, 28 which awarded development grants, federally-backed loans, and purchasing preferences to Indian tribes pursuing energy development projects 29 ; culminating in the Indian Energy Act of 2005 (IEA), 30 the most comprehensive Indian-specific energy legislation to date.¶ Until 2005, much of the federal push for energy development had focused on creating incentives for investment rather than a restructuring of the antiquated legal structures involved. 31 Much of the IEA, however, was devoted to the creation of a new framework for the management and oversight of energy development in Indian country – the Tribal Energy Resource Agreement (TERA). 32 This section of the IEA allowed a tribe to enter into a master agreement (the TERA) with the Secretary of the Interior, granting the tribe the ability to enter into leases and other business agreements and to grant rights of way across tribal lands without Secretarial approval. 33¶ To date, however, no tribe has entered into a TERA. For many tribes, the cost simply outweighs the benefits 34 – TERAs allow tribes the leeway to skip secretarial approval for specific projects, “but only on terms dictated by the federal government rather than on the tribes’ own terms.” 35 First, in applying for the TERA, the tribe must consult with the director of the DOI before submitting the application. 36 The director must hold a public comment period on the proposed TERA application and may conduct a NEPA review of the activities proposed. 37 Thereafter, the DOI has 270 days to approve the TERA. 38 Second, the TERA requires that tribes create a NEPA-like environmental review process. 39 This “tribal NEPA” must have a procedure for public comment and for “consultation with affected States regarding off-reservation impacts” of the project. 40 Third, the TERA must include a clause guaranteeing that the tribe and its partner will comply “with all applicable environmental laws.” 41 In so doing, tribes must allow the Secretary to review the tribe’s performance under the TERA – annually for the first three years and biannually thereafter. 42 If in the course of such a review the Secretary finds “imminent jeopardy to a physical trust asset,” the Secretary is allowed to take any action necessary to protect the asset, including assuming responsibility over the project. 43 Fourth, the TERA must address public availability of information and record keeping by designating “a person … authorized by the tribe to maintain and disseminate to requesting members of the public current copies of tribal laws, regulations or procedures that establish or describe tribal remedies that petitioning parties must exhaust before instituting appeals ….” 44 Finally, agreements for developing alternative energies are subject to a 30-year limit, renewable only once for another 30-year term. 45¶ Roadblocks¶ Commentators have noted that the TERA imposes more stringent environmental standards upon tribes than non-Indian developers elsewhere. 46 But even where a tribe is compelled to go through the burdensome TERA process – which may still be a good idea 47 – many tribes simply do not have the resources necessary to fulfill the TERA requirements. The regulations impose an extremely heavy burden on tribal governments to demonstrate that they have the requisite expertise, experience, laws, and administrative structures in place to assume the responsibility of a TERA. “Few tribes at present have the in-house geologists, engineers, hydrologists, and other experts, or the financial wherewithal to hire or train them,” in order to provide the tribe with the capacity necessary to obtain secretarial approval under the TERA regulations. 48¶ The irony is that those tribes with TERA capacity are likely in a position to skip the approval process altogether by implementing alternative energy projects on their own, which do not require secretarial approval. 49 Where no lease, contract, or right-of-way is involved, the approval process – and the insurmountable burdens of federal law that come along with it – is not necessary. 50 The majority of tribes, however – tribes that are most in need of economic development and would most benefit from the implementation of an alternative energy project – have to seek an outside partner, which puts them “at a terrific disadvantage for developing their own resources.” 51¶ The Road Ahead¶ The doctrine of self-determination acknowledges that tribal control over development is the best way to strengthen tribal governance and improve economic selfsufficiency. 52 According to much of the testimony offered at the recent Hearing before the Subcommittee on Indian and Alaska Native Affairs, self-determination must also include freedom from the yoke of federal energy oversight and regulation.¶ On May, 4-5, 2011, the U.S. Department of Energy (DOE) held its first Tribal Summit. 53 The goal of the Summit, much like that of the most recent Hearing, is to identify and “break down bureaucratic barriers that have prevented tribal nations from developing clean energy with the ultimate goal of prosperity and energy security for both Indian country and the nation as a whole.” 54 For many, the Summit reflects the nation’s “continued commitment to partnering with Native Americans to support the development of clean energy projects on tribal lands ….” 55 But will it be enough?¶ Having identified “unnecessary laws and regulations” hindering alternative energy development in Indian country, it is now time for Congress to write necessary legislation to allow tribes to pursue energy self-determination. 56 If the words of Doc Hastings, Chairman of the House Committee on Natural Resources, hold any bearing, the current regulation of energy resources in Indian country may soon be upset: “Tribes know best how to meet their own land management objectives.” 57 This axiom should not be lost. Indeed, in order to effectively realize the twin goals of promoting tribal self-determination and encouraging the efficient development of tribal energy resources, 58 it will be necessary to emphasize the former to bring about the latter.

#### The counterplan trades off with sovereignty

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

[\*849] The discussion below offers two suggestions for reform. These options, though somewhat contradictory, would both improve upon the existing TERA regulations. Whether one proposal is found more persuasive than the other may turn "partly on how one conceptualizes the trust doctrine. It can be seen as a federal duty to protect tribes' right of self-governance and autonomy, or as a way to justify federal power and control over tribal affairs." n138 Senators Bingaman's and Campbell's comments on the then-pending TERA provisions exemplify this difference of viewpoint on the federal government's trust responsibility to federally-recognized tribes.¶ The first proposal approaches the federal trust responsibility from the perspective of promoting tribal sovereignty and self-determination: the TERA regulations maintain federal decision-making authority over energy development in Indian country, which is unnecessary and perhaps even detrimental to the overarching goal of tribal self-determination and energy development. Alternatively, the second proposal for reform adopts a "federal" or "paternalistic" perspective of the federal trust responsibility: the federal government maintains a significant role in energy development in Indian country and therefore should be liable for decisions made under TERA (presumably to protect the economic stability of tribal governments). In considering these proposals, one must be mindful of the fact that the role of the federal government in tribal decision-making is a hotly contested issued. n139 Moreover, these two options for reform are presented in recognition of the existing trade-offs between the tribal trust responsibility and full tribal sovereignty. As Professor Ezra Rosser explained, "the challenge for Indian scholars and leaders alike is recognizing that the future of tribal progress will involve a trade-off between self- [\*850] determination and the trust duties of the federal government." n140 Interestingly, the Navajo Nation made similar recommendations to the Senate Committee on Indian Affairs in comments submitted in 2003. n141

\*\*\*in AT liability takes out case\*\*\*

#### Federal liability is antithetical to sovereignty and is an arbitrary exertion of trust power

Unger 10—J.D. Candidate, Loyola Law School. M.A., Linguistic Anthropology, University of Texas at Austin (Kathleen, CHANGE IS IN THE WIND: SELF-DETERMINATION AND WIND POWER THROUGH TRIBAL ENERGY RESOURCE AGREEMENTS, <http://www.tribesandclimatechange.org/docs/tribes_24.pdf>)

As the foregoing discussion indicates, the concerns expressed about the government abdicating its trust obligation 276 are unwarranted—the government has more of a tendency to use the trust doctrine to retain control over tribal resource development. TERA advocates who emphasize that TERAs are voluntary recognize the importance of focusing more on the opportunity for self-determined resource development than on the security afforded by the federal trust obligation. 277 Thus, the provision limiting federal liability does not require revision, 278 for two main reasons.¶ One reason revision is not needed is that the Indian Energy Act’s explicit recognition of the trust responsibility offers assurance that this responsibility remains intact. 279 The Act can be compared with the Indian Mineral Development Act of 1982. 280 Professor Judith V. Royster asserts that in that Act, Congress intended to sustain the trust responsibility despite the inclusion of a similar limitation on federal liability. 281 Though Professor Royster expresses some reservations based on differences between the Indian Mineral Development Act and the Indian Energy Act, she ultimately concludes that the concerns about the trust responsibility are unfounded. 282¶ 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. 283 It is sensible not to require that the federal government be liable for damages related to such agreements. 284 More importantly, it is in tribes’ own interests to accept the risks attendant to developing their resources. 285 Freedom from government control necessarily entails forgoing some federal protection. 286 The Indian Energy Act includes several provisions to build tribal capacity to take on development projects. 287 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. 288 When they do take control, they should embrace the attendant risks, because “sovereignty without such risks is a contradiction in terms.” 289

#### Only the aff can force accountability which results in sustained development --- the CP has been tried and tried again

Cornell and Kalt 93—Ph.D. Director Professor of Sociology and of Public Administration and Policy Faculty Associate, Native Nations Institute—AND—Ford Foundation Professor of International Political Economy, Emeritus, Co-Director Harvard Proj. on American Indian Econ. Development (Stephen and Joseph, WHAT CAN TRIBES DO? STRATEGIES AND INSTITUTIONS IN AMERICAN INDIAN ECONOMIC DEVELOPMENT, http://www.tribalreentry.org/sites/tribalreentry.org/files/Strategies%20and%20Institutions%20in%20AI%20Economic%20Development.pdf)

We believe the available evidence clearly demonstrates that tribal sovereignty is a necessary prerequisite of reservation economic development. Each present instance of substantial and sustained economic development in Indian Country is accompanied by a transfer of primary decision-making control to tribal hands and away from federal and state authorities. Sovereignty brings accountability and allows "success" to be properly defined to include Indians' goals of political and social well-being along with economic well-being. Decades of control over reservation economic resources and affairs by federal and state authorities did not work to put reservation economies on their feet. ¶ This conclusion does not imply that tribal-federal/state relations are or should be hostile or uncooperative. In fact, the federal government in particular has made a number of encouraging efforts to enhance tribal control over economic affairs. Public Law 638, which enables tribal contracting of otherwise federal services; the Indian Gaming Act, which codifies tribal authority over certain activities; and BIA efforts such as the "SelfGovernance Project" are examples of steps in the right direction. The objective of federal and state policy should be to enhance tribal sovereignty over economic matters, with federal and state efforts aimed at support and technical assistance. In the role of consultant, federal and state governments need not always devolve back to the role of decision-maker.¶ The vast bulk of federal and state assistance to Indian tribes comes in the form of program-specific expenditures: health, education, infrastructure investment, loan and grant programs, direct general income assistance, and so forth. Capable tribal governments should be granted "Super 638" powers to elect to receive most of that assistance in the form of no-strings block grants, much in the way that the states now relate to the federal government. Criteria for eligibility should shift the burden of proof away from the tribe by presuming eligibility upon the tribe's request, unless it can be shown that the tribe is incapable of self-management of its block grant.¶ Sovereignty has many dimensions, from taxation and resource control to civil rights and child welfare. 35 Our research is confined to the economic sphere. Within that sphere, we believe the evidence on development success and failure supports the conclusion that tribal sovereignty over economic affairs should be founded upon a government-to-government relationship between Indian nations and the United States. This means tribal preeminence in taxation and business regulatory policy, as well as in land, water and resource use, and environmental policy. Split or shared jurisdiction, as under the Indian Gaming Act, does not go far enough.¶ One of the consequences of enhanced tribal sovereignty in the economic arena is likely to be greater variation in the economic conditions prevailing across reservations. There will be successes—and there will be failures. American Indian tribes are no more guaranteed than other developing countries that self-government will quickly and unfailingly produce dramatic improvements in economic, political, and social well-being.¶ The prospect of failure raises difficult policy and jurisdictional issues: Under the federal trust doctrine (under which Indian reservations are managed by the federal government in the role of trustee), does the federal government have the responsibility to bail out tribes that stumble as sovereigns? We believe that an appropriate long-range objective of federal policy should be to empower tribes with the information and decision-making apparatus by which they might knowingly and voluntarily elect to waive explicitly the federal trust responsibility upon the assertion of sovereignty powers (e.g., over the use of current trust funds, natural resource development, or environmental regulations). This would undoubtedly expose tribes to risks. But sovereignty without such risks is a contradiction in terms.

\*\*\*in AT Exploitation\*\*\*

#### Doesn’t undermine the trust doctrine and choice is key

Unger 10—Clerk, Hon. Ferdinand Fernandez , U.S. Court of Appeals for the Ninth Circuit, JD Loyola Law School, MA - Linguistic Anthropology, University of Texas at Austin (Kathleen, CHANGE IS IN THE WIND: SELF-DETERMINATION AND WIND POWER THROUGH TRIBAL ENERGY RESOURCE AGREEMENTS, http://www.tribesandclimatechange.org/docs/tribes\_24.pdf)

Another area of concern regarding TERAs is their effect on the federal trust obligation toward tribes. Of particular concern is the provision absolving the federal government of liability related to the negotiated terms of agreements tribes enter into pursuant to a TERA. 180 Some tribal leaders see this limitation of liability as the government abdicating its trust responsibilities. 181 The possibility provokes fears that private entities such as energy companies will exploit tribal resources and take unfair advantage of tribes. 182 On the other side, some tribes and tribal organizations welcome the opportunity to use TERAs as a way to develop tribal resources. 183 They stress the fact that entering into a TERA is voluntary and that the law creating TERAs is, at its essence, about self-determination. 184¶ These two viewpoints capture the complexity of the relationship between the doctrines of trust and self-determination. 185 The former viewpoint seeks federal protection at the expense of increased control over the course of tribal resource development. 186 For some tribes, such as those with weaker governmental structures, this may be the best choice. 187 However, the idea of choice is key, as tribes should be in charge of whether and when to assume control of their development. 188 The TERA structure is meant to allow this choice because entering into a TERA is voluntary. 189 Tribes that wish to remain under federal protection may continue to use the preexisting system of federal approval for development projects. 190 Thus, the TERA framework does not weaken the trust responsibility.191¶ On the contrary, the federal government uses the trust responsibility to retain control unnecessarily through the TERA regulations. The Preamble included a discussion of proposed section 224.115 of the regulations highlighting this tendency. 192 In the subpart of the regulations that addresses petitions by interested parties regarding noncompliance with a TERA, 193 the DOI’s regulations, as originally proposed, allowed for dismissing such a petition if the tribe and the petitioner concur in the tribe’s proposed resolution of the petitioner’s claim. 194 The following section allowed the DOI—through the director of the Office of Indian Energy and Economic Development—to reject a resolution that the tribe and the petitioner mutually agreed to. 195 In the Preamble, the DOI declined to remove that provision, characterizing it as an expression of the DOI’s “residual trust responsibility.” 196

#### Trust causes more exploitation

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

n216 Justifications for congressional refusal to consign the trust doctrine to the ashcan of history focus on the claim that the trust is necessary to protect Indians from exposure to market forces and the improvident disposal of their property. See PERRY, supra note 62, at 16. However, it is questionable at best whether the increasingly sophisticated tribes of the twenty-first century are any longer in need of the "protection" afforded by an inept trustee such as the U.S. has demonstrated itself to be. Critical examinations of BIA management decisions, as well as recent case law, support the argument that the trust doctrine operates as legal dressing for the assertion of federal politico-economic power for the benefit of non-Indian constituencies, such as industries that compete against, or rely upon raw materials derived from Indian interests. See WELLS, supra note 105, at 381 (identifying trust doctrine as facilitating corporate exploitation of Indian lands and resources); see also Cobell v. Babbitt, 91 F. Supp. 2d 1, 6–7 (D.D.C. 1999) (finding as a matter of fact that the purpose of the trust doctrine was to "deprive [Indians] of their native lands and rid the nation of their tribal identity" to avail non-Indians of tribal lands 42 OHIO STATE LAW JOURNAL [Vol. 66:1

#### no link to exploitation

Royster 12—Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law (Judith, Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures, 31 Stan. Envtl. L.J. 91)

The proposed amendment to the definition of "mineral resources" in the IMDA would eliminate one of the serious disadvantages of the statutes presently available for renewable energy development by allowing tribes to take as active a role in the development process as they choose. But it does not address the other major drawback, that of secretarial approval. Under the IMDA, the Secretary is responsible for individually approving every negotiated lease and minerals agreement.¶ Discarding any approval role for the Secretary of the Interior is, at least in the short term, unrealistic. In only one limited situation relevant to renewable energy has Congress eliminated secretarial approval entirely: the 2000 amendment to § 81 to authorize contracts or agreements that encumber Indian lands for less than seven years without any federal approval. As noted earlier, § 81 applies only if other statutory authority does not.¶ More commonly, Congress has been willing to ease up on the Secretary's approval power, allowing tribes to bypass federal approval of specific instruments if a more global approval has already been granted. Thus, the original ten-year authority of section 17 corporations to lease without secretarial approval was expanded in 1990 to twenty-five years. Nonetheless, the section 17 corporate charter itself is issued by the Secretary, and the powers granted in the charter are thus subject to secretarial approval. The surface leasing statute was amended several times to authorize specific tribes to lease without secretarial approval of the individual lease, as long as the tribe first has in place tribal regulations approved by the Secretary. Legislation introduced in the 111th and 112th Congresses would have extended this authority to all tribes. Similarly, the TERA process enacted in 2005 authorizes any tribe to use the same approach for energy leases and agreements.¶ While these statutes and amendments clearly indicate a trend toward a somewhat less intrusive role for the Secretary, it is equally clear that Congress wants some level of federal oversight for long-term encumbrances of Indian lands. It is willing to have that oversight one step removed from specific development instruments, but not removed altogether. Any realistic solution at this point, therefore, must retain some sort of secretarial approval.¶ 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.

### K

#### No link---the plan subverts contemporary capitalist development by rendering it submissible to Native culture---the K inscribes a false distinction b/w modern and traditional that effaces Natives

O’Neill 4—Associate Professor, Utah State (Collen, Rethinking Modernity and the Discourse of Development in American Indian History, an Introduction, http://www.upcolorado.com/excerpts/9780870818592.pdf)

Modernity is a culturally specific, historical construct, yet the concept remains stubbornly reified as some sort of natural historical phenomenon. As Joseph Gusfield described in 1967, “We cannot easily separate modernity and tradition from some specific tradition and some specific modernity, some version which functions ideologically as a directive. The modern comes to the traditional society as a particular culture with its own traditions.” 39 The use of universal categories of capitalist development defines a particular kind of historical narrative. Theoretical paradigms that posit subsistence ways of life against proletarian experiences and the traditional versus the modern render historically invisible economic systems that do not fit within those dualistic parameters. Recognizing the coexistence of modernity and tradition within the same historical time and space and refusing to think of culture as purely a terrain of resistance reveals a much more complicated and compelling story. As historian Kathy Walker suggests from her study of Chinese peasants, “Alternative pasts indicate a counter-appropriation of history that simply cannot be reduced to a logic of capitalist development or universalized modernity. They must be explained on their own terms.” 40 Reaching for historical specificity does not mean ignoring the bigger picture or abandoning the work of capitalist theory. On the contrary, moving beyond the “discourse of development,” to use Arturo Escobar’s term, means creating new theoretical models to help make sense out of the multiple histories that are bound to emerge once we remove the paradigmatic blinders.¶ American historians can learn a great deal from scholars studying the ways rural peoples in the Third World have shaped and been shaped by capitalist development. Peasant and subaltern studies scholars have chipped away at assumptions that had previously characterized peasant societies as undifferentiated, or “traditional,” and peasant uprisings as reactive and conservative. In effect, they opened Marx’s “sack of potatoes” to look inside. What they found were complex societies divided along wealth, gender, and age hierarchies and united by kinship and other socially constructed identities. Third World social scientists found that peasants, a social category once defined as “precapitalist,” existed within capitalist structures as well as on the periphery of the world system. These scholars wondered how the internal dynamics of peasant cultures mediated their interactions with the world economy, how they resisted absorption into the capitalist market, as well as how they accommodated to it. This type of scholarship produced a nuanced view that expanded definitions of resistance beyond collective uprising and revolution to oppositional popular culture, nationalism, gender antagonism, and subtle subversion encoded in “hidden transcripts.” 41 Still, revealing the agency of historical actors does not necessarily shed light on the power structures within which they operate. However, these types of studies revealed how complex the dance between power structures and historical agents can be. 42 ¶ NATIVE PATHWAYS: COMMERCIAL INCORPORATION¶ The capitalist market has taken its toll on American Indian communities, particularly since incorporation has usually meant a devastating loss of land and other natural resources—elements of central economic and cultural significance. Yet the way indigenous communities recovered in the twentieth century shows a creative engagement with the market. By contesting the terms of incorporation, either as laborers or as tribal capitalists, American Indians are challenging the cultural assumptions of modernity itself.¶ Native Pathways reflects much of the exciting scholarship done by Third World scholars since the mid-1980s. This volume helps to flesh out what historian Florencia Mallon has described as “that skeleton historians call the development of capitalism.” She examines how Andean peasants used “traditional relationships” to shape their villages’ transition to a capitalist economy, and in the process those “weapons of the weak” transformed the villagers and their communities. 43 Paul Rosier’s chapter on Blackfeet oil leasing demonstrates the importance of understanding the “culture of political economy” implicit in the incorporation of indigenous societies into the capitalist market economy. Even though American Indians do not dictate the terms of their incorporation, they may in fact shape its impact. For example, Rosier shows that the revenue earned from oil leasing did not necessarily subvert Blackfeet culture. Instead, tribal members incorporated it into their established cultural practices, such as giveaways, which helped to “mitigate against incipient class conflict” through a redistribution of tribal income. Cultural practices changed, but they remained no less Blackfeet in their reincarnation.¶ Whereas cultural practices might temper the effects of incorporation, Tressa Berman describes ways informal women’s networks served as a buffer against the surrounding capitalist market, helping to “spread the risks of survival across households.” American Indian women on the Fort Berthold Reservation intermixed their production for the market with ceremonial use so that those realms have become interdependent. Mandan, Hidatsa, and Arikara women pooled resources such as commodity food issued by the federal government, wages, or star quilts and redistributed them for ceremonial purposes or to aid kin who were in need. As a result, Berman states, “[in] both their structural adaptation and their community-based resistance the core cultural life remains intact, such that new strategies emerge from the maintenance of traditional practices.”¶ David Arnold’s chapter on Tlingit fishermen describes a similar cultural dynamic. Although development of a commercial salmon industry in southeastern Alaska drew Tlingits into the market economy, it did not necessarily undermine their subsistence practices. Indeed, customary fishing traditions and seasonal cannery work allowed Tlingits to retain some autonomy from the market. And like the Blackfeet, the revenue they earned in the commercial market and from wages in the canneries could be redistributed through ceremonial activities and community feasts.¶ David La Vere’s analysis of the Kiowa-Comanche-Apache Business Committee in the early twentieth century shows a similar use of “tradition” to build, protect, and enhance tribal resources. In this example, kinship obligations remained central to the goals of the Business Committee “as a way of navigating the white man’s road.” In this vein, the council developed a process of adopting people into the tribes—a well-worn tradition among the Comanche and the Kiowa—as a way to build tribal membership and resources. Jeffrey Shepherd’s history of the Hualapai describes a similar dynamic. Like the wealthier peasants Mallon describes in Yanamarca Valley, who drew on their influence at the village level to fashion a system of wage-based, commercial agricultural from a kinship-based system, participation in the market economy as labor contractors provided Hualapai elites with a new avenue of power and prestige. According to Shepherd, incorporation into the market economy actu-ally encouraged tribal cohesion and strengthened Hualapai identity instead of eroding it. 44¶ The history of American Indians’ relationship to the developing capitalist market involves multiple strands of analysis. Although it is important to think about how Indians responded to the cultural and economic demands of incorporation and how they fashioned strategies that rejected the incipient cultural logic of twentieth-century capitalism, the more compelling story involves the new institutions they created out of the conflict. Duane Champagne’s chapter raises these issues in important ways. As he suggests, although American Indians formed tribal governments under pressure from the federal government, those tribal councils did not always behave in the ways the federal government had hoped. He argues that in fact, many “[t]ribal governments continue to operate within the holistic orientations of native community life. Unlike U.S. society, institutional relations among economy, community, kinship, and politics are not separated.” For example, whereas the federal government created many of the modern tribal councils in an effort to extract valuable natural resources such as oil, timber, or other resources Western capitalists coveted, the tribal councils became something else indeed. Champagne’s examples show that American Indians embraced capitalism yet developed a system that embodies native values. As American Indians have been drawn into the capitalist economy, they have also been able to transform the institutions originally intended to control and exploit them.¶ Jessica Cattelino’s and Nicolas Rosenthal’s chapters on gaming offer interesting examples of what tribal capitalism looks like. Although American Indian sovereignty and the morality of gaming dominate the public debate, how and why those operations are “different” from the gaming establishments in Las Vegas or Atlantic City are often overlooked. Yet as Cattelino and Rosenthal demonstrate, American Indians have crafted a new pathway of development. For the most part, American Indians have crafted capitalist endeavors that redistribute and redirect profits for community benefit. The success of gaming is unparalleled. However, these chapters show that gaming did not emerge in a vacuum. The Seminoles and the southern California tribes developed gaming enterprises as one in a long line of development initiatives.

#### The alternative is complicit with the ongoing domination of Native peoples and reentrenches colonialism---the aff is necessary to reorient class relations

Churchill 8—former prof @ UC Boulder (Ward, I Am Indigenist, www.zcommunications.org/i-am-indigenist-by-ward-churchill)

Leaving aside questions concerning the validity of various treaties, the beginning point for any indigenist endeavor in the United States centers, logically enough, in efforts to restore direct Indian control over the huge portion of the continental United States that was plainly never ceded by native nations. Upon the bedrock of this foundation, a number of other problems integral to the present configuration of power and privilege in North American society can be resolved, not just for Indians, but for everyone else as well. It is probably impossible to solve, or even to begin meaningfully addressing, certain of these problems in any other way. But still, it is, as they say, "no easy sell" to convince anyone outside the more conscious sectors of the American Indian population itself of the truth of this very simple fact.¶ ¶ In part, uncomfortable as it may be to admit, this is because even the most progressive elements of the North American immigrant population share a perceived commonality of interest with the more reactionary segments. This takes the form of a mutual insistence upon an imagined "right" to possess native property, merely because they are here, and because they desire it. The Great Fear is, within any settler-state, that if indigenous land rights are ever openly acknowledged, and native people therefore begin to recover some significant portion of their land, the immigrants will correspondingly be dispossessed of that which they have come to consider "theirs" (most notably, individual homes, small farms, ranches and the like).¶ ¶ Tellingly, every major Indian land recovery initiative in the United States during the second half of the twentieth century—the Western Shoshone, those in Maine, the Black Hills, the Oneida claims in New York State are prime examples—has been met by a propaganda barrage from right-wing organizations ranging from the Ku Klux Klan to the John Birch Society to the Republican Party warning individual non-Indian property holders of exactly this "peril."36¶ ¶ I will debunk some of this nonsense in a moment, but first I want to take up the posture of self-proclaimed leftist radicals in the same connection. And I will do so on the basis of principle, because justice is supposed to matter more to progressives than to rightist hacks. Let me say that the pervasive and near-total silence of the left in this connection has been quite illuminating. Non-Indian activists, with only a handful of exceptions, persistently plead that they cannot really take a coherent position on the matter of Indian land rights because, "unfortunately," they are "not really conversant with the issues" (as if these are tremendously complex).¶ ¶ Meanwhile, they do virtually nothing, generation after generation, to inform themselves on the topic of who actually owns the ground they are standing on. The record can be played only so many times before it wears out and becomes just another variation of "hear no evil, see no evil." At this point, it does not take Einstein to figure out that the left does not know much about such things because it has never wanted to know, or that this is so because it has always had its own plans for utilizing land it has no more right to than does the status quo it claims to oppose.¶ The usual technique for explaining this away has always been a sort of pro forma acknowledgment that Indian land rights are of course "really important stuff" (yawn), but that one "really does not have a lot of time" to get into it (I'll buy your book, though, and keep it on my shelf even if I never read it). Reason? Well, one is just "overwhelmingly preoccupied" with working on "other important issues" (meaning, what they consider to be more important things). Typically enumerated are sexism, racism, homophobia, class inequities, militarism, the environment, or some combination. It is a pretty good evasion, all in all. Certainly, there is no denying any of these issues their due; they are all important, obviously so. But more important than the question of land rights? There are some serious problems of primacy and priority imbedded in the orthodox script.¶ To frame things clearly in this regard, let us hypothesize for a moment that all of the various non-Indian movements concentrating on each of these issues were suddenly successful in accomplishing their objectives. Let us imagine that the United States as a whole were somehow transformed into an entity defined by the parity of its race, class and gender relations, its embrace of unrestricted sexual preference, its rejection of militarism in all forms and its abiding concern with environmental protection (I know, I know, this is a sheer impossibility, but that is my point).¶ When all is said and done, the society resulting from this scenario is still, first and foremost, a colonialist society, an imperialist society in the most fundamental sense and with all that this implies. This is true because the scenario does nothing at all to address the fact that whatever happens is on someone else's land, not only without their consent, but with an adamant disregard for their rights to the land. Hence, all it means is that the immigrant or invading population has rearranged its affairs in such a way as to make itself more comfortable at the continuing expense of indigenous people. The colonial equation remains intact and may even be reinforced by a greater degree of participation and vested interest in maintenance of the colonial order among the settler population at large.37¶ ¶ The dynamic here is not very different from that evident in the American Revolution of the late eighteenth century, is it? And we all know very well where that led. Should we therefore begin to refer to socialist imperialism, feminist imperialism, gay and lesbian imperialism, environmentalist imperialism, Afroamerican and la Raza imperialism? I would hope not.38 I would hope this is all just a matter of confusion, of muddled priorities among people who really do mean well and who would like to do better. If so, then all that is necessary to correct the situation is a basic rethinking of what it is that must be done, and in what order. Here, I would advance the straightforward premise that the land rights of "First Americans" should be a priority for anyone seriously committed to accomplishing positive change in North America.¶ ¶ But before I suggest everyone jump up and adopt this priority, I suppose it is only fair that I investigate the converse of the proposition: If making things like class inequity and sexism the preeminent focus of progressive action in North America inevitably perpetuates the internal colonial structure of the United States, does the reverse hold true? I will state unequivocally that it does not.¶ ¶ There is no indication whatsoever that a restoration of indigenous sovereignty in Indian Country would foster class stratification anywhere, least of all in Indian Country. In fact, all indications are that when left to their own devices, indigenous peoples have consistently organized their societies in the most class-free manner. Look to the Haudenosaunee (Six Nations Iroquois Confederacy) for an example. Look to the Muscogee (Creek) Confederacy. ¶ Look to the confederations of the Yaqui and the Lakota, and those pursued and nearly perfected by Pontiac and Tecumseh. They represent the very essence of enlightened egalitarianism and democracy. Every imagined example to the contrary brought forth by even the most arcane anthropologist can be readily offset by a couple of dozen other illustrations along the lines of those I just mentioned.39¶ ¶ Would sexism be perpetuated? Ask the Haudenosaunee clan mothers, who continue to assert political leadership in their societies through the present day. Ask Wilma Mankiller, recent head of the Cherokee Nation, a people who were traditionally led by what were called "Beloved Women." Ask a Lakota woman—or man, for that matter—about who owned all real property in traditional society, and what that meant in terms of parity in gender relations. Ask a traditional Navajo grandmother about her social and political role among her people. Women in most traditional native societies not only enjoyed political, social, and economic parity with men, but they also often held a preponderance of power in one or more of these spheres.¶ ¶ Homophobia? Homosexuals of both genders were, and in many settings still are, deeply revered as special or extraordinary, and therefore spiritually significant, within most indigenous North American cultures. The extent to which these realities do not now pertain in native societies is exactly the extent to which Indians have been subordinated to the morés of the invading, dominating culture. Insofar as restoration of Indian land rights is tied directly to the reconstitution of traditional indigenous social, political, and economic modes, one can see where this leads; the Indian arrangements of sex and sexuality accord rather well with the aspirations of feminism and gay rights activism.40¶ ¶ How about a restoration of native land rights precipitating some sort of "environmental holocaust?" Let us get at least a little bit realistic here. If one is not addicted to the fabrications of Smithsonian anthropologists about how Indians lived,41 or George Weurthner's eurosupremicist Earth First! fantasies about how we beat all the woolly mammoths and mastodons and sabertoothed cats to death with sticks,42 then this question is not even on the board. I know it has become fashionable among Washington Post editorialists to make snide references to native people "strewing refuse in their wake" as they "wandered nomadically" about the "prehistoric" North American landscape.43 What is this supposed to imply? That we, who were mostly "sedentary agriculturalists" in any event, were dropping plastic and aluminum cans as we went?¶ ¶ As I said, let us get real. Read the accounts of early European invaders about what they encountered: North America was invariably described as being a "pristine wilderness" at the point of European arrival, despite the fact that it had been occupied by fifteen or twenty million people enjoying a remarkably high standard of living for nobody knows how long. 40,000 years? 50,000 years?44 Longer? Now contrast that reality to what has been done to this continent over the past couple of hundred years by the culture Weurthner, the Smithsonian and the Post represent, and you tell me about environmental devastation.45¶ ¶ That leaves militarism and racism. Taking the last first, there really is no indication of racism in traditional indigenous societies. To the contrary, the record reveals that Indians habitually intermarried between groups and frequently adopted both children and adults from other groups. This occurred in precontact times between Indians, and the practice was broadened to include those of both African and European origin, and ultimately Asian origin as well, once contact occurred. Those who were naturalized by marriage or adoption were considered members of the group, pure and simple. This was always the native view.46¶ The Europeans and subsequent Euroamerican settlers viewed things rather differently, however, and foisted off the notion that Indian identity should be determined primarily by "blood quantum," an outright eugenics code similar to those developed in places like nazi Germany and apartheid South Africa. Now, that is a racist construction if there ever was one. Unfortunately, a lot of Indians have been conned into buying into this anti-Indian absurdity, and that is something to be overcome. But there is also solid indication that quite a number of native people continue to strongly resist such things as the quantum system.47¶ ¶ As to militarism, no one will deny that Indians fought wars among themselves both before and after the European invasion began. Probably half of all indigenous peoples in North America maintained permanent warrior societies. This could perhaps be reasonably construed as "militarism." But not, I think, with the sense the term conveys within the European/Euroamerican tradition. There were never, so far as anyone can demonstrate, wars of annihilation fought in this hemisphere prior to the Columbian arrival. None. In fact, it seems that it was a more-or-less firm principle of indigenous warfare not to kill, the object being to demonstrate personal bravery, something that could be done only against a live opponent. There is no honor to be had in killing another person, because a dead person cannot hurt you. There is no risk.¶ ¶ This is not to say that nobody ever died or was seriously injured in the fighting. They were, just as they are in full-contact contemporary sports like football and boxing. Actually, these kinds of Euroamerican games are what I would take to be the closest modern parallels to traditional Indian warfare. For us, it was a way of burning excess testosterone out of young males and not much more. So, militarism in the way the term is used today is as alien to native tradition as smallpox and atomic bombs.48¶ ¶ Not only is it perfectly reasonable to assert that a restoration of native control over unceded lands within the United States would do nothing to perpetuate such problems as sexism and classism, but the reconstitution of indigenous social standards that this would entail stands to free the affected portions of North America from such maladies altogether. Moreover, it can be said that the process should have a tangible impact in terms of diminishing such things elsewhere. The principle is this: Sexism, racism, and all the rest arose here as a concomitant to the emergence and consolidation of the eurocentric nation-state form of sociopolitical and economic organization. Everything the state does, everything it can do, is entirely contingent upon its maintaining internal cohesion, a cohesion signified above all by its pretended territorial integrity, its ongoing domination of Indian Country.¶ Given this, it seems obvious that the literal dismemberment of the nation-state necessary for Indian land recovery correspondingly reduces the ability of the state to sustain the imposition of objectionable policies within itself. It follows that realization of indigenous land rights serves to undermine or destroy the ability of the status quo to continue imposing a racist, sexist, classist, homophobic, militaristic order upon non-Indians.¶ A brief aside: Anyone with doubts as to whether it is possible to bring about the dismemberment from within of a superpower state in this day and age, ought to sit down and have a long talk with a guy named Mikhail Gorbechev. It would be better yet if one could chew the fat with Leonid Breznev, a man who we can be sure would have replied in all sincerity, only twenty years ago, that this was the most outlandish idea he'd ever heard. Well, look on a map today, and see if you can find the Union of Soviet Socialist Republics. It ain't there, folks. Instead, you are seeing—and you will see it more and more—the reemergence of the very nations Léon Trotsky and his colleagues consigned to the "dustbin of history" clear back at the beginning of the century. These megastates are not immutable. They can be taken apart. They can be destroyed. But first we have to decide that we can do it and that we will do it.¶ ¶ So, all things considered, when indigenist movements like AIM advance slogans like "U.S. Out of North America," non-Indian radicals should not react defensively. They should cheer. They should see what they might do to help. When they respond defensively to sentiments like those expressed by AIM, what they are ultimately defending is the very government, the very order they claim to oppose so resolutely. And if they manifest this contradiction often enough, consistently enough, pathologically enough, then we have no alternative but to take them at their word: that they really are at some deep level or another aligned, all protestations to the contrary notwithstanding, with the mentality that endorses our permanent dispossession and disenfranchisement, our continuing oppression, our ultimate genocidal obliteration as self-defining and self-determining peoples. In other words, they make themselves part of the problem rather than becoming part of the solution.

#### Perm do the plan and <reorient our relationship to consumption> --- the perm radicalizes reformism

Doran and Barry 6 – worked at all levels in the environment and sustainable development policy arena - at the United Nations, at the Northern Ireland Assembly and Dáil Éireann, and in the Irish NGO sector. PhD--AND-- Reader in Politics, Queen's University School of Politics, International Studies, and Philosophy. PhD Glasgow (Peter and John, Refining Green Political Economy: From Ecological Modernisation to Economic Security and Sufficiency, Analyse & Kritik 28/2006, p. 250–275, http://www.analyse-und-kritik.net/2006-2/AK\_Barry\_Doran\_2006.pdf)

**EM = Ecological Modernization**

**Viewed in isolation** EM can be painted as a reformist and limited strategy for achieving a more sustainable economy and society, and indeed questions could be legitimately asked as to whether the development of a recognisably ‘green’ political economy for sustainable development can be based on it. In this paper, it is contended that **there are strategic advantages in seeking to build upon and radicalise EM.** There are indications in the UK that the debate on sustainable consumption may lead to new deliberative fora for a re-negotiation of the meaning and ends of consumption. Could it be that ‘suﬃciency’ will emerge as the logical complement (on the consumer side) of the early production-side debate on EM on the limits of ‘eﬃciency’ without an ecological context? ¶ While there are various reasons one can give for this, in this conclusion we focus on two—one normative/principled the other strategic.¶ From a strategic point of view, it is clear that, as Dryzek and his colleagues have shown, if green and sustainability goals, aims and objectives are to be integrated within state policy, **these need to attach themselves to one of the core state imperatives**—accumulation/economic growth or legitimacy (Dryzek et al. 2003; Barry 2003b). It is clear that **the discourse of EM allows** (some) **green objectives to be** integrated/translated into a policy language and framework which complements and does not undermine the state’s core imperative of pursuing orthodox economic growth. Therefore if (in the absence of a Green Party forming a government or being part of a ruling coalition, or even more unlikely of one of the main traditional parties initiating policies consistent with a radical understanding of sustainable development), the best that can be hoped for under current political conditions is the ‘greening of growth and capitalism’ i. e. a narrow, ‘business as usual’ version of EM. Or as Jonathan Porritt has put it, “We need more emphasis about the inherent unsustainability of our dominant economic model, **even as we seek to improve the delivery of that model in the short** to medium **term**” (Porritt 2004, 5). 23 ¶ On a more principled note, the adoption of EM as a starting point for the development of a model/theory of green political economy does carry with it the not inconsiderable beneﬁt of removing the ‘anti-growth’ and ‘limits to growth’ legacy which has (in our view) **held back the theoretical development of a positive, attractive, modern conceptualisation of green political economy and radical conceptualisations of sustainable development.** Here the technological innovation, the role of regulation driving innovation and eﬃciency, the promise that the transition to a more sustainable economy and society does not necessarily mean completely abandoning currently lifestyles and aspirations—**strategically important in generating democratic support for sustainable development, and** as indicated above, importance if the vision of a green sustainable economy is one which promotes diversity and tolerance in lifestyles **and does not demand everyone conform to a putative ‘green’ lifestyle.** Equally, this approach does not completely reject the positive role/s of a regulated market within sustainable development. However, it does demand a clear shift towards making the promotion of economic security (and quality of life) central to economic (and other) policy. **Only when this happens can we say we have begun the transition to implementing the principles of sustainable development rather than fruitlessly seeking for some ‘greenprint’ of an abstract and utopian vision of the ‘sustainable society’.**

### Ptx

#### Russia has abandoned aggression in favor of cooperation

Sawczak 11 [Dr. Peter Sawczak, Adjunct Research Fellow at Monash University, “Obama’s Russia Policy: The Wages and Pitfalls of the Reset,” peer reviewed paper presented at the 10th Biennial Conference of the Australasian Association for Communist and Post-Communist Studies, Feb 3-4 2011, <http://cais.anu.edu.au/sites/default/files/Sawczak_Obama.pdf>]

As a measure of their optimism, US officials like to point – cautiously – to a discernible shift in Russian foreign policy towards a more pragmatic, cooperative approach. Whether or not the Obama administration can claim credit for this, the United States has at least shown Russia the dividends which could flow from enhanced cooperation. This is most palpably reflected in the Russian foreign policy paper leaked in May 2010, which identifies a “need to strengthen relations of mutual interdependence with the leading world powers, such as the European Union and the US,” 5 as well as, more indirectly, in Medvedev’s modernisation agenda. The fact that Russia has sought, in the tragic circumstances attending commemoration ceremonies at Katyn, rapprochement with Poland and moved to demarcate its border with Norway, in addition to partnering with the US on arms control, Iran and Afghanistan, suggests to US policy-makers that a rethink, however tenuous, is underway. Noteworthy also is the fact that Russia, gladdened by the emergence of more compliant leaders in Ukraine and Kyrgyzstan, has been remarkably restrained of late in its dealings closer to home, not having waged any major gas wars, threatened leaders, or incited civil war.

#### The DA is an anxiety ridden excuse to ignore internal colonization---their arguments are paranoid ramblings

Hoggett 4—prof of politics and co-dir. of Center for Psycho-Social Studies, U West England. Degree in social psychology, U Sussex—AND—Dr. Simon Clarke—prof of psycho-social studies and co-dir. of the center. (The Empire of Fear: The American Political Psyche and the Culture of Paranoia, http://www.btinternet.com/~psycho\_social/Vol5/JPSS5-PHSC1.htm)

It is necessary therefore to focus upon this dark side of the new Promethean for this is a figure wracked by guilt and anxiety concerning the destructive consequences of his creative powers. First there is internal destruction. In a recent bestseller, The Culture of Fear: Why Americans are Afraid of the Wrong Things, Barry Glassner (1999) investigates a range of social anxieties which have beset the American psyche, from panics about smack and gunslinging black teenagers to scares about satanic abuse and internet addiction. The book is a rich description of some of the fears that haunt the contemporary American psyche but it is ultimately disappointing for it offers little insight into the deeper cultural anxieties that the American media so cleverly exploits. What Glassner highlights, without ever examining, is the internal destruction consequent upon the American mode of development. The USA is a grossly unequal society and one in which structural inequality remains steadfastly mapped onto questions of race and class. Right at the end of his book Glassner briefly examines the source of the moral panics he has described, suggesting that they are `oblique expressions of concern about problems Americans know to be pernicious but have not taken decisive action to quash – problems such as hunger, dilapidated schools, gun proliferation, and deficient health care for much of the US population’ (Glassner p.209). No more vivid expression of this social divisiveness can be found than in statistics regarding prison populations. According to recent Home Office (2000) figures, Britain, the worst offender in Europe, has a prison population of 72,000, equivalent to 139 per 100,000 people (Norway has 59). But the US tops the table with 686 per 100,000 (compared to China’s 111 and Brazil’s 133). The US prison population currently stands at 1.96 million people, an astronomical figure, the overwhelming proportion of whom are black men, and the US government spends more on imprisonment than on higher education! Contrary to the belief that the US exemplifies an effective multicultural society what we see is a severely restricted multiculturalism in which racial divisions, focusing upon the exclusion of African-Americans and Latinos, are more entrenched than ever. This has led some commentators to suggest that the US’s failure to understand global inequality and its incomprehension at the rage that many peoples feel towards it is an expression of its own inability to understand the sharpness of its own internal differences (Shapiro 2003). But social disintegration in the US is not just mapped along racial lines. As the effects of decades of neo-Liberal social and fiscal policies accumulate it is increasingly clear that in the US the concept of a `safety net’, central to the post-war settlement in western type democracies, has all but disappeared. As a consequence, and this has been glimpsed in some of Richard Sennett’s (1998) recent work, failure can now have catastrophic psychological and material effects even upon the American middle classes. The result seems to be a form of `moral isolationism', which is spreading through American society, a feeling that there is no-one and no-thing to rely upon. And whilst associationism, despite Putnam’s (2000) gloomy prognostications, still seems to be a strong feature of civic culture in the USA, with a few exceptions, such as strong faith communities, this offers little consolation when the chips are really down. In the absence of collective solutions to shared risk Americans fall back upon themselves. But this is not healthy individualism but social anomie, an isolationism fueled by those survival anxieties which were first glimpsed by Christopher Lasch (1985). There exists a second reservoir of guilt and anxiety, which is intimately connected to the destructive creativity of the American Prometheus. This can be traced back to the hideous and monstrous child that America, more than any other, nurtured from conception through to realisation. A monstrous child, Little Boy by name, which was unleashed upon the ordinary civilians of Hiroshima. The first of countless thousands of such children which, along with consequences of other monstrous biological and chemical conceptions, now constitute the exterminating logic of modernity. Let us not forget who unleashed the first Weapon of Mass Destruction and the imprint that this act must have left upon the collective psyche of the perpetrator. Within a few years a whole genre of sci-fi American B movies, paperbacks and comics was flourishing in which the theme of mutation was a constant motif (Jancovich 1996). This was the return of the repressed, or, rather, the annihilated. A whole culture of paranoia was developing; partly fueled by the Cold War, a culture that remains a potent dimension of the American psyche to this day. Richard Hofstadter (1979) described how this **culture of** **paranoia** infused American politics. Describing the paranoid style of the American politician, Hofstadter argues that whilst retaining some of the characteristics of the clinical paranoiac - overheated, oversuspicious, overaggressive, grandiose, and apocalyptic in expression – this character does not perceive that the hostile and conspiratorial world is necessarily directed at him. Rather he sees all that is bad and evil directed at his nation, his culture and his way of life (Hofstadter, p.4). This has been typical of new right politics for many years and, for example, has resulted in persecutory immigration policies designed to protect ways of life that are often fictitious and based in phantasy. In a recent essay, Jason Cowley (2001) argues that this culture, despite its religiosity, `**is** essentially an entertainment culture, **addicted to narratives of catastrophe’** in everything from film right through to computer games. Sat astride the pinnacle of this culture is Tom Clancy, the best-selling, Reagan-adoring writer of fiction such as the Sum of all Fears which presciently described the hijacking by Arab militants of civilian planes which were then used as weapons against the American people. Fiction becomes fact. America looks into the mirror of the world and sees an enemy, an enemy which if not contained will spread. Thus the `domino theory’, given vivid expression by Harry.S. Truman who succeeded Roosevelt as US President in 1944, a `theory’ which justified American intervention in Greece, Turkey and countless Latin American countries during the Cold War, inspired the Vietnam tragedy and now `the War on Terror’ in which a febrile Islam is imagined to be spreading rhizome-like around the edges of the `free world’. But who is this enemy if not Thanatos, Little Boy and all his heirs, the dark echoes of the idealisation of the American way of life - a variety and quantity of weapons of mass destruction which are now, like China’s citizens, almost beyond enumeration? In 2000 American defence expenditure stood at $295bn, this exceeded the combined expenditure of the rest of the world by almost $30bn. This year, 2003, it is set to rise by a further 14%, the biggest leap in over two decades, as a new generation of tactical nuclear weaponry, outlined in Rumsfeld’s `nuclear posture review’ of the previous year, is actively contemplated by the National Nuclear Security Agency (Guardian 2003). Despite the caution of John Quincy Adams, America’s sixth president, not to go `in search of monsters to destroy’, Rumsfeld and Co. are clearly bent on fostering the conditions that will keep this species sustainable for decades to come (and the US defence industry by the way). Such an overwhelming degree of military superiority betrays not just the extent of American ambitions for global hegemony but also the extent of America’s fear. Returning to Riviere, she notes how depressive anxiety gives rise to its own special defence, the manic defence. **In place of vulnerability there is omnipotence** and specifically an attitude of contempt and depreciation for the relationships upon which the narcissist depends. Listening to Richard Perle and other architects of the Project for the New American Century this contempt – for the United Nations, `Old Europe’ and countries which cannot or will not embrace the neo-conservative brand of modernisation – is explicit and worn with smirking pride. Contemplating the demise of the UN after the war on Iraq, Perle notes that `whilst the chatterbox on the Hudson will continue to bleat’ what will die `is the fantasy of the UN as the foundation of the new world order’ (Perle 2003). He then unleashes an apparently clinical demolition of the repeated failure of the Security Council to act against breaches of international law without providing even the faintest of hints that in truth it has been the US which has most consistently used its veto on the Security Council – nine times in all since 1990 against the four vetos cast by the other four members combined during the same period. And whilst we’re on the subject of inaction in the face of breaches of international law we’d do well to remember that over the last thirty years the USA has vetoed 34 UN resolutions on Israel and has consistently supported Israel’s routine violations of UN resolution 242 to which the US is a signatory. What we have here is both cold cunning – there is no room for the UN as a countervailing source of authority in `the Project’ – and a **paranoia about the world which has become so routine that it is not even aware of itself**. Allusions to `threat’ and `security’ run like a thread throughout the brief manifesto of the Project, that is, its `Statement of Principles’. But what makes this paranoia, instead of a rational fear response to the real threats that exist to American hegemony around the world? The massive overkill, the self-fulfilling nature of so many American interventions, the uncanny knack that American foreign policy has displayed of making its worst fears come true, the classic paranoid conviction that one is the misunderstood victim and never the perpetrator, the complete inability to perceive how ones own `defensive actions’ are experienced by the other as provocation and threat – **wherever we look, the `arms race’ with the Soviet Union**, the run-up to the Cuban Missile Crisis, **fear of communist** **contagion in** S.E **Asia** and Latin America, **the** current `**war on terror**ism’ **and `containment’ of N.Korea we see the same mixture of provocation, ineptness and misunderstanding.** In his recent book on paranoia, David Bell (2003) notes how the fears that the paranoid is subject to are the echo of what has become alien(ated). In this way Melanie Klein adds a twist to our understanding of alienation by insisting that what we project into the world forever threatens to return and haunt us. Bell notes how films such as Alien and The Conversation vividly depict this. Indeed Klein argues that through projective identification the other can become subject to control by self, in subtle ways becoming nudged and coerced into enacting what is put into them. In this way **paranoia can become self-fulfilling and it really does seem as if the world is out to get you.** God’s chosen people Estimates suggest that well over 60% of the citizens of the USA engage in religious worship on a regular basis – in Britain the figure is more like 7%. Christian fundamentalism has become particularly powerful in the USA since the late 1960’s, perhaps as the backlash towards 60’s `godlessness’. But these fundamentalist movements seem to be simply the tip of the iceberg that is modern American religiosity. Indeed, as Karen Armstrong (2001) noted, the concept of `fundamentalism’ was first coined to characterise the emergence of charismatic religious movements in N.America at the beginning of the twentieth century. In fact God and America have walked hand in hand ever since the Founding Fathers. This has found a powerful and consistent expression in the politics of the United States, and particularly in its foreign policy, where analysts have coined the phrase `American exceptionalism’ to describe the belief that `the United States is an extraordinary nation with a special role to play in human history’ (McCrisken 2001). Almost from the beginning of the occupation by European settlers N.America has been construed as a promised land and its citizens a chosen people. The New World was, in this sense contrasted with the Old, a world of famine, war and intolerance from which many of these settlers had fled. McCrisken provides countless indications of this exceptionalist belief system from George Washington to Bill Clinton but all are characterised by certain common suppositions – that America is the land of the free, that its intentions are inherently benevolent, that inside every non-American there is an American struggling to get out and, perhaps most importantly given the War on Terror and the occupation of Iraq, that the US is the embodiment of universal human values based on the rights of all mankind – freedom, democracy and justice. Weinberg (1935) described this in terms of the belief in `manifest destiny’ which gave successive administrations in the nineteenth century the sense of America’s special mission to bring freedom to the peoples of the world, as in the Mexican War or the Spanish-American War which led to the `liberation’ of Cuba. Today the sense of manifest destiny is no less strong but now it is garbed in the cloak of `modernisation’ – the belief that all societies pass through certain stages of development (from traditional to modern) and that the West, and particularly the United States, is the common endpoint towards which all peoples must irresistibly move. Of course, this is Fukuyama’s `end of history’ and it is perhaps no surprise to find him to be (along with Rumsfeld, Wolfowitz & Co.) one of the 25 signatories to the Statement of Principles (written in June 1997) of the Project for the New American Century – the neo-Conservative manifesto which now directs American and British foreign policy. The point about all this is that this very idealisation of America by Americans, its self-identification with virtue, contributes enormously both to its innocence and to its arrogance. There is often a real generosity of spirit and a friendly naivete which strikes the non-American (at least the English ones) when encountering an American citizen. One thinks of the countless jokes about the American as an `innocent abroad’ captured in the image of the gawping American tourist. But there is also the arrogance added to this, an arrogance which leads even hard nosed strategists to assume that invading troops need know nothing about the peoples that they are about to `liberate’, a mistake which had tragic consequences in Somalia and is now being repeated in Iraq. Moreover this is an arrogance which leaves Americans with such a strong sense that they have virtue on their side, and it is this that has provided the fertile ground for the splitting and paranoia which has been such a feature of the American view of the world since the Second World War. Again, if we return to Hofstadter's ideas about American politics we can see this paranoid belief in a vast and sinister conspiracy which is set out to undermine and destroy a way of life. Indeed for Hofstadter, `the paranoid spokesman sees the fate of this conspiracy in apocalyptic terms - he traffics in the birth and death of whole worlds, whole political orders, whole systems of human values. He is always manning the barricades of civilization’ (Hofstadter 1979, p.29). Three decades on and this still sounds very familiar. One thinks of the `fighting talk’ of George Bush in the war on Iraq, in the fight against the Axis of Evil, and the struggle against global terrorism - fighting terror with terror, the talion morality of the paranoid schizoid position, destroying and re-creating political systems, acting as the purveyor of civilization to the world. This then, is a world in which American society has been called upon to resist the spreading evils, first of communism, now of militant Islam. Moreover, it has been this splitting of good and evil which fueled the rise of McCarthyism in the 1950’s and which is threatening American civil liberties today. Injured narcissism In 'Notes on Some Schizoid Mechanisms' Melanie Klein (1946) describes the destructive and controlling nature of the narcissistic state of mind. A typical feature of paranoid object relations is their narcissistic nature, for in reality the objects to which the paranoid individual or group relates are representations of their alienated selves. Moreover the narcissistic relationship has strong obsessional features, and in particular the need to control others, to remain omnipotent and all powerful. David Bell develops this theme in his commentary on Mike Davis’s recent NLR article (Davis 2001) in which he notes that the resort, following September 11th, to increasingly pervasive forms of security and control within the USA actually contributes the very anxiety these measures seek to address. Bell argues, `**the** grandiose **demand for complete security creates ever more, in our minds, enemies endowed with** **our own omnipotence who are imagined as seeking to control us’ (**Bell, p.37). But what happens when this narcissism is injured, omnipotence punctured? In the real world, as opposed to the world of the imaginary, this attitude of omnipotence is repeatedly subject to disconfirmation. McCrisken (2003) refers to the `Vietnam syndrome’ as a defining element of American foreign policy since the 1970’s, something which formed the backdrop to the first Gulf War through which it reached a partial and incomplete resolution. Vietnam was a trauma for the USA in two ways. The American claim to have a monopoly on virtue was destroyed by successive scandals, atrocities and outrages, in fact they were revealed to be as savage as any other occupying power. Jean-Paul Sartre (1968) famously argued that the war waged by America on Vietnam was implicitly genocidal. Indeed for Sartre, the war in Vietnam signified a new stage in the development of imperialism - 'it is the greatest power on earth against a poor peasant people. Those who fight it are living out the only possible relationship between an over-industrialized country and an under-developed country, that is to say, a genocidal relationship implemented through racism' (p.42). Worse still, they lost the war, against one of the most economically backward societies imaginable the might of American military power came to nought. The impact of Vietnam was such that the USA virtually avoided direct military involvement for twenty five years, preferring indirect involvement (encouraging and equipping Iraq versus Iran, Afghanistan versus the Soviet Union) or direct engagement in situations such as tiny Grenada where they could hardly lose. The Vietnam Syndrome also encouraged the development of an approach to warfare which gave maximum emphasis to the use of air power and the avoidance of ground troops, something exemplified by the intervention in Kosovo and, later, Afghanistan. We can also understand the Vietnam Syndrome in terms of Freud’s work on trauma and his notions of repetition and working through. Trauma (whether loss of limb or sexual abuse) is an attack upon the narcissistic organisation of the psyche/body, it is experienced as loss which is irreparable. But loss can be managed sufficiently for a life to move on, and for this to occur a place in the psyche/culture needs to be found in which some of the shock, rage, horror and grief can be addressed symbolically. And for a while in the 1970’s elements of the liberal American intelligentsia were able to initiate such a process through critical self-analysis, literature, film and music. But a quite different response, based upon a manic form of denial, was waiting in the wings. Freud notes how a child may engage in the repetition of traumatic experience in an attempt to magically overcome it by reversing the subject/object relationship, by becoming master rather than victim. But this is a `working through’ by enactment, an attempt to `act upon’ reality rather than understand it. Thus the `action movie’ and the `action hero’ of the Hollywood movies which began in the 1970’s featuring Schwarzenegger, Jean Claude Van Damme, and, later, Bruce Willis. But, more seriously, we can also see the same process of `working through’ in terms of the search to re-enact in reverse the humiliation of Vietnam but this time with the US as master. The first Gulf War only partially accomplishes this, Saddam remains unfinished business for many of the neo-conservatives gathering with Rumsfeld and Wolfowitz in the late 1990’s. It is in this context that we can understand September 11th . For September 11th was a second huge narcissistic injury for the USA and the current war on Iraq is a further attempt at `working through’. As by now is absolutely clear (and openly admitted by Wolfowitz) the existence of Weapons of Mass Destruction in Iraq was the pretext for an intervention which had quite different motives. These motives were partly strategic (oil, the need to find an alternative to Saudi Arabia as a forward base for US forces in the region) but they were also partly simply about the reassertion of American power against a more fulfilling target than the Taliban in Afghanistan. They set about `finishing the job’ begun by Bush Snr and achieving `closure’, closing the narcissistic wound opened up by Vietnam and never properly healed. Psychotic Anxieties, Splitting and September 11th If we think psychoanalytically about the events leading up to the war on Iraq, then the starting point is the twin towers - September 11th . Its not easy to forget the horror of that day. There was no absence of bodies then. Horrific scenes of people jumping out of windows, running for life, mangled and dismembered corpses. On September 11th we witnessed true annihilation, not a film, just annihilation. As Cowley (2001) acutely observed, `Islamic terrorists appropriated the destructive impulses of American entertainment culture, making of a nation’s apocalyptic fantasies a terrifying actuality, as if they were attempting to speak to the Americans in their own language’. This was a massive attack on the security of the American nation. As Hanna Segal (2002) noted, the trauma of the terrorist attack had an added dynamic 'the crushing realisation that there is somebody out there who actually hates you to the point of annihilation'. It is now commonplace to say that the USA lost its innocence on September 11th. But what it really lost was its embrace of the imaginary. Until that day the American psyche had been consumed by a helpless fascination with a fictional threat, or rather a series of fictional threats; on September 11th they received the shock of the real. `Welcome to the world’ some people said. Suddenly Americans became as vulnerable as the rest of us. The immediate response to September 11th was bewilderment and incredulity. Again, as Segal noted, the question on most American lips was `why’? It is a common reaction for people in trauma situations to think that people are out to get them, ‘in the case of the terrorist attacks it is actually a true fact. One’s worst nightmares come true’. Segal added another dimension - the symbolism of the twin towers and the Pentagon. This is very important if we are to try and understand the meanings and motivations behind the war on Iraq. So, the symbolism equates to ‘we are all-powerful, with our weapons, finance, high tech - we can dominate you completely’. The suicide bombers destroyed this omnipotence. As Segal noted: we were pushed into a world of terror versus terror, disintegration and confusion. The shock was followed by mourning and barely contained anxiety. The president of the United States of America appeared on global television networks as `the child adult’, a little boy lost. At first he seemed quite inadequate to the part that was being demanded of him. It almost looked like he wanted to run – asking, `why me’? For weeks the USA was gripped by a wave of panics about anthrax and other impending attacks. But traces of American triumphalism were being quickly reasserted. The flags which, from Maine to Arizona, first hung from poles and windows in grief quickly transmuted into a sign of strength and resolution, and later, to bellicosity. This other mood could also be discerned in homage to the courage of fire crews and emergency service personnel and to the passengers who overcame the hi-jackers on the fourth plane (`let’s roll’). But rage took time to gather. Many liberals and leftists in Europe anticipated an outpouring of vengeful rhetoric from the Republicans, but it did not come. Rather, the response was surprisingly measured and multilateral. And whilst many opposed the war of the `coalition against terror’ against Afghanistan, at least the connection with September 11th seemed obvious – Al Quaeda was clearly being protected by the Taliban regime. It was only when this phyric victory had been swiftly achieved that a shift, symbolised by the `Axis of Evil’ speech in January 2002, into a more paranoid and in-your-face triumphalist discourse began. The question of weapons of mass destruction became central to the moral and ethical charge for war. Was there any proof of their existence? The weapons inspectors could find none, yet we were told time after time that clear evidence existed, even though the documents cited had very little credibility. Again, as Hofstadter noted, the typical procedure of higher paranoid scholarship is to start by accumalating facts, or what appear to be facts to establish 'proof' that a conspiracy exists - **the paranoid mentality seeks a coherence that reality cannot provide**. Indeed for Hofstadter, `what distinguishes the paranoid style is not, then, the absence of verifiable facts (though it is occasionally true that in his extravagant passion for facts the paranoid occasionally manufactures them), but rather the curious leap in imagination that is always made at some critical point in the recital of events.’ (Hofstadter 1979, p.39). **The deployment of reason and strategic cunning becomes unpinned by the apocalyptic vision of paranoid politics.** Destroying the Bad Object Classically, in a paranoid schizoid state, manic defenses are called into play. The splitting of good and bad, processes of idealisation and denigration, as we have seen, lead us to perceive the world in dichotomous relationships between good and bad. The bad object/other becomes the fixation point of our anger, fear, rage and paranoia. Excessive projection leaves the individual in mortal fear of an attack from the bad object. Thus we try and destroy this object, lest it comes back to destroy us. The question arises though, as to what happens when these destructive forces are unable to find a satisfactory object. Despite the measured and multi-lateral nature of the intervention there was still something murderous and retaliatory about the attack on the people of Afghanistan. An attack based in the talion morality of the paranoid schizoid position - an eye for an eye. The problem with the war in Afghanistan against the Taliban was there was no sense of gratification and the lust to get equal was never satisfied. There are several reasons for this. First, the bombing of Afghanistan simply wasn’t enough to either exact revenge, or to demonstrate the power of the Apocalypse - you cannot bomb the stone age back into the stone age even though, as Sartre (1968, p.40) had noted over thirty years earlier, this had already been attempted in Vietnam with disastrous effects. Second, Bin Laden disappeared, vaporised - there was no bad object to destroy. Finally, the exercise of military might, of unadulterated power had nothing to be powerful over - power only exists if people are the objects of that power. Instead we seemed to have an increasingly paranoid American population and its government on the one hand and disappearing enemy bodies on the other. And then came the `Axis of Evil’ speech and a further ratcheting up of the spiral of splitting, projection, paranoid phantasy, and defensive offence. White House rhetoric began providing florid depictions of a world divided between good and evil in which there was no `in between’, `you are either with us or you are against us’. Fakhry Davids (2002) notes that the events of September 11th were brought home vividly to us by the wall to wall media coverage - the shocking images of the planes crashing into the twin towers of the World Trade Centre, and then its collapse. Psychically unbearable events, argues Davids, call into play powerful defences whose aim is to protect us from perceived danger. For Davids, the extent to which the event has been reframed in stereotyped racist terms is apparent everywhere, ‘the problem has now been reduced to a conflict between the enlightened, civilised, tolerant, freedom loving, clean living democrat versus the bearded, robed, Kalashnikov bearing bigoted, intolerant, glint in the eye fundamentalist fanatic, or viewed from the other side, the humble believer with God on his side versus the infidel armed with all the worldly might of the devil’ (Davids 2002, p.362). For Davids, it is difficult for us to find neutral ground - you are either with us, or against us - which side are you on? This reduction of a complex situation into black and white, good and bad is a paranoid solution to intense anxiety which reinforces the self-idealisation which we have seen lies at the heart of American exceptionalism. As Davids notes, such a world view makes us feel that we know who we are, and may justify actions that make us feel better. The problem is that we don’t face the problem.

#### It will pass easily---not controversial

Kasperowicz 11/9 Pete is a writer for The Hill. “House to vote on Russia trade,” 2012, <http://thehill.com/blogs/floor-action/house/267047-house-looks-to-move-russia-pntr-bill-next-week>

The House next week is expected to pass legislation that would give Russia permanent normal trade relations (PNTR) status, which would allow the United States to benefit from Russia's August accession to the World Trade Organization (WTO).¶ The House Rules Committee announced Friday that it will hold a meeting on Tuesday to approve a rule that governs floor consideration of the bill, H.R. 6156. That implies that the House will start work on the **bipartisan** measure as early as Wednesday, and complete it by the end of the week.

#### Business groups, not Obama are pushing it

AP 11/9 "House to take up Russia trade bill next week", www.google.com/hostednews/ap/article/ALeqM5gubhcm45tg2pxiBmnhHeI1ReYlug?docId=153d42a82d4e4206b33cc9a16be3853f

WASHINGTON (AP) — One of the first actions of the lame-duck Congress is an expected vote to give U.S. exporters greater access to Russia's newly opened markets.

Business groups have been clamoring for months for Congress to remove Cold War-era trade restrictions now that Russia is a member of the World Trade Organization. Because of those restrictions, American exporters are alone among the more than 150 WTO members in not being able to take advantage of the lower tariffs, intellectual property protections and other market-opening steps required by membership in the trade organization.

#### Doesn’t cause relations collapse

AP 12 3/27, http://www.kansascity.com/2012/03/27/3516127/us-trade-upgrade-may-worsen-relations.html

Jackson-Vanik has long been a thorn in US-Russian relations. It was introduced in 1974 to pressure the Soviet Union to allow Jews to emigrate. Named after its congressional sponsors, Jackson-Vanik denies normal trading relations with communist countries that restrict emigration or punish those trying to leave the country.

Russia calls it anachronistic, even though the legislation has had little practical effect since 1994, when the United States began waiving its application. Still, previous calls to repeal it have found little traction among lawmakers critical of Russia's human rights record.

#### Nothing will pass – gridlock

Tucker 11/9 JOSHUA TUCKER is Associate Professor of Political Science at the University of Pittsburgh, “Fundamentals of Lawmaking: Gridlock in the 113th Congress”, November 9, 2012, http://themonkeycage.org/blog/2012/11/09/fundamentals-of-lawmaking-gridlock-in-the-113th-congress/

By looking at how elections affect these intervals, we can understand and form expectations about how productive Congress will be. The key is how the interval shifts and shrinks (or stretches) over time. The more of the previous interval that is “freed up” by the election (i.e., does not overlap the subsequent interval), the more productive we can expect Congress to be.¶ To see what we might expect over the next two years based on these fundamentals, I computed a projected gridlock interval for the 113th Congress (using Keith Poole’s NOMINATE scores and the technique I used to predict lawmaking following 2008 election) and plotted it along with the gridlock intervals for the 110th through the 112th Congresses (2007-2012) for comparison. The projected interval for the 113th is virtually identical to the interval for the 112th, so **we can expect Congress to do…ABSOLUTELY NOTHING**!¶ Well, that’s a bit of an overstatement, but it’s probably not too far off the mark. There will always be some existing policies that lie outside the interval and other laws will expire, effectively bringing them outside the interval, too. These will lead to reauthorizations and minor policy tweaks. But for most policy areas (even ones that seem pressing, like immigration reform), **don’t expect any significant accomplishments**. Instead, expect the status quo—**more gridlock**.

#### Plan bipart + tribes like it

Brown 10 -- AP (Matthew, Indian tribes to Congress – Streamline energy development, www.buffalopost.net/?p=8525#more-8525)

American Indian leaders on Thursday asked Congress to streamline the development of energy projects on tribal lands by curbing some federal oversight and providing incentives for companies to strike deals with reservations.¶ Reservations from Oklahoma to Montana and Alaska sit atop large amounts of oil, natural gas and coal. Others in wind-swept regions of the Northern Plains and on the West Coast have huge renewable energy potential.¶ But existing government rules make it easier for energy companies to pursue projects on non-tribal land, some members of Congress and tribal leaders say. As a result, tribes often miss out on the chance to develop their natural resources.¶ “Tribes in some of the poorest counties in America have vast renewable energy resources that can help them overcome poverty,” said Joe Garcia, Chairman of the All Indian Pueblo Council of New Mexico.¶ Garcia and other tribal representatives want the Senate Indian Affairs Committee to intervene through legislation proposed by Sen. Byron Dorgan, the North Dakota Democrat who chairs the committee.¶ The tribes want to eliminate federal drilling fees, pare down the Interior Department’s bureaucracy, and shield tribes from state and local taxes on energy projects.¶ Dorgan’s bill has yet to be introduced.¶ The tribal leaders’ requests were welcomed Thursday by both Democrats and Republicans.¶ “Energy development means jobs,” said Sen. John Barrasso, a Wyoming Republican. “It means income for families. It means paying the heating bill.”¶ Nationwide, energy royalties paid to tribes through the federal government totaled more than $334 million in 2008, the most recent year with figures available. That was down sharply from 2007, driven largely by a drop in oil and gas prices.¶ More than 2 million acres of tribal land have been developed for oil, gas and coal, according to the government. Estimates show 15 million acres more have the same potential, with additional land suited for wind, solar and other renewable energy projects.¶ In 2005, Congress tried to promote development by making it easier for tribes to enter agreements with private companies.¶ Witnesses at Thursday’s hearings said those changes weren’t enough. They also criticized changes instituted since 2005, such as a $4,000 fee for drilling on public lands – including reservations, which are held in federal trust.

#### Reducing regulations on Native energy is popular

Jones 11—Senior Fellow on the Energy Policy Team, Center for American Progres—AND—Bracken Hendricks, Senior Fellow, and Jorge Madrid, Research Associate (Van, Clearing the Way for a Native Opportunity in America’s “Sputnik Moment”, http://www.nativetimes.com/index.php?option=com\_content&view=article&id=4853:clearing-the-way-for-a-native-opportunity-in-americas-sputnikmoment&catid=46&Itemid=22)

In recent weeks President Obama has boldly called for a 21st-century regulatory system that removes outdated government regulations that would otherwise stifle private-sector innovation and slow job growth, making our economy less competitive. Part of this commitment is a government-wide audit of all the rules on the books, and an order to cut where reasonable and necessary. This sentiment is strongly echoed in both chambers of the newly elected 112th Congress, and in both political parties.¶ The general consensus is that government needs to be more efficient and more effective, keeping our public safety and welfare a priority while removing unnecessary or outdated regulatory overlap and barriers that slows investment, job creation, and economic growth.¶ Now is the time to apply this logic to Indian country. The administration and policymakers on both sides of the aisle should join forces to remove the bureaucratic barriers to rapid renewable energy deployment, and draw a game plan for reaching multiple goals. Fixing our current policies and offering appropriate incentives can streamline government processes, stimulate a new wave of investment in clean energy, and activate the economic potential of tribal lands, while stimulating the American entrepreneurial and innovation spirit. Moreover, these projects have sizable benefits for both Indian country and the rest of the nation. Here are a few ideas to start with:¶ Promote interagency and federal tribal coordination. Immediate efficiency can be achieved by designating one lead agency to oversee renewable energy projects on tribal lands so that existing processes would be streamlined and duplicative ones eliminated, mitigating a slow and costly process for development. Overlapping responsibilities and potential conflicts between the Department of Interior and the Department of Energy, in particular, need to be resolved. In addition, agencies should establish a tribal advisory body to ensure meaningful tribal participation in this work.¶ Ensure tribal access to the national electricity grid. Tribes must be included in the planning and expansion of our national electricity grid so their projects can “plug in” without unfair added expenses. Tribes should be explicitly represented in national, regional, and state planning processes.¶ Enable tribes to develop their energy resources. Tribes must have access to production and investment tax credits already on the books and available to all other states. Agencies should also eliminate fees that apply only to projects undertaken on tribal lands. These two relatively easy fixes would go a long way toward jumpstarting a renewable energy renaissance in the Native American community.¶ Empower tribes to conduct preliminary clean energy feasibility studies on their lands either internally or through a third party. Presently all preliminary clean energy work, such as land appraisals needs to be done through the Department of the Interior, which creates substantial backlog. Allowing tribes to conduct their own studies either internally or through a third party would expedite this process substantially.¶ Provide smart financing incentives for tribal projects. Energy Secretary Steven Chu has already begun championing a process to promote tribal energy development with financing to support the evaluation, development, and deployment of energy efficiency and renewable energy projects on tribal lands through the Tribal Energy Program. These programs should be enhanced to provide valuable start-up funds for projects that will have multiple co-benefits and pay dividends many times over.¶ Today, the tribes are ready and willing to be key contributors to this nation’s “Sputnik moment.” Part of this effort will include our government removing barriers that slow industry and innovation, and introducing smart policies that unleash the creative and entrepreneurial spirit that has made American the world power it is today. Another equally important part of our economic recovery will depend on how well we utilize our domestic resources and activate the full potential of our human capital–especially those communities that have been hit hardest by the recession. A bipartisan effort to cut through the red tape will clear the way for them to thrive and strengthen their people, and thus make America as a whole stronger.

#### Winners win

Marshall and Prins 11 (BRYAN W, Miami University and BRANDON C, University of Tennessee & Howard H. Baker, Jr. Center for Public Policy, “Power or Posturing? Policy Availability and Congressional Influence on U.S. Presidential Decisions to Use Force”, Sept, Presidential Studies Quarterly 41, no. 3)

Presidents rely heavily on Congress in converting their political capital into real policy success. Policy success not only shapes the reelection prospects of presidents, but it also builds the president’s reputation for political effectiveness and fuels the prospect for subsequent gains in political capital (Light 1982). Moreover, the president’s legislative success in foreign policy is correlated with success on the domestic front. On this point, some have largely disavowed the two-presidencies distinction while others have even argued that foreign policy has become a mere extension of domestic policy (Fleisher et al. 2000; Oldfield and Wildavsky 1989) Presidents implicitly understand that there exists a linkage between their actions in one policy area and their ability to affect another. The use of force is no exception; in promoting and protecting U.S. interests abroad, presidential decisions are made with an eye toward managing political capital at home (Fordham 2002).

#### Intrinsicness

#### PC not key

Dickinson 9 (Matthew, professor of political science at Middlebury College and taught previously at Harvard University where he worked under the supervision of presidential scholar Richard Neustadt, 5/26, Presidential Power: A NonPartisan Analysis of Presidential Politics, “Sotomayor, Obama and Presidential Power,” [http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/](http://lynch.foreignpolicy.com/posts/2011/03/21/keeping_libya_in_context))

What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee.

#### Self D is broadly bipart

Cornell and Kalt 10—Ph.D. Director Professor of Sociology and of Public Administration and Policy Faculty Associate, Native Nations Institute—AND—Ford Foundation Professor of International Political Economy, Emeritus, Co-Director Harvard Proj. on American Indian Econ. Development (Stephen and Joseph, American Indian Self-Determination The Political Economy of a Successful Policy, http://nni.arizona.edu/pubs/jopna-wp1\_cornell&kalt.pdf)

It is our hypothesis that the survival of the U.S. federal policy of Indian self-determination through self-governance over the last four decades is rooted in a double appeal that it has for both the general electorate and their U.S. Congressional and Executive Branch representatives. Stated directly, self-determination has had enduring appeal to both American political liberals and conservatives, albeit for substantially different reasons. Indian self-determination accords with the views commonly found on the liberal, or “left”, end of the U.S. political spectrum (e.g., as represented by federal officials elected as representatives of the Democratic Party), which support relatively strongly the civil rights of ethnic minorities and often see it as proper that such minorities be compensated for past-wrongs committed by the majority society. At the same time, for the conservative, or “right,” end of the U.S. political continuum (as more often embodied in the Republican Party), the descriptions above make it clear that American Indian self-determination and self-governance hold appeal because of their strong components of “bootstrapping” self-sufficiency and self-reliance. Moreover, from the conservative perspective, these policies are attractive in so far as they constitute local, albeit Indigenous, communities taking authority away from the federal government and devolving authority to local government.¶ The policy history set out below finds that Indian self-determination has quite consistently garnered bi-partisan support. Indeed, the key self-determination legislation in the 1970s (i.e., Public Law 95-638) was first passed during the presidency of Republican Richard Nixon and emanated directly from an Executive Order of President Nixon. It was signed into law by Republican President Gerald Ford. However, the antecedents of these actions are seen in prior moves by Democratic administrations and are found in the radical left, militant political activism of the distinctly Native version of the civil rights movement of the 1960s. Analyzing the party affiliations of the sponsors of Congressional legislation introduced to (a) improve conditions among Indian communities through increased federal spending and (b) promote tribal self-determination in the U.S. House and Senate over 1973-2010, we find that Republican legislators are decidedly tilted toward the latter. Democratic legislators are disproportionately represented in the Congressional support for spending on Indian affairs.

#### Low PC inevitable and not key

Schier 11 Steven E. Schier is the Dorothy H. and Edward C. Congdon professor of political science at Carleton College, The contemporary presidency: the presidential authority problem and the political power trap. Presidential Studies Quarterly December 1, 2011 lexis

Implications of the Evidence¶ The evidence presented here depicts a decline in presidential political capital after 1965. Since that time, presidents have had lower job approval, fewer fellow partisans and less voting support in Congress, less approval of their party, and have usually encountered an increasingly adverse public policy mood as they governed.¶ Specifically, average job approval dropped. Net job approval plummeted, reflecting greater polarization about presidential performance.The proportion of fellow partisans in the public dropped and became less volatile. Congressional voting support became lower and varied more. The number of fellow partisans in the House and Senate fell and became less volatile. Public issue mood usually moved against presidents as they governed. All of these measures, with the exception of public mood, correlate positively with each other, suggesting they are part of a broader phenomenon.¶ That "phenomenon" is political authority. The decline in politicalcapital has produced great difficulties for presidential political authority in recent decades. It is difficult to claim warrants for leadership in an era when job approval, congressional support, and partisan affiliation provide less backing for a president than in times past.¶ Because of the uncertainties of political authority, recent presidents have adopted a governing style that is personalized, preemptive,and, at times, isolated. Given the entrenched autonomy of other elite actors and the impermanence of public opinion, presidents have had to "sell themselves" in order to sell their governance. Samuel Kernell (1997) first highlighted the presidential proclivity to "go public"in the 1980s as a response to these conditions. Through leveraging public support, presidents have at times been able to overcome institutional resistance to their policy agendas. Brandice Canes-Wrone (2001) discovered that presidents tend to help themselves with public opinion by highlighting issues the public supports and that boosts their congressional success--an effective strategy when political capital is questionable.¶ Despite shrinking political capital, presidents at times have effectively pursued such strategies, particularly since 1995. Clinton's centrist "triangulation" and George W. Bush's careful issue selection early in his presidency allowed them to secure important policy changes--in Clinton's case, welfare reform and budget balance, in Bush's tax cuts and education reform--that at the time received popular approval. This may explain the slight recovery in some presidential political capital measures since 1993. Clinton accomplished much with a GOPCongress, and Bush's first term included strong support from a Congress ruled by friendly Republican majorities. David Mayhew finds that from 1995 to 2004, both highly important and important policy changeswere passed by Congress into law at higher rates than during the 1947-1994 period. (2) A trend of declining political capital thus does not preclude significant policy change, but a record of major policy accomplishment has not reversed the decline in presidential political capital in recent years, either. Short-term legislative strategies can win policy success for a president but do not serve as an antidote to declining political capital over time, as the final years of both the Clinton and George W. Bush presidencies demonstrate.

#### Their DA = tyranny of the majority --- makes Native subjugation inevitable

Judge Royce C. Lamberth 5, United States District Judge, 229 F.R.D. 5; 2005 U.S. Dist. LEXIS 13757; 62 Fed. R. Serv. 3d (Callaghan) 319, July 12, 2005, lexis

At times, it seems that the parties, particularly Interior, lose sight of what this case is really about. The case is nearly a decade old, the docket sheet contains over 3000 entries, and the issues are such that the parties are engaged in perpetual, heated litigation on several fronts simultaneously. [\*\*2] But when one strips away the convoluted statutes, the technical legal complexities, the elaborate collateral proceedings, and the layers upon layers of interrelated orders and opinions from this Court and the Court of Appeals, what remains is the raw, shocking, humiliating truth at the bottom: After all these years, **our government still treats Native American Indians as if they were somehow less than deserving** of the respect that should be afforded to everyone in a society where all people are supposed to be equal.¶ For those harboring hope that the stories of murder, dispossession, forced marches, assimilationist policy programs, and other incidents of **cultural genocide** against the Indians are merely the echoes of a horrible, bigoted government-past that has been sanitized by the good deeds of more recent history, this case **serves as an appalling reminder of the evils that result when large numbers of the politically powerless are placed at the mercy of institutions engendered and controlled by a politically powerful few**. It reminds us that even today our great democratic enterprise remains unfinished. And it reminds us, finally, that the terrible power of government, and the frailty [\*\*3] of the restraints on the exercise of that power, are never fully revealed until government turns against the people.¶ The Indians who brought this case are beneficiaries of a land trust created and maintained by the government. The Departments of the Interior and Treasury, as the government's Trustee-Delegates, were entrusted more than a century ago with both stewardship of the lands placed in trust and management and distribution of the revenue generated from those lands for the benefit of the Indians. Of course, it is unlikely that those who concocted the idea of this trust had the Indians' best interests at heart--after all, the original General Allotment Act that created the trust was passed in 1887, at a time when the government was engaged in an "effort to eradicate Indian culture" that was fueled, in part, "by a greed for the land holdings of the tribes[.]" Cobell v. Babbitt ("Cobell V"),91 F. Supp. 2d 1, 7-8 (D.D.C. 1999). But regardless of the motivations of the originators of the trust, one would expect, or at least hope, that the modern Interior department and its modern administrators would manage it in a way that reflects our modern understandings [\*\*4] of how the government should treat people. Alas, our "modern" Interior department has time and again demonstrated that it is a dinosaur--the morally and culturally oblivious hand-me-down of a **disgracefully racist and imperialist government** that should have been buried a century ago, the **last pathetic outpost of the indifference and anglocentrism** we thought we had left behind.

#### Failure to recognize colonial domination of Native’s is the root of war---hegemony is a narcissistic fantasy that makes conflict inevitable

Street 4—member of the International Organization for a Participatory Society[1] and holds a doctorate in U.S. History from Binghamton University. Author of many books and former Director of Research and Vice President for Research and Planning at the Chicago Urban League (Paul, Those Who Deny The Crimes of the Past: American Racist Atrocity Denial 101, http://www.blackcommentator.com/82/82\_think\_street.html)

Americans are clearly faced with a choice. On the one hand, they can continue in their collective pretense that "the opposite of everything is true," prattling on about "innocent Americans" being "the most peaceful people on earth" while endorsing the continuous U.S. disposition of death, destruction, and domination in every quarter of the globe. On the other, they must at last commence the process of facing up both to the realities of their national history and to the responsibilities that history has bequeathed. In effect, Americans will either become active parts of the solution to what they and their country have wrought, or they will remain equally active parts of the problem. There is no third option. – Ward Churchill, On the Justice of Roosting Chickens: Reflections on the Consequences of U.S. Imperial Arrogance and Criminality (AK Press, 2003, p. 79) John Kerry Haunted by the Youthful Admission of "Absolute Horror" There are many indications that the United States is nowhere near ready to repudiate imperial arrogance, racism, and criminality so that it might join or help create a real world community. One such indication is the brazen chutzpah with which it has restored fascist thugs to power in Haiti, standing by while U.S.-friendly henchmen butcher supporters of a president that American military personnel kidnapped “back to Africa” because he was too closely aligned for American corporate tastes to the nation’s millions of desperately impoverished citizens. If one of those citizens is to be believed, and his eyewitness testimony (see the quote from “Johnny” above) is richly consistent with a long record of U.S. military conduct (see below), some U.S. Marines are posing for souvenir photographs with murdered victims of Haiti’s new death squads. Another depressing sign is the United States’ failure to include Arab victims in its ongoing presidential candidate "debate" over the wisdom and morality of George W. Bush's illegal invasion and occupation of Iraq. At the height of his anti-war campaign for the Democratic nomination, Howard Dean said that "there are now almost 400 people dead who wouldn't be dead if we hadn't gone to war" (New York Times, November 4, 2003), ignoring careful investigations showing that more than 7800 Iraqi civilian non-combatants died during the invasion. Another among many warnings along the same discouraging lines is the sad fact that Democratic presidential candidate John Kerry can be put on the defensive because of some minimally honest testimony he gave to the Senate Foreign Relations Committee more than thirty years ago. The candidate's political problem is that he told some basic truth about what he called "the absolute horror" of U.S. conduct in Vietnam after two tours of "duty" in Southeast Asia. Kerry's "old words have come back to haunt him," the New York Times reported two weeks ago, as "conservative" supporters of "President" Bush "question whether Mr. Kerry is 'a proud war hero or an angry antiwar protester.'" The young Kerry's 1971 testimony noted that American military personnel there had "raped, cut off ears, cut off heads, taped wires from portable telephones to human genitals and turned up the power, cut off limbs, blown up bodies, randomly shot at civilians, razed villages in a fashion reminiscent of Genghis Kahn, shot cattle and dogs for fun, poisoned food stocks and generally ravaged the countryside of South Vietnam." According to the Times, Kerry's words "remain a special lightning rod...especially" because he described military atrocities in Vietnam as "'not isolated incidents but crimes committed on a day-to-day basis with the full awareness of officers at all levels of command.'" (Kerry's 1971 testimony, quoted in Todd S. Purdum, "In '71 Antiwar Words, a Complex View of Kerry," New York Times, February 28, 2004, A1) A Nation of Exceptional "Kindness and Good Will" In uttering these accurate words, Kerry violated two related principles of dominant US doctrine and culture. The first principle holds that the real tragedy of the Vietnam War is all about the trauma it inflicted on America, not Vietnam – a small peasant nation that lost millions of lives to US invasion. Seen (or not seen) through the filters of America's "mainstream" (really corporate-state) news and entertainment culture, however, Vietnam's difficulties are nothing compared to the pain that "pre-modern" state inflicted on the world's most powerful nation by committing the unpardonable "sin of self-defense," to use one of Noam Chomsky's sardonic characterizations. The second principle is a timeworn United States dictum that is "often," in Chomsky words, "considered unnecessary to formulate because its truth is taken to be so obvious." This narcissistic, self-evident U.S. maxim holds that, in Chomsky apt paraphrase, "we [the U.S] – or at least the circles who provide the leadership and advise" the makers of US policy – "are good, even noble. Hence our interventions are necessarily righteous in intent, if occasionally clumsy in execution. In [former US President (1912-1918) Woodrow] Wilson's own words, we have 'elevated ideals' and are dedicated to 'stability and righteousness,' and it is only natural, then , as Wilson wrote in justifying the conquest of the Philippines, that 'our interests must march forward, altruists though we are.'" (Chomsky, Hegemony or Survival: America's Quest for Global Dominance, 2003, pp. 42-43). Chomsky's analysis provides useful context for understanding a speech that George W. Bush delivered last November to the U.S. Chamber of Commerce. After claiming that U.S. actions during the last three years had "shown the noble aims and good heart of America," Bush told his assembled business class compatriots that "the cause we serve is right, because it is the cause of all mankind": to "promote liberty around the world." "The advance of freedom," Bush II elaborated, is "the calling of our country," which has always "put our power at the service of principle" - unlike past empires, which sought profit and advantage (George W. Bush, remarks at the 20th Anniversary of the National Endowment for Democracy, November 6, 2003). In a similar vein, Bush's "Mission Accomplished" speech to U.S. troops on the USS Abraham Lincoln last May claimed that "American values and America interests lead in the same direction: ...human liberty." America is unique, Bush the Second claimed, in the benevolence of its global power. "When Iraqi civilians looked into the faces of our servicemen and women," Bush claimed, "they saw strength and kindness and goodwill" on the part of armed forces that "achieve military objectives without directing violence against civilians" and use force only "as a last resort" ("President Bush Announces Major Combat Operations in Iraq Have Ended," May 1, 2003). In these and other examples, Bush II's orations are often monuments to the depth and degree of the "national self-love" (to borrow a phrase from Frederick Engels) that statesmen are capable of proclaiming. The Noble "Determination to Kill Every Native in Sight": A Brief Chronology of Direct U.S. Atrocities One of the many difficulties with the Wilson-Bush II way of seeing the US role in the world is the United States' long record of inflicting massive, elite-approved military mayhem on noncombatants at home and abroad. Below, I provide a partial and selective chronology of some of the better-known U.S. atrocities. This record places the carnage hinted at by the youthful Kerry in chilling historical context, helping us grasp the full extent of the United States' exceptional commitment to "kindness and goodwill" at home and abroad. In reviewing these terrible episodes, it is important to remember that the US prefers whenever possible for atrocities to be carried out quietly and impersonally – the US-imposed sanctions on Iraq (which silently killed more than half million Iraqi children) and the econoterrorist neoliberal mandates of the International Monetary Fund and the World Bank, for example – or indirectly, by non-American proxy forces like Pinochet's fascist butchers of the Chilean left (1973), the Central American death squads and contras of the 1970s, 1980s and 1990s, the mass-murderous Suharto regime in Indonesia (1965-2001), the racist occupation state in Israel, and the current gang of fascist thugs (whose leader expresses admiration for Pinochet) the US has just recently restored to client-state power in Haiti. Indirect and silent massacre is not always feasible, however, and there is thus a rich record of direct US engagement in the infliction of "absolute horror" on enemies at “home” and abroad, accompanied by a strong dose of racist rationalization. Here are some of the highlights: "The Winning of the West": A Great Work of Civilization By "The English-Speaking Race" 1776: Six thousand US troops raze more than 20 Cherokee towns, "destroying crops, inflicting serious casualties on noncombatants and sweeping much of the population into Spanish Florida. Only the cessation of about a third of the all Cherokee territory brings the annihilatory campaign to a halt" (Churchill, On the Justice of Roosting Chickens, p.44) 1800: American troops destroy a slave revolt in Virginia, executing Gabriel Prosser and 35 accomplices as a deterrent example to blacks that might seek freedom in the land of freedom. Already nearly two centuries old, North-American black chattel slavery will continue for six and half more decades, an ultra-racist social atrocity that some might consider as bad as physical eradication and which is followed by successive new regimes of anti-black racist oppression – Jim Crow segregation/apartheid, sharecropping and debt-peonage, urban ghettoization, mass incarceration, etc. – that embody the largely unacknowledged legacy and un-repaired burden of mass enslavement. Untold numbers of African-Americans will be murdered by white masters and overseers for various “reasons,” ranging from out-and-out rebellion to attempted escape, “disrespectful” behavior, and perceived insufficient work productivity. 1822: Troops hang 35 rebellious black slaves in South Carolina, leaving the rotting corpses on prolonged public display as a warning to other black chattel who might contemplate extending the principles of the Declaration of Independence to people of African ancestry. 1828-1840: U.S. Army conducts a long and bloody forced removal of the Cherokee, Choctaw, and Seminole nations to Oklahoma. 1831: Troops hang 19 rebellious slaves in Virginia. 1850: US troops massacre at least 75 Pomo Indians trapped on an island in the Russian River area of California. 1863: US Army Colonel Henry Sibley puts down a revolt of starving Santee Dakota Indians, conducting a mass execution of 38 native leaders. 1864: U.S. territorial military commander Colonel John Chivington oversees the quick and brutal murder of as many as 200 Cheyenne and Arapaho Indians at Sand Creek (Colorado). The Indians had been led to believe they had been given sanctuary at Sand Creek. More than half of the victims were women and children. 1868: Lieutenant George Armstrong Custer's Seventh U.S. Cavalry conducts a dawn assault on a noncombatant Cheyenne village camped along the Washita River in Oklahoma. Custer orders and oversees the slaughter of more than 100 Cheyenne, including women and children and the killing of 875 ponies. 1876-1877: The U.S. Army celebrates the 100th anniversary of American "freedom" and "goodwill" by launching a "Centennial Campaign" to clear the Black Hills of their original inhabitants. A winter campaign targeting mostly defenseless villages shreds away 90 percent of Lakota territory. Former Civil War hero and prolific Indian-killer General Phillip Sheridan proclaims that US Indian policy is one of "extermination," consistent with his pithy 1868 observation that "the only good Indian is a dead Indian." 1890/1899: The U.S. Seventh Cavalry massacres 350 unarmed Lakota - mainly women, children, and old men – at Wounded Knee creek in South Dakota. "The ostensible purpose," writes Churchill, "is to end the 'insubordination' embodied in the Indians' practice of the Ghost Dance. More likely, the troops [were] revenging themselves for the fate of Custer fourteen years earlier" (Churchill, On the Justice of Roosting Chickens, p.57) – when Lakota warriors committed the "sin of self-defense" by decimating Custer and his regiment at Little Bighorn. The Seventh Cavalry killers received Medals of Honor in recognition of their courageous actions. This and other genocidal anti-Indian atrocities that preceded it receive hearty approval in future US President and Spanish-American War instigator/hero Theodore Roosevelt's massive, four-volume 1899 study Winning of the West – a white-supremacist paean to Anglo-America's near- eradication of North America's original civilizations. "During the past three centuries," Roosevelt opined, "the spread of English-speaking people over the world's waste spaces" (meaning spaces not occupied by "progressive" capitalist-developmental Caucasians) was a great and welcome "feat of power," for which the "English-speaking race" could justly feel proud. No such "feat" of "race power" was more laudable, however, than "the vast movement by which this continent [North America] was conquered and peopled" – the "crowning and greatest achievement of a series of mighty movements." The Anglo-American pioneers conducted what Roosevelt called the noble civilizing "work" of "overcoming the original inhabitants" while at the same time "warding off the assaults of the kindred [that is European-Caucasian] nations that were bent on the same schemes." The North-American settlers performed the most heroic "work" of all, for they "confronted the most formidable savage foes ever encountered by colonists of European stock." Destroying the Indian "savages," Roosevelt claimed, was white North America's third greatest work to date, exceeded only by "the preservation of the Union itself and the emancipation of the blacks" – this as African-Americans suffered under terrorist Jim Crow regime in the former slave states and faced countless indignities throughout the U.S (Theodore Roosevelt, The Winning of the West, Volume I: From the Alleghenies to the Mississippi, 1769-1776 [New York, 1899], pp. 1-22). 1889-1918: 3,224 Americans are lynched within the United States, mostly in the South. Seventy-eight percent of these atrocity victims are black. In most cases the victims are hung or burned to death by mobs of white vigilantes, commonly in front of thousands of gleeful spectators. Many observes take pieces of the victim’s body as souvenirs to memorialize the event. Photographs of the murdered victims circulate as popular postcards throughout the South, providing precedent for the imperialist pornographic exercise observed by “Johnny” and noted at the beginning of this article. The Free-Fire Zoning of Asia and the Disciplining of Haiti by "The Children of the Anglo-Saxon Race" 1898-1905: The U.S. Army, frequently led by "old Indian fighters," seizes the Philippines from its prior colonial master (Spain) and crushes a Filipino independence movement, killing as many as 600,000 natives of the newly US-acquired Philippine islands. Few prisoners are taken and the Red Cross reports an extremely high ratio of dead to wounded, indicating U.S. "determination to kill every native in sight." Throughout the barbarian U.S. "pacification" of the Philippines, American forces refer to the Filipinos as "niggers," "barbarians," and "savages." America's racist and Social-Darwinist President (1901-08) Theodore Roosevelt vilifies resisting Filipinos as "Apaches." The phrase "gook" makes its first appearance as a U.S. military term to describe angry and frightened Asians who inhabit lands invaded by "freedom-loving" Americans. Custer's legendary U.S. Seventh Cavalry arrives to help suppress "gook Apaches" in 1905. The U.S. butchery receives indirect racist approval from leading U.S. financial authority and Wall Street journalist Charles A. Conant, who anticipates certain aspects of J.A. Hobson and V.I. Lenin's celebrated theories of imperialism (see Carl Parrini and Martin Sklar, “New Thinking About the Market: Some American Economists on Investment and the Theory of Surplus Capital,” Journal of Economic History [September 1983], pp. 559-578) in an essay titled "The Economic Basis of Imperialism." Beyond his argument that surplus domestic capital in core industrial states provides the taproot for modern U.S. and European imperialism, Conant claims that the US is entering a path of global expansion "marked out for them as children of the Anglo Saxon race." The new movement towards overseas imperialism is "the result," Conant argues, of "natural laws of economic and race development. The great civilized people have today at their command the means of developing the decadent nations of the world," who require benevolent Anglo-Saxon intervention because they are on the wrong side of the law of the "survival of the fittest" (Charles A. Conant, The United States in the Orient, New York, NY, 1900, p. 2) 1915-1934: Haiti lives under the supreme authority of the U.S. Marine Corps, which dissolves that formerly sovereign country’s National Assembly, restores practical slavery for much of the populace, turns the economy over to U.S. corporations, and massacres an untold number of Haitian peasants. During a “battle” at Fort Reviere, the Marines kill 51 Haitians and do not suffer a single casualty, helping U.S. Smedly D. Butler earn a Congressional Medal of Honor. Reports of U.S. military abuse and atrocity lead to an investigation by NAACP official James Weldon Johnson, who finds the charge of extreme cruelty by the North-American troops to be accurate (J. Damus, “Reparations,” National Black Law Students’ Association). This imperial butchery is encouraged by the rich and toxic racism of the supposedly great moral-idealist Woodrow Wilson administration, one of whose high diplomatic officials tells Wilson’s Secretary of State Robert Lansing that “Negro blood” keeps the Haitians “almost in a state of savagery and complete ignorance.” Lansing agrees, claiming that “the African race are devoid of any capacity for political organization” and “governance” and marked by “a tendency to revert to savagery and to cast aside the shackles of civilization which are irksome to their physical nature” (quoted in Noam Chomsky, World Orders Old and New (New York, 1996, p.44). August 1945: the US drops atomic bombs on Hiroshima and Nagasaki, fully aware that Japan was defeated and seeking surrender. These monumental crimes are perpetrated to demonstrate unassailable U.S. power to the world and especially to the Soviet Union in the post-WWII era. The only nation-state to use nuclear WMD against concentrated human populations, the U.S. murders 150,000 "Jap" civilians to make a threatening statement to the Russians and other people who might follow the Soviet example by developing their nations and societies outside the American-based world capitalist system. 1950: In one small incident in a broader war that killed perhaps 2 million Koreans, members of the legendary U.S. Seventh Cavalry murder hundreds of South Korean refugees – mostly women and children – at a railroad trestle near the village of No Gun Ri. According to the Pulitzer Prize-wining authors of a 2002 book recounting this previously buried U.S. atrocity, "some refugees were shot trying to climb back up the embankment to fetch food from abandoned bags. Some were shot when, desperately thirsty, they ventured outside for stream water." U.S. "mortarmen, machine-gunners, and riflemen blasted away" at trapped refugees "from their ragged holes on the dusty barren hillside, in the Seventh Cavalry's first big encounter with 'gooks' in Korea." When they joined the Seventh, recruits were given a pamphlet telling them that their cavalry unit "firmly established their reputation as Indian fighters at the battle of Washita." This pamphlet "did not explain that the Seventh Cavalry, in the snowstorm at Washita, had slaughtered more than one hundred Native Americans – mostly unarmed old men, women, and children – who had been ordered into the area by the U.S. Army itself." (Charles Hanley, Sang-Hun Choe, and Martha Mendoza, The Bridge At No Gun Ri: A Hidden Nightmare From the Korean War, N.Y., 2002, pp. 17, 129-34). May to November 1967: As a small part of a broader U.S. invasion and occupation that killed millions of Vietnamese, an "elite" 45-man unit of the U.S. Army 101st Airborne Division known as "Tiger Force" conducts a murderous march through Vietnam's central highlands. A detailed and courageous four-part series published by The Toledo Blade in the fall of 2003 shows that "Tiger Force" killed an untold number – certainly well into the hundreds – of farmers, villagers, and prisoners. One medic interviewed by Blade reporters "said he counted 120 unarmed villagers killed in one month." According to left writer Mike Davis, who helped bring the Blade series to national light, "Tiger Force atrocities began with the torture and execution of prisoners in the field, then escalated to the routine slaughter of unarmed farmers, elderly people, even small children... Early on, Tiger Force began scalping its victims (the scalps were dangled from the ends of M-16s) and cutting off ears as souvenirs. One member – who would later behead an infant – wore the ears as a ghoulish necklace... A former Tiger Force sergeant told reporters that 'he killed so many civilians he lost count.'" A Tiger Force private remembers thinking that the killings were "wrong" but recalls that they were considered an "acceptable practice" for US military personnel in the central-highlands' many US-designated "free fire zones," where (by a former Tiger Force Lieutenant's account) "anything living...was subject to be eliminated." The slaughter was sponsored and protected by senior officers (including one who went by the name of "Ghost Rider" and named his battalions "Barbarians," "Cutthroats" and the like) and never resulted in prosecution of any of the perpetrators, despite an extensive Pentagon investigation that was buried by the White House in 1975. Asked why the Pentagon's post-atrocity investigation of Tiger Force never went anywhere, a leading senior office and massacre participant later recalls being summoned to the Pentagon and told that "there's wrongdoing there, and we know about it. But basically it's not...in the best interest of this, that and the other to try to pursue this." According to this officer, the investigation "was a hot potato. See this was after My Lai [see below] and the army certainly didn't want to go through the publicity thing." Former Watergate perpetrator and chief White House counsel (under Nixon) John Dean told the Blade that he was not surprised the investigation was dropped since "the government doesn't like ugly stories." Neither apparently does today's supposedly "left-leaning" mainstream press, which refuses to pick up and meaningfully disseminate the shocking Blade findings. The great "liberal" New York Times prefers months later to prattle on page one about the "controversial" nature of Kerry's 1971 testimony, leaving cutting-edge investigation into what really happened in Vietnam to a relatively small paper in the "conservative" Midwest. 1968: My Lai, the mother of all officially recognized modern U.S. atrocities: 347 unarmed Vietnam civilians, including 12 babies, are slaughtered in the hamlet at Song My by a company of the U.S. Army 23rd ("Americal") Division. While belated U.S. media attention focuses in 1969 and 1970 on the company's deranged commander (Lieutenant William Calley) and treats the incident as an anomaly within the broader benevolent (if occasionally “clumsy”) conduct of US policy, the massacre provides what Ward Churchill calls "a lens through which to examine the de-facto rules of engagement under which U.S. ground forces operated for nearly 7 years (1965-1972). "Known as the 'Dead Gook Rule' – that is, if a corpse is Vietnamese it is counted as a slain 'enemy combatant' on that basis alone – it points to a process of unremitting massacre, both large-scale and small, of the civilian population.... More than a score of such operations during the course of the U.S. 'commitment,' and this is not even to begin to count the toll taken by such routine measures as the declaration of whole swaths of the country to be 'free-fire zones,' in which anything that moved could be killed with impunity." (Churchill, pp. 140-141). Colonel Oran Henderson (who shares the duty of covering up the My Lai killings with an up-and-coming military bureaucrat named Colin Powell), noted in 1971 that "every unit of brigade size" that "served" in Vietnam "has its My Lai hidden someplace" (Howard Zinn, The Twentieth Century: A People's History, 1988, p.226). 1969: Future US Senator (D-Nebraska) and current president of New York City's New School University Bob Kerry joins other Navy SEALS in the massacre of a score of unarmed villagers, mainly women and children. He later says it's "pretty close to being right" to call this massacre "an atrocity." "We Annihilated That Target, Let's Move On:" Killing Innocent Arabs, Africans, and Afghanis, 1987-2004 1986: The U.S. bombs the Libyan cities of Tripoli and Benghazi, killing hundreds, including Libyan dictator Muamar al Quadaffi's infant daughter. There is no evidence for the White House's claim that Libyan agents had been involved in the earlier bombing of a German disco in which seven U.S. military personnel were killed. 1988: The U.S.S. Vincennes shoots down a clearly marked civilian Iranian airliner over the Persian Gulf, killing 290 civilians and possibly motivating Iran to become involved in the bombing of Pan Am flight 103 over Scotland. The ship's captain, who illegally crossed into Iran's territorial waters before shooting the defenseless commercial plane, later receives a "combat action ribbon" for this action. His "air warfare coordinator" even receives the Navy's Commendation Medal for "heroic actions" and "ability to maintain poise and confidence under fire." 1991: US forces kill as many as 250,000 Iraqis, including large numbers of noncombatants during "Operation Dessert Storm," ostensibly launched to punish its longstanding dictator-client Saddam Hussein for invading Kuwait, a neo-feudal U.S. oil protectorate – an action Saddam had reason to think the U.S. approved. The U.S. military mercilessly slaughtered more than 2000 Iraqi troops, many waving surrender flags, who are moving defenselessly out of and away from Kuwait on what became known as "the Highway of Death." Numerous war crimes are committed by US forces (including the dropping of cluster bombs in areas where civilians are present) in an onslaught that is absurdly excessive relative to the force required to drive Saddam out of Kuwait. The Jordanian Red Crescent society counts 120,000 civilian casualties. The White House initially encourages Iraqi Kurds and Shiites to rebel against Saddam but then permits the Iraqi dictator it supposedly reviles as a "butcher" to pitilessly slaughter his domestic opposition. 1998: The Bill Clinton White House orders the bombing of the only pharmaceutical plant in the deeply impoverished Sudan, killing thousands of bystanders and an untold number of others. There is no evidence for White House claims that the plant was manufacturing illegal weapons. 2001-2004: Thousands of innocent Afghans and Iraqis are killed by U.S. forces. Among other things, these murders reflect racist superpower payback for the jetliner attacks carried out on 9/11/01 by a small number of predominantly Saudi-Arabian Islamic extremists against innocent noncombatants at the World Trade Center and military personnel at the Pentagon. Resisting majority global sentiment insisting that the U.S. respect established global norms and procedures for responding, U.S. authorities answer the 9/11 atrocities with proportionately far greater terrorism directed at people who had nothing to do with any attacks on the United States. During one of many incidents where the US "mistakenly" murders innocent/noncombatant Iraqis in the spring of 2003, the Air Force blows up 18 ordinary civilians in a house thought to be sheltering Saddam Hussein. Left dead in the rubble is "Abdul M's" "entire family," including his daughter and his wife. "I dug them out," Abdul tells researchers a Public Broadcasting system "Frontline" documentary that appears in February 2004, "with my own bare hands. I carried them out with my own bare hands. I buried them with my own bare hands." "Emotionally," a U.S. officer involved in this glorious, freedom-loving act of imperial butchery notes, "it was, 'we annihilated that target, ok we did that, let's move on." Regarding butchered Iraqi soldiers, the "Frontline" documentary tells viewers that, "in the end, it was [Iraqi] street gangs versus [American] soldiers": poorly equipped Iraqi troops, including large numbers of teen conscripts, versus the most powerful military force in world history. "Operation Iraqi Freedom," it appears, was another "turkey shoot," to use Dessert Storm veterans' common description of the first George Bush's one-sided Iraqi "war," which ushered in a US-imposed sanctions regime that killed more than half a million Iraqi children, exacting a "price worth paying," in the immortal words of Clinton's Secretary of State Madeline Albright, who once claimed that that the United States "stands taller and sees farther than other nations." The White House and Pentagon justifies its imperial orgy in Iraq during 2003 with falsely concocted arguments about imminent WMD threats to the security of the United States – of increasing official prominence as the WMD threat claims are disproved – and America's supposed desire to export democracy to the Middle East. The American imperial state seizes upon 9/11 as a glorious opportunity to launch a permanent, open-ended "war on terrorism" and unfurl a long-planned doctrine of pre-emptive war and unilateral world domination that seeks among other things to tighten the US grip on pivotal Persian Gulf and South Asian petroleum and gas resources and demonstrated US capacity to rule the world on the basis of preponderant military force. By “the latest conservative estimate,” John Pilger notes, the bloody U.S.-British invasion has killed “between 21,000 and 55,000,” causing the “death every month of 1,000 children from cluster bombs” (John Pilger, interview by the Australian Broadcasting System, March 11, ZNet). Meanwhile the U.S. can’t develop the capacity to include Arab victims in its election arguments over “Operation Iraqi Freedom.” Dean makes the critical oversight (including 8000 dead Iraqi noncombatants) mentioned at the beginning of this article. In a pivotal anti-war address he makes to the Council on Foreign Relations in June 2003, the most outspokenly anti-war of the serious contenders renders Iraqi victims invisible, except – maybe – insofar as their suffering harms America's damaged "moral authority in the world." Dean proclaims his desire to restore that supposed "authority," which he identifies with president Harry Truman (1945-52), who ordered the two most barbarian acts in human history (the racist atom-bombings of Hiroshima and Nagasaki) and who grossly exaggerated the "Soviet threat" to launch a half-century campaign of hyper-militarization and racially disparate global devastation called "the Cold War." Those Who Fail to Acknowledge the Crimes of the Past... Seen against, and as part of, the vast historical canvass of U.S. racist-imperial slaughter, the monumental US crimes in Southeast Asia that John Kerry hinted at in his 1971 testimony are part of a larger story that renders self-delusional many Americans' notion that their nation-state is some sort of great exceptional moral and ethical city on a global hill. It is especially important to appreciate the significance of the vicious, often explicitly genocidal "homeland" assaults on native-Americans, which set foundational racist and national-narcissist patterns for subsequent U.S. global butchery, disproportionately directed at non-European people of color. The deletion of the real story of the so-called "battle of Washita" from the official Seventh Cavalry history given to the perpetrators of the No Gun Ri massacre is no small detail. Denial about Washita and Sand Creek (and so on) encouraged US savagery at Wounded Knee, the denial of which encouraged US savagery in the Philippines, the denial of which encouraged US savagery in Korea, the denial of which encouraged US savagery in Vietnam, the denial of which (and all before) has recently encouraged US savagery in Afghanistan and Iraq. It's a vicious circle of recurrent violence, well known to mental health practitioners who deal with countless victims of domestic violence living in the dark shadows of the imperial homeland's crippling, stunted, and itself-occupied social and political order. Power-mad US forces deploying the latest genocidal war tools, some suggestively named after native tribes that white North American "pioneers" tried to wipe off the face of the earth (ie, "Apache," "Blackhawk," and "Comanche" helicopters) are walking in bloody footsteps that trace back across centuries, oceans, forests and plains to the leveled villages, shattered corpses, and stolen resources of those who Roosevelt acknowledged as America's "original inhabitants."  Racist imperial carnage and its denial, like charity, begin at home.  Those who deny the crimes of the past are likely to repeat their offenses in the future as long as they retain the means and motive to do so.  It is folly, however, for any nation to think that it can stand above the judgments of history, uniquely free of terrible consequences for what Ward Churchill calls "imperial arrogance and criminality."  Every new U.S. murder of innocents abroad breeds untold numbers of anti-imperial resistance fighters, ready to die and eager to use the latest available technologies and techniques to kill representatives – even just ordinary citizens – of what they see as an American Predator state. This along with much else will help precipitate an inevitable return of US power to the grounds of earth and history.  As that fall accelerates, the U.S. will face a fateful choice, full of potentially grave or liberating consequences for the fate of humanity and the earth. It will accept its fall with relief and gratitude, asking for forgiveness, and making true reparation at home and abroad, consistent with an honest appraisal of what Churchill, himself of native-American ancestry, calls "the realities of [its] national history and the responsibilities that history has bequeathed":  goodbye American Exceptionalism and Woodrow Wilson's guns. Or Americans and the world will face the likely alternative of permanent imperial war and the construction of an ever-more imposing U.S. fortress state, perpetuated by Orwellian denial and savage intentional historical ignorance.  This savage barbarism of dialectically inseparable empire and inequality will be defended in the last wagon-train instance by missiles and bombs loaded with radioactive materials wrenched from lands once freely roamed by an immeasurably more civilized people than those who came to destroy.

## 1ar

#### yes enter agreements

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

¶ ¶ [\*834] Potentially in response to these concerns, on June 11, 2003, Senator Bingaman introduced an amendment to add the mandatory environmental review provisions to the then-pending TERA provisions. n87¶ Senator Campbell opposed Senator Bingaman's proposed amendment, explaining that "in my view, the Bingaman amendment would literally strip tribes of 30 years of that direction of self-determination and would circumvent the trust responsibilities this Government has to tribes because it would force the statutory equivalent of NEPA on all decisions they make with their own land." n88 Senator Domenici shared Senator Campbell's concerns regarding the mandatory provisions in Senator Bingaman's proposed amendment, adding that "the amendment before us takes the unprecedented step of applying the NEPA process to the Indian tribes just as if they were the Federal Government. This amendment goes well beyond current environmental regulations and adds unnecessary regulations and costs to the tribal energy project." n89¶ Accordingly, the legislative history demonstrates commentators' concern about potential encroachments into tribal sovereignty and costs associated with the imposition of mandatory environmental review through the TERA provisions. These issues may explain in part tribes' ongoing reluctance to enter into TERAs. ¶ E. Waiver of Federal Government's Liability¶ ¶ As identified above, another concern of several commentators on the then-pending TERA provisions related to the waiver of federal government liability to third parties or tribes related to matters arising after approval of a TERA. On June 5, 2003, Senator Campbell explained the purpose of the liability waiver in the then-pending TERA provisions:¶ [\*835] ¶ ¶ Section 2604 provides that the United States will not be liable to any party, including a tribe, for losses resulting in the terms of any lease agreements or right-of-way executed by the tribe pursuant to the approved TERA, which makes sense; Liability follows responsibility. If a tribe makes the leasing decisions, it should certainly be held responsible. If the United States continues to make the leasing decisions, it will continue to be held responsible. If Indian self-determination means anything, it means the right of tribes to make their own decisions and their responsibility to the tribes to live with those decisions. n90¶ ¶ Despite Senator Campbell's sentiments, concerns regarding this provision pervade the legislative history. Senator Bingaman acknowledged that the TERA provision waiving the federal government's liability was controversial, in stating that "there are concerns with language in the bill that limits the liability of the Federal Government with respect to leases and rights-of-way approved by tribes under the citing provisions of the bill." n91 Chairman Vernon Hill shared this concern, explaining that given the government's pervasive role in energy development in Indian country, tribes would be unlikely to release the federal government from liability until the implications of the streamlined process were clear. n92 President Joe Shirley, Jr., shared and expounded upon the concerns raised by Chairman Hill, explaining that:¶ ¶ Both bills [submitted by Senator Bingaman and Senator Campbell] stipulate a waiver of federal liability, regardless of the degree of managerial control exercised by the federal government in Indian energy development... .¶ ¶ ¶ While these bills purport to put tribes in the driver seat of decision making, they continue to empower the federal government to act as the traffic cop who is authorized to put its hand out to stop a tribe's car from moving. Both bills ultimately [\*836] preserve the federal government's final authority over energy leases. Such final authority constitutes the lead role. This scheme, wherein a cabinet Secretary has prescriptive control over decisions regarding Indian energy development, but no subsequent liability, is an abdication of the federal trust responsibility that is patently unfair to tribes. n93

#### No impact – launch would hit the ocean

Slocombe 9 [Walter B. Slocombe, former director of national security and defense in the Coalition Provisional Authority, the U.S. organization charged with overseeing Iraq's reconstruction, and former under-secretary of defense for Policy, June 2009, “De-Alerting: Diagnoses, Prescriptions, and Side-Effects,” <http://www.ewi.info/system/files/Slocombe.pdf>]

Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that even if a nuclear-armed missile were launched, it would go not to a “real” target in another country but – at least in the US 6 case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error. 5

These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack. 6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use. The drawback from a deterrence and operational point of view is, of course, that the system for transmitting the information must not be susceptible of interruption – that is, there must be assurance that an authorized decision maker will be able to act and have the decision – and the accompanying authenticated orders and unlock combinations – communicated to and received by the operators of the weapon systems. Accordingly, a system of combination-locked safeties requires a highly survivable network for decision and communication with the operators. Otherwise there would be pressures for early transmission of the codes, with their insertion subject to a later execute order or even more dangerous, pre-delegation of authority to issue the execute orders. In this, as in other aspects of measures to meet the “never” requirement, a highly capable and highly survivable command and control system is essential