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#### Restrictions on production must mandate a decrease in the quantity produced

Anell 89 Lars is the Chairman of the WTO panel adopted at the Forty-Fifth Session of Contracting Parties on December 5, 1989. Other panel members: Mr. Hugh Bartlett and Mrs. Carmen Luz Guarda. “Canada – Import Restrictions on Ice Cream and Yoghurt,” http://www.wto.org/english/tratop\_e/dispu\_e/88icecrm.pdf

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

#### Vote negative:

#### Including regulations is a limits disaster---undermines preparedness for all debates

Doub 76 William is a principal in the law firm of Doub and Muntzing. Previously he was a partner in LeBoeuf, Lamb, Leiby, and MacRae. He was a member of the U.S. Atomic Energy Commission (1971-1974). He served as a member of the Executive Advisory Committee to the Federal Power Commission (1968-1971) and was appointed by the President to the President’s Air Quality Advisory Board. He is a past chairman of the U.S. National Committee of the World Energy Conference. “Energy Regulation: A Quagmire for Energy Policy,” http://www.annualreviews.org/doi/abs/10.1146/annurev.eg.01.110176.003435

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

#### And precision---only direct prohibition is a restriction---key to predictability

Sinha 6 S.B. Sinha is a former judge of the Supreme Court of India. “Union Of India & Ors vs M/S. Asian Food Industries,” Nov 7, http://webcache.googleusercontent.com/search?q=cache:http://www.indiankanoon.org/doc/437310/

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

### DA

#### Debt ceiling compromise likely now but uniqueness doesn’t overwhelm the link---the impact is economic collapse

Klein 1/2 Ezra is a politics writer for the Washington Post. “The lessons of the fiscal cliff,” 2013, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/02/the-lessons-of-the-fiscal-cliff/?wprss=rss_ezra-klein>

There is a narrative in American politics that goes something like this: The White House can’t negotiate. House Republicans can’t be reasoned with. And so the country is caught between pragmatists who can’t hold their ground and radicals who can’t compromise.¶ The last few days complicate those narratives. The White House didn’t hold firm on their promise to let the Bush tax cuts expire for all income over $250,000. They agreed to a $450,000 threshold instead. But at the same time, they pocketed more than $600 billion in revenue, $30 billion in extended unemployment benefits and five years of stimulus tax credits without giving up any real spending cuts. ¶ Speaker John Boehner, negotiating on behalf of House Republicans, rejected the White House’s offers for a bigger deal that included big spending cuts and watched his “plan B” die on the House floor. But, with the support of many of his members, he ended up shepherding the McConnell-Biden package towards final passage. Republicans realized they couldn’t be blamed for pushing the country over the cliff. ¶ The question of who “won” the fiscal cliff won’t be answered till we know what happens when Congress reaches the debt ceiling. The White House says that there’ll be no negotiations over the debt ceiling, and that if Republicans want further spending cuts, their only chance is to hand over more tax revenue. If they’re right and they do manage to enforce a 1:1 ratio of tax hikes to spending cuts in the next deal, they’re going to look like geniuses.¶ Republicans swear they are crazy enough to push the country into default, and they promise that the White House isn’t strong enough to stand by and let it happen. If they’re right, and the White House agrees to big spending cuts absent significant tax increases in order to avert default, then Republicans will have held taxes far lower than anyone thought possible.¶ But both Republicans and Democrats can’t be right. If we take the lessons of this negotiation, here’s what will happen: The White House will negotiate over the debt ceiling. They’ll say they’re not negotiating over the debt ceiling, and in the end, they may well refuse to be held hostage over the debt ceiling, but the debt ceiling will be part of the pressure Republicans use to force the next deal. The White House fears default, and in the end, they always negotiate.¶ That said, the Republicans aren’t quite as crazy as they’d like the Democrats to believe. They were scared to take the country over the fiscal cliff. They’re going to be terrified to force the country into default, as the economic consequences would be calamitous. They know they need to offer the White House a deal that the White House can actually take — or at least a deal that, if the White House doesn’t take it, doesn’t lead to Republicans shouldering the blame for crashing the global economy. That deal will have to include taxes, though the tax increases could come through reform rather than higher rates.¶ The Republicans also have a problem the White House doesn’t: The public broadly believes they’re less reasonable and willing to negotiate than the Democrats are. The White House has a reputation for, if anything, being too quick to fold. They have more room to avoid blame for a default than the Republicans do. In the end, if the White House holds its ground, Republicans will likely compromise — though only after the White House has done quite a bit of compromising, too. ¶ The final moments of the fiscal cliff offered evidence that both sides see how this is going to go. In his remarks tonight, President Obama signaled he would hold firm on the debt ceiling. “While I will negotiate over many things, I will not have another debate with this Congress over whether or not they should pay the bills they’ve already racked up through the laws they have passed,” he said. And Boehner signaled that he knows tax reform will have to be part of the next deal. The post-deal press release his office sent out had the headline, “2013 Must Be About Cutting Spending and Reforming the Tax Code.” That said, the final days of the fiscal cliff, in which the deal almost broke apart a half-dozen times for a hal-dozen reasons, is a reminder that these tense, deadline negotiations can easily go awry. And so there’s a third possibility, too: That the White House is wrong about the Republicans will compromise, that the Republicans are wrong that the White House will fold, and so we really will breach the debt ceiling, unleashing economic havoc.

#### It’s top of the docket, PC is key, and it’s Obama’s sole focus

John Feehery 1-2, President of Communications and Director of Government Affairs for Quinn Gillespie and Associates, 1/2/13, “The Clock,” <http://www.thefeeherytheory.com/2013/01/02/the-clock/>

The small tax agreement passed by the House last night makes it harder for Obama to do other things with his time in the White House. ¶ That is the inevitable truth that seems lost on conservatives who opposed a deal to make permanent 98% of the Bush tax cuts. ¶ Mitch McConnell is a master at clock management, and as minority leader, his job is to make it as hard as possible for the President to enact his left-wing agenda. ¶ As I wrote yesterday, McConnell was the master strategist who decided that the Congress would deal first with taxes and then with spending. ¶ Conservative leaders (well, the ones most desperate to raise money attacking Republicans) are professionally apoplectic. They can’t believe that Republicans didn’t get any spending cuts included in this deal, after they torpedoed John Boehner’s plan which included massive spending cuts and popular tax provisions. ¶ But Plan C wasn’t designed to include spending cuts, you blithering idiots. That comes later, in the fight over the debt limit. ¶ The President has already declared that the debt limit is off the table, but of course, we all know that he is posturing**.** Nothing is off the table, and the fact of the matter is that Republicans need to come up with substantial spending cuts if they are to gain the respect of their political base. ¶ After the fight on the debt limit will come a fight on sequester. After the fight on the sequester will come a fight on the 2013 Appropriations bills. ¶ All of these fights will take the time and attention of the President himself. All of these fights will take political capital and energy and promises. By focusing on the budget issues, Republicans make it harder for the President to focus on other things, like immigration and gun control, and whatever crazy left-wing agenda items he might want to add to the list. ¶ Imagine if last night, the grand bargain came together, and Republicans and Democrats cleared up everything in one vote. The President wouldn’t have high-fived the Speaker and said, “my job is done here.” ¶ He would have moved on to gun control. He can’t do that now. Now he has to talk exclusively about the debt limit. He has to burn up political capital on an issue that dove-tails quite nicely with out-of-control spending. ¶ The clock is running out on the Obama White House, and the more time we talk about fiscal issues, the less time he has to get his left-wing agenda through the Congress.

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

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

Opponents, including some environmental groups, have expressed concern that Title V will eliminate the federal guarantees of public participation and environmental review from energy development decisions in Indian Country. n78 Further, opponents state that the "language also undercuts the federal trust [\*471] responsibility to Tribes by providing a waiver for the federal government of all liability from energy development." n79 Additionally, "other governments - state, local and foreign - are not required to conduct a NEPA review of actions they approve." n80

Some claim that the bill releases the federal government from its traditional trust responsibility to ensure the protection of the health, environment, and resources of Tribes and undermines federal environmental laws such as NEPA for energy development projects on Indian lands, resulting in a rearrangement of the federal- tribal relationship. n81 For example, during a congressional oversight hearing on NEPA, Zuni tribal member Calbert Seciwa stated "that NEPA was a vital tool in the Zuni Salt Lake Coalition's successful fight to block development of a coal mine near the sacred lake south of Gallup." n82

Environmentalists also criticize the new language. The National Resources Defense Council argued that the provisions remove the federal guarantee of environmental review and public participation. n83 Sharon Buccinio, an attorney for the NRDC argues

Title V could remove the application of federal laws, such as NEPA and the National Historic Preservation Act, from energy development decisions on tribal lands. The bill affects land both on and off the reservation. It provides that once the Secretary of the Interior approves a [TERA] providing a process for making energy development decisions, individual energy projects would proceed without federal approval. Since no federal action would occur, the existing guarantees of environmental review and public participation under NEPA would be lost. Concerned tribal community members and communities adjacent to the project would lose the mechanism that they now have to make their voices heard. n84

 [\*472]

Because of the ongoing concern that TERA tribes could ignore NEPA, Congress added a tribal environmental review process to the TERA. n85 The environmental review process must provide for the identification and evaluation of all significant environmental effects, including effects on cultural resources, identify proposed mitigation measures, and incorporate these measures into the TERA agreement. n86 In addition, the Tribe must ensure that the public is informed of and has the opportunity to comment on the environmental impacts of the proposed action, provide responses to relevant and substantive comments before tribal approval of the TERA agreement, provide sufficient administrative support and technical capability to carry out the environmental review process and allow Tribal oversight of energy development activities by any other party under any TERA agreement to determine whether the activities are in compliance with the TERA and applicable federal environmental law. n87

#### Global economic crisis causes nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism**.**

### CP

#### The United States federal government should end restrictions under Section 2604 of the Energy Policy Act of 2005 that require approval from the Secretary of the Interior for Tribal Energy Resource Agreements for the production of solar energy.

#### Solves the case and avoids the link to our net-benefit---their 1AC evidence doesn’t establish a reason why wind is insufficient.

#### Windmill facilities kill bats which are key to the ecosystem

Dodds No Date – Dodds and Dodds Jr. No Date Given (Pamela C, Ph.D and Arthur W.; HUGE WINDMILL "PLANTS" FAIL AS "GREEN ENERGY" AND FAIL TO PROVIDE ANY SIGNIFICANT AMOUNT OF ELECTRICITY,; http://www.laurelmountainpreservationassociation.org/laurel\_mountain\_preservation\_association\_003.htm )

All bats found in West Virginia and Virginia are insectivores, which are animals that eat only insects. Bats often eat more than 50% of their body weight in insects each night and nursing female bats eat enough insects to equal their body weight. This can result in a single bat eating over 4,500 insects in a single night. Because bats eat so many insects, they are a very important part of our ecosystem. The endangered gray bat [Myotis grisescens] spends the majority of its life inside of caves. Unfortunately, human disturbance of its cave roosts has led to a severe decline in this species' population and the gray bat is now declared an endangered species. With protection, the gray bat is making a come back and its numbers are increasing. This southeastern bat can eat as many as 3,000 insects in a single night (http://www.organcave.com/Bats.htm). Under Section 9 of the Endangered Species Act, it is unlawful for 'any person subject to the jurisdiction of the United States to take any [federally listed] species within the United States' (16 U.S.C. Section 1538 (a)(1)(B**))."** However, the U.S. Fish and Wildlife Service is now working with companies responsible for constructing huge windmill "plants" in order to develop Habitat Conservation Plans that would provide an Incidental Take Permit of the very same endangered species they are certain will be killed. The U.S. Fish and Wildlife Service projected number of 135,000 bat deaths that would result if the huge windmill "plant" had been constructed on Jack Mountain in Pendleton County, West Virginia. An Incidental Take Permit would protect the company from being penalized for this enormous amount of killing. However, the West Virginia Public Service Commission denied the application to build a windmill "plant" on Jack Mountain.

#### Bats key to control mosquito populations – risks spread of West Nile Fever, Encephalitis, Malaria and Dengue Fever

Stevenson 8 – Heidi Stevenson, Fellow at the British Institute of Homeopathy, Natural News, April 11, 2008, http://www.naturalnews.com/022989.html

The first problem people note may be a profusion of mosquitoes this year. Bats are nature's primary means of controlling mosquito populations. Although it's possible that the excessive use of pesticides will keep this under control temporarily, the day must come when the piper will be paid, as new toxin-resistant mosquitoes develop. Ultimately, these diseases are likely to multiply aggressively -- but by then, the bats that keep them under control may be gone. Major diseases borne by mosquitoes include West Nile Fever, Eastern Equine Encephalitis, Malaria, and Dengue Fever. All of them are severe and life-threatening.

#### Spread of malaria risks the deaths of millions

Hopkins 8 – Johns Hopkins Malaria Research Institute, About Malaria, 2008, Accessed May 11, 2008, http://malaria.jhsph.edu/about\_malaria/

Despite mankind's longstanding struggle to control mosquito populations, the World Health Organization currently estimates that each year malaria causes 300 to 500 million infections and over 1 million deaths each year.

### CP

#### Text:

#### The United States federal government should fully fund contract support costs under the Indian Self-Determination and Education Assistance Act of 1975.

#### The United States Federal Government should interpret the National Environmental Protection Act to limit categorical exclusions.

#### The United States Federal Government should:

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

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

#### --approve Tribal Energy Resource Agreements in the event that the Secretary of the Interior fails to act within the allotted time

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

#### Counterplan solves the case:

#### Supporting effective native governance is the vital internal link to self-determination and economic self-sufficiency. It’s also a pre-req to effective natural resource use

National Congress of American Indians, 2012, “Support for Tribal Governments,” http://www.ncai.org/resources/ncai-publications/indian-country-budget-request/FY2013\_Spport\_for\_Tribal\_Governments.pdf

Providing tribes with the tools for effective governance is critical to fulfilling the promise of the Indian Self-Determination and Education Assistance Act. To build a more prosperous American future, the following policy changes are essential. Support for Tribal Governments Key Recommendations Shared Responsibility: DEPARTMENT OF THE INTERIOR AND DEPARTMENT OF HEALTH AND HUMAN SERVICES Interior – Environment Appropriations Bill • Fully fund Contract Support Costs at the Bureau of Indian Affairs and Indian Health Service. The Indian Self-Determination and Education Assistance Act of 1975, (Pub. L. 93-638) allowed tribes to manage federal trust programs for the benefit of their citizens that would otherwise be administered by the US government. Under contracts or self-governance compacts, tribes administer a vast array of governmental services, including healthcare, law enforcement services, education, housing, land and natural resource management, and other vital social service programs. Program flexibility has allowed tribes to determine internal priorities, redesign programs, and reallocate financial resources to effectively and efficiently address the needs of their respective communities. Tribal communities rely on these programs to help provide the basic requirements of food, clothing, and shelter. However, the greatest impediment to the successful administration of these trust programs is the failure on the part of the US government to fully fund contract support costs. When contract support costs are not paid, tribes cannot fill vital positions in areas such as healthcare and law enforcement, or they are compelled to divert resources to cover these expenses, placing a great economic burden on the tribes and jeopardizing the health, welfare, and safety of their tribal communities. When the US government fails to provide these costs, the government is failing to live up to its trust obligations. These contractual obligations must be fulfilled, so that critical jobs that serve tribal communities can be restored.

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

Judith V. Royster 12, Co-Director – Native American Law Center @ University of Tulsa, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91

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

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

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

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

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

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

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

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

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

VII. Conclusion

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

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

#### Redefining the IMDA spurs renewable power development by circumventing TERAs

Judith V. Royster 12, Co-Director – Native American Law Center @ University of Tulsa, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91

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

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

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

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

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

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

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

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

#### Reinstating liability avoids politics and solves energy development---their author

Elizabeth Ann Kronk 12, assistant professor of law – Texas Tech University, 29 Pace Envtl. L. Rev. 811,

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

As an alternative, a second recommendation for reforming the existing TERA provisions would call for reinstatement of federal liability so as **to increase tribal participation** in TERAs. This second proposal is also **an improvement over the status quo** in that it will (with any luck) alleviate tribal concerns related to the federal government's responsibility to tribes. Such a revision would arguably be consistent with the federal government's trust responsibility to tribes. As "the ability to hold the federal government liable for breach is at the heart of its trust obligation toward tribes," n163 the waiver of federal governmental liability [\*856] seems to be inconsistent with this federal trust obligation. **Removing the waiver would** also **allay fears that "private entities** such as energy companies **will** exploit tribal resources and **take unfair advantage of tribes**." n164 This is because the federal government would likely maintain a more active role in energy development under TERAs. Moreover, this proposal would likely be consistent with the federal viewpoint, such as the one expressed by Senator Bingaman, which envisions the federal government maintaining a significant role in Indian country.

Congress apparently intended the TERA provisions to be consistent with the federal government's trust responsibility to tribes. For example, one subsection of the TERA provisions refers specifically to the federal trust responsibility, affirming that the trust responsibility remains in effect. This provision mandates that the Secretary "act in accordance with the trust responsibility of the United States relating to mineral and other trust resources ... in good faith and in the best interests of the Indian tribes." It also notes that with the exception of the waiver of Secretarial approval allowed through the TERA framework, the Indian Energy Act does not "absolve the United States from any responsibility to Indians or Indian tribes, including ... those which derive from the trust relationship." n165

In addition to apparent consistency with the federal trust responsibility, federal liability under the TERA provisions is appropriate given that the federal government maintains a significant role in the development of energy within Indian country even under the TERA agreements. For example, under the TERA provisions, the federal government retains "inherently Federal functions." n166 Moreover, as discussed above, the federal government maintains a significant oversight role through the existing TERA provisions because it has a mandatory environmental review process which tribes must incorporate into TERAs. The failure to relinquish oversight to tribes ensures that the federal government will maintain a strong management role, even after a tribe enters into a TERA with the Secretary of the [\*857] Interior. Given that the federal government maintains a substantial oversight role under the TERA provisions (which it views as consistent with its federal trust responsibility), the federal government should remain liable for decisions made under TERAs. In addition to the strong administrative role that the federal government would still play under approved TERAs, it also maintains an important role as a tribal "reviewer." Under the TERA provisions, the federal government must review the tribe's performance under the TERA on a regular basis. n167 Although the existing TERA provisions certainly mark an increased opportunity for tribes to participate in decision-making related to energy development within Indian country, the federal government's role should remain significant. The proposal to reinstate federal liability under the TERA provisions, therefore, recognizes the significant role that the federal government still plays under the existing TERA provisions.

If Senator Bingaman's viewpoint is any indication, Congress may be unwilling to relinquish federal oversight over energy development within Indian country. As a result, the first proposal for reform discussed above may prove to be unacceptable to Congress. Assuming this is the case, this second proposal allows the federal government to maintain an oversight role in Indian county and reinstates the federal government's liability. Based on the legislative history detailed above, **reinstatement of the federal government's liability would likely address many of the concerns raised by tribes regarding the existing TERA provisions**. In this way, this second proposal would also constitute an improvement over the status quo.

VI. CONCLUSION

For a variety of reasons, America needs to increase energy production from domestic sources. Indian tribes may prove the perfect partners for the federal government to achieve its goal of increased domestic production of energy. These tribes have the available natural resources, and experience managing these resources, to make them excellent partners. Increased energy [\*858] production within Indian country would serve federal interests and tribal interests, as such endeavors would **increase tribal sovereignty and self-determination** while promoting economic diversification within Indian country. Congress recognized this potentially beneficial relationship with tribes when it passed the TERA provisions of the Energy Policy Act of 2005. The existing TERA provisions arguably "streamline" the process of energy production within Indian country. Under these provisions, tribes that enter into a TERA with the Secretary of Interior may be relieved of Secretarial oversight in certain regards. Despite the benefits of such "streamlining," at the time of this writing, no tribe has entered into a TERA agreement with the Secretary of Interior.

In an effort to understand the potential reasons for lack of tribal engagement with TERA, this article has explored the legislative history associated with the TERA provisions. A review of the legislative history has illustrated that concerns related to the then-pending TERA provisions generally fell into three categories: (1) concerns associated with the federal government's trust responsibility to tribes; (2) concerns associated with federally-mandated environmental review provisions; and (3) concerns associated with the general waiver of federal liability.

Based on the review of applicable legislative history and the concerns expressed therein, this article proposes reform of the TERA provisions. In particular, this article proposes two potential reforms. The first represents a tribal sovereignty perspective. Under the first proposal, the tribes should be liable (i.e., a waiver of federal government liability should be maintained) only if tribes are the true decision-makers. In this regard, the first proposal argues for the removal of federal mandates, such as the conditions of environmental review and administrative oversight. The reform would allow tribes to truly make decisions regarding energy development within their territories.

Because Congress may not accept this proposal, the article also proposes an option for reform that maintains the federal mandates and oversight role of the federal government, but reinstates the federal government's liability under the TERA provisions. Such a reinstitution of federal liability is consistent [\*859] with the federal government's trust responsibility to tribes. Although the two proposals are contradictory, **both represent improvements over the status quo and**, should either be adopted by Congress, **would encourage tribes to enter into TERAs with the Secretary of Interior**.

#### Deregulating TERAs allows corporate exploitation of tribes—worse for sovereignty

April Reese 3, reporter – High Country News (Colorado) and Energy & Environment, “Plains tribe harnesses the wind,” <http://www.hcn.org/issues/255/14139>

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

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

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

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

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

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

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

#### And, the net-benefit:

#### CP reinvigorates NEPA---creates perception of strong environmental law in the US---EIS’s are key

Weiland 97 (Paul S. Weiland, Land Use and Natural Resources Practice Group Leader at Nossaman LLP, worked in the Law and Policy Section, Environmental and Natural Resources Division of the U.S. Department of Justice helping agencies formulate policies to comply with the NEPA, JD at Harvard, Ph.D. at Indiana, Spring 97, "AMENDING THE NATIONAL ENVIRONMENTAL POLICY ACT: FEDERAL ENVIRONMENTAL PROTECTION IN THE TWENTY-FIRST CENTURY,"

Journal of Land Use & Environmental Law, 12 J. Land Use & Envtl. Law 275)

[\*292] Third, in light of judicial interpretation of NEPA, it is critical to link substance to procedure explicitly. In its present form, section 102(2)(C) of NEPA requires federal agencies to consider the environmental impacts of a **variety of alternative projects.** 127 Caldwell has suggested that the law as written has contributed to better decisionmaking, but **change is necessary** to realize the substantive goals set forth in section 101. 128 "The EIS **alone** cannot compel adherence to the principles of NEPA. The EIS is necessary but insufficient as an action-forcing procedure . . . ." 129 To further NEPA's substantive goals, the EIS requirement could be **supplemented with a mandate** that agencies adopt the project from among alternatives that "**maximizes environmental protection** and enhances environmental values" while maintaining the economic viability of the project. 130 Fourth, section 102(2)(C) mandates that "**every** recommendation or report on **proposals for legislation" include an EIS**. 131 Generally, this mandate has been ignored by Congress. 132 Grad notes that "there is little evidence that NEPA has had any significant effect on the legislative process . . . . Few impact statements have been filed in the context of legislation that may have substantially adverse effects on the environment . . . ." 133 Subjecting legislation to the procedural requirements that have been enforced by the judiciary up to this point would result in more fully informed, and perhaps better, decisionmaking. If substantive and procedural requirements are jointly implemented, notoriously inefficient and environmentally unsound laws, such as those governing grazing and mining on federal lands, would possibly be reformed. 134 In addition, appropriation bills, in which many decisions [\*293] that lead to the destruction of the environment are successfully hidden, would be subject to review. 135 Fifth, to the fullest extent possible, legislation should include provisions that force the President to fulfill his responsibility to appoint a council on environmental quality and to make that council a high priority. Up to this point, numerous presidents have failed to appoint a council, thus violating the Constitution which states in part that the President "shall take care that the laws be faithfully executed." 136 Though this duty has been repeatedly ignored in the past, it need not be the case in the future. 137 Additionally, a clarification of congressional commitment to the CEQ may increase the likelihood that the President will fulfill the responsibility of chief executive. VI. CONCLUSION The amendment of NEPA is not likely to be an easy task. However, a reinvigorated NEPA may establish environmental protection among the nation's priorities when entering the twenty-first century. The need for an **explicit referent in statutory** or constitutional **law is essential to ensure strong and efficacious environmental law within the U**nited **S**tates.

#### Binding application of NEPA reinvigorates the international model of environmental impact assessment---solves all global environmental impacts---the plan’s exceptions undermine necessary political will

Caldwell 98 (Lynton K. Caldwell, Arthur F. Bentley Professor of Political Science Emeritis and Professor of Public and Environmental Affairs, Indiana University, 98, "BEYOND NEPA: FUTURE SIGNIFICANCE OF THE NATIONAL ENVIRONMENTAL POLICY ACT," The Harvard Environmental Law Review, 22 Harv. Envtl. L. Rev. 203)

 [\*205] It is this prospective orientation that extends the relevance of NEPA to a world economy that has been expanding and accelerating beyond any historical precedent. Environmental protection policy has now attained global significance, and NEPA recognizes "the worldwide and long-range character of environmental problems." 7 In some respects, NEPA has already significantly influenced public policy in the United States and abroad. In particular, the procedural reform required by the EIS has improved the quality of public planning and decisionmaking and has been widely adopted in other countries and by international organizations. 8 Despite its influence, however, NEPA has not come near to realizing its full potential either at home or abroad. The international relevance of NEPA has been weakened by ambiguous interpretations in the federal courts and outright denial by some executive agencies. Domestically, NEPA's effectiveness has been hampered by insufficient funding and inconsistent application. The EIS requirement alone is insufficient to achieve the intent declared in NEPA. The research, oversight, and forecasting provisions of NEPA under Title II have yet to be fully implemented. The CEQ has done what it could with unduly limited resources, but has lacked the active presidential and congressional support needed to play its intended role. Where the federal government has acted, its environmental decisions have often been inconsistent with NEPA's declared principles. 9 The goals and principles declared in section 101 10 have been treated as noble rhetoric having little practical significance. In the absence of forceful White House action, the courts have been the principal interpreters of NEPA, although the [\*206] Supreme Court has limited their adjudication under the Act to purely procedural matters. 11 The failure of NEPA to fulfill its potential is of particular concern today, as the policy issues addressed in NEPA seem almost certain to reach a point of urgency early in the twenty-first century. Growing economic and social demands indicate environmental troubles ahead too clearly to be dismissed as "alarmist." In America's future, the quality of life will depend upon the extent to which the government and people of the United States make the principles declared in NEPA a practiced reality. Its principles must be applied in actual public administration**.**In order to revitalize NEPA as a true expression of national intent, it is first necessary to understand why it has not become a highly visible centerpiece of American environmental policy. Why has this statute, which has had worldwide influence and has been described as America's environmental Magna Carta, not achieved greater recognition in the United States? NEPA is perhaps no less understood than is any other federal statute--many of which are lengthy, complex, and subject to periodic reinterpretation by the judiciary. In fact, NEPA has the potential to be more easily grasped and readily applied because it is relatively short, straightforward and, as a policy act, neither vague nor ambiguous. There are at least four explanations for the difference between the policy declared by NEPA and what actually happens in government and the economy. The first is official marginalization of NEPA policy in deference to political priorities; the second is judicial misinterpretation; the third is popular indifference to matters of principle when no compelling event arouses concern; and the fourth is the lag between conventional perceptions of the environment and the world dynamics of environmental change. These explanations are generalizations and hence there are exceptions. It is the contention of this Essay that, in order to fulfill NEPA's potential, it may now be necessary to reaffirm the Act's declared congressional intent or to incorporate it into constitutional law. The anticipated challenges of the twenty-first century have enlarged the implications of NEPA for American public policy far beyond those [\*207] anticipated by the authors of the Act and the Congress that adopted it, although, in principle, the international relevance of NEPA was certainly recognized by Senator Henry M. Jackson and his staff. As the nation moves into the twenty-first century, and is confronted by problems now being forecast, the principles and goals declared by NEPA will need reinforcement to work toward the goal of attaining a sustainable future.

#### Even small ecosystem disruptions threaten extinction

Diner 94 - Major in the U.S. Army (David, Military Law Review, Winter, Lexis)

4. Biological Diversity. -- The main premise of species preservation is better than simplicity. As the current mass extinction has progressed, the world's biological diversity generally has decreased. This trend occurs within ecosystems by reducing the number of species, and within species by reducing the number of individuals. Both trends carry serious future implications. Biologically diverse ecosystems are characterized by a large number of specialist species, filling narrow ecological niches. These ecosystems inherently are more stable than less diverse systems. "The more complex the ecosystem, the more successfully it can resist stress... [l]ike a net, in which each knot is connected to others by several strands, such a fabric can resist collapse better than a simple, unbranched circle of threads -- which is cut anywhere breaks down as a whole." By causing widespread extinctions, humans have artificially simplified many ecosystems. As biologic simplicity increases, so does the risk of ecosystem failure. The spreading Sahara Desert in Africa, and the dustbowl conditions of the 1930s in the United States are relatively mild examples of what might be expected if this trend continues. Theoretically, each new animal or plant extinction, with all its dimly perceived and intertwined affects, could cause total ecosystem collapse and human extinction. Each new extinction increases the risk of disaster. Like a mechanic removing, one by one, the rivets from an aircraft's wing, mankind may be edging closer to the abyss.

### Self-Determination Advantage

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

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

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

#### And, war turns structural violence

Winter 99– Professor of Psychology, Whitman (Deborah and Dana Leighton, Structural Violence Section Introduction, http://www.psych.ubc.ca/~dleighton/svintro.html)

While structural violence often leads to direct violence, the reverse is also true, as brutality often terrorizes bystanders, who then become unwilling or unable to confront social injustice. Increasingly, civilians pay enormous costs of war through death and devastation of neighborhoods and ecosystems. Ruling elites rarely suffer from armed conflict as much as civilian populations do, who endure decades of poverty and disease in war-torn societies.

#### Moral absolutism undermines political effectiveness and causes political paralysis

Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University, Spring 2002, Dissent, Vol. 49, No. 2

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

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

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

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

#### Policymakers must act in a consequentialist fashion --- their moral theorizing ignores the constraints of real-world policymaking

Michael Ignatieff 7, member of the independent international commission on Kosovo, chaired by Judge Richard Goldstone of South Africa. Former fellow at King’s College, Cambridge; École des Hautes Études, Paris; and St. Antony’s College, Oxford; and Visiting Prof of Human Rights Practice at Harvard, August 5, 2007, The New York Times, online: http://www.nytimes.com/2007/08/05/magazine/05iraq-t.html?ei=5090&en=cb304d04accc6df8&ex=1343966400&partner=rssuserland&emc=rss&pagewanted=all, accessed August 10, 2007

The unfolding catastrophe in [Iraq](http://topics.nytimes.com/top/news/international/countriesandterritories/iraq/index.html?inline=nyt-geo) has condemned the political judgment of a president. But it has also condemned the judgment of many others, myself included, who as commentators supported the invasion. Many of us believed, as an Iraqi exile friend told me the night the war started, that it was the only chance the members of his generation would have to live in freedom in their own country. How distant a dream that now seems.

Having left an academic post at Harvard in 2005 and returned home to Canada to enter political life, I keep revisiting the Iraq debacle, trying to understand exactly how the judgments I now have to make in the political arena need to improve on the ones I used to offer from the sidelines. I’ve learned that acquiring good judgment in politics starts with knowing when to admit your mistakes.

The philosopher Isaiah Berlin once said that the trouble with academics and commentators is that they care more about whether ideas are interesting than whether they are true. Politicians live by ideas just as much as professional thinkers do, but they can’t afford the luxury of entertaining ideas that are merely interesting. They have to work with the small number of ideas that happen to be true and the even smaller number that happen to be applicable to real life. In academic life, false ideas are merely false and useless ones can be fun to play with. In political life, false ideas can ruin the lives of millions and useless ones can waste precious resources. An intellectual’s responsibility for his ideas is to follow their consequences wherever they may lead. A politician’s responsibility is to master those consequences and prevent them from doing harm.

I’ve learned that good judgment in politics looks different from good judgment in intellectual life. Among intellectuals, judgment is about generalizing and interpreting particular facts as instances of some big idea. In politics, everything is what it is and not another thing. Specifics matter more than generalities. Theory gets in the way.

The attribute that underpins good judgment in politicians is a sense of reality. “What is called wisdom in statesmen,” Berlin wrote, referring to figures like Roosevelt and Churchill, “is understanding rather than knowledge — some kind of acquaintance with relevant facts of such a kind that it enables those who have it to tell what fits with what; what can be done in given circumstances and what cannot, what means will work in what situations and how far, without necessarily being able to explain how they know this or even what they know.” Politicians cannot afford to cocoon themselves in the inner world of their own imaginings. They must not confuse the world as it is with the world as they wish it to be. They must see Iraq — or anywhere else — as it is.

### Solvency/No War

#### The aff alone fails

Sullivan 10—J.D. Candidate, University of Arizona James E. Rogers College of Law (Bethany, CHANGING WINDS: RECONFIGURING THE LEGAL FRAMEWORK FOR RENEWABLE-ENERGY DEVELOPMENT IN INDIAN COUNTRY, <http://www.tribesandclimatechange.org/docs/tribes_25.pdf>)

Unfortunately, the IEED's TERA program has produced unsatisfactory results. Not a single tribe, as of present, has successfully attained a TERA. 54 This may partially be a consequence of the multi-step TERA application requirements, including: submission of documentation demonstrating a tribe's financial and personnel capacity to administer energy agreements and programs, establishment of a tribal environmental review process, and consultative meetings with the Director of the Indian Energy and Economic Development Office. 55 Perhaps more problematic are conflicting sentiments within tribes over distancing tribal energy development from federal government protection, an issue strongly debated among Indian law practitioners and scholars. 56 So, although tribes could arguably benefit \*832 from the decreased federal oversight that TERAs would provide, it appears that this mechanism, on its own, is insufficient to truly stimulate renewable development. In summary, the Act has provided for federal programs that encourage the development of tribal renewable resources, yet its policy goals of tribal economic and energy development and tribal self-determination have not yet been met. In part, this may be a function of inadequate appropriations for the Act's provisions. 57 An alternative explanation, however, is that the Act fails to address substantial obstacles to tribal renewable-energy development. The most significant obstacles can be generally divided into two categories: (1) tribal inability to take advantage of federal tax incentives in the renewable-energy industry and (2) unfavorable case law concerning tribal civil jurisdiction.

#### Potential for great power conflict will increase over time---their ev is wrong

James Wood Forsyth 7, professor of national security studies and department chair, Strategy and Leadership, Air Command and Staff College; and Col Thomas E. Griffith Jr., USAf, the dean of faculty and academic programs at the National War College, Fall 2007, “Through the Glass Darkly: The Unlikely Demise of Great-Power War,” Strategic Studies Quarterly, online: http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA509123

The United States cannot prepare to put down any and all potential rivals. The costs of such an undertaking would quickly prove to be enormous, especially when domestic spending on programs like social security and Medicare are factored into the security equation. Over the long haul rivals will emerge, and there is little the United States can do except balance against them, as they will prepare to balance against us. In such a world, where states compete for power, one must be concerned with survival. That being the case, it is worth remembering that the most serious threats to the great powers have historically stemmed from other great powers. In the years ahead, as strong challengers emerge, conflicts will arise, making war among the great powers more, not less, likely. 49

Contrary to popular belief, we are not living in a whole new world. The events of September 11 and the wars that have followed have had a pronounced effect on US foreign and defense policy, but they have not done away with the state system. The world is still made up of states that must look out for themselves. To pretend otherwise is to neglect history or to fall prey to presentism—something common among pundits but dangerous for statesmen and men and women of the armed forces. Historically, the most efficient and effective way to ensure state security is through military means. Thus, the importance of the balance of power, which exists to prevent one great power from dominating the rest, has not diminished. Instead, it has been reinvigorated as states are reminded of the need to defend themselves.

The implications of acknowledging the possibility of a great-power war are easier to grasp than to implement. Despite the urgency of the war in Iraq, we need to think seriously about what a great-power war would look like, how it could occur and be prevented, and how it would be fought so that we can gain some understanding about the equipment and forces needed to fight and win. The groundwork for the technologies needed for such a contest needs to be laid today. The difficulties in putting armor on vehicles for Iraq pale in comparison to creating the lead time and resources needed to fight a great-power war. Failing to do so risks lives and jeopardizes US security goals.

This does not mean that we should ignore current threats or overlook the need to relieve misery and suffering around the world, what one strategist terms “minding the gap.” 50 As citizens, we should be concerned with the political and human consequences of poverty, ecological degradation, and population growth. We must also fully address the problem of terrorism. But as real as the consequences of poverty, ecological degradation, population growth, and terrorism might be, it is hard to come up with a realistic scenario involving these tragedies that would alter the balance of power. 51 Put simply, in an age of transformation, we cannot neglect the basics. Should the United States find itself in another great-power war, things that are taken for granted today, like air superiority or control of sea lanes, might come up short tomorrow. That technology, economics, democracy, and norms play a role in preventing great-power war is not the issue. The issue is whether they make it unthinkable. Regrettably, they do not, and because they do not, great-power war has a bright future, however tragic that might seem.

#### Current great-power peace is reversible and not based on structural trends---thousands of years of empirics

Francis P. Sempa 11, adjunct professor of political science at Wilkes University, October 2011, “Book Review: Dangerous Times? The International Politics of Great Power Peace,” Joint Force Quarterly, Vol. 63, online: http://www.ndu.edu/press/dangerous-times.html

Forget Clausewitz, Sun Tzu, and Machiavelli. Put aside Mackinder, Mahan, and Spykman. Close the military academies and war colleges. Shut our overseas bases. Bring our troops home. Make dramatic cuts in the defense budget. The end of major war, and perhaps the end of war itself, is near, according to Tulane assistant professor Christopher Fettweis in his recent book, Dangerous Times? The International Politics of Great Power Peace.

Fettweis is not the first intellectual, nor will he be the last, to proclaim the onset of perpetual peace. He is squarely in the tradition of Immanuel Kant, Herbert Spencer, and Norman Angell, to name just three. Indeed, in the book's introduction, Fettweis attempts to rehabilitate Angell's reputation for prophecy, which suffered a devastating blow when the Great War falsified his claim in The Great Illusion that economic interdependence had rendered great power war obsolete. Angell, Fettweis writes, was the first "prominent constructivist thinker of the twentieth century," and was not wrong—just ahead of his time (p. 5).

Fettweis bases his theory or vision of the obsolescence of major war on the supposed linear progress of human nature, a major tenet of 20th-century liberalism that is rooted in the rationalist theories of the Enlightenment. "History," according to Fettweis, "seems to be unfolding as a line extending into the future—a halting, incomplete, inconsistent line perhaps, one with frequent temporary reversals, but a line nonetheless." The world is growing "more liberal and more reliant upon reason, logic, and science" (p. 217).

We have heard this all before. Human nature can be perfected. Statesmen and leaders will be guided by reason and science. Such thinking influenced the visionaries of the French Revolution and produced 25 years of war among the great powers of Europe. Similar ideas influenced President Woodrow Wilson and his intellectual supporters who endeavored at Versailles to transform the horrors of World War I into a peace that would make that conflict "the war to end all wars." What followed were disarmament conferences, an international agreement to outlaw war, the rise of expansionist powers, appeasement by the democracies, and the most destructive war in human history. Ideas, which Fettweis claims will bring about the proliferation of peace, transformed Russia, Germany, and Japan into expansionist, totalitarian powers. Those same ideas led to the Gulag, the Holocaust, and the Rape of Nanking. So much for human progress.

Fettweis knows all of this, but claims that since the end of the Cold War, the leaders and peoples of the major powers, except the United States, have accepted the idea that major war is unthinkable. His proof is that there has been no major war among the great powers for 20 years—a historical period that coincides with the American "unipolar" moment. This is very thin empirical evidence upon which to base a predictive theory of international relations.

Fettweis criticizes the realist and neorealist schools of thought, claiming that their adherents focus too narrowly on the past behavior of states in the international system. In his view, realists place too great an emphasis on power. Ideas and norms instead of power, he claims, provide structure to the international system. Classical geopolitical theorists such as Halford Mackinder, Alfred Thayer Mahan, Nicholas Spykman, and Colin Gray are dismissed by Fettweis in less than two pages, despite the fact that their analyses of great power politics and conflict have long been considered sound and frequently prescient.

Realists and classical geopoliticians have more than 2,000 years of empirical evidence to support their theories of how states and empires behave and how the international system works. Ideas are important, but power is the governing force in international politics, and geography is the most permanent factor in the analysis of power.

Fettweis makes much of the fact that the countries of Western and Central Europe, which waged war against each other repeatedly for nearly 400 years, are at peace, and claims that there is little likelihood that they will ever again wage war against each other. Even if the latter assertion turns out to be true, that does not mean that the end of major war is in sight. Throughout history, some peoples and empires that previously waged war for one reason or another became pacific without producing worldwide perpetual peace: the Mongols, Saracens, Ottomans, Dutch, Venetians, and the Spanish Empire come immediately to mind. A Europe at peace does not translate to an Asia, Africa, and Middle East at peace.

In a world in which major wars are obsolete, Fettweis believes the United States needs to adjust its grand strategy from vigorous internationalism to strategic restraint. His specific recommendations include the removal of all U.S. military forces from Europe; an end to our bilateral security guarantees to Japan and South Korea; an end to our alliance with Israel; an indifference to the balance of power on the Eurasian landmass; a law enforcement approach to terrorism; a drastic cut in military spending; a much smaller Navy; and the abolition of regional combatant commands.

What Fettweis is proposing is effectively an end to what Walter Russell Mead calls "the maritime world order" that was established by Great Britain and maintained first by the British Empire and then by the United States. It is a world order that has defeated repeated challenges by potential hegemonic powers and resulted in an unprecedented spread of prosperity and freedom. But all of that, we are assured, is in the past. China poses no threat. The United States can safely withdraw from Eurasia. The power vacuum will remain unfilled.

Fettweis needs a dose of humility. Sir Halford Mackinder, the greatest of all geopoliticians, was referring to visionaries and liberal idealists like Fettweis when he cautioned, "He would be a sanguine man . . . who would trust the future peace of the world to a change in the mentality of any nation." Most profoundly, General Douglas MacArthur, who knew a little bit more about war and international conflict than Fettweis, reminded the cadets at West Point in 1962 that "only the dead have seen the end of war."

#### Reversibility empirically disproves predictions of war’s decline---err neg

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

A look at the past should make anyone hesitate to discuss the future of force. In 1811 a sensible person would have predicted that the coming century would be extremely bloody; in 1911 an informed observer could be quite optimistic. It is perhaps this knowledge that leads me in 2011 to see a mixed (but fairly bright) picture, and the safest prediction might be that whatever I am about to say will be proven wrong. Indeed, the unexpected revolt in Libya and what to me was the equally unexpected military response by France, the UK and the US casts a somewhat different light – or shadow – on our understanding of the role of force today, and this understanding will in turn be influenced by how the operation turns out. The fact that the Libyan operation is (so far) a limited one epitomizes the conflicting perceptions to which I will return. On the one hand, the incidence of war and even internal violence has greatly subsided. One the other hand, the US, and to a lesser extent Britain and France, are involved in an increasing number of violent affairs. On a smaller scale, the raid that killed Osama bin Laden also reminds us that force can solve an immediate problem, although the more important long-run effects remain to be seen. That no one today would echo Bismarck’s famous claim that ‘Not by speeches and votes of the majority, are the great questions of the time decided … but by iron and blood’, does not mean that force is without a role, or even that changes in behavior have matched changes in what leaders feel they can say out loud.

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## T

### AT: We Meet

#### Easy litmus test—can you comply? If you can, it is regulation, not restriction

Mohammed 7 Kerala High Court Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, 1997 Equivalent citations: AIR 1997 Ker 121 Author: P Mohammed Bench: P Mohammed

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

#### This is true of TERAs---Interior is required to basically knock down Tribal doors to get them to comply

Irma S. Russell 9, Dean and Professor, University of Montana School of Law, 2009, “STREAMLINING NEPA TO COMBAT GLOBAL CLIMATE CHANGE: HERESY OR NECESSITY?,” http://www.lclark.edu/live/files/3582

The environmental criteria for TERA approval include identification and evaluation of “all significant environmental effects,” identification of “proposed mitigation measures,” a process ensuring public input on the environmental effects, proper administrative support and technical capability, and tribal oversight of any third parties related to the TERA. 125 To the extent that a project meets the requirements of ITEDSDA, environmental considerations will be taken into account. 126 It is not clear, however, that there is no effect of outsourcing environmental considerations from NEPA to ITEDSDA. One clear effect of this shift from NEPA to ITEDSDA is that the project no longer meets the category of a “federal action” of NEPA. Accordingly, judicial oversight provided for federal projects no longer applies. ITEDSDA also requires a quick response from the Secretary of the Interior in evaluating TERAs, and provides criteria under which the Secretary must approve the application. The Secretary is required to approve or deny TERA applications “[n]ot later than 270 days after the date on which the Secretary receives a tribal energy resource agreement.” 127 Even if the TERA is denied, the Secretary must, within ten days, notify the tribe of why the TERA was disapproved, identify what changes are required, and allow the tribe to resubmit the TERA. 128 If the tribe does this, the Secretary must approve or deny the revised TERA within sixty days. 129

#### Conditions aren’t restrictions---this distinction matters

Pashman 63 Morris is a justice on the New Jersey Supreme Court. “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. Lexis

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. It is within these rules of construction that this policy must be construed.¶ Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [\*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition." A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that the word "restrictions," as used [\*\*\*12] by defendant insurers, is ambiguous. The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [\*\*472] of redevelopment work within 32 months because (1) the word is used ambiguously and must be strictly construed against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added)

#### Regulation is strictly distinct from restriction of production

Qureshi 46 Indian representative at the United National Social and Economic Council. Verbatim report of the sixth meeting of committee IV. Oct 31st, http://www.wto.org/gatt\_docs/English/SULPDF/90220091.pdf

Mr. Chairman, I would like to point out that in Article 47, Paragraph 1, the regulation of production should not mean restriction of production, otherwise the whole aim of raising the standard of living will be defeated; nor should it mean to discourage the production of certain commodities if certain countries find it necessary to do so and to expand their production in the interests of their country.

### AT: C/I

#### Berger ev is awful---anything that restricts enjoyment of a property.

### Limits

#### Including regulations is a limits disaster---undermines preparedness for all debates

Doub 76 William is a principal in the law firm of Doub and Muntzing. Previously he was a partner in LeBoeuf, Lamb, Leiby, and MacRae. He was a member of the U.S. Atomic Energy Commission (1971-1974). He served as a member of the Executive Advisory Committee to the Federal Power Commission (1968-1971) and was appointed by the President to the President’s Air Quality Advisory Board. He is a past chairman of the U.S. National Committee of the World Energy Conference. “Energy Regulation: A Quagmire for Energy Policy,” http://www.annualreviews.org/doi/abs/10.1146/annurev.eg.01.110176.003435

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

#### Including energy regulations adds five million research hours

Tugwell 88 Franklin Tugwell joined The Asia Foundation's Board of Trustees in 2010. Dr. Tugwell has served as the President and CEO of Winrock International since 1999. Previously, Dr. Tugwell was the executive director of the Heinz Endowments of Pittsburgh, the founder and president of the Environment Enterprises Assistance Fund, and as a senior consultant for International Projects and Programs at PG&E Enterprises. He served as a deputy assistant administrator at USAID (1980-1981) and as a senior analyst for the energy program at the U.S. Office of Technology Assessment (1979-1980). Dr. Tugwell was also a professor at Pomona College and an adjunct distinguished professor at the Heinz School of Carnegie Mellon University. Additionally, he serves on the Advisory Board and International Committee of the American Council on Renewable Energy and on the Joint Board of Councilors of the China-U.S. Center for Sustainable Development. He also serves on the Board of Eucord (European Cooperative for International Development). Dr. Tugwell received a PhD in political science from Columbia University. “The Energy Crisis and the American Political Economy,” ISBN 0-8047-1500-9

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

#### Including energy regs is too big---it’s torture for the neg

Edwards 80 Opinion in BAYOU BOUILLON CORP. v. ATLANTIC RICHFIELD CO. Court of Appeal of Louisiana, First Circuit. May 5

Comprehending the applicability and complexity of federal energy regulation necessitates both a stroll down the tortuous legislative path and a review of legal challenges so numerous as to require the establishment of a Temporary Emergency Court of Appeals.

#### That destroys education---too much to comprehend

Stafford 83 G. William is an Associate at Ross, Marsh and Foster. Review of “Federal Regulation of Energy” by William F. Fox, Jr, http://felj.org/elj/Energy%20Journals/Vol6\_No2\_1985\_Book\_Review2.pdf

It may safely be said that any effort to catalogue "the entire spectrum of federal regulation of energy"' in a single volume certainly requires an enterprising effort on the part of the author. In this regard, Mr. Willam F. Fox, Jr., an Associate Professor of Law at Catholic University of America, has undertaken an examination of a vital aspect of United States policy in Federal Regulation of Energy, published in 1983 with an annual pocket supplement available. Despite the complex nature of the subject of his work, Mr. Fox has prepared a text that provides a significant description of many aspects of federal energy regulatory policy. Initially, the book's title may prove somewhat misleading in that it approaches the subject from an historical perspective focused more on substantive than procedural issues. Although a reader gets the impression that the author at time has tried to do too much -at least from the standpoint of the energy practitioner- the historical and technical insights it offers the student of federal energy relation are valuable. Moreover; its detailed explanations of the methods used to tneet federal energy goals are useful for those in the position of initiating energy policy. This strength notwithstanding, it appears unlikely that an energy law practitioner would benefit significantly from its use, other than from its historical point of view. A general impression is that the author may have been overly ambitious in his effort to undertake the monumental task of evaluating laws, regulations, and significant judicial decisions in a single work.

### Precision

#### And precision---only direct prohibition is a restriction---key to predictability

Sinha 6 S.B. Sinha is a former judge of the Supreme Court of India. “Union Of India & Ors vs M/S. Asian Food Industries,” Nov 7, http://webcache.googleusercontent.com/search?q=cache:http://www.indiankanoon.org/doc/437310/

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

#### The best lexicography proves restriction and regulation are distinct by definition

Schackleford 17 J. is a justice of the Supreme Court of Florida. “Atlantic Coast Line Railroad Company, a corporation, et al., Plaintiff in Error, v. The State of Florida, Defendant in Error,” 73 Fla. 609; 74 So. 595; 1917 Fla., Lexis

There would seem to be no occasion to discuss whether or not the Railroad Commissioners had the power and authority to make the order, requiring the three specified railroads running into the City of Tampa to erect a union passenger station in such city, which is set out in the declaration in the instant case and which we have copied above. [\*\*\*29] It is sufficient to say that under the reasoning and the authorities cited in State v. Atlantic Coast Line R. Co., 67 Fla. 441, 458, 63 South. Rep. 729, 65 South. Rep. 654, and State v. Jacksonville Terminal [\*631] Co., supra, it would seem that HN14the Commissioners had power and authority. The point which we are required to determine is whether or not the Commissioners were given the authority to impose the fine or penalty upon the three railroads for the recovery of which this action is brought. In order to decide this question we must examine Section 2908 of the General Statutes of 1906, which we have copied above, in the light of the authorities which we have cited and from some of which we have quoted. It will be observed that the declaration alleges that the penalty imposed upon the three railroads was for the violation of what is designated as "Order No. 282," which is set out and which required such railroads to erect and complete a union depot at Tampa within a certain specified time. If the Commissioners had the authority to make such order, it necessarily follows that they could enforce a compliance with the same by appropriate proceedings in the courts, but [\*\*\*30] it does not necessarily follow that they had the power and authority to penalize the roads for a failure to comply therewith. That is a different matter. HN15Section 2908 of the General Statutes of 1906, which originally formed Section 12 of Chapter 4700 of the Laws of Florida, (Acts of 1899, p. 86), expressly authorizes the imposition of a penalty by the Commissioners upon "any railroad, railroad company or other common carrier doing business in this State," for "a violation or disregard of any rate, schedule, rule or regulation, provided or prescribed by said commission," or for failure "to make any report required to be made under the provisions of this Chapter," or for the violation of "any provision of this Chapter." It will be observed that the word "Order" is not mentioned in such section. Are the other words used therein sufficiently comprehensive to embrace an order made by the Commissioners, such as the one now under consideration? [\*632] It could not successfully be contended, nor is such contention attempted, that this order is covered by or embraced within the words "rate," "schedule" or "any report,' therefore we may dismiss these terms from our consideration and [\*\*\*31] direct our attention to the words "rule or regulation." As is frankly stated in the brief filed by the defendant in error: "It is admitted that an order for the erection of a depot is not a 'rate' or 'schedule' and if it is not a 'rule' or 'regulation' then there is no power in the Commissioners to enforce it by the imposition of a penalty." It is earnestly insisted that the words "rule or regulation" are sufficiently comprehensive to embrace such an order and to authorize the penalty imposed, and in support of this contention the following authorities are cited: Black's Law Dictionary, defining regulation and order; Rapalje & Lawrence's Law Dictionary, defining rule; Abbott's Law Dictionary, defining rule; Bouvier's Law Dictionary, defining order and rule [\*\*602] of court; Webster's New International Dictionary, defining regulation; Curry v. Marvin, 2 Fla. 411, text 515; In re Leasing of State Lands, 18 Colo. 359, 32 Pac. Rep. 986; Betts v. Commissioners of the Land Office, 27 Okl. 64, 110 Pac. Rep. 766; Carter V. Louisiana Purchase Exposition Co., 124 Mo. App. 530, 102 S.W. Rep. 6, text 9; 34 Cyc. 1031. We have examined all of these authorities, as well as those cited by the [\*\*\*32] plaintiffs in error and a number of others, but shall not undertake an analysis and discussion of all of them. While it is undoubtedly true that the words, rule, regulation and order are frequently used as synonyms, as the dictionaries, both English and law, and the dictionaries of synonyms, such as Soule's show, it does not follow that these words always mean the same thing or are interchangeable at will. It is well known that the same word used in different contexts may mean a different thing by virtue of the coloring which the word [\*633] takes on both from what precedes it in the context and what follows after. Thus in discussing the proper constructions to be placed upon the words "restrictions and regulations" as used in the Constitution of this State, then in force, Chap. 4, Sec. 2, No. 1, of Thompson's Digest, page 50, this court in Curry v. Marvin, 2 Fla. 411, text 415, which case is cited to us and relied upon by both the parties litigant, makes the following statement: "The word restriction is defined by the best lexicographers to mean limitation, confinement within bounds, and would seem, as used in the constitution, to apply to the amount and to the time [\*\*\*33] within which an appeal might to be taken, or a writ of error sued out. The word regulation has a different signification -- it means method, and is defined by Webster in his Dictionary, folio 31, page 929, to be 'a rule or order prescribed by a superior for the management of some business, or for the government of a company or society.' This more properly perhaps applies to the mode and form of proceeding in taking and prosecuting appeals and writs of error. By the use of both of those terms, we think that something more was intended than merely regulating the mode and form of proceedings in such cases." Thus, in Carter v. Louisiana Purchase Exposition Co., 124 Mo. App. 530, text 538, 102 S.W. Rep. 6, text 9, it is said, "The definition of a rule or order, which are synonymous terms, include commands to lower courts or court officials to do ministerial acts." In support of this proposition is cited 24 Amer. & Eng. Ency. of Law 1016, which is evidently an erroneous citation, whether the first or second edition is meant. See the definition of regulate and rule, 24 amer. & Eng. Ency. of Law (2nd Ed.) pages 243 to 246 and 1010, and it will be seen that the two words are not always [\*\*\*34] synonymous, much necessarily depending upon the context and the sense in which the words are used. Also see the discussion [\*634] of the word regulation in 34 Cyc. 1031. We would call especial attention to Morris v. Board of Pilot Commissioners, 7 Del. chan. 136, 30 Atl. Rep. 667, text 669, wherein the following statement is made by the court: "These words 'rule' and the 'order,' when used in a statute, have a definite signification. They are different in their nature and extent. A rule, to be valid, must be general in its scope, and undiscriminating in its application; an order is specific and not limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made." Also see 7 Words & Phrases 6271 and 6272, and 4 Words & Phrases (2nd Ser.) 419, 420. As we held in City of Los Angeles v. Gager, 10 Cal. App. 378, 102 Pac. Rep. 17, "The meaning of the word 'rules' is of wide and varied significance, depending upon the context; in a legal sense it is synonymous with 'laws.'" If Section 2908 had contained the word order, or had authorized the Commissioners to impose a penalty for the violation of any order [\*\*\*35] made by them, there would be no room for construction. The Georgia statute, Acts of 1905, p. 120, generally known as the "Steed Bill," entitled "An act to further extend the powers of the Railroad Commission of this State, and to confer upon the commission the power to regulate the time and manner within which the several railroads in this State shall receive, receipt for, forward and deliver to its destination all freight of every character, which may be tendered or received by them for transportation; to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said commission in the execution of these powers, and for other purposes," expressly authorized the Railroad Commissioners "to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said Commision." [\*635] See Pennington v. Douglas, A. & G. Ry. Co., 3 Ga. App. 665, 60 S.E. Rep. 485, which we cited with approval in State v. Atlantic Coast Line R. Co., 56 fla. 617, text 651, 47 South. Rep. 969, 32 L.R.A. (N.S.) 639. Under the reasoning in the cited authorities, especially State v. Atlantic Coast Line R. Co., [\*\*\*36] supra, and Morris v. Board of Pilot Commissioners, we are constrained to hold that the fourth and eighth grounds of the demurrer are well founded and that HN16the Railroad Commissioners were not empowered or authorized to impose a penalty upon the three railroads for failure to comply with the order for the erection of a union depot.

### AT: No Affs---Caselist

#### There are tons of viable affirmatives --- Restrictions on offshore oil production including Pacific Coast, Atlantic Coast and the eastern Gulf of Mexico, Restrictions on onshore oil production on public land and Indian Country, Restrictions on Pentagon use of coal to liquid technology

#### Restrictions on oil and natural gas

Bernstein 6 (Andrew Bernstein, Orlando Business Journal, June 2, 2006, “Bush and Congress Should Lift Environmental Restrictions on Energy Production” http://www.aynrand.org/site/News2?page=NewsArticle&id=12623&news\_iv\_ctrl=1021

With American consumers currently paying the highest gasoline prices in recent history, and after another winter of high heating costs, many Americans are properly concerned about America's energy future. Predictably, many politicians and commentators blame the "greed" of U.S. energy companies for the soaring prices. The truth, however, is that prices rise when demand increases relative to supply, and that the American supply of energy is being strangled by the policies of U.S. federal and state governments.¶ A prime example of such strangulation is the moratorium on offshore drilling for oil and natural gas imposed on 85 percent of America's coastal waters for the past quarter century. Last week, when the House rejected an attempt to lift the moratorium, it sent a powerful message that the strangulation will continue.¶ Let us examine some of the other policies that have brought America--a country blessed with abundant natural resources and possessing the technology to produce energy more efficiently than ever--to a state of energy poverty.¶ In addition to the moratorium on offshore drilling, the federal government repeatedly refuses to permit oil drilling in Alaska's National Wildlife Refuge (ANWR). Geologists claim that ANWR holds seven billion barrels of oil, enabling it to add significantly to American energy production. Further, in large measure due to environmental restrictions, America has not built a new oil refinery for more than 25 years, meaning a diminished ability to refine crude oil into gasoline, diesel, jet fuel, heating oil, and other petroleum products. Our refineries run at capacity constantly, making repairs difficult, leaving them more susceptible to breakdowns and fires, and--with most centered in the Gulf of Mexico--leaving the country's supply of refined oil vulnerable to such natural disasters as Katrina.¶ Additionally, regulations have made building new nuclear power plants economically uninviting--despite the fact that nuclear plants, operated in free countries, where top minds are liberated to create advanced technology, have proven their reliability and safety. In France, for example, nuclear power provides roughly two-thirds of the nation's electricity. American nuclear plants have had, and continue to show, a superb safety record--and this includes Three Mile Island, whose 1979 partial meltdown led to no deaths or injuries.¶ Finally, environmental restrictions also limit production of natural gas, which currently supplies 25 percent of the energy Americans consume, a figure that will rise in the future. Huge natural gas reserves in places such as the Rocky Mountain basins, Alaska, and the Outer Continental Shelf are either "off limits" or have their development severely restricted. These unnecessary restrictions endure despite the fact that the wholesale price of natural gas has quadrupled since the 1990s. As an example of the hurdles placed in front of natural gas companies, producers in Wyoming's Powder River Basin, which holds 39 trillion cubic feet of gas, several years ago saw the federal government suspend the issuing of drilling permits pending the outcome of a second "environmental impact" study. Is this kind of treatment going to encourage more companies to get into the energy business?¶ The United States is a country rich in both energy sources and the technology necessary to develop them. But the policies of our own government are preventing such development from occurring. America needs to learn from the bitter experience of England. Last century, a popular expression "taking coals to Newcastle" (a center of English coal production) was coined to indicate the absurdity of taking a product to a place that was plentiful in it. But in the late 1940s, when the British government nationalized the coal industry, shortages and rationing resulted, and taking coal to Newcastle became a grim reality. Similarly, the United States today, with its enormous supplies of oil, natural gas, and other energy sources, is suffering high prices because of restrictions imposed by our government.¶ If the U.S. government established freedom in the energy industry by removing environmental restrictions, we would witness a significant increase in domestic production of oil, natural gas, and electricity. This would do more than increase supply and lower prices for American customers. It would herald a new commitment by the U.S. government to economic freedom and capitalism. The relative freedom of the computer industry has led to an explosion of innovativeness and productivity. The same freedom in the energy industry will lead to the same result.

#### Restrictions on coal

Institute for Energy Research 3/5/2012(Coal: Not Part of the Obama “All-of-the-above” Strategy <http://www.canadafreepress.com/index.php/article/45056>)

U.S. Government and Coal-to-Liquids Technology The U.S. Government promoted the development of coal-to-liquids technologies following the oil shocks of the 1970s, but shelved the projects in the 1980s when oil prices fell. In the current economic environment, with oil prices surpassing $100 per barrel and generally projected to rise in the long term, coal-to-liquid technology could again become viable. According to a study by the National Energy Technology Laboratory (NETL), when the crude oil price is equal to or above $86 per barrel, coal-to-liquid technology would be economic. The NETL study also indicates that adding carbon sequestration to the process is relatively inexpensive and would result in life cycle greenhouse gas emissions 5 to 12 percent less than petroleum based diesel.[iv] Other studies, however, do not agree with this lower estimate of emissions. Currently, there is a Congressional ban on the Pentagon’s use of alternative fuels if they produce more carbon dioxide than conventional petroleum. Because the life cycle greenhouse gas emissions from the coal-to-liquids fuel are believed to be larger than the greenhouse gas emissions from conventional petroleum, they are not pursuing our most abundant energy source. Thus, the U.S. Armed Services is banned from using synthetic fuels from coal to fuel their aircraft and other vehicles.[v] Instead, the U.S. Air Force and the U.S. Navy are experimenting with renewable biofuels that are extremely expensive and whose own “carbon footprint” may turn out to be more than conventional petroleum. Cost estimates are 10 to 40 times more than petroleum based aviation fuels. Conclusion While China is benefiting from a coal-to-liquids program, it is unlikely that the United States will do the same. Even though the United States has the world’s largest coal reserves, the Obama administration’s regulations and government policies concerning the military make a coal-toliquids industry unlikely in the United States at the present time. The U.S. Energy Information Administration is projecting that some coal-to-liquid technology will be used in the United States, beginning with production this decade and reaching 280,000 barrels per day by 2035.[vi] However, that is a very small amount and unlikely to be competitive with China’s programs.

### AT: Reasonability/T Debates = Race To Bottom---2NC

#### The point of our T arg is to determine what a reasonable interpretation of the topic is---our violation’s that they’re outside the scope of that

#### A competing interpretations framework is critical – the resolution contains no words that provide an inherent limit, so we need to craft the best possible interpretation or else all predictability is lost

#### Reasonability’s bad

#### ---Neutrality – competing interpretations is the only objective way to determine topicality – you should err on the side of objectivity because topicality is a rule of the game

#### ---Silly – the aff doesn’t win if they almost outweigh a disad, they shouldn’t win if they’re almost topical

## CP

## N/B

#### US environmental leadership’s key to maintaining life on earth---solves their ocean impacts as well as soil erosion, deforestation, and air pollution

Ashok **Khosla 9**, IUCN President, International Union for Conservation of Nature, A new President for the United States: We have a dream, 1-29-09, http://cms.iucn.org/news\_events/?uNewsID=2595

A rejuvenated America, with a renewed purpose, commitment and energy to make its contribution once again towards a better world could well be the turning point that can reverse the current decline in the state of the global economy, the health of its life support systemsand the morale of people everywhere. This extraordinary change in regime brings with it the promise of a deep change in attitudes and aspirations of Americans, a change that will lead, hopefully, to new directions in their nation’s policies and action. In particular, we can hope that from being a very reluctant partner in global discussions, especially on issues relating to environment and sustainable development, the United States will become an active leader in international efforts to address the Millennial threats now confronting civilization and even the survival of the human species. For the conservation of biodiversity, so essential to maintaining life on Earth, this promise of change has come not a moment too soon. "The environmental challenges the world is facing cannot be addressed by one country, let alone by one man." It would be a mistake to put all of our hopes on the shoulder of one young man, however capable he might be. The environmental challenges the world is facing cannot be addressed by one country, let alone by one man. At the same time, an inspired US President guided by competent people, who does not shy away from exercising the true responsibilities and leadership his country is capable of, **could do a lot to spur the international community into action**. To paraphrase one of his illustrious predecessors, “the world asks for action and action now.” What was true in President Roosevelt’s America 77 years ago is even more appropriate today. From IUCN’s perspective, the first signals are encouraging. The US has seriously begun to discuss constructive engagement in climate change debates. With Copenhagen a mere 11 months away, this commitment is long overdue and certainly very welcome. Many governments still worry that if they set tough standards to control carbon emissions, their industry and agriculture will become uncompetitive, a fear that leads to a foot-dragging “you go first” attitude that is blocking progress. A positive intervention by the United States could provide the vital catalyst that moves the basis of the present negotiations beyond the narrowly defined national interests that lie at the heart of the current impasse. The logjam in international negotiations on climate change should not be difficult to break if the US were to lead the industrialized countries to agree that much of their wealth has been acquired at the expense of the environment (in this case greenhouse gases emitted over the past two hundred years) and that with the some of the benefits that this wealth has brought, comes the obligation to deal with the problems that have resulted as side-effects. With equitable entitlement to the common resources of the planet, an agreement that is fair and acceptable to all nations should be easy enough to achieve. Caps on emissions and sharing of energy efficient technologies are simply in the interest of everyone, rich or poor. And both rich and poor must now be ready to adopt less destructive technologies – based on renewables, efficiency and sustainability – both as a goal with intrinsic merit and also as an example to others. "Caps on emissions and sharing of energy efficient technologies are simply in the interest of everyone, rich or poor." But climate is not the only critical global environmental issue that this new administration will have to deal with. **Conservation of biodiversity**, a crucial prerequisite for the wellbeing of all humanity, no less America, needs as much attention, and just as urgently. The United States’ self-interest in conserving living natural resources strongly converges with the global common good in every sphere: in the oceans, by arresting the precipitate decline of fish stocks and the alarming rise of acidification; on land, by regenerating the health of our soils, forests and rivers; and in the atmosphere by reducing the massive emission of pollutants from our wasteful industries, construction, agriculture and transport systems.

#### Deforestation causes extinction

**Park 92** (Christpher, Senior Lecturer Geography and Principal of – Graduate College of Lancaster University, “Tropical Rainforests”, p. 100-101)

Global climate might also be affected by deforestation through the loss of a valuable natural pollution filter which trees provide.78 Trees produce oxygen and take in carbon dioxide (CO2) by photosynthesis. Deforestation, by removing this natural air conditioning system, might have two consequences. Trees purify the air we breathe and forests play a significant role in maintaining the oxygen balance of the earth. Clearance might mean a shortage of oxygen for life on earth to survive. The second and more damaging effect stems from the very effective role which forests play in filtering carbon dioxide from the atmosphere. Rainforests act as a carbon sink and prevent the build-up of CO2 in the atmosphere, acting as the 'lungs' of the earth. This helps to constrain global warming triggered by greenhouse gases. Fears have been expressed that forest clearance is eroding this natural pollution filter and thus rempTing the check on global warming.79 Clearance by burning, which is very widespread, amplifies the problem because large-scale wood burning will deplete oxygen in the atmosphere and release more carbon in the form of CO2 (which will promote global warming). The significance of this loss of pollution sink is widely debated, and there is little hard evidence to confirm or reject it. Some take the threat seriously whereas others dismiss the prospect as just a myth'8° which is much less important than other mechanisms of climatic change.

#### Soil collapse causes extinction

Globe and Mail 7 John Allemang, feature writer, “Planet Earth has a dirty little secret”, May 12, Lexis Nexis

Dirt is disappearing, and **when it goes, we go.** It's a simple fact that we're using up our finite supply of good soil faster than it can be made, and whatever our eyes choose to tell us, **a crisis is looming**. Of course, like so much else about dirt, even **its do-or-die** crisis manages to be barely perceptible. In a world prepared to welcome the inconvenient truths of environmental degradation, and even make them the markers of intellectual fashion, poor old untrendy dirt somehow falls to the bottom of the global to-do list. Air pollution, water contamination, the limited lifespan of fossil fuels, the urgent need to confront climate change no matter how far away its worst threats may be - we get it, whatever don't-worry governments and vested interests like to pretend to the contrary¶ But erosion as the ultimate catastrophe, the dusty death blow? Somehow it's hard to feel apocalyptic about something you buy at a garden centre, scrape off your boots before walking through the door or scrub off your lettuce before the salad can be made.¶ "We take it for granted," agrees David R. Montgomery - which is a pretty hard admission for a man who has made it his goal to alert a distracted world to the crisis of lost soil.¶ To his practised eyes, at least, the best part of the Earth is eroding and the danger signs are everywhere: bare plowed soil carried off by wind or rain, rivers choked by sediment from clear-cut forests, over-irrigated fields turned into salt-contaminated deserts, huge unprotected tracts of wheat or corn dependent on chemical fertilizer to replace the nutrients corporate agriculture discards, the constant stripping of topsoil to create new suburbias. Our complacency is so instinctive, our wastefulness so extreme, that Dr. Montgomery has come up with a disturbing new name for modern agriculture: soil mining.¶ "We only have a fixed amount of soil - and we're digging it up," he says.¶ Dr. Montgomery is a geomorphologist at the University of Washington in Seattle, a well-travelled and well-read monitor of Earth's thin skin who knows that a civilization's lifespan depends on how it treats - or mistreats - its dirt. As a student of the Earth's eons of slow but certain transformations, he is trained to spot the big-picture inevitabilities the rest of us miss, and of this he is certain: "We're on track to lose most of our agricultural soils. And even if we solve the water crisis and the climate crisis, if we don't conserve soil, then that will do us in."¶ You hear that, and you look around at the lushness of life in the spring, and the doomsday scenario seems unconvincing. Dirt is everywhere, the fields are full of crops, the supermarket shelves have their usual cornucopia look of gross overabundance and, if there's a famine in a far-off place, as there always is, can it really all come down to a few inches of topsoil that has gone missing?¶ Yes is the short answer, according to Dr. Montgomery's wide-ranging new book, Dirt: The Erosion of Civilizations, which is to be published this week and has been deemed "a compelling manifesto" by New Scientist magazine. He takes pains to demonstrate the key role played by soil degradation in almost every civilization that once claimed to dominate the Earth - a useful antidote to the Golden Age nostalgia for a more harmonious past that afflicts many in the environmental movement. Wrecking soil, he implies, is something humans do, given the opportunity, because we're programmed to think of immediate issues such as personal survival rather than forgoing our inheritance to benefit the farmers of the future. And one reason we can do this with a clear conscience is our belief that soil is everywhere.¶ "People just don't realize that not all soils are good agricultural soils," Dr. Montgomery says. "And even with good soils, the pace at which it's being lost is slow by human standards even if it's quite rapid by geologic standards."¶ You don't have to be a geologist to spot the problem. At least since the Dust Bowl crisis of the Depression era, when much of North America was blanketed by thick clouds of soil eroded off the drought-ridden prairie, soil specialists have put forward strong arguments for conservation - arguments that are all the more crucial since the western plains, as Dr. Montgomery observes, "are one of the few places on the planet that can produce agricultural surpluses and feed the world."¶ In the Canadian West, a combination of high winds, heavy rains and years of drought has compromised the region's high-quality soil (a gift of the glacier action that collected and conveyed soil from the now-rocky Canadian North). To reduce erosion, soil advocates try to persuade farmers to cut down or even cut out the tilling (plowing) of the loose, granular soil, maintain grassy ground cover, practise crop rotation, reduce chemical fertilizer and pesticide use while making better use of manure, introduce windbreaks and work the land along more natural contours.¶ As the price of oil has climbed, making it much more expensive to operate heavy farm machinery on a vast scale and spread fertilizer extravagantly, the more sustainable approach to agriculture is gaining converts in the West. No-till farming, in particular, has gone from being a wacky agrarian fantasy to being a widely accepted practice for those who want to maintain the industrial scale of agriculture while conserving the soil by disturbing it less. "Canada is leading the way on no-till," Dr. Montgomery says, approvingly.¶ Concern about soil isn't confined to the wide-open wheat fields: In tiny Prince Edward Island, the potato industry faced bad publicity over the harmful effects of soil runoff, and a provincial act now mandates crop rotation (although critics point out that the government still permits a hefty annual erosion rate of three tons of soil per acre). The island's fine sandy loam has been identified as having huge potential for erosion due to the heavy summer rains that wash away exposed soil from vulnerable potato fields. Even to those who see dirt as inexhaustible, all that runoff is a problem: In a province where aquaculture is a major business as well as a way of life, pesticides and fertilizer nutrients from eroded soil quickly upset the delicate environmental balance.

**Air pollution causes extinction**

**Driesen 3** (David, Professor of Law, Syracuse, Buffalo Environmental Law Journal, Fall, 2002 / Spring, 2003, p. LN)

Air pollution can make life unsustainable by harming the ecosystem upon which all life depends and harming the health of both future and present generations. The Rio Declaration articulates six key principles that are relevant to air pollution. These principles can also be understood as goals, because they describe a state of affairs [\*27] that is worth achieving. Agenda 21, in turn, states a program of action for realizing those goals. Between them, they aid understanding of sustainable development's meaning for air quality. The first principle is that "human beings. . . are entitled to a healthy and productive life in harmony with nature", because they are "at the center of concerns for sustainable development." n3 While the Rio Declaration refers to human health, its reference to life "in harmony with nature" also reflects a concern about the natural environment. n4 Since air pollution damages both human health and the environment, air quality implicates both of these concerns. n5

#### NEPA is key to environmental justice

**Johnson 97** – Professor of Law @ Mercer, (Stephen, “NEPA and SEPA's in the Quest for Environmental Justice,” Digital Commons @ LMU, Loyola of Los Angeles Law Review, Hein Online)

In many cases minority and low-income communities are disparately impacted by government actions because the communities do not have a voice in the decision-making process, and the communities lack the influence or political power of special interest groups that may support the government action. Broad and flexible public participation provisions, like those in NEPA, empower communities and provide them with a voice in the decisionmaking process. Broad and flexible public participation provisions also improve the government's decision-making process by enabling it to solicit information vital to that process. 36 Without such provisions, the federal government may reach decisions that disparately impact minority and low-income communities because the government fails to obtain input from the impacted communities. Arguably, the communities are the **most important** group of experts. Local individuals, who will be most directly affected by a government action, can provide unique information about the impacts of the proposed action that the government may be unable to obtain elsewhere. 37 This additional information enables the government to identify additional alternatives to the proposed action. As a result, it is **more likely** that the government can reach a decision that achieves its goal without disparately impacting minority or lowincome communities. 38

### Solvency---ISDEAA

#### CP accesses a stronger internal link to self-determination---the ISDEAA provides tribes the necessary tools and resources to run autonomous government programs---critical internal link to healthcare, law enforcement, education, housing, land control, and native resource control---the only problem is that it’s underfunded in the status quo. CP’s sufficient to solve for native growth and living conditions which means it solves the terminal impact to self-determination.

#### CP solves the cornerstone of self-d – single most important thing for self-d according to native groups

National Congress of American Indians, 2012, “Contract Support,” http://www.ncai.org/policy-issues/tribal-governance/budget-and-approprations/contract-support

The Indian Self-Determination Act represents the cornerstone of this nation’s federal policy toward tribes for more than one quarter of a century. Under the Indian Self-Determination Act the United States enters into inter-governmental contracts with Tribes under which Tribes administer federal trust programs, either through contracts or self-governance compacts, for the benefit of tribal members. In amending the 1975 Act Congress in 1988 observed that the single greatest impediment to successful implementation of the Indian Self-Determination Policy was the consistent failure of the Bureau of Indian Affairs and of the Indian Health Service to pay full fixed contract support costs associated with the administration of transferred programs. Congress recognized that the failure of the BIA and IHS to pay full fixed contract support costs has often led to reductions in programs, amounting to partial termination of the federal government’s trust responsibility. Historically contract support cost shortfalls have penalized Tribes in the exercise of their self-determination rights under the law. Contract support costs are the key to self-determination for tribes—these funds ensure that tribes have the resources that any contractor would require to successfully manage decentralized programs. Tribal leaders across Indian Country have repeatedly emphasized the importance of fully funding contract support costs.

#### Biggest internal link to the aff

Hobbs Straus Dean & Walker, law firm, 2012, “Contract Support Cost,” http://www.hsdwlaw.com/contract-support-cost

One of the biggest obstacles to tribal self-determination and self-governance has been the underfunding of “contract support costs” by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). The Indian Self-Determination and Education Act (ISDEAA) requires full funding of these administrative and overhead costs, yet Congress has consistently failed to provide sufficient funds. Without this funding tribes may be required to reduce services or to go without essential administrative activities.

### Solvency---Gtown Stuff

**The next plan of the counterplan specifically solves**

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

Judith V. Royster 12, Co-Director – Native American Law Center @ University of Tulsa, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91

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

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

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

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

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

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

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

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

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

VII. Conclusion

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

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

#### Redefining the IMDA spurs renewable power development by circumventing TERAs

Judith V. Royster 12, Co-Director – Native American Law Center @ University of Tulsa, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91

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

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

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

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

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

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

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

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

#### The CP shifts the NEPA review process to explicitly prioritize tribal decisions---solves the entire case

Judith V. Royster 8, Co-Director – Native American Law Center @ University of Tulsa, ‘8, 12 Lewis & Clark L. Rev. 1065

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

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

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

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

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

#### IMDA empirically solves resource development

Royster 12, Co-Director – Native American Law Center @ University of Tulsa, ’12 (Judith V., “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91)

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

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

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

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

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

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

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

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

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

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

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

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

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

### 2NC---Link Wall

#### The plan undermines the credibility of NEPA---the 1NC Jensen and Caldwell evidence says failure to conduct environmental impact assessments (the core mandate of NEPA) on all government projects undermines perception of US commitment to the law and environmental protection in general---spills over internationally and undermines political will for enforcement.

#### Continued categorical exclusions collapse the credibility of NEPA – retraction key to solve

Green Group 8 Coalition of 30 Environmental groups, Transition to Green: Environmental Trasnition Recommendation for the Obama Administration, Group Includes: American Rivers - Center For International Environmental Law- Clean Water Action- Defenders Of Wildlife - Earthjustice - Environment America - Environmental Defense Fund - Friends Of The Earth- Greenpeace - Izaak Walton League - League Of Conservation Voters -National Audubon Society - National Parks Conservation Association -National Tribal Environmental Council - National Wildlife Federation- Native American Rights Fund - Natural Resources Defense Council - Oceana -Ocean Conservancy - Pew Environment Group -Physicians For Social Responsibility - Population Connection -Population Action International -Rails-To-Trails Conservancy - Sierra Club - The Wilderness Society -The Trust For Public Land - Union Of Concerned Scientists -World Wildlife Fund, http://otrans.3cdn.net/ba9c868ec4fe74f1b8\_2pm62vhlb.pdf

Since 1970, the National Environmental Policy Act (“NEPA”) has required federal agencies to assess the environmental effects of their proposed actions and provide the public a **meaningful opportunity** to participate in agency decision making. The proper application of NEPA ensures that agencies make well-informed decisions that are supported by a robust consideration of the environmental effects of both the proposed action and alternatives to that action, the cumulative effects of the proposed action and its alternatives, and concerns raised by the public. The past eight years have witnessed an assault on NEPA that has eroded the application of the law to the point where major federal actions with significant environmental effects are taken **without any environmental analysis**. First, some agencies have improperly shifted the application of NEPA to later stages of decision making. CEQ regulations state that agencies should integrate the NEPA process at the earliest time possible; the regulations also expressly state that the adoption of “formal plans” is major federal action subject to NEPA. However, agencies have not heeded this mandate, with one agency (the Forest Service) going as far as seeking to exempt planning documents entirely from NEPA analysis. By misconstruing NEPA to mean that an agency does not have to conduct a NEPA analysis until narrow, site-specific actions are taken, agencies have effectively exempted themselves from NEPA’s provisions at the decision stage. Moreover, some agencies fail to apply NEPA until after they have entered binding contracts that create a financial incentive for the agency to go forward with an action regardless of its environmental impacts. Second, agencies have improperly expanded the use of **categorical exclusions** (CEs) to exempt categories of activities that may have significant environmental effects from environmental review. A categorical exclusion is “a category of actions which do not individually or cumulatively have a significant effect on the human environment”, and therefore do not require preparation of environmental impact statement or environmental assessment. CEs are approved through an agency’s NEPA implementing procedures or, in one case, through legislation. If extraordinary circumstances exist that may cause the proposed action to have a significant effect on the environment, that action cannot be categorically excluded from NEPA analysis. When used appropriately, CEs can save agencies time and resources, and avoid duplicative analysis for actions that will not have a significant effect on the environment. However, when there are substantive questions about whether an action’s impacts are significant, the public deserves the opportunity to be part of the process for evaluating potential impacts. Over the past eight years, agencies and Congress have expanded the approval and application of CEs. No longer are CEs applied to only discrete actions that do not have a significant environmental effect; instead, **CEs have been expanded** to include broad categories of actions that should receive a detailed look by the agencies and the public because these actions may have significant direct or cumulative impacts on the environment. Also, some agencies have failed to provide for extraordinary circumstances that would limit the application of CEs to environmentally insignificant actions. Thus, potentially significant actions are approved with minimal to no environmental review or public input. Reinforcing CEQ’s Leadership Role in the CE Process On September 19, 2006, CEQ published draft guidance designed to aid agencies in the establishment, revision, and use of CEs. This guidance has not been finalized. The next Administration should issue final guidance that will reinforce CEQ’s leadership role in the CE process and reflect the changes suggested in comments submitted jointly by over 100 local and national environmental organizations.1 Specifically, the final guidance should, inter alia, (1) require agencies to consult with CEQ early in the drafting of the proposed CE and at minimum before the proposed CE is published in the Federal Register, (2) require agencies to provide CEQ with a comprehensive administrative record supporting the new or revised CE, (3) require that agencies make information supporting CEs available to the public, and (4) instruct agencies to avoid establishing CEs for activities likely to generate public opposition regarding effects on the human environment. Responsible Official: CEQ Chair Review of CEs that raise significant concerns The next Administration should carefully review the CEs that raise significant concerns, and retract those that include actions that may individually or cumulatively have a significant effect on the environment, thus **requiring environmental review**.

#### The plan’s exemptions from the EIS process undermine the credibility of NEPA and the offshore wind itself---turns case and leads to global war

**Purvis 3** –Nonresident Senior Fellow in Foreign Policy at the Brookings Institute (Nigel, “Greening U.S. Foreign Aid through the Millennium Challenge Account” Brookings Institute, June, http://www.brookings.edu/research/papers/2003/06/energy-purvis)

Third, the global environment affects the U.S. economy. Dealing with largely preventable threats posed by foreign invasive species, such as the super-weed kudzu, costs the U.S. economy several hundred million dollars a year. Dealing with pollution along the U.S.-Mexico border is also costly. In contrast, encouraging other countries to fight environmental ills helps promote U.S. exports as American firms produce some of the most advanced environmentally friendly technology products. Fourth, **avoiding international environmental tensions, such as regional conflicts** over scarce water in the Middle East and Africa, **can contribute to regional stability** and enhance our security interests. Finally, nature also has an important independent value for most Americans, who value it the way they value freedom—for its own sake. Human welfare and happiness depend on many nonmonetary intangibles, including a clean environment. Sustainable Development The strong U.S. interest in global environmental protection has meant that U.S. and international development efforts have been organized for more than a decade around the principle of 'sustainable development,' not merely economic growth. While the concept can be difficult to apply in practice and has stirred partisan debate at home, it means roughly meeting the needs of the present generations without compromising the needs of future generations. Because progress against poverty must be sustainable, economic development must be environmentally sustainable. To avoid long-term or irreversible environmental damage, economic growth and environmental protection must be pursued simultaneously. This concept has been enshrined in international thinking on development since the 1992 Earth Summit in Rio de Janeiro. The recent United Nations Millennium Development Goals, an ambitious set of anti-poverty objectives, highlight the centrality of sustainable development and include an extensive set of environmental benchmarks. Despite the fact that President Bush's MCA announcement came on the eve of a major international gathering in Monterrey, Mexico, dedicated to advancing those goals, the administration?s proposal neither acknowledges sustainable development nor the importance of environmental progress. The international consensus around the goal of sustainable development means that developing countries would welcome environmental aid. They lag behind industrialized nations in the adoption of modern energy technologies and are eager to close the gap. Many poor nations have created national parks but lack the capacity to keep away illegal squatters, miners, farmers, poachers, and loggers. Encouraging more action on issues affecting poverty and the environment was the central theme of the World Summit on Sustainable Development last year in Johannesburg, South Africa. The signal from the international community could not be clearer: sustainable development, including its environmental dimension, is the global priority. The international emphasis placed on environmental protection is primarily a **result of U.S. leadership.** The longstanding, bipartisan foreign policy of the United States maintains that economic growth and environmental protection must proceed in tandem. Not only does the United States pursue international environmental protection directly through treaties, trade negotiations, and foreign assistance, but it ensures that its commercial objectives do not produce unintended ecological consequences. Moreover, U.S. policymakers have demonstrated, through domestic policies, that sustained progress on the environment actually contributes to prosperity. For example, air and water have become substantially cleaner over the past two decades, even as the United States has led the developed world in economic growth. Reorienting the MCA Soon Congress will take up the president's MCA proposal with a view to enacting initial authorizing legislation that will define the purpose, scope, and modalities of this new U.S. approach to development. Lawmakers and the administration should use this opportunity to ensure that the MCA builds on U.S. and international sustainable development efforts. In practical terms, this will require the following changes to the administration's initial MCA proposal: Environmental Mandate The central objective of the MCA should be promoting sustainable development rather than economic growth alone. Not only would this bring the MCA in line with widely accepted development policy, but it also would make the MCA consistent with the goals of existing U.S. foreign affairs and development agencies. The State Department, the U.S. Agency for International Development (USAID), the Overseas Private Investment Corporation (OPIC), and the Export-Import Bank of the United States, for example, have explicit environmental and sustainable development statutory mandates. To help build a culture that values environmental protection, the MCA?s implementing agency should have a statutorily established environmental advisory committee for its first two years of operation. The advisory committee would help the agency establish responsible environmental policies and procedures. Environmental Safeguards The MCA's implementing agency should be required to adopt an extensive set of procedural safeguards to ensure MCA-funded projects are environmentally sensible. It should screen projects for environmental risks and disqualify categorically certain types of environmentally damaging or socially disruptive projects, such as large-scale dams that would forcibly displace thousands of people. The new agency should conduct technical assessments of the likely environmental effects of grant proposals. The MCA program would benefit if the agency monitored its overall environmental track record and prepared annual reports on the long-term environmental consequences of its grants. While the MCA should encourage developing countries to help prepare this analysis and follow similar procedures, the MCA should be responsible for the completeness and accuracy of environmental assessments. Environmental safeguards are a well-established part of U.S. development policy. Since 1979, Executive Order 12114 has required U.S. agencies to assess the environmental effects abroad of "major federal action." Because of the executive order's limited scope, Congress has in recent years required that existing U.S. development agencies follow additional strict environmental assessment and reporting procedures. Almost all U.S. international agencies (including USAID, the EX-IM bank, and OPIC) must screen projects for environmental sensitivity, conduct rigorous assessments of possible environmental consequences, and monitor environmental results. Executive Orders also extend similar requirements to some other U.S. commercial agencies, such as the U.S. Trade Representative. These assessments are performed by the U.S. agencies themselves based in part on information submitted by recipient nations, and they include opportunities for public comment. Importantly, both the environmental and business communities support these procedures. While some environmental organizations believe U.S. environmental assessments should be strengthened, they appreciate that these procedures make government decisions more transparent and participatory. The business community has found that government-sponsored **environmental reviews** can be commercially timely and **add legitimacy to** approved **projects, which helps win public acceptance.** Like existing environmental review processes in OPIC and elsewhere, great attention should be paid to making the MCA?s environmental screening and assessment procedures as simple and streamlined as possible. Given the success of past efforts, this would not be overly difficult. Failing to require the MCA's implementing agency to adopt a rigorous environmental assessment policy not only would depart from general U.S. practice but **it would** also **undermine** longstanding, bipartisan **efforts** by the United States **to convince other countries** and multilateral institutions **to conduct their own environmental assessments.** The United States has led global efforts to strengthen the World Bank Group's already extensive environmental assessment procedures. It has also for years urged industrialized countries to require their export credit agencies to adopt environmental criteria similar to those already used by OPIC and the EX-IM bank. As early as 1992, for example, the United States successfully negotiated a common donor statement of the importance of assessing the environmental impact of foreign assistance programs. Allowing U.S. foreign aid to be blind to the environment now would undercut the progress we have made internationally to coordinate donor efforts and ensure a level international playing field for U.S. companies.

#### The plan undermines the integrity of the NEPA process

Karkkainen 4– Professor of Law @ U Minnesota [Bradley C. Karkkainen, Prof. of Law @ Univ of Minnesota, 12 N.Y.U. Envtl. L.J. 333, Whither NEPA?, Lexis]

Yet NEPA's mythic status, like that of the Great Oz, [n6](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n6) rests largely on the power of illusion. Pull back the curtain and NEPA stands revealed as just another statute, subject to repeal or revision at the will of Congress. Like other statutes, NEPA is also vulnerable to administrative reinterpretation - a vulnerability exacerbated in NEPA's case by a statutory text that is far from self-executing. NEPA's central provisions are framed in lofty generalities, [n7](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n7) leaving much discretion to the Council on Environmental Quality (CEQ), [n8](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n8) the federal courts, [n9](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n9) and federal agencies to translate its broad mandates into specific operational requirements. [n10](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n10) Although CEQ's relatively detailed regulations have done [\*335] much to constrain and regularize NEPA practice, [n11](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n11) these regulations, too, hang by an unusually slender legal thread: they are made binding on federal agencies not by congressional delegation of rulemaking authority, but by a presidential executive order instructing federal agencies to follow CEQ's rules. [n12](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n12) Thus, in principle, CEQ regulations could be revoked or revised in whole or in part by a countermanding executive order - an action that can be taken simply by the stroke of the presidential pen, without notice and comment and, in all likelihood, without judicial review. [n13](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n13) As a legal matter, then, NEPA is subject to [\*336] administrative reinterpretation on a potentially far more sweeping scale than more specific statutes that expressly delegate authority to agencies in narrower and more qualified terms. Considering that NEPA rests upon such a shaky legal foundation, it is remarkable how stable the structure has remained over time. Congresses and presidents have come and gone, some of them environmentalists and others more skeptical of environmentalism's aims and methods. Yet NEPA endures - never significantly amended, [n14](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n14) never drastically modified by administrative reinterpretation, a comfortable old shoe of a statute, wearing well the passage of time. Now, for the first time in a generation, NEPA is at a crossroads. [n15](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n15) Long-simmering dissatisfaction among agency officials and resource extraction industries has boiled over. Efforts to revise NEPA practice are proceeding on several fronts. In September, 2003, a CEQ-convened NEPA Task Force issued a detailed report, entitled Modernizing NEPA Implementation, which advocated a series of NEPA "reforms." [n16](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n16) Some of the Task Force recommendations appear uncontroversial. [n17](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n17) Others are too vaguely [\*337] stated at present to evaluate or put into operation.[n18](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n18) Some, however, represent significant and potentially far-reaching departures from established NEPA practice. [n19](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n19) On a separate track, leading administration officials and members of Congress are seeking streamlined NEPA procedures in connection with President Bush's "Healthy Forests Initiative." [n20](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n20) This program is intended to accelerate "forest thinning" and "fuels reduction" - euphemisms for logging - in federally owned forests said to pose a high risk of fire. [n21](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n21) NEPA's analytical requirements are blamed for slowing the pace of these forest management initiatives. [n22](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n22) In addition to these White House initiatives, a number of agencies have undertaken significant revisions of their own agency-specific NEPA compliance procedures. [n23](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n23) While it is too [\*338] early as of this writing to predict what package of NEPA revisions, if any, will emerge from the current ferment, it is timely to examine the general direction of changes now being discussed. This Article concludes that NEPA does need significant restructuring to make it a more effective tool in environmental management. But the general thrust of the proposals now being circulated in Washington is, in the author's judgment, misguided. NEPA has some critical shortcomings, but not because it demands too much information of federal agencies, as the present administration contends. [n24](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n24) Instead, NEPA is falling short because it demands the wrong types of information at the wrong time. The administration's NEPA reform proposals do little to address this problem and would add new problems to the mix.I A View of NEPA's Effectiveness: Four Caricatures Observers hold divergent views on NEPA's effectiveness and its value as an environmental policy tool. As a baseline, we might describe one prevalent view as that of the "NEPA optimist." The optimist argues that NEPA is working reasonably well to achieve the objectives set out by Congress. By forcing agencies to confront information they otherwise might not have considered, the environmental impact assessment process as set out by NEPA [n25](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n25) leads straightforwardly to better informed, more rational, and [\*339] environmentally enlightened decision-making. [n26](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n26)At the same time, the optimist argues, NEPA-mandated procedures have the democracy-enhancing virtue of opening the policy process to greater public scrutiny and public participation, thus enhancing transparency and democratic accountability. [n27](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n27) The twin goals of better-informed decision-making and enhanced public oversight seem to have been the original public policy justifications for NEPA, [n28](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n28) and the Act's most ardent defenders insist it has largely succeeded on both fronts. [n29](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n29) The optimist's rosy assessment can be distinguished from the darker, more cynical view of the "NEPA monkey wrencher." [n30](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n30) The monkey wrencher is often critical of the quality of the information generated by environmental impact assessments and skeptical that agencies compelled to observe the rituals of NEPA procedure are actually influenced by the information thus generated. The monkey wrencher nonetheless places a high value on NEPA because it affords extraordinary opportunities to throw up procedural roadblocks that may delay or kill projects the monkey wrencher opposes. A full-scale environmental impact [\*340] statement (EIS), in particular, is usually costly and time-consuming to produce.[n31](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n31) NEPA litigation - either to decide whether an EIS is required [n32](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n32) or to determine its adequacy once it is produced - adds further costs and delays. Fear of judicial review pushes agencies toward ever-lengthier and more elaborate EISs, responding to all major comments received in the public notice and comment period. [n33](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n33) NEPA thus becomes a highly effective tool that environmental NGOs and others can use to raise the financial and political costs of projects they oppose and stretch out decisions over an extended time frame, giving time to rally political opposition. In some cases these delays and associated financial and political costs may be enough to derail the project entirely. [n34](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n34) In other cases, their ability to erect procedural obstacles may give project opponents leverage in the larger political bargaining that surrounds the decision, which they may use to force desired modifications in project design. When used in this way, NEPA is largely a negative weapon - an obstructionist tool. Its use is predicated upon an understanding [\*341] that the EIS process is by its very nature so inefficient and cumbersome that it may be used to thwart or constrain agency decision-making through selective, tactical application of extreme transaction costs. Environmental NGOs often deploy NEPA in this way, producing environmentally beneficial outcomes in particular cases; some NGOs justify NEPA's continued utility on these grounds. [n35](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n35) In the aggregate, however, a decision-making process that depends upon high transaction costs and tactical obstructionism looks like a sub-optimal way to run a government. As to particular applications, there is no way to sort the good cases from the bad; anyone with an obstructionist agenda, a skilled lawyer, and constitutional standing can wield the procedural monkey wrench to try to block or delay government projects, making NEPA (and state-level "little NEPAs" [n36](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n36)) a favorite tool of NIMBY-ism [n37](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n37) as well as environmentalism. A third position, roughly reflecting the longstanding view of some agency officials and many in the extractive industries operating on federal lands, is that of the "NEPA skeptic." This view is roughly the flip-side of the monkey wrencher's. For all the reasons environmental NGOs love NEPA, agency managers and affected industry parties tend to hate it. They see it as a tool of unprincipled obstructionism, a roadblock to progress, and a pointless and burdensome paperwork exercise that leads to delays and adds to project costs. [n38](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n38) Some NEPA skeptics also see its [\*342] obstructionist potential as a fundamentally undemocratic device that gives "special interest lobbies" (the monkey wrenchers) undue influence over governmental decision-making. [n39](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n39) The skeptics' underlying analysis of NEPA's operative mechanisms is in important respects quite similar to that of the monkey wrenchers, yet, as the parties who bear the costs of delay, they are on the other side of the fence with respect to the desirability of tactical obstructionism. A fourth view, prevalent in the legal academic literature, is that of the "legalist critic." The legalist's view of NEPA is also generally negative, but her complaint here is not that NEPA is too robust, but rather that it is too anemic. Legalists charge that although NEPA was intended to have substantive as well as procedural requirements, the statute has been eviscerated by the courts and especially by the Supreme Court - a forum in which environmental NGOs have never won a NEPA case. The Court held that NEPA's substantive requirements [n40](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n40) were merely precatory and not judicially enforceable; NEPA's requirements, the Court said, are "essentially procedural." [n41](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n41) Mandatory procedure without substantive legal standards is held in low regard [\*343] by the legalist critics. [n42](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n42) In addition, the Court has eliminated even the more detailed procedures that lower courts had begun to require. [n43](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n43) The effect of these decisions, in the view of the legalist critic, is to expand the range of agency discretion and weaken NEPA's influence. This brief inventory does not exhaust the range of views concerning NEPA's effectiveness. Nor are the four positions caricatured here mutually exclusive. Some environmental NGOs, for example, may simultaneously hold optimist and monkey wrencher views, valuing NEPA both because it produces better-informed and more environmentally enlightened agency decisions, and because it allows them to intervene to block especially undesirable projects. Other monkey wrenchers may share the legalist critic's view that judicially enforceable substantive standards would make for a stronger and more effective NEPA, but in the meantime they are willing to use the procedural tools at their disposal. Precisely because they think that procedure without substance is likely to be ineffective, some legalist critics may share the skeptic's view that observance of NEPA's procedural formalities is dilatory, costly, and a waste of scarce agency resources. Nor are these various positions always held in such stark terms as I pose them here; actual views extend across a continuum of intensity. Still, the caricatures depicted here roughly capture the principal poles in the debate. II NEPA's Effectiveness: An Alternative View In a recent article, I came down somewhere between NEPA's [\*344] enthusiasts and its critics, but with a twist. [n44](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n44) I argued that NEPA has accomplished a good deal - certainly more than its most vociferous critics acknowledge. These results have not come about, however, through the mechanisms usually identified by NEPA's supporters. Instead, progress has been achieved mainly through a back-handed and unintentional incentive mechanism, one that is poorly understood and deserves a good deal more scholarly attention than it has received to date. NEPA demands of the reporting agency a great deal of information all at once: a one-time-only, purely ex ante, panoptic assessment of all the environmental consequences of a proposed action; all reasonably foreseeable alternatives to that action; and any reasonably foreseeable mitigation measures necessary to reduce the adverse environmental impacts. [n45](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n45) That's quite a mouthful even to say, but stating it that way suggests the enormous burden that such an open-ended information production requirement places on the agency. Another critical feature of NEPA is that its environmental impact assessment requirements are purely predictive in character. [n46](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n46) Simply put, NEPA asks reporting agencies to tell us everything that's going to happen. It does not ask for subsequent verification that the agency's predictions were accurate. The emphasis is not on actual impacts, but on predicted impacts. This may seem puzzling, but NEPA - written in the latter stages of an era when we had great confidence in "comprehensive bureaucratic rationality" [n47](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n47) - apparently assumes that expert bureaucrats armed with sharp pencils and green eyeshades will have the capacity to predict, accurately and comprehensively, how things will turn out, given a particular course of action and taking all relevant factors into account. We have subsequently learned that the world is more complicated than that. Ecological systems are complex, dynamic, and non-linear, consisting of numerous mutually interdependent [\*345] components and processes, interacting in complex and hard-to-calculate ways, and exhibiting numerous threshold effects and high levels of "inherent stochasticity." [n48](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n48) Our scientific understanding of basic ecosystem components and processes is riddled with gaps and uncertainties, and even the most thoroughly studied and best understood ecosystems tend to produce surprises - sometimes quite large surprises - over time. [n49](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n49) This background of ecological complexity and interconnectedness contributes to the burdensomeness of the EIS requirement. Comprehensive assessments of environmental impacts are costly and time-consuming, as the monkey wrenchers well recognize; it is precisely for this reason that the EIS has become the favorite tool of those seeking to kill or delay projects. [n50](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n50) The background of ecological complexity also creates opportunities for monkey wrenchers to challenge the substantive adequacy of the EISs that are produced, since they can often find some impact, alternative, or mitigation measure that the agency has failed to consider. [n51](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n51) This, predictably, drives agencies to try to [\*346] write even more comprehensive "kitchen sink" EISs so as to preempt the possibility of judicial reversal, further adding to the length of the process, the size of the EIS document, and the costs of EIS production. [n52](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n52) This leads to the further perverse consequence that EISs tend to be quite uninformative. No one can wade through hundreds or thousands of pages of mind-numbing detail. [n53](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n53) Few people inside or outside the agency actually read the EIS, and those who attempt to do so may find it difficult to separate the good information from the junk. Contrary to conventional wisdom, more information is not always better. Over-inclusiveness may dilute the overall quality of information, as good information is swamped by bad. [n54](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n54) The EIS itself, then, turns out not to be a particularly good device for informing anyone - not key agency decision-makers, and certainly not the public. Due to the time it takes to produce, the EIS will also typically arrive too late in the process to inform and influence the agency's decision. [n55](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n55) Typically, agencies will commit resources to producing an EIS only if they have already determined that it is unavoidable; that is, if the project is so environmentally damaging than an EIS will be required, but the agency calculates that project benefits outweigh the costs and delay added by EIS production. [n56](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n56)Consequently, we tend to get EISs only for the most environmentally harmful projects, after the agency has already decided (though not as a formal legal matter) to proceed despite the adverse environmental consequences. As an unintended corollary, agencies have a strong incentive to avoid EIS production in the first instance if at all possible. For the vast majority of projects, avoiding EIS production turns out to [\*347] be reasonably easy. NEPA requires that an agency produce an EIS only if its proposed action "significantly affects the quality of the human environment." [n57](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n57) The term "significantly affects" is not defined in the statute or in the CEQ regulations, [n58](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n58) leaving that judgment to agency discretion - albeit policed by the possibility of NGO lawsuits and judicial intervention. [n59](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n59) Most NEPA compliance effort these days goes not into producing full-scale EISs, but into producing slimmed-down documents called environmental assessments (EAs), designed to produce just enough information to justify a "Finding of No Significant Impact" (FONSI) to get the agency off the hook. [n60](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n60) The numbers tell the story: each year federal agencies produce about 50,000 EAs leading to FONSIs. [n61](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n61) In contrast, across the [\*348] entire federal government only about 500 EISs are produced annually, [n62](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n62) and since every Final EIS must be preceded by a Draft EIS (and may be followed by a Supplemental EIS), this figure really represents approximately 250 federal actions per year that trigger the EIS production process - a vanishingly small number given the scale and scope of federal operations. [n63](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n63) Many of the 50,000 FONSIs are so-called "mitigated FONSIs," in which the proposed project is redefined at an early stage to include some mitigation measures that, if implemented, will bring the expected environmental impacts below the EIS-triggering threshold of "significant." [n64](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n64)To enthusiasts of the EIS process, the mitigated FONSI looks like an unprincipled evasion of NEPA's core requirement. [n65](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n65) If the agency starts out expecting the project to have "significant" impacts, a full-scale EIS is ordinarily required to compel the agency to examine environmental impacts, reasonable alternatives, and the full range of mitigation measures, so that a "fully informed" agency can reassess its alternatives and mitigation options in light of the information thus revealed. With a mitigated FONSI, the agency takes a procedural shortcut, short-circuiting the prescribed decision-making path by choosing mitigation measures before the results of a full EIS analysis are in, and on that basis redefining the project so it is no longer expected to have "significant effects." To the mitigated FONSI's critics, this looks like cheating. [n66](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n66) I say, "Bravo!" to the use of mitigated FONSIs - at least, up to a point. The widespread use of the mitigated FONSI is the best evidence we have that NEPA is actually altering agency decision-making and improving environmental performance. Agencies are redefining projects to include mitigation measures that reduce adverse environmental impacts below the "significant" threshold. [\*349] Moreover, through use of the mitigated FONSI, they are presumably achieving these environmentally beneficial results at a lower cost and in less time than would be required if they went through the full-blown EIS process. [n67](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n67) That is a positive outcome, not a negative one. It is evidence that NEPA works. Of course, it may not be working in quite the way it was intended to work. Rather than serving as the vehicle for fully informed agency decision-making, the EIS operates as a penalty-default rule, creating an incentive for agencies to avoid its onerous requirements by upgrading environmental standards at an earlier stage of project design. III A Smarter NEPA? I said "Bravo!" to the mitigated FONSI, but only up to a point. The missing elements here are verification, transparency, and accountability - shortcomings in the entire NEPA system, but especially in the netherworld of FONSIs and mitigated FONSIs, where most NEPA compliance efforts occur outside the glare of public scrutiny. [n68](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n68) Environmental impact assessment should be reoriented toward monitoring and reporting on actual outcomes, rather than relying exclusively on ex ante predictions. We should begin by recognizing that agency experts do not have perfect information, and consequently we cannot trust that their predictions will turn out to be accurate. If we want to ensure that mitigation measures are achieving environmentally beneficial results, at some point we need to see what has actually happened and to know whether the predictions were correct. Without question, there is value in a pre-project analytical exercise that generates science-based predictions concerning the expected environmental consequences of a proposed action. [\*350] However, because ecological processes are complex and typically less than fully understood, such predictions are often highly uncertain, as are expectations concerning the effectiveness of mitigation measures that might be included in the project. Yet no follow-up monitoring or verification of the accuracy of pre-project predictions is required once the project is in place. [n69](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n69) NEPA thus assumes an unattainable level of clairvoyance at the pre-project stage, and naively relies on the uncertain information thus generated. My first proposal is simply that we require follow-up monitoring to verify the accuracy of any predictions we can identify at the pre-project analytical stage as resting on uncertain foundations. [n70](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n70) Follow-up monitoring would produce multiple benefits. It would provide baseline data that should allow us to improve scientific understanding of ecological processes and human impacts, and thereby improve our predictive capacity over time. [n71](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n71) In addition, it would create the possibility of post-project adjustments in mitigation measures, enhancing their prospects for success. [n72](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n72) Finally, it would give the political branches and the public a better opportunity to hold agencies accountable for actual, as opposed to merely predicted, environmental performance. Second, in recognition of the uncertainty embedded in the NEPA analytical process, I have urged the creation of a new category of NEPA disposition, which I have dubbed the "Contingent FONSI." [n73](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n73) To the extent that an agency's FONSI rests on uncertain predictions about the environmental impacts of the proposed action or the effectiveness of included mitigation measures, we should treat that finding as contingent, pending subsequent verification or reversal on the basis of post-project monitoring. So, for example, if the agency reaches a Finding of No Significant Impact predicated upon the expected (but uncertain) effectiveness of mitigation measures, and follow-up [\*351] monitoring later reveals that the mitigation is less effective than anticipated, the contingent FONSI would be reversed, and the NEPA analytical process would be re-triggered. To avoid a full-scale EIS at that point, the agency would need to devise additional mitigation measures, coupled with further monitoring, to justify a "Round Two" FONSI. Thus, we would build into NEPA an ongoing, dynamic process of learning and adjustment of mitigation plans in light of actual revealed impacts. My third NEPA reform proposal, which I call "Adaptive Mitigation," is closely related to the first two. [n74](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n74) Currently, mitigation plans are typically fixed and inflexible. The agency simply adds a mitigation component to its project proposal, relying on the expected effectiveness of the mitigation measures to justify a FONSI (a so-called "mitigated FONSI"). [n75](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n75) Since this is all that NEPA requires, the agency then proceeds full speed ahead with the project as mitigated, more or less blind to actual environmental outcomes. Under Adaptive Mitigation, agencies would be authorized and encouraged to design more responsive mitigation plans that provide for a range of alternative mitigation measures and subsequent upward or downward adjustments in the scale and intensity of mitigation efforts, to be triggered in response to information produced by follow-up monitoring. This flexible approach to mitigation should have better prospects of success than fixed mitigation measures and, where appropriate, could provide an important part of the justification for a FONSI. IV The CEQ Task Force Report How do the Administration's NEPA Task Force proposals compare with this diagnosis of NEPA's shortcomings? The Task Force report is short on specifics, but it recommends several broad categories of changes. Two of these appear to be relatively [\*352] uncontroversial, at least as presently stated. First, without offering details, the Task Force urges that agencies improve their use of information technologies in the NEPA process. [n76](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n76) Second, in similarly imprecise terms, the Task Force urges enhanced interagency, intergovernmental, and public-private collaboration in the environmental assessment process. [n77](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n77) This Article will not address these recommendations, which at least on a facial level appear reasonable, necessary, and timely - although the goals may be harder to implement than they are to state at this level of generality. Other Task Force recommendations, however, are more controversial. A. Categorical Exclusions Current CEQ regulations permit agencies to define "Categorical Exclusions," entire classes of agency action that are deemed exempt from NEPA's EA and EIS requirements because they "do not individually or cumulatively have a significant effect on the human environment and ... have been found to have no such effect." [n78](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n78) As part of its overall NEPA "streamlining" agenda, the Task Force proposes to "improve and modernize" the use of Categorical Exclusions, [n79](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n79) but there can be little doubt that what the Task Force really has in mind is to expand their use. [n80](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n80) The use of Categorical Exclusions is not problematic when the excluded category is routine and has only a trivial environmental impact. [n81](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154" \l "n81) That the Task Force should be urging [\*353] expanded use of Categorical Exclusions at this time is more troubling, however. Categorical Exclusions have been authorized for a very long time under CEQ's NEPA regulations. [n82](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n82) Their ready availability, coupled with agencies' understandable desire to avoid costly and potentially lengthy case-by-case environmental reviews, should cause us to expect that agencies would have already placed most categories of genuinely uncontroversial and de minimis actions under Categorical Exclusions. What, then, is to be gained by recommending their expanded use now? A clue may be found in one recent and highly controversial foray into expansion of Categorical Exclusions. In connection with the President's Healthy Forests Initiative, the Departments of Interior and Agriculture have promulgated new Categorical Exclusions for "hazardous fuels reduction activities" and post-fire rehabilitation projects, [n83](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n83) categories that extend to forest "thinning" (ostensibly to reduce fire risk). [n84](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n84) The soundness of these practices as a matter of public policy is hotly debated, with environmental NGOs contending that the Healthy Forests Initiative is motivated less by a genuine concern for fire prevention than by the desire to promote accelerated logging under the rhetorical smokescreen of fire safety. [n85](http://www.lexisnexis.com/us/lnacademic/frame.do?reloadEntirePage=true&rand=1266377014824&returnToKey=20_T8580742375&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.999787.363144154#n85) In no small measure, these public policy disputes revolve around competing claims about the environmental impacts of thinning and salvage logging. Against that background, creation of the new Categorical Exclusions appears to be a preemptive strike by the Administration, with the dual aim of accelerating the pace of forest thinning and salvage logging by eliminating environmental review and taking the underlying public policy disputes off the table by categorically declaring [\*354] environmental impact analysis off-limits. This arguably constitutes an abuse of the Categorical Exclusion concept, contrary to the spirit, if not the letter, of NEPA. Such moves will inevitably tend toward reducing the number and frequency of environmental reviews, subjecting large classes of governmental action to cursory categorical review framed at a high level of generality. In this way the fine-grained impacts of particular cases can be safely ignored and remaining uncertainties can be interred in a once-off, never-to-be reopened categorical inquiry. The general thrust of the Task Force proposal on Categorical Exclusions is diametrically opposed to my own earlier NEPA reform proposals, which generally aim at expanding and improving the quality of information produced in the environmental review process through expanded monitoring and post-project adjustment of mitigation factors. Additional Categorical Exclusions would also tend to reduce accountability and transparency in a NEPA process that is currently not transparent enough.

### AT: No Impact to Biodiversity

**More evidence**

**Science Daily 11** (Citing Prof Michel Loreau, PhD Ecologist, and Prof Michael Scherer-Lorenzen, PhD and Professor @ University of Freiburg, " Biodiversity Key to Earth's Life-Support Functions in a Changing World," Aug 11, http://www.sciencedaily.com/releases/2011/08/110811084513.htm)

ScienceDaily (Aug. 11, 2011) — The biological diversity of organisms on Earth is not just something we enjoy when taking a walk through a blossoming meadow in spring; it is also the basis for countless products and services provided by nature, including food, building materials, and medicines as well as the self-purifying qualities of water and protection against erosion. These so-called ecosystem services are what makes Earth inhabitable for humans. They are based on ecological processes, such as photosynthesis, the production of biomass, or nutrient cycles. Since biodiversity is on the decline, both on a global and a local scale, researchers are asking the question as to what role the diversity of organisms plays in maintaining these ecological processes and thus in providing the ecosystem's vital products and services. In an international research group led by Prof. Dr. Michel Loreau from Canada, ecologists from ten different universities and research institutes, including Prof. Dr. Michael Scherer-Lorenzen from the University of Freiburg, compiled findings from numerous biodiversity experiments and reanalyzed them. These experiments simulated the loss of plant species and attempted to determine the consequences for the functioning of ecosystems, most of them coming to the conclusion that a higher level of biodiversity is accompanied by an increase in ecosystem processes. However, the findings were always only valid for a certain combination of environmental conditions present at the locations at which the experiments were conducted and for a limited range of ecosystem processes. In a study published in the current issue of the journal Nature, the research group investigated the extent to which the positive effects of diversity still apply under changing environmental conditions and when a multitude of processes are taken into account. They found that 84 percent of the 147 plant species included in the experiments promoted ecological processes in at least one case. The more years, locations, ecosystem processes, and scenarios of global change -- such as global warming or land use intensity -- the experiments took into account, the more plant species were necessary to guarantee the functioning of the ecosystems. Moreover, other species were always necessary to keep the ecosystem processes running under the different combinations of influencing factors. These findings indicate that much more biodiversity is necessary to keep ecosystems functioning in a world that is changing ever faster. The protection of diversity is thus a crucial factor in maintaining Earth's life-support functions.

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## Politics

## Overview

#### Prolonged downturn diverts attention from other issues---compounds their effect on stability---means we don’t have to win collapse directly leads to war

Rothkopf 9 – David Rothkopf, Visiting Scholar at the Carnegie Endowment for International Peace, 3-11, 2009, “Security and the Financial Crisis,” Testimony Before the House Armed Services Committee, CQ Congressional Testimony, lexis

--Threats associated with opportunity costs of the current crisis. In other words if we are directing resources and attention to the current problem, we may be ignoring other important issues. In the case of the U.S., for example, this may be failing to bring our fiscal house in order or address the long- term debilitating costs of an inefficient health care system, or it may mean (as it may in many other countries) failing to devote sufficient attention to issues like global warming which in turn may **have devastating long-term consequences**. Similarly, funds for addressing issues like global poverty, development, or the containment of disease will dry up and the long-term consequences of an erosion of programs in these areas **may be prolonged poverty, stalled growth, a generation without education, and consequent impacts on stability**.

#### Causes global poverty --- multiple warrants

Nanto 9 Dick K. Nanto 2009, Coordinator Specialist in Industry and Trade, The Global Financial Crisis: Foreign and Trade Policy Effects, April 7 http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA497762&Location=U2&doc=GetTRDoc.pdf

In a February 2009 commentary, Dominique Strauss-Kahn, Managing Director of the IMF, noted that during the financial turmoil attention has been focused on the advanced and emerging-market economies that are most immediately affected, but, in his opinion, the impact on poor countries is far more severe. 83 He pointed out that weak global growth is shrinking export markets, and many commodity prices are plunging. The combination of tighter credit conditions in the advanced economies and dimmer economic prospects in low-income countries is reducing investment flows, while workers' remittances, which now eclipse aid as the largest financial flows to many low-income countries, also are falling. Even though the poorest countries in the world, many in sub-Saharan Africa, are less integrated into global capital markets than the advanced industrial nations or emerging economies in Eastern Europe, the global economic crisis is affecting standards of living and is expected to lead to higher levels of global poverty. Many argue that the impact on poverty also may be most felt in the large, middle-income countries such as China and India, the world’s two most populous nations, and not just in the least developed countries. Over the past two decades, the largest gains in raising people out of poverty have been made in these two countries. For several years China has averaged economic growth rates of 10% or higher, while India has grown at 8% or more per year. The World Bank estimates each one percentage point drop in world economic growth could trap another 20 million people in poverty. 84 In 2008, global growth was an estimated 2.5%. For 2009, growth is expected to drop by three percentage points or more.85 In February 2009, China reported that about 20 million of the nation’s 130 million migrant workers already had become unemployed.86 The impact of the global crisis is transmitted to the poorest countries through several channels. These include: • Declining exports. In Pakistan, for example, textile exports fell by 4.1% year-onyear in December 2008. The textile sector represents approximately two-thirds of Pakistan’s total export revenues. • Declining commodity prices. Because many of the poorest countries are heavily dependent on a few primary export commodities, rapid swings in commodity prices can wreak havoc on their domestic economy. Yemen, for example, announced in January that it would have to decrease public expenditures by 50% because of the financial crisis and the lower government revenues from its oil exports. • Migration and remittances. The combination of slow growth rates, job losses, and the rising cost of living in advanced countries has led to fewer economic migrants from developing countries and lower levels of remittances. This could have major effects in countries which provide large numbers of migrant workers, including Mexico, Guatemala, El Salvador, India, Bangladesh, and the Philippines. The volume of remittances soared over the past decade, but recent data show significant deceleration since the beginning of the current crisis, with Latin America and Caribbean the hardest hit. The Inter-American Development Bank calculates that remittances to the Latin American and Caribbean region declined by 1.7% between 2007 and 2008. • Lower levels of foreign assistance. Research from previous incidences of economic crisis suggests that foreign aid from developed to poor countries is likely to decrease. • Diminished capital flows. Although some progress has been made in developing capital markets in poor countries, they are still perceived as risky. Global credit has tightened across the world, especially among the developing countries. This has lead to a sharp contraction in capital flows to developing countries as well as restrictions on the availability of trade finance. The inability of developing country governments to raise money on international capital markets will likely have a sharp impact on government budgets, reducing the amount available for poverty reduction programs.

## AT: Link Turn

#### Their link turn evidence is terrible---not about the plan specifically, two lines long---Congress wants reform, not the same thing as categorical exclusions

#### Environmentalists backlash against the plan---that’s Miles---they like the existence of NEPA and its reviews

### Categorical Exclusions

#### Plan’s *massively* controversial---categorical exclusions are a political lightening rod

Till 6 Dustin is an associate at Marten Law. “CEQ Issues Proposed Guidance on NEPA Categorical Exclusions,” Oct 18, http://www.martenlaw.com/newsletter/20061018-nepa-exclusions

The White House Council on Environmental Quality (CEQ) recently released draft guidance to clarify and promote the use of categorical exclusions under the National Environmental Policy Act (NEPA).[1] 71 Fed. Reg. 54816 (Sept. 17, 2006). Often a lightning rod for controversy and a constant source of litigation, categorical exclusions allow agencies to exempt certain types of actions from NEPA’s environmental review requirements. According to CEQ, federal agencies have expressed both concern that categorical exclusions are too cumbersome to develop, and confusion over how to substantiate new categorical exclusions.[2] As part of its ongoing regulatory modernization process, CEQ hopes that its guidance will streamline review and encourage greater use of “appropriate categorical exclusions [to] promote[] the cost-effective use of agency NEPA related resources.”[3]¶ NEPA Categorical Exclusions¶ NEPA generally requires federal agencies to take a “hard look” at the environmental consequences of their proposed actions. Specifically, agencies must prepare an environmental impact statement (EIS) for any proposed major federal action that will significantly affect the human environment.[4] If an agency is uncertain whether its proposed action will have significant environmental impacts, it must prepare an environmental assessment (EA) to determine whether an EIS is necessary.[5] If the EA threshold determination concludes that an EIS is not required, the agency issues a Finding of No Significant Impact (FONSI).[6]¶ Not all proposed federal actions are subject to assessment in an EIS or EA. CEQ’s NEPA regulations allow agencies to “categorically exclude” from further review those actions that experience has indicated will not have significant environmental effects, individually or cumulatively.[7] Because preparing an EA and/or an EIS can be time consuming and expensive, CEQ has encouraged agencies to develop and refine categorical exclusions to promote efficiency and cost effectiveness.[8]¶ The use of categorical exclusions is often controversial. For example, the United States Forest Service’s recently established categorical exclusions for hazardous fuel reduction projects and post-fire timber salvage projects have proven litigious.[9] Some commentators contend that categorical exclusions are over-used and permit agencies to ignore the cumulative impacts of numerous small projects.[10] Government officials, on the other hand, argue that categorical exclusions do not weaken NEPA, and that streamlining the categorical exclusion process is part of a comprehensive regulatory reform process that began during the Carter administration.[11]

#### The plan links to politics but the counterplan doesn’t---exemptions from EIS cause massive backlash to the plan

Hutchinson and Bryan 96 – Ralph Hutchinson, & Mary Bryan, @ Oak Ridge Environmental Peace Alliance, The Continuing Assault: How the Department of Energy Avoids the National Environmental Policy Act, http://getsustainablenow.org/orepa/nepaorep.html

NEPA seeks to guarantee that environmental impacts are given full consideration in the decision-making processes of the federal government through public participation. NEPA envisions this decision-making process as a consultative process with regularly scheduled conversations between government officials and the general public each time an activity which might have an environmental impact is being considered by the government. NEPA requires that the public be involved in environmental studies for three reasons:  The public may have more information about the local environmental conditions than federal officials. For instance, the existence of caves, springs, sinkholes, or other unusual natural formations may not be readily apparent to federal officials. Having local residents who have tramped through, hunted over, lived or farmed on land in the past identify geologic peculiarities may save the government time and money. In other instances, the public may have information about past uses of land-for mining, for a waste disposal area, for burial of human remains-which federal officials would not be expected to know. Disclosure in a scoping hearing can significantly impact the eventual decisions about the proposed project.  The public may have suggestions and comments which contribute to a better decision. NEPA presumes that federal officials and their contractors do not exhaust the potential for good ideas; NEPA believes that two heads are better than one. By its very nature-requiring officials to thoroughly consider and respond to public comments-NEPA encourages the public to participate in creating the best possible decisions.  Public participation can streamline the decision-making process. The public is engaged early in the decision-making process through scoping hearings in an effort to elicit those issues which are of most concern to the public. NEPA then directs the agency to give primary consideration to these concerns. The law approaches efficiency in a very practical way-don't waste time on things that nobody thinks is a big deal and pay attention to the things people care about. When a federal agency fails to engage the public appropriately in a NEPA process it runs the real risk of making a decision that is not the best it could make. It is likely to be less efficient in its decision-making process. What's more, the final decision is less likely to enjoy the support of the public and, in the case of controversial projects, may therefore not receive the funding support necessary from Congress for the project to proceed.

## AT: Pounders

### Top of the Docket

#### THE 2AC CONCEDES that debt ceiling will pass now---they only read pounders but don’t explicitly dispute a compromise will happen--- they also CONCEDE PC is key---no new answers because block strategy is predicated on 2AC mistakes

#### Their pounders evidence doesn’t say these issues are being debated now or will cost capital---debt ceiling is top of the docket

#### It’s top of the docket and PC is key---it’s Obama’s SOLE FOCUS---that’s Feehry from the 1NC

#### Debt ceiling fight’s at the top of the docket---pushing domestic energy production saps Obama’s PC which is key to a deal

Richard McGregor 1-2, Financial Times, “Fiscal fights threaten US policy goals,” 1/2/13, http://www.ft.com/intl/cms/s/0/8f8ef804-5501-11e2-a628-00144feab49a.html?ftcamp=published\_links%2Frss%2Fworld%2Ffeed%2F%2Fproduct#axzz2GrdeyWrn

Moments after the fiscal cliff was averted, President Barack Obama strode to the White House podium to thank congressional leaders from both parties and remind them of other policy challenges ripe for bipartisan co-operation.¶ What followed was an ambitious list of second-term priorities: immigration reform, climate change, lifting domestic energy production, and gun control, on top of perhaps the most important issue, finding ways to lift the economy and incomes.¶ “It’s not just possible to do these things, it’s an obligation to ourselves and to future generations, and I look forward to working with every single member of Congress to meet this obligation in the new year,” he said.¶ The measured peace offering from Mr Obama to Republicans in Congress, however, will run up against a much more rancorous reality on Capitol Hill and promises to make any second-term gains painfully difficult.¶ The confrontation over the fiscal cliff has further undermined relations between Mr Obama and his most important negotiating partner in Congress, John Boehner, the Republican House speaker.¶ “I don’t think either of them regards the other as being able to deliver his own troops,” said William Galston, a former Clinton administration official, now at the Brookings Institution.¶ Within Congress, relations between the Democratic and Republican Senate leaders, Harry Reid and Mitch McConnell, two old warhorses who can usually find ways to do business, also foundered in the fiscal cliff talks.¶ In the short term, fiscal fights will dominate politics for months to come and threaten to crowd out serious consideration of other issues, with a large potential downside for the economy in 2013.¶ The fiscal cliff compromise alone will act as a drag on the economy, largely because of the end of the payroll tax holiday, which had added substantially to middle-class incomes, economists said.¶ “The economy needs a stimulus, but under the agreement, taxes will go up in 2013 relative to 2012,” said William Gale of the Tax Policy Center in Washington in a blog post.¶ “For most households, the payroll tax takes a far bigger bite than the income tax does, and the payroll tax cut therefore was a more effective stimulus than income tax cuts were.”¶ The forthcoming confrontations will probably have a similar impact, as Republicans feel they enter talks over raising the debt ceiling in the coming weeks playing a far stronger hand than they had in the fiscal cliff.¶ Under the fiscal cliff, taxes were going up no matter what Republicans did. The debt ceiling, however, cannot be lifted unless they vote for it.¶ Dave Camp, who chairs the congressional committee overseeing tax policy, said that House Republicans had not settled on a strategy for the debt ceiling but the central aim was to leverage it to cut spending further.¶ “Before we raise the debt limit we have to reduce spending,” Mr Camp said.¶ Many Republicans are less diplomatic in private and see the debt ceiling fight as a chance to get revenge both on the White House and the dealmakers within their own party for being forced into accepting a tax increase this week.¶ Of all the issues crowding Mr Obama’s agenda, immigration has the best hope of passing in some form, as the disastrous vote recorded by Republicans among minorities in 2012 gives them a huge incentive to address the issue.¶ But on everything else, with the Republicans remaining in control of the House, Mr Obama needs all the skills of cajoling, seducing and manipulating Congress that he has so far shown no signs of developing.¶ “I find it remarkable that the president apparently continues to believe that he will not have to deal with people that he does not agree with,” said Mr Galston. “A president who is not disdainful of the art of legislating can get things done.”¶ Forging a consensus on issues such as gun control and climate change, if the White House does take them on, will require Mr Obama to do more than just persuade some Republicans to support him.¶ Many Democrats are wary of such reforms or oppose them outright, and a second-term president with declining political capital will face an uphill battle to shift their views

#### Multiple issues pound the link

Rucker 1/5 (Philip, “Obama’s plan for gun control taking shape”, Associated Press, 2013, <http://www.dailyherald.com/article/20130105/news/701059819/>, CMR)

The gun-control push is just one part of an ambitious political agenda that Obama has pledged to pursue after his decisive reelection victory in November, including comprehensive immigration reform, climate-change legislationand long-term deficit reduction. Obama also faces a reshuffling of his Cabinet,and a looming debate over the nation's debt ceiling that will compete for his time and attention in the coming months.

### AT: Immigration

#### Debt ceiling’s before immigration and gun control

LA Times 12/31 Kathleen Hennessey and David Lauter. “Obama wins 'fiscal cliff' victory, but at high cost,” 2012, http://articles.latimes.com/2012/dec/31/nation/la-na-fiscal-cliff-analysis-20130101

The agreement to freeze income tax rates for most Americans while allowing them to rise for the wealthiest dealt only with the most pressing elements of the fiscal storm Congress and the president created last year. A newly elected Congress will begin work in a few days and immediately will need to start negotiating yet another deal. That next fight will be aimed at further reducing the long-term deficit and raising the debt ceiling before the government runs out of money to pay its bills — a deadline that will hit sometime in late February or March.¶ The persistent battle over spending, which already has consumed Washington for two years, threatens to block Obama's other major legislative priorities, including immigration reform and gun control.

### AT: Climate

#### No ev Obama is pushing a specific piece of legislation, he just supports the environment generally

## AT: No Impact

#### Answered above

## AT: Hagel

### 2NC---AT: Hagel Pounder

#### Hagel won’t be a fight---DC press analysis doesn’t reflect reality

Josh Marshall 1-6, editor of Talking Points Memo, 1/6/13, “Crack Pipe,” http://talkingpointsmemo.com/archives/2013/01/crack\_pipe\_1.php

I’m watching a lot of neoconservative policy activists and a lot of people in the press telling me that it’s a very up in the air thing whether Chuck Hagel gets confirmed as Secretary of Defense. These folks should stop smoking crack. Because crack isn’t good for you.

Maybe I’m just out of the loop because I’m not reporting aggressively myself. Or maybe — I think much more likely — I’m not in the same crack den with the rest of these good people so the air I’m breathing is clear and I know what is happening in the real world.

Will Republicans uniformly oppose a former member of their own caucus when the issues at stake are complaints that look comical when held up to the light of day? One who was one of the top foreign policy Republicans in the Senate? I doubt it.

Will Democratic senators deny a reelected President Obama his choice for one of the top four cabinet positions when he is quite popular and the expansion of their caucus is due in significant measure to his popularity? Please. Chuck Schumer will oppose the President? Not likely.

So I look forward to Republican crocodile tears on gay rights — seemingly in large part over something Hagel said in the 90s in support of the Senate Republican caucus’s efforts to pillory an openly gay nominee. And yes, perhaps it really will pave the way for a LGBT upsurge of support for Richard Grinnell for President in 2016. But I doubt it.

Otherwise, assuming President Obama nominates him tomorrow, get ready for a Hagel Pentagon.

#### Appointments don’t drain PC---empirics

Hutchinson 12/2 Earl Ofari, "Rice Nomination Fight Won't Drain President Obama's Political Capital, 2012, www.eurweb.com/2012/12/rice-nomination-fight-wont-drain-president-obamas-political-capital/

It won’t hurt him. All presidents from time to time face some backlash from real or manufactured controversies by opponents over a potential nominee to the Supreme Court, a cabinet or diplomatic post. In 2008, Obama faced backlash when he nominated Eric Holder as Attorney General. A pack of GOP senators huffed and puffed at Holder for alleged transgressions involving presidential pardons he signed off on as Clinton’s Deputy Attorney General. In the end he was confirmed. The mild tiff over Holder didn’t dampen, diminish, or tarnish Obama in his hard pursuit of his major first term initiative, namely health care reform.¶ This was true three years earlier when then President Bush nominated Condoleezza Rice for Secretary of State. Rice was slammed hard by some Democratic senators for being up to her eyeballs in selling the phony, conniving Bush falsehood on Iraq’s weapons of mass destruction. The threat to delay Rice’s confirmation in the Senate quickly fizzled out, and she was confirmed. This did not distract or dampen Bush in his pursuit of his key initiatives. There was not the slightest inference that in nominating Rice, and standing behind her in the face of Democrats grumbles about her would threaten his push of his administration’s larger agenda items.¶ Susan Rice will continue to be a handy and cynical whipping person for the GOP to hector Obama. But the political reality is that the legislative business that Congress and the White House must do never has been shut down by any political squabble over a presidential appointee. The fiscal cliff is an issue that’s too critical to the fiscal and economic well-being of too many interest groups to think that Rice’s possible nomination will be any kind of impediment to an eventual deal brokered by the GOP and the White House.¶ The Rice flap won’t interfere in any way with other White House pursuits for another reason. By holding Rice hostage to a resolution of the fiscal cliff peril and other crucial legislative issues, the GOP would badly shoot itself in the foot. It would open the gate wide to the blatant politicizing of presidential appointments by subjecting every presidential appointment to a litmus test, not on the fitness of the nominee for the job, but on whether the appointee could be a bargaining chip to oppose a vital piece of legislation or a major White House initiative. This would hopelessly blur the legislative process and ultimately could be turned against a future GOP president. This is a slippery slope that Democrats and the GOP dare not risk going down.¶ Rice will not be Obama’s only appointment at the start of his second term. He will as all presidents see a small revolving door of some cabinet members and agency heads that will leave, and must be replaced. There almost certainly will be another Obama pick that will raise some eyebrows and draw inevitable fire from either the GOP or some interests groups. Just as other presidents, Obama will have to weigh carefully the political fall-out if any from his pick. But as is usually the case the likelihood of any lasting harm to the administration will be minimal to nonexistent.

#### Opposition to Hagel is all hype—once he’s nominated his supporters and competence will be highlighted.

Drew 12—Elizabeth Drew, The New York Review of Books, 12/27/12, The Preemptive War on Hagel, http://www.nybooks.com/blogs/nyrblog/2012/dec/27/preemptive-war-hagel/

Less known about this fight is that a much larger and more peace-oriented segment of pro-Israel opinion strongly supports Hagel’s nomination. These organizations do not assume that particular policies of the Israeli government of the day are necessarily in Israel’s interests. Hagel has had quite friendly relations with J Street, founded a few years ago to try to offset AIPAC’S influence, and with the Israel Policy Forum, and has given keynote speeches to both organizations. A wide swath of former national security officials also support Hagel’s nomination as Defense Secretary, including Brent Scowcroft and Zbigniew Brzezinski, as well as most of the former US ambassadors to Israel. Hagel also holds the highly prestigious position of co-chair of the President’s Foreign Intelligence Advisory Committee.¶ Hagel’s independence and criticism of Bush administration foreign policy left him with few admirers in the Senate Republican caucus, where party discipline is the order of the day. The blunt Hagel, a plain-spoken Nebraskan, has long exhibited a striking nonchalance about offending the powers that be: as the second-ranking official of the Veterans Administration during the Reagan administration, Hagel, a decorated Vietnam veteran (two Purple Hearts), brushed off warnings that he might lose his job if he refused to attack Maya Lin’s stark Vietnam Memorial. Hagel said, “I serve at the pleasure of the President. If he fires me for supporting a design for the Vietnam Veterans Memorial, so be it.”¶ The opponents of Hagel weren’t content to fight his nomination in the Senate, where they were expected to lose, so they have tried something different, with long-term significance to the power of the presidency. They have been attempting to dissuade the President from nominating Hagel, which he was on the verge of doing before this fight broke out. These forces counted on Obama’s caution, his oft-displayed lack of stomach for a fight, and set out to convince him that Hagel was “controversial”—that if he were nominated there would be a difficult set of confirmation hearings, so it wasn’t worth it.¶ In Washington it’s quite simple to get someone labeled “controversial.” All it takes is an attack by a prominent person, followed up by similar arguments by allies; throw in a couple of senators whom the press loves because they make controversial statements—John McCain has been the reigning champ for years—and, voila! someone is seen to have “a lot of opposition.” In the absence of a statement of support by the president, some elected politicians hide under their desks. Before you knew it the word in Washington was that Hagel was controversial and his nomination faced strong opposition.¶ The press fed the narrative that the neocons wanted. Controversy is so much more fun than balance. Meaningless statements by some politicians are accorded great significance and foreboding: thus a big deal was made in the press of the th the supposedly devastating comments made by two of McCain’s closest buddies—Joe Lieberman, who will be gone from the Senate shortly (“very tough confirmation process”), and Lindsey Graham (“it would be a challenging nomination”) on the Sunday talk shows just before Christmas. (Lieberman’s role as part of McCain’s “three amigos” is being taken over by Kelly Ayotte, a freshman from New Hampshire, who has thus won an unusually large amount of attention for such an early stage in her congressional career). Chuck Schumer of New York, with no persuasive reason to commit on a nomination that hadn’t been made, said that Hagel’s “record will be studied carefully”—and this was interpreted as a serious blow to Hagel’s confirmation. ¶ But what had actually happened was that these senators, employing one of the talking points that had been circulated on the Hill and published in Kristol’s Weekly Standard, had simply indicated that the Senate Armed Services Committee’s consideration of a Hagel nomination would be rough. These innocuous statements, devoid of any real meaning, were strictly tactical. Not a single one of them said that they would vote against Hagel. (As of this writing exactly one senator, John Cornyn of Texas, has said that he would vote against the nomination.) Hearings could also expose the emptiness of their charges and put on display Hagel’s considerable array of supporters. That such substantial Senate figures as Carl Levin, chairman of the Armed Services Committee, and Jack Reed, also a major figure on defense issues, have announced that they strongly support Hagel has gone almost without notice. To the press, they are the planes that landed.

## AT: Nuclear Weapon Use

#### No nuclear weapon use – fear of retaliation

**Walsh** (Lieutenant colonel in Air Force) 19**85** “Nuclear War Opposing Viewpoints, p. 51. GENDER MODIFIED

No president or dictator, madman or otherwise would take it upon himself themself [sic] to launch an all out nuclear attack without due consultation with his [sic] staff. It is a natural human phenomenon that there would be certain members of this staff with an invincible sense of survival who would resort to assassination before allowing themselves and their nation to be subjected to a retaliatory holocaust.

#### Global economic crisis causes nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism**.**

## Economy Impact

#### econ decline won’t cause war

Daniel **Deudney**, Hewlett Fellow in Science, Technology, and Society at the Center for Energy and Environmental Studies at Princeton, April 19**91**, “Environment and Security: Muddled Thinking”, Bulletin of the Atomic Scientists, p. 27, google books, umn-rks

Poverty Wars. In a second scenario, declining living standards first cause internal turmoil. then war. If groups at all levels of affluence protect their standard of living by pushing deprivation on other groups class war and revolutionary upheavals could result. Faced with these pressures, liberal democracy and free market systems could increasingly be replaced by authoritarian systems capable of maintaining minimum order.9 If authoritarian regimes are more war-prone because they lack democratic control, and if revolutionary regimes are warprone because of their ideological fervor and isolation, then the world is likely to become more violent. The record of previous depressions supports the proposition that widespread economic stagnation and unmet economic expectations contribute to international conflict. Although initially compelling, this scenario has major flaws. One is that it is arguably based on unsound economic theory. Wealth is formed not so much by the availability of cheap natural resources as by capital formation through savings and more efficient production. Many resource-poor countries, like Japan, are very wealthy, while many countries with more extensive resources are poor. Environmental constraints require an end to economic growth based on growing use of raw materials, but not necessarily an end to growth in the production of goods and services. In addition, economic decline does not necessarily produce conflict. How societies respond to economic decline may largely depend upon the rate at which such declines occur. And as people get poorer, they may become less willing to spend scarce resources for military forces. As Bernard Brodie observed about the modein era, “The predisposing factors to military aggression are full bellies, not empty ones.”’” The experience of economic depressions over the last two centuries may be irrelevant, because such depressions were characterized by under-utilized production capacity and falling resource prices. In the 1930 increased military spending stimulated economies, but if economic growth is retarded by environmental constraints, military spending will exacerbate the problem. Power Wars. A third scenario is that environmental degradation might cause war by altering the relative power of states; that is, newly stronger states may be tempted to prey upon the newly weaker ones, or weakened states may attack and lock in their positions before their power ebbs firther. But such alterations might not lead to war as readily as the lessons of history suggest, because economic power and military power are not as tightly coupled as in the past. The economic power positions of Germany and Japan have changed greatly since World War 11, but these changes have not been accompanied by war or threat of war. In the contemporary world, whole industries rise, fall, and relocate, causing substantial fluctuations in the economic well-being of regions and peoples without producing wars. There is no reason to believe that changes in relative wealth and power caused by the uneven impact of environmental degradation would inevitably lead to war. Even if environmental degradation were to destroy the basic social and economic fabric of a country or region, the impact on international order may not be very great. Among the first casualties in such country would be the capacity to wage war. The poor and wretched of the earth may be able to deny an outside aggressor an easy conquest, but they are themselves a minimal threat to other states. Contemporary offensive military operations require complex organizational skills, specialized industrial products and surplus wealth.

#### Unchecked economic crisis causes global great power war

Liu Qing 11, Director of the Department for American Studies and an associate research fellow at the China Institute of International Studies, May 20, 2011, “Existing and Emerging Threats to International Security: A View from the United Kingdom,” online: http://www.nuclearsecurityproject.org/publications/deterrence-its-past-and-future-panel-one

Financial and economic crisis begets political turmoil and drives destabilization on national, regional and global scales.¶ The current financial and economic crisis results in direct loss in wealth. A recent report by the Asian Development Bank suggests the crisis has already obliterated approximately $50 trillion in asset value worldwide - the equivalent of roughly a year of global economic output. Ultimately, the effects of the crisis spark destabilization, geopolitical tensions with far-reaching impacts.¶ We have already seen political reactions in public demonstrations in a diverse list of countries including both developed countries and developing countries. Some countries and key regions even suffer from unrests brought on by the crisis. Some unrests are taking the form of regime changes and social turmoil.¶ The crisis eats away at the foundations of stable governments. Job losers are angry at the “haves” and the failure of the government. The resentment produces social tensions. Governing parties lose political credibility, and opposition groups seek to use the crisis as a wedge issue or to mobilize support for their anti-government views. As a consequence, viable states become weaker; weaker states become failed states; failed states cause rifts and potential conflicts.¶ The weakening of states can produce instability that spills across borders. Opportunistic neighbors intend to make use of the political and economic weakness in those nations, and find excuses to intervene in their neighbour’s politics. Some wish to produce distractions from their own crises; some try to take control of neighboring territories. In order to respond to some of the geopolitical consequences caused by the crisis, some global powers may be involved into regional turmoil through military, aid or other forms of intervention. These actions eventually would worsen the regional security situation.

#### The best statistical support proves – economic decline causes war

Royal 10 – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

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

#### Russian economic collapse causes mass political instability and nuclear war

#### Filger 9 – Sheldon Filger, columnist and founder of GlobalEconomicCrisis.com, May 10, 2009, “Russian Economy Faces Disastrous Free Fall Contraction,” online: http://www.huffingtonpost.com/sheldon-filger/russian-economy-faces-dis\_b\_201147.html

In Russia, historically, economic health and political stability are intertwined to a degree that is rarely encountered in other major industrialized economies. It was the economic stagnation of the former Soviet Union that led to its political downfall. Similarly, Medvedev and Putin, both intimately acquainted with their nation's history, are unquestionably alarmed at the prospect that Russia's economic crisis will endanger the nation's political stability, achieved at great cost after years of chaos following the demise of the Soviet Union. Already, strikes and protests are occurring among rank and file workers facing unemployment or non-payment of their salaries. Recent polling demonstrates that the once supreme popularity ratings of Putin and Medvedev are eroding rapidly. Beyond the political elites are the financial oligarchs, who have been forced to deleverage, even unloading their yachts and executive jets in a desperate attempt to raise cash.

Should the Russian economy deteriorate to the point where economic collapse is not out of the question, the impact will go far beyond the obvious accelerant such an outcome would be for the Global Economic Crisis. There is a geopolitical dimension that is even more relevant then the economic context. Despite its economic vulnerabilities and perceived decline from superpower status, Russia remains one of only two nations on earth with a nuclear arsenal of sufficient scope and capability to destroy the world as we know it. For that reason, it is not only President Medvedev and Prime Minister Putin who will be lying awake at nights over the prospect that a national economic crisis can transform itself into a virulent and destabilizing social and political upheaval. It just may be possible that U.S. President Barack Obama's national security team has already briefed him about the consequences of a major economic meltdown in Russia for the peace of the world. After all, the most recent national intelligence estimates put out by the U.S. intelligence community have already concluded that the Global Economic Crisis represents the greatest national security threat to the United States, due to its facilitating political instability in the world.

During the years Boris Yeltsin ruled Russia, security forces responsible for guarding the nation's nuclear arsenal went without pay for months at a time, leading to fears that desperate personnel would illicitly sell nuclear weapons to terrorist organizations. If the current economic crisis in Russia were to deteriorate much further, how secure would the Russian nuclear arsenal remain? It may be that the financial impact of the Global Economic Crisis is its least dangerous consequence.

## Case

### AT: Structural Violence Cause

#### Their causality is backwards—war is the root of injustice, not the other way around

Goldstein 1 **–** IR Professor, American U (Joshua, War and Gender, p 412)

The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars' outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices.4 So, "if you want peace, work for peace." Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to "reverse women's oppression." The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book's evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate."

#### Structural violence is nbd—rejecting flashpoint focus causes war

Friedberg 2k – Professor of Politics and International Affairs, Princeton (Aaron, Will Europe's Past Be Asia's Future?, Survival 42.3)

But there are reasons too to be wary of placing too much faith in the collective human capacity for learning, still less common sense. At the turn of this century, many sensible Europeans believed that war was idiotic, outmoded, even obsolete, and they were optimistic about the enormous benefits to be gained from permanent peace. Their good sense and sound judgment on this question was not enough to stamp out the anxieties, jealousies and hatreds that resulted eventually in the tragedy of World War I. Twenty-five years later, with the evidence of war's folly still fresh before them, the European powers were unable to prevent another catastrophe. Indeed, looking back, it seems clear that it was the very eagerness of the liberal democratic powers to learn the lessons and to avoid the mistakes of the past that caused them to stumble again into war. Had they been more attentive to the realities of power, more alert to the dangers of aggression by ambitious states, and less convinced of the pacifying effects of trade, institutions and conciliatory diplomacy, they might have done better at securing their interests and preserving the peace.

### Self-Determination Advantage

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

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

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

#### *And, war turns structural violence*

*Winter 99**– Professor of Psychology, Whitman (Deborah and Dana Leighton, Structural Violence Section Introduction, http://www.psych.ubc.ca/~dleighton/svintro.html)*

*While structural violence often leads to direct violence, the reverse is also true, as brutality often terrorizes bystanders, who then become unwilling or unable to confront social injustice. Increasingly, civilians pay enormous costs of war through death and devastation of neighborhoods and ecosystems. Ruling elites rarely suffer from armed conflict as much as civilian populations do, who endure decades of poverty and disease in war-torn societies.*

#### *Moral absolutism undermines political effectiveness and causes political paralysis*

*Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University, Spring 2002, Dissent, Vol. 49, No. 2*

*As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.*

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

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

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

### Solvency/No War

#### Extinction risks outweigh your impacts

Nick Bostrom, PhD and Professor at Oxford University, March, 2002

[Journal of Evolution and Technology, vol 9] <http://www.nickbostrom.com/existential/risks.html>

It’s dangerous to be alive and risks are everywhere. Luckily, not all risks are equally serious. For present purposes we can use three dimensions to describe the magnitude of a risk: scope, intensity, and probability. By “scope” I mean the size of the group of people that are at risk. By “intensity” I mean how badly each individual in the group would be affected. And by “probability” I mean the best current subjective estimate of the probability of the adverse outcome.[[1]](http://www.nickbostrom.com/existential/risks.html%22%20%5Cl%20%22_ftn1#_ftn1" \o ") 1.1         A typology of risk We can distinguish six qualitatively distinct types of risks based on their scope and intensity (figure 1). The third dimension, probability, can be superimposed on the two dimensions plotted in the figure. Other things equal, a risk is more serious if it has a substantial probability and if our actions can make that probability significantly greater or smaller.   “Personal”, “local”, or “global” refer to the size of the population that is directly affected; a global risk is one that affects the whole of humankind (and our successors). “Endurable” vs. “terminal” indicates how intensely the target population would be affected. An endurable risk may cause great destruction, but one can either recover from the damage or find ways of coping with the fallout. In contrast, a terminal risk is one where the targets are either annihilated or irreversibly crippled in ways that radically reduce their potential to live the sort of life they aspire to. In the case of personal risks, for instance, a terminal outcome could for example be death, permanent severe brain injury, or a lifetime prison sentence. An example of a local terminal risk would be genocide leading to the annihilation of a people (this happened to several Indian nations). Permanent enslavement is another example. 1.2         Existential risks In this paper we shall discuss risks of the sixth category, the one marked with an X. This is the category of global, terminal risks. I shall call these existential risks. Existential risks are distinct from global endurable risks. Examples of the latter kind include: threats to the biodiversity of Earth’s ecosphere, moderate global warming, global economic recessions (even major ones), and possibly stifling cultural or religious eras such as the “dark ages”, even if they encompass the whole global community, provided they are transitory (though see the section on “Shrieks” below). To say that a particular global risk is endurable is evidently not to say that it is acceptable or not very serious. A world war fought with conventional weapons or a Nazi-style Reich lasting for a decade would be extremely horrible events even though they would fall under the rubric of endurable global risks since humanity could eventually recover. (On the other hand, they could be a local terminal risk for many individuals and for persecuted ethnic groups.)

#### *Potential for great power conflict will increase over time---their ev is wrong*

*James Wood Forsyth 7, professor of national security studies and department chair, Strategy and Leadership, Air Command and Staff College; and Col Thomas E. Griffith Jr., USAf, the dean of faculty and academic programs at the National War College, Fall 2007, “Through the Glass Darkly: The Unlikely Demise of Great-Power War,” Strategic Studies Quarterly, online: http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA509123*

*The United States cannot prepare to put down any and all potential rivals. The costs of such an undertaking would quickly prove to be enormous, especially when domestic spending on programs like social security and Medicare are factored into the security equation. Over the long haul rivals will emerge, and there is little the United States can do except balance against them, as they will prepare to balance against us. In such a world, where states compete for power, one must be concerned with survival. That being the case, it is worth remembering that the most serious threats to the great powers have historically stemmed from other great powers. In the years ahead, as strong challengers emerge, conflicts will arise, making war among the great powers more, not less, likely. 49*

*Contrary to popular belief, we are not living in a whole new world. The events of September 11 and the wars that have followed have had a pronounced effect on US foreign and defense policy, but they have not done away with the state system. The world is still made up of states that must look out for themselves. To pretend otherwise is to neglect history or to fall prey to presentism—something common among pundits but dangerous for statesmen and men and women of the armed forces. Historically, the most efficient and effective way to ensure state security is through military means. Thus, the importance of the balance of power, which exists to prevent one great power from dominating the rest, has not diminished. Instead, it has been reinvigorated as states are reminded of the need to defend themselves.*

*The implications of acknowledging the possibility of a great-power war are easier to grasp than to implement. Despite the urgency of the war in Iraq, we need to think seriously about what a great-power war would look like, how it could occur and be prevented, and how it would be fought so that we can gain some understanding about the equipment and forces needed to fight and win. The groundwork for the technologies needed for such a contest needs to be laid today. The difficulties in putting armor on vehicles for Iraq pale in comparison to creating the lead time and resources needed to fight a great-power war. Failing to do so risks lives and jeopardizes US security goals.*

*This does not mean that we should ignore current threats or overlook the need to relieve misery and suffering around the world, what one strategist terms “minding the gap.” 50 As citizens, we should be concerned with the political and human consequences of poverty, ecological degradation, and population growth. We must also fully address the problem of terrorism. But as real as the consequences of poverty, ecological degradation, population growth, and terrorism might be, it is hard to come up with a realistic scenario involving these tragedies that would alter the balance of power. 51 Put simply, in an age of transformation, we cannot neglect the basics. Should the United States find itself in another great-power war, things that are taken for granted today, like air superiority or control of sea lanes, might come up short tomorrow. That technology, economics, democracy, and norms play a role in preventing great-power war is not the issue. The issue is whether they make it unthinkable. Regrettably, they do not, and because they do not, great-power war has a bright future, however tragic that might seem.*

#### *Current great-power peace is reversible and not based on structural trends---thousands of years of empirics*

*Francis P. Sempa 11, adjunct professor of political science at Wilkes University, October 2011, “Book Review: Dangerous Times? The International Politics of Great Power Peace,” Joint Force Quarterly, Vol. 63, online: http://www.ndu.edu/press/dangerous-times.html*

*Forget Clausewitz, Sun Tzu, and Machiavelli. Put aside Mackinder, Mahan, and Spykman. Close the military academies and war colleges. Shut our overseas bases. Bring our troops home. Make dramatic cuts in the defense budget. The end of major war, and perhaps the end of war itself, is near, according to Tulane assistant professor Christopher Fettweis in his recent book, Dangerous Times? The International Politics of Great Power Peace.*

*Fettweis is not the first intellectual, nor will he be the last, to proclaim the onset of perpetual peace. He is squarely in the tradition of Immanuel Kant, Herbert Spencer, and Norman Angell, to name just three. Indeed, in the book's introduction, Fettweis attempts to rehabilitate Angell's reputation for prophecy, which suffered a devastating blow when the Great War falsified his claim in The Great Illusion that economic interdependence had rendered great power war obsolete. Angell, Fettweis writes, was the first "prominent constructivist thinker of the twentieth century," and was not wrong—just ahead of his time (p. 5).*

*Fettweis bases his theory or vision of the obsolescence of major war on the supposed linear progress of human nature, a major tenet of 20th-century liberalism that is rooted in the rationalist theories of the Enlightenment. "History," according to Fettweis, "seems to be unfolding as a line extending into the future—a halting, incomplete, inconsistent line perhaps, one with frequent temporary reversals, but a line nonetheless." The world is growing "more liberal and more reliant upon reason, logic, and science" (p. 217).*

*We have heard this all before. Human nature can be perfected. Statesmen and leaders will be guided by reason and science. Such thinking influenced the visionaries of the French Revolution and produced 25 years of war among the great powers of Europe. Similar ideas influenced President Woodrow Wilson and his intellectual supporters who endeavored at Versailles to transform the horrors of World War I into a peace that would make that conflict "the war to end all wars." What followed were disarmament conferences, an international agreement to outlaw war, the rise of expansionist powers, appeasement by the democracies, and the most destructive war in human history. Ideas, which Fettweis claims will bring about the proliferation of peace, transformed Russia, Germany, and Japan into expansionist, totalitarian powers. Those same ideas led to the Gulag, the Holocaust, and the Rape of Nanking. So much for human progress.*

*Fettweis knows all of this, but claims that since the end of the Cold War, the leaders and peoples of the major powers, except the United States, have accepted the idea that major war is unthinkable. His proof is that there has been no major war among the great powers for 20 years—a historical period that coincides with the American "unipolar" moment. This is very thin empirical evidence upon which to base a predictive theory of international relations.*

*Fettweis criticizes the realist and neorealist schools of thought, claiming that their adherents focus too narrowly on the past behavior of states in the international system. In his view, realists place too great an emphasis on power. Ideas and norms instead of power, he claims, provide structure to the international system. Classical geopolitical theorists such as Halford Mackinder, Alfred Thayer Mahan, Nicholas Spykman, and Colin Gray are dismissed by Fettweis in less than two pages, despite the fact that their analyses of great power politics and conflict have long been considered sound and frequently prescient.*

*Realists and classical geopoliticians have more than 2,000 years of empirical evidence to support their theories of how states and empires behave and how the international system works. Ideas are important, but power is the governing force in international politics, and geography is the most permanent factor in the analysis of power.*

*Fettweis makes much of the fact that the countries of Western and Central Europe, which waged war against each other repeatedly for nearly 400 years, are at peace, and claims that there is little likelihood that they will ever again wage war against each other. Even if the latter assertion turns out to be true, that does not mean that the end of major war is in sight. Throughout history, some peoples and empires that previously waged war for one reason or another became pacific without producing worldwide perpetual peace: the Mongols, Saracens, Ottomans, Dutch, Venetians, and the Spanish Empire come immediately to mind. A Europe at peace does not translate to an Asia, Africa, and Middle East at peace.*

*In a world in which major wars are obsolete, Fettweis believes the United States needs to adjust its grand strategy from vigorous internationalism to strategic restraint. His specific recommendations include the removal of all U.S. military forces from Europe; an end to our bilateral security guarantees to Japan and South Korea; an end to our alliance with Israel; an indifference to the balance of power on the Eurasian landmass; a law enforcement approach to terrorism; a drastic cut in military spending; a much smaller Navy; and the abolition of regional combatant commands.*

*What Fettweis is proposing is effectively an end to what Walter Russell Mead calls "the maritime world order" that was established by Great Britain and maintained first by the British Empire and then by the United States. It is a world order that has defeated repeated challenges by potential hegemonic powers and resulted in an unprecedented spread of prosperity and freedom. But all of that, we are assured, is in the past. China poses no threat. The United States can safely withdraw from Eurasia. The power vacuum will remain unfilled.*

*Fettweis needs a dose of humility. Sir Halford Mackinder, the greatest of all geopoliticians, was referring to visionaries and liberal idealists like Fettweis when he cautioned, "He would be a sanguine man . . . who would trust the future peace of the world to a change in the mentality of any nation." Most profoundly, General Douglas MacArthur, who knew a little bit more about war and international conflict than Fettweis, reminded the cadets at West Point in 1962 that "only the dead have seen the end of war."*

#### *Reversibility empirically disproves predictions of war’s decline---err neg*

*Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425*

*A look at the past should make anyone hesitate to discuss the future of force. In 1811 a sensible person would have predicted that the coming century would be extremely bloody; in 1911 an informed observer could be quite optimistic. It is perhaps this knowledge that leads me in 2011 to see a mixed (but fairly bright) picture, and the safest prediction might be that whatever I am about to say will be proven wrong. Indeed, the unexpected revolt in Libya and what to me was the equally unexpected military response by France, the UK and the US casts a somewhat different light – or shadow – on our understanding of the role of force today, and this understanding will in turn be influenced by how the operation turns out. The fact that the Libyan operation is (so far) a limited one epitomizes the conflicting perceptions to which I will return. On the one hand, the incidence of war and even internal violence has greatly subsided. One the other hand, the US, and to a lesser extent Britain and France, are involved in an increasing number of violent affairs. On a smaller scale, the raid that killed Osama bin Laden also reminds us that force can solve an immediate problem, although the more important long-run effects remain to be seen. That no one today would echo Bismarck’s famous claim that ‘Not by speeches and votes of the majority, are the great questions of the time decided … but by iron and blood’, does not mean that force is without a role, or even that changes in behavior have matched changes in what leaders feel they can say out loud.*