### 1AC Paternalism

#### First the status quo, Wind/Solar energy developing inevitable in the US and globally- increased attention to climate change and technical innovation

Queally 3/13

(Jon, Staff writer, Common Dreams, “Despite Efforts to Suppress, Cleaner Energy Continues Inevitable Rise,” https://www.commondreams.org/headline/2013/03/13-0//wyo-mm)

Despite political opposition to clean energy, however, the report shows that wind and solar, specifically, continue to show real gains in the US and global energy markets. And the reasons, according to Clean Edge, have as much to do with the observable impacts of climate change than anything else. According to the report: In the aftermath of unprecedented climate disruption in the U.S. and abroad, resiliency and adaptation are becoming critical business and policy drivers as organizations scramble to meet a literally changing landscape. In the U.S., President Obama has signaled a strong commitment to expanding clean energy and energy efficiency in his second term, calling for a doubling of renewable power by 2020. And increasingly lower prices for clean-tech goods and services are helping wind and solar power reach cost parity in both utility-scale and distributed markets, making the value proposition increasingly attractive. Even amidst the carnage of 2012, clean energy has continued its ascent as a major economic force, with an increasing focus on deploying technologies that are ready and available now. And the Guardian, which reviewed the report, adds: Looking to the future, the report suggests innovation can continue to improve the performance of renewable technologies, including using biomimicry ideas to imitate nature. Curved wind turbine blades inspired by humpback whale fins have increased wind energy capture over flat blades by 25%, while mimicking photosynthesis using dye-sensitised solar cells based on titanium oxide instead of silicon is proving effective in low-light situations. In addition, energy efficiency developments like Nest's 'learning thermostat' and smartphone apps for thermostat control will help connect web and smart-grid technologies.

#### However, the leasing approval process by the Secretary of Interior perpetuates a system of governmental paternalism on tribes excluding them from this investment-

Kronk 13

(Elizabeth, Assistant Professor, Assistant Professor of Law and Director, Tribal Law and Government Center University of Kansas School of Law, “Tribal Renewable Energy Development Under the HEARTH Act: An Independently Rational, but Collectively Deficient Option,” March 11, 2013, Social Science Research Network//wyo-mm)

In addition to limiting efficient development in Indian country because of the lengthy delays typically related to Department of Interior approval of the leases, Representative Rob Bishop (R-UT) also explained that the current leasing scheme perpetuates a paternalistic system upon tribes. He stated that Under current law, each and every nonmineral lease that a tribe executes with a third party is subject to approval of the Department of the Interior before it can take effect. It doesn’t matter whether the tribe and a third party have negotiated the terms of a lease to their mutual satisfaction; Washington, D.C., ultimately decides because, after all, Washington, D.C. always knows better. Unfortunately, the result of this paternalism is predictable – the leases do not get approved on a timely basis, if at all. The government has erected all kinds of regulatory hurdles for tribes leasing their lands. In the private sector, time is money; and when the government delay costs money, investors take their business elsewhere.73 Ultimately, representative Tom Cole (R-OK) concluded that “[t]he [existing] secretarial [leasing] process is costly, time consuming, often results in lost business and economic opportunities for tribal communities, and is far too cumbersome to be helpful to those it’s designed to protect.74

#### This makes economic and energy equality for tribes impossible-

Smith and Frehner 10

(Sherry L. and Brian, Indians & energy : exploitation and opportunity in the American Southwest, “Introduction: Indians & Energy,” pg. 8//wyo-mm)

Of course, gaining such control has not been easy. In the mid-twentieth century, as the Southern Ute case attests, most energy tribes (defined as those that receive a significant portion of their income from energy minerals or that own significant undeveloped reserves) fell far short of realizing their economic potential. Hamstrung by a federal government that assumed paternalistic control of Native Americans, the latter had to fight both government and corporations to secure a place “at the table.” From the outset, conflicts arose over ownership of the mineral resources: did these belong to the tribes or to the federal government? By the end of the 1950s, tribes finally established their rights to both ownership and consent authority—that is, deciding whether resources could be developed. Development was not necessarily a given. High unemployment and poverty rates on reservations certainly encouraged it, but Native American conceptions about their relationship to land did not. And the fact that they could not relocate if mining ended up in environmental disaster underscored their potential vulnerability. Also, royalty rates, hammered out in consultations between the Bureau of Indian Affairs and corporations, fell far below market value, cheating tribes (and individual allottees) of their fair share of profits.8 The advantages and disadvantages of energy development led to debates within tribes. For some, developing coal and other energy resources seemed to violate their sacred responsibilities to the land. Others privileged the economic opportunities that might result from mining or other mineral extraction.9 Clearly, energy development offered no perfect panacea.

#### Recognizing that giving tribes control over resources can combat paternalism’s violent racial discrimination fosters new ways of thinking, solves the root of violence- Absent plan, environmental destruction, native genocide and extinction is inevitable

Jacques et al 03

(Peter, Ph.D. University of Central Florida, Sharon Ridgeway, Ph.D. Grinnell College and the University of Iowa, and Richard Witmer, Ph.D. Grinnell College. Federal Indian Law and Environmental Policy: A Social Continuity of Violence, 18 J. Envtl. L. & Litig. 223)

Currently, federal Indian environmental policy relies on the annulment of treaties that were made in sacred trust between American Indian tribes and the United States government. In the years since signing these agreements, non-Indians have used racial discrimination against Indian tribes to justify their maltreatment and dispossession of Indian land. This injustice became institutionalized over time by unilateral decisions made by the United States Congress and President, and was further supported by numerous Supreme Court decisions. Court rulings that allowed for the abrogation of treaties at the discretion of the United States Congress are perhaps the most egregious of these injustices. One of the most pernicious outcomes of these decisions by the Court and Congress has been to sever full tribal relationships with their land, a central component of the negotiated treaties. This set of broken relationships is at the bottom of an unsustainable and unlivable land management system that has occurred on a number of Indian reservations.¶ The premise of this Article is that the environmental policy of the United States government, because it exerts control over Indian nations' natural resources in violation of specific treaties, is inherently violent. We define violence in this case as a breach of the reciprocal relationship established between Indian tribes and the federal government through treaties. To demonstrate our premise, we first conceptualize and configure the concept of violence as it applies to environmental Indian policy. Second, the violence of broken treaties to gain Indian resources is not a new phenomenon as we demonstrate in an analysis of the Medicine Lodge Treaty, the subsequent Jerome Agreement, and the Lone Wolf v. Hitchcock Supreme Court case that officially instituted congressional plenary power over all Indian nations. n1 Third, we demonstrate how environmental policy operates under visions of racial and ethnic superiority in order to continue colonial control of Indian resources. This vision of racial and ethnic superiority was institutionalized by Supreme Court precedence, and continues to put the control of Indian resources in non-Indian hands. [\*225] Finally, we suggest that current environmental policy has not only committed violence against tribes but also against the earth through exploitation of reservations. The way to end such violence and exploitation of Indian people and the earth is to retract plenary power over environmental policy and exploitation, acknowledge treaty relationships as sacred sovereign-to-sovereign promises, and place tribal lands back in tribal hands.¶ I¶ ¶ A Concept of Violence¶ ¶ To draw out the violence embedded in broken treaties we first describe mainstream understandings of violence in the modern era. Such understandings of violence are typically blind to the violence committed by government institutions acting in the name of rationality, progress, or material benefit for the state. Second, we argue that the hierarchical relations, which replaced the reciprocal treaty relations, are inherently violent because they force one party into the role of a ward with compromised agency.¶ The modern understanding of violence, as found in social contract theory and the Post-Westphalian state, is particularly important in the case of American Indian law and policy. Since early discussion of the subject by Greek scholars, in order for an action to be considered violent it must be an illegitimate, irrational behavior of a minority of individuals in society. n2 During the casting of modernity, this became an axiom of the social contract. One purpose of the social contract was to keep violence at a minimum so that people could be free to live their lives without the risk of violence that was thought to exist outside formal social organization. n3 To enter the social contract is to gain civility and the ability to have real property. n4 "What man [sic] loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses." n5 Thus, the social [\*226] contract provides the civility of imposed limits on violent human appetites while providing a system where the possession of real property is possible. Outside the social contract there is no such thing as "private property" to social contract theorists, merely the ability to temporarily use a resource. This is important because, as we discuss below, the doctrine of discovery allotted private property rights to "discoverers." Indian tribes possessed only use rights because they were seen to be outside the social contract, residing in a state of nature. n6¶ Outside the social contract and within the anarchic state of nature, violence is an expected behavior. For this reason, sacrificing some portion of individual liberty to a sovereign who would keep order was a rational decision. n7 Thus, violence within modernity is usually conceived of as the erratic behavior of criminals and has not typically been conceived of as a social continuity perpetrated by rational and civil modernity itself. By definition, the state becomes a protector from violence, not the perpetrator of violence; and, violence that the state does commit is veiled in legitimacy.¶ Legitimacy of the state's use of violence was articulated by foundational sociologists such as Durkheim and Comte who suggest that the state was the source of modern and moral authority. n8 Like all political institutions, the state "is a relation of men dominating men," but this domination serves as a "monopoly of legitimate use of physical force within a given territory." n9 Since the state is the source of legitimacy its actions are not recognized as violent. Or, if they are seen as violent, the violence is not seen as problematic as it furthers the goals of a social contract and modern progress. This concept is also reflected in the roots of Hegel's Philosophy of Right, where the state is the ideological foundation of a good and developing society, an idea Marx would later dismiss. n10¶ [\*227] The state's monopoly of the legitimate use of force was the justification for the violence used against American Indians in the establishment and maintenance of the United States. Taking and controlling tribal land was seen as a necessary step in the progress of the state. We reject this thinking, and argue that the state can be an agent of illegitimate force. This is central to our theory of violence because the lens of institutional legitimacy has so far kept the operation of federal Indian environmental policy from foundational criticism. One reason for this is that the same agent (the United States federal government) in the form of the Supreme Court and Congress has been allowed to both rule in its own interest and then sanction that ruling - a clear violation of even mainstream pluralist political theory. n11 In other words, in relying on the agent of violence to define legitimate fiduciary responsibility for the tribes, the Court and Congress are empowered to promote their own interest. In this case, the separation of powers is irrelevant because the interest of the federal government as a whole is uniformly found in the control of tribal land wealth.¶ While the definition of violence has been subject to minimal debate or analysis as a concept, it has an assumed meaning in social science that generally includes physical injury with malicious intent. In this definition of violence, the focus is on the intent of the agent to cause harm. Attempting to define actions as violent from the agent's perspective, here the federal government, becomes very difficult. Melissa Burchard recognized this complexity of violence and discusses the concept in the case of non-stranger rape. n12 An especially appropriate example given by Burchard is the case of non-stranger rape where the rapist often says he did not "mean to do it." n13 As a result, prosecutors have been reluctant to vigorously pursue prosecutions when the perpetrator of the crime suggested no malicious intent. n14 Thus we are left relying on the agent of violence to define (or not) their own violent act. In the case of federal Indian environmental policy, it is unlikely that branches of government acting in collusion will recognize their own violent acts or seek to prosecute them.¶ [\*228] This point becomes even more poignant when dealing with an institution or government whose actual intentions could be numerous and complicated to identify. Further, intention and interest may be hidden in the modern rational decision-making process which can promote violence. Through the focus on means-end logic, violence may be justified, considered natural, or simply overlooked as a necessary step in modern "progress." However, the role of this rationality in state-sponsored violence has been ignored "because the social sciences still largely retain the etiological myth - the belief in an emergence from a pre-social barbarity into a civilized and rational society." n15 Consequently, modern institutions are rarely challenged as the root of systemic violence.¶ Intent to cause harm is often obfuscated by the casting of some social groups outside of the social contract as non-rational, primitive, and thus incapable of agency. Ecofeminists specifically point out that social groups associated with the state of nature are tied to a state versus society justification of domination. As a result, they are compelled to conform to the idea of European civilization. Ecofeminist scholars further suggest that the control of tribes and the earth by a dominant society are a related enterprise. n16 This domination is justified by the rhetoric of paternalism. However, the true goal is to produce material wealth and power at the expense of those protected. Thus, the efforts to assimilate American Indians into civilized people disguised the primary goal of taking American Indian land and resources and using them to benefit non-Indians. In fact, the rhetoric of civilizing the "savage" was a consistent element in contemporary American Indian history, including the Allotment era beginning in 1887. During Allotment, tribes were divested of reservation with the promise that agriculture and a change in lifestyle would ultimately lead to a better life. n17 Similarly during the "termination" period starting in 1945, some sovereign tribal governments were terminated with the implication that American Indians would benefit from becoming full-fledged members of the dominant society if their official tribal affiliations were dissolved. n18 [\*229] Allotment and termination were not viewed as violent since the rhetoric of the federal government was of aid, not malicious intent. Since mainstream notions of violence do not accurately describe this violence experienced by American Indian tribes, our notion of violence itself must be reformed.¶ Therefore, the notion of violence employed here is the violence that begins in the minds of men and women about "others," specifically those perceived to be outside of the social contract. Violence is, first and foremost, a breach of expectations inherent in a relationship. According to Burchard,¶ ¶ Harm is not only a matter of what damage, physical or otherwise, has been done, however. It is also, when taken in the context of determining whether violence has been done, an evaluative concept which implies that some legitimate expectation about what ought to have been done has been breached. That is, part of the understanding of what actions will be named violence depends on the understanding of the relationships involved in the given context. n19¶ ¶ The focus has now shifted from the subjective intent of the agent and all of its associated problems to the relationship established between the involved parties. Understanding what constitutes violent action is recognizing the expectations inherent in that relationship. Breaching these expectations is the core of understanding whether harm has occurred. n20¶ Harm occurs at the point in a relationship where there is an expectation of an equal relationship, but one of the parties unilaterally assumes a superior position. The essence of this harm is not just that one party has more power, but that one entity changes an established or assumed reciprocal relationship with another party for their own gain. Political realists have observed this phenomenon at least since the time of Thucydides, but typically assert that it is part of an unchanging human nature. Normalizing violence in this way takes an expectation for circular (non-hierarchical, interdependent, and balanced) relations out of the frame of reference and the foundation of violence goes unchallenged.¶ [\*230] When groups of people interact with each other, we assume that no group of people will view themselves as justifiably inferior to the other, regardless of relative capabilities. Therefore, on the personal level, even though strangers on the subway or in the alleyway do not have an established reciprocal relationship, this minimal expectation of reciprocity is presumed. When this reciprocity is formalized into sacred treaties, breaking this relationship has even more severe consequences because defenses against exploitation may be relaxed. It is assumed that actions by one party in a circular relationship occur with the consent of the other parties. Thus, non-coercive and non-retributive consent is a minimum requirement to change the expectations of a reciprocal relationship between equals. If consent is not obtained, the unilateral action by one side without consent of the other destroys the equality and replaces circularity with hierarchy within the relationship. This hierarchy results in harm, which then constitutes violence.¶ The establishment of a hierarchical structure is one of the most damaging elements of violence. The power accumulated in hierarchy facilitates the ability of abusers to keep the abused under their reign. This accumulation of power then compromises the potential for resistance. American Indians did not consent to the new hierarchical relationships that replaced the sacred treaty relationships. The United States government unilaterally imposed this hierarchy by threat of force justified by the United States Congress and the Supreme Court.¶ With the original duties and relationships between the federal government and tribes discarded, the federal government was able to exercise plenary control over native land bases for their own gain. This has meant extracting vast surplus value through wanton natural resource extraction from tribal land bases.¶ Two acts of violence are committed when the United States government breaches a treaty with Indian nations that reserve an area for tribal control. The first relationship broken is that between the two peoples, Indian tribes and the United States government who have formed a sacred bond. The second relationship broken is the human/nature relationship between Indian tribes and the land. Important to our understanding of environmental policy, the agents in this relationship (and thus our theory) can include non-humans such as animals, plants, rocks, streams, and mountains. Different societies ascribe agency to [\*231] differing entities. For many American Indian tribes, the earth itself was a consistent, active and powerful agent with whom many tribes instituted reciprocal affiliation. While treaties do not spell out how tribes should think of nature, forcing a utilitarian use of nature where a different relationship previously existed is another violent dimension of broken treaties. This can be restored with minimal effort by simply following the agreements that were made.¶ Under the prevailing conception, Western ontologies and epistemologies have not recognized the breach of sacred treaty relationships as a violent action. However, with a new understanding of violence, environmental policy in Indian Country can be recognized for the dysfunction that it continues to serve. We can better understand this conception of violence by profiling a Kiowa experience that was later applied to all federal-tribal relationships.¶ II¶ ¶ Twenty-Five Years Reserved: The Treaty of Medicine Lodge is Allotted¶ ¶ In 1867, the Kiowa and Comanche Nations and the United States government negotiated a treaty at Medicine Lodge Creek, Kansas. Article One reads:¶ ¶ From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is here pledged to keep it. The Indians desire peace, and they now pledge their honor to maintain it. n21¶ ¶ The 1867 Medicine Lodge peace treaty was forged to end potentially protracted fighting that could have severely damaged both sides. For the United States government, talks were needed to strike a deal with the Kiowas and Comanches so they would not attack the railroad or wagon trains crossing through their territory on the way west. For the Kiowa and Comanche, negotiations for a cessation of fighting were meant to ensure the protection of tribal land from further incursions by non-Indians. In negotiating an agreement, both sides also approved a framework for further agreements. This framework, usually referred [\*232] to as the "Indian Consent Rule," stated that the federal government would have to gather the signed consent from three-quarters of the adult males in the tribe before any other land cessions were made. This was an attempt by tribal leaders to avert the loss of any additional tribal land and/or rights to the federal government. The Indian consent requirement was placed in the Treaty "to specifically reassure those Indians who wanted a federal guarantee of their future, undisturbed use and occupancy of their reserved lands." n22¶ Thus, "in exchange for certain land cessions, the federal government explicitly promised the Kiowas that no additional land cessions would be made without their consent." n23 At Medicine Lodge Creek, the Kiowa ceded original tribal lands that spanned from South Dakota to large portions of western Oklahoma in exchange for more than two million acres in present day southwestern Oklahoma. n24 The Agreement is explicit about the extent of control the respective tribes had over this land.¶ ¶ The United States now solemnly agrees that no person except those herein authorized so to do and except such offers, agents and employees of the government as may be authorized to enter upon said Indian reservation in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians. n25¶ ¶ Thus the Medicine Lodge Treaty provides a legal agreement for the permanent residence, use and benefit of a reservation explicitly for the Kiowa and Comanche people. Yet despite the explicit language in the original treaty, the Kiowa reservation no longer exists. Kiowa land holdings are now a "checkerboard" arrangement of personal property (not tribal) and trust land. Tribal members personally retain 1200 acres of discontinuous land and an interest in about 3000 acres of trust land. n26 This represents a loss of 99.7% of the land originally reserved in the Treaty. Some scholars argue this should be considered an act of genocide due [\*233] to the attempt to destroy the land base of land-based peoples. n27 Part of this act was the necessary hierarchical relationship and exercise of power to enact these genocidal policies. Moreover, such policies would not have been considered had the original reciprocal duties been honored and genuinely respected.¶ The loss of permanently reserved land occurred for many tribes through "allotment" via the General Allotment Act of 1887. Allotment was a policy to reduce tribal holdings and end tribalism by taking tribal reserved land and allotting it to tribal individuals to be used for farming. Non-Indians advocated the Act under the guise of "civilizing" Indian people by dispossessing tribal land and privatizing it for individual farming. However, it was also done at a time when the federal government was under pressure to release more land to settlers. The "surplus" land left from allotments to tribal members was consequently sold off to non-Indian settlers for less than $ 2.00 an acre. During this period, tribal people lost over 80% of their reserved land (which was already an enormous reduction from previously ceded land). n28 Before Congress ended the policy of allotment, many individuals' allotments were sold to non-Indians, making tribal holdings a "checkerboard" of ownership.¶ For the Kiowa and Comanche, allotment was implemented through the Jerome Agreement of 1892. "Agreement," however, is a contested term in this case because the "Indian consent rule" of the Medicine Lodge Treaty had been broken. It was broken by David Jerome and Warren Sayre, Federal Indian Commissioners, who told the Kiowas, Comanches and Kiowa-Apache that if they did not allot their land, the President would do it by force as had been done to other tribes. The Kiowa protested, but the federal officials forced the matter and left with 456 tribal signatures. n29 The most current census of that time showed that there were 725 adult males on the reservation. In order to be in accordance [\*234] with the Medicine Lodge Treaty, Article 12, the federal government needed 543 signatures. n30¶ According to our definition of violence, abrogation of the Medicine Lodge Treaty was an act of violence against the tribes as it abrogated the reciprocal relationship between two sovereigns. Clearly, placing the Kiowa, Kiowa-Apache and Comanche Indians under a hierarchical relationship forced them to subordinate their rights of self-determination and forfeit their ability to determine policy on tribal land. However, this violence was consequently legitimated by the Supreme Court holding in Lone Wolf v. Hitchcock.¶ III¶ ¶ The Violent Institution of Lone Wolf v. Hitchcock¶ ¶ Kiowa Chief Lone Wolf appealed the Jerome Allotment to the Supreme Court, citing the fact that the Agreement failed to get a super-majority from the tribe, thus breaking the Medicine Lodge Treaty. The Kiowa chief lost the case, and the Lone Wolf v. Hitchcock Court ruled that the United States Congress could abrogate this agreement and all treaties as it saw fit. n31 This decision affirmed congressional plenary, or nearly unrestricted, power and gave Congress the ability to make final decisions regarding American Indian lands and welfare. n32 In this decision, Congress is assumed to act as fiduciary to the tribes as a parent acts in the interest of a child; this is the trust doctrine and continues to be a foundation for justification of plenary power today. n33¶ The Court and Congress never denied that, if the Jerome Agreement was ratified, it would break the Medicine Lodge Treaty. In fact, the Secretary of the Interior testified to Congress that the treaty had not been fulfilled. n34 Thus, the issue in the Lone Wolf decision was not whether the treaty was indeed broken - it was - but whether the United States was bound by the relationships of the Medicine Lodge documents and others like it. n35¶ [\*235] Perhaps the key to understanding the scope of this violence is to understand what the federal government and the tribes expected out of the treaty relationship. The tribes expected that the treaties had a universal, spiritual, and teleological import. For tribes, treaty making was often viewed as a sacred trust. Treaties were bonds that had utility and were also bonds that held the promise of multicultural unity and connection. Treaties were a way to bring peace and were seen in a larger context than simply the absence of physical violence, because the treaty parties would become joined in trust. "First and foremost with Indians of the Classical Era (and even today) a treaty is a sacred text. It fulfills a divine command for all the peoples of the world to unite as one." n36¶ The views of Indians towards treaties is further explained by a scholar quoting an Indian superintendent, "'in the making of treaties'... 'no people are more open, explicit, and direct.' This was because, according to American Indian traditions of law and peace, treaties created a sacred relationship of trust between two peoples." n37 The relationship forged in treaties could not be more evident. Treaties connected Indian people with the settler people "literally as relatives." n38¶ The federal government, on the other hand, expected more of a business deal than a brotherhood. The federal government apparently saw treaties as a means to an end and an instrumental decision to conclude a conflict and gain resources. This commitment only had rational appeal so long as the agreement was in the government's favor. In 1871, just four years after the Medicine Lodge Treaty, the settler government found themselves in a position of enough power and political will to end treaty-making with the tribes for good. Apparently the convenience had worn off, even if the sacred trust had not.¶ The settler government, instead of respecting the specific circular relationships set up in treaties, would come to generalize its hierarchical relationship over Indian peoples through a universal Indian policy, largely based on plenary power. "As long as we emphasize the generalities, we do violence to the rights of Indians [\*236] as they are articulated specifically in the history of the tribe with the federal government." n39 One such generalization is the decision of the Lone Wolf Court.¶ Had the Court reversed Allotment and upheld the relationships of treaties in federal Indian law, it would have had to also remand the purchases made by over 150,000 non-Indian settlers who had bought homesteads at a $ 1.75 per acre. n40 All of these factors were nearly immovably in place despite the fact that the United States very often promised reservation lands would be available for the sole use by the tribes, "as long as the grass is green and the rivers flow." n41¶ Not only did the Lone Wolf Court decide that Congress did not have to abide by its promises in the Medicine Lodge Treaty, but it released itself from all treaties with Indian people.¶ ¶ The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians. n42¶ ¶ It should be noted that plenary power and the power to abrogate, as it is referred to in the ruling, did not always exist in the form that it does now. To proclaim so denies the reasoning for which the federal government was forced to negotiate treaties with the tribes in the first place. Also, the Court's apparent presumption that abrogation and plenary power would be administered with the best interests of the tribes in mind is not a point that has been fully supported by congressional policy. Yet, the Court famously admits, "We must presume that Congress acted in perfect good faith in the dealings with the Indians of which [\*237] complaint is made, and that the legislative branch of the government exercised its best judgment in the premises." n43 With this understanding of the trust, Congress is said to know the interests of the tribes more than the tribes themselves and the abrogation of treaties would be made to benefit them. Under this new relationship, control of the structure of Indian life and resources were placed within the plenary control of Congress. "Furthermore, Congress was judicially authorized to take Indian lands incident to its exercise of guardianship power over the Indian peoples. The Court's action unleashed the federal government's forced Indian assimilation program that was aimed at the systematic dismantling of traditional tribal governance and cultural systems." n44 These colonial inscriptions and the violence inherent in them are the basis for contemporary environmental policy on tribal lands.¶ IV¶ ¶ Colonialism, the Doctrine of Discovery, and Environmental Policy¶ ¶ "The history of man's effort to subjugate nature is also the history of man's subjugation by man." n45 Control of Indian people by controlling Indian land is a poignant example.¶ Given colonial visions of the European superiority in ideas of religion, government, culture and control of the environment, Indian nations were not permitted to have the same control of resources as Europeans. Instead, Indian title was a compromised version of land and resource control that only implied use and occupancy, not mastery of land and resources that the Europeans assigned themselves. Western ideas of title included fee simple property that could be sold. In contrast, "aboriginal title" did not allow similar transfer/sale privilege. n46¶ Aboriginal title was not determined by examining the governance systems in place - which were complex and largely well-organized in egalitarian and peaceful means n47 - but through race. [\*238] This is evident in the Supreme Court's decision in United States v. Sandoval. In Sandoval, Pueblo tribes differed from other Indian nations in that they owned their land in fee title since the time of Spanish contact in New Mexico. n48 Despite this undisputed title, the Supreme Court ruled that Congress could still impose control over the reservation simply because the people were Indian.¶ ¶ The people of the pueblos, although sedentary rather than nomadic in their inclinations, and disposed to peace and industry, are nevertheless Indians in race, customs, and domestic government. Always living in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and [fetishism], and chiefly governed according to the crude customs inherited from their ancestors, they are essentially a simple, uninformed and inferior people. n49¶ ¶ As the Court proclaims, application of the federal trust, plenary power and federal control of environmental policy is based on notions of an inferior race. This theory allows for the perpetuation of an institutionalized, hierarchical relationship where non-Indians control Indian land and may perpetuate violence "in good faith."¶ Further reinforcing European notions of racial difference was the divergent relationships Indian peoples and Anglos had with nature. n50 Anglo conceptions typically viewed nature as an opportunity for material wealth based on the control of nature. n51 This utilitarian relationship to the natural world promoted vast conversions of natural resources into usable commodities and industries. n52 These industries were then transformed into increased industrial and military capacity used to further expansion and to acquire more resources. n53¶ In contrast, many tribal epistemologies did not recognize the ability to own or master an animate nature. n54 Viewing nature as alive restricts the uses of natural resources and severely restricts [\*239] commodification and industry as a matter of respect. n55 Conversely, viewing nature as inanimate, as did Anglos, allows for maximum exploitation. n56 Some scholars see this type of world-view as a foundation for imperialism because societies that extract the most short-term energy from natural resources gain dominant social positions and power over those who temper their exploitation. n57¶ A. The Doctrine of Discovery¶ ¶ ¶ The English colonists came up with two justifications for taking the Native Americans' lands. First, they argued that colonists would civilize the Indians and 'cover their naked miserie, with civill use of foode and cloathing.' In royal charters given to the companies organizing the colonization, mention was always made of the obligation to bring Christianity to the 'savages.' The other part of the rationale was that Europeans could put the land to a 'higher use,' making it more productive by intensive cultivation and by bringing in livestock. In 1625, Samuel Purchas argued that God did not intend for the land to remain as 'that unmanned wild Countrey, which [the savages] range rather than inhabite.' n58¶ ¶ From the very beginning, Europeans sought to control the ontology of nature by imposing western norms of separating nature from society. Groups with a communal and cohesive relationship with nature were seen as outside of the social contract and were marginalized as irrational. As such, "savage as the wolf" and "noble savage" constructions were used to imagine American Indian people as inferior. n59 These characterizations become the underlying justifications for domination of people portrayed as "unfortunate children of nature" n60 who need to be controlled, managed and dominated like nature itself under the rubric of Enlightenment civilization. The first version of colonial jurisprudence [\*240] to utilize this characterization in the United States was the method of dividing resources for use via title, as understood by discovery tenets.¶ The discovery doctrine gained further legitimacy in United States law through its application by Chief Justice Marshall. According to Marshall this doctrine leads to a natural assumption about 'use' versus 'title' property. He elaborates the point in Johnson v. McIntosh. n61¶ ¶ They [American indigenous people] were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it. n62¶ ¶ Federal trust, in light of its discovery legacy, is a legal tool whose primary use is to compromise the title and claims held by tribes. Moreover, the federal trust is a colonial instrument used from the beginning to divest the natural resources from American Indians. This justification by differences in race and ethnicity places aboriginal people outside of the social contract. If they are placed outside of the social contract, the original, established agreements with the tribes could be broken on the grounds of paternalism. However, the use of the discovery doctrine to legitimize the violence done to American Indians through this unilateral paternalism, even if hidden during treaty making, cannot disguise the harm done to American Indians who were forcefully removed from their lands and denied their traditional relationship with nature.¶ B. Environmental Policy as Colonial Legacy¶ ¶ Federal-tribal environmental land management on reservations reflects the foundational violence committed through colonial-based plenary power. American Indian leaders, scholars and policy experts agree that these environmental policies have been a disaster. n63 We contend that the harm done can be traced to the [\*241] forced change in American Indian use relationships with nature that had been protected by treaties. Thus, while tribes and individual American Indian citizens often retain traditional values for relating to nature, they are not allowed to incorporate them into the federal environmental laws that govern policy on tribal lands. As a result, Indian environmental policy, as dictated by various federal environmental laws, places major decisions about resource use and management in the hands of the federal government through application of the trust doctrine and the "good faith" which it is supposed to embody.¶ One function the federal trust affords the federal government, usually the Department of the Interior, is the ability to approve leases for uranium mines, coal mines, timber harvests and other extractive industries. The trust doctrine has had a damaging effect on tribal sovereignty as well as environmental quality. Tribes have been forced to lease out territory for the mining of radioactive material used in civilian and military nuclear facilities. n64 Such operations usually destroy an area in perpetuity and are often abandoned without being cleaned up. n65 "Tribal self-determination requires the ending of the colonial relationship facilitated by the energy companies and the government... ." n66 The federal trust responsibility is used in an abusive fashion to exploit the resources of American Indian people without paying the social costs of doing so. n67 The leases are producing revenue for the tribes, but at a rate far below their market value. n68 Thus, [\*242] the tribes are not only denied the right to stop exploitation and treatment of nature in a way counter to their beliefs, they are also cheated out of their share of the profits when resources are extracted.¶ "The government has long discovered since, that by keeping Indian resources pooled in reservation areas under trust, it is able to channel the resources at very low rates to preferred corporations, using the tribal council apparatus it established in 1934 as a medium for leasing purposes." n69 The 1934 Indian Reorganization Act instituted liberal democracies on reservations which are referred to as puppet tribal councils. These puppet councils, working within the hierarchy of the Bureau of Indian Affairs (BIA), operate under special interest politics, as opposed to the traditional egalitarian and often consensual governments that tribes previously employed. n70¶ This misuse of nature was strictly prohibited by American Indian ideas and theological restraints that provided an American Indian worldview about a living and sentient nature. Unfortunately, this ended with tribal displacement and rule by non-Indians. The Indian worldview insisted on non-violence and a reciprocal relationship with nature. Moreover, human beings are encouraged to develop their personal capabilities "but only in ways which do not infringe on other elements - called 'relations,' in the fullest dialectical sense of the word - of nature." n71 In addition, the reason that American Indian tribes were able to live sustainably for thousands of years was precisely because of these restraints on what human changes could be made to the natural world. n72 For example, engineering was allowed so long as no permanent changes were made to the earth. n73 Agriculture was a traditional mainstay for some tribes, but it typically could not displace other non-domesticated vegetation or wildlife. n74¶ [\*243] After the displacement of Indians from ancestral lands and the forced severance of traditional Indian uses of nature through broken treaties, extractive resource development became a norm on many reservations. n75 A first step in ending these corrosive environmental practices is to recognize the violence inherent in the destruction of the traditional American Indian connections to their land and the harm perpetuated by plenary land management.¶ One example of federal land management practices violating traditional values and leading to environmental destruction has been unsustainable logging and clear-cutting found on many reservations. Tribes experiencing this problem include the Lummis in Washington, the Umatillas in Oregon, the Western Shoshone in Nevada, the Nez-Perce in Idaho, the Chippewa in Minnesota, the Anishinaabeg in Minnesota, the Menomonee in Wisconsin, and the Navajo Nation in Arizona/New Mexico. n76 In contrast, some tribes such as the White Mountain Apache, Colville, and Grand Portage Ojibwe seem to have faired better in setting more sustained yields. n77 Also, tribes which were subject to congressional termination, a policy which ordered the full integration of Indian people into mainstream society by unilaterally terminating the legal existence of some tribes, had little choice but to watch their forests be clear-cut. n78¶ Perhaps the most well known and egregious federal Indian environmental policy was to encourage uranium mining on reservations. Uranium mining on reservations occurred at a fevered pitch during the Cold War and fueled much of the United States' nuclear arsenal and nuclear power plants. n79 The results of these operations are well documented and have been catastrophic to American Indian health, culture, and ecosystem integrity. n80¶ [\*244] We argue that the mismanagement of tribal lands must not be viewed as random acts of malfeasance, but rather they should be seen as directly attributable to the violence of the broken circular relationship which would have prevented these disasters. When the violence of these broken expectations is recognized, we can begin to address the harm done by allowing more holistic solutions to emerge through the restoration of positive, nonviolent relationships.¶ C. Hope for Non-violent Solutions¶ ¶ Some isolated, but positive steps have already begun. First, some federal land management practices and theories are moving away from extraction and toward preservation through ecosystem management. n81 Also, tribes are gaining more local control through the Environmental Protection Agency. n82 Next, pressure groups and electoral strategies employed by Indian nations may expand tribal influence even more. Finally, the area with the most hope is the powerful history of the American Indian people that can be used to rally support from American Indians and non-Indians as they seek to apply traditional approaches to land management.¶ There has been an emboldened, but not yet universal, change in federal land management. This signals a move away from extractive industries and more toward conservation. At the same time, ecosystem science has begun to come of age, and the application of ecosystem management--seeing all parts of an ecosystem as important and connected--is gaining more adherents and application in contemporary federal environmental policy. n83 Land managers such as foresters, biologists, and social scientists are beginning to reaffirm some components of traditional land management through the respect of predators, habitat conservation, and balance in the natural world. n84 This is an opportunity for administrative officials to personally deny the colonial vision [\*245] and reinstate a reciprocal operating relationship at an agency level as they devise environmental policy with tribes. Honoring the expertise of tribal holism could be recognized at the bureaucratic level as a way for agencies to re-embrace the original circular relationships that were broken. In this way, public administration officials of many levels could initiate programs that embrace the spirit of circular relationships with tribes as a way to begin dissolving the illegitimate hierarchy. This would be both useful and symbolic. Tribal expertise could inform federal bureaucrats about ecosystem management for federal public lands, while these agencies could then recognize that same expertise as a reason to leave tribal land management to the tribes. As an example, the Nez Perce have taken charge of the wolf reintroduction in Idaho because the state refused to do so. As a result, the Nez Perce and the United States Fish and Wildlife Service have used this opportunity to put traditional relationships and values in practice to inform a contemporary need, and it is "one of the most successful wildlife recovery efforts ever." n85¶ Tribes are also gaining some increased control of their environmental policy as the Environmental Protection Agency (EPA) modifies its working relationships with tribes. In programs such as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act, tribes may be designated by the EPA to receive Treatment As States (TAS) and administer their own standards. n86 Under the current TAS amendments, tribes may even assert control over land outside their reservation if the activities will affect the reservation in a "serious and substantial" way. n87 This kind of power is unprecedented in Indian environmental policy. However, it is up to the EPA to designate the tribes with this control, and these provisions do nothing to counter plenary power that could overturn the provisions at any time. n88¶ Tribes are also gaining political power as their revenues increase through gaming and other means. They have been investing these revenues in lobbying members of the United States [\*246] Senate. n89 Tribes are also entering competitive American politics with much more vigor than in the past. n90 For example, in the 2000 election, tribal efforts were recognized as the swing vote that deposed Senator Slade Gorton in Washington. n91 Also, some tribes are investing financial resources and awards to reestablish title to original tribal lands. n92 While these efforts do not directly address the violence inherent in hierarchical relationships with the federal government, they do have the potential to reduce the violent environmental policies rampant in the current system.¶ Finally, and most importantly, hope lies in the history and legacy of the tribes themselves. One helpful question that could provide environmental improvement is "how did the people who lived in this area before relate to and use the rivers, the trees, the grass, the mountains?" While the ability to implement the answer is blocked by plenary power, the solution it offers may help in the local areas where tribes are increasing decision-making ability for land use (such as the TAS). Academic research about this topic is rife with support that many American Indian ancestors related to nature through "cyclical thinking and reciprocal relations with the earth." n93 This research seems to universally agree that tribal institutional worldviews and values encompass "respect." n94¶ [\*247] Illuminating traditional values and demonstrating how this value system can work in contemporary times focuses on the nexus between the past and the future for tribes. This respect specifically means a universal notion of community where "human-to-human relationships are similar to human-to-animal and human-to-plant relationships." n95 Additionally, respect means an acknowledgment that all things are connected; that "past human generations left us a legacy, and we have a duty to pass that legacy on to our great-grandchildren and beyond, as far as to the seventh generation." n96 Further, there must be humility for the oceanic depth and complexity and power of nature. n97 However, current holistic implementation of these values and the full realization of any of the above improvements are fully contingent upon the violently imposed plenary power of the United States federal government.¶ Consequently, fundamental changes are needed at the level of the federal government. First, the federal government should recognize that the treaties made with indigenous peoples are sacred texts (similar to the Constitution or the Bill of Rights) and use them as the basis for future deliberations. Second, the trust doctrine should be abandoned as a guardian/ward hierarchy and replaced with a commitment to a reciprocal relationship with tribes. This should mirror the original multicultural unity between Indian nations and non-Indians found in the original treaty-making context. Third, Congress should revoke plenary power. Society must recognize that Congress does not act in the best interest of Indian nations nor do they provide a system of checks and balances considering tribal input. Only through these kinds of fundamental changes can tribal environmental integrity hope to be fully restored.¶ Further, at the tribal level, consensus decision-making, which was an important part of a holistic approach to the environment, has been replaced with majoritarian rule. Since consensus decision [\*248] making may be difficult to reinstate (maybe currently impossible), well-defined tribal protections for traditional values are worthy of consideration. Traditional values based on inviolable grounds and protected from changes in political mood could be a proxy for the original social beliefs.¶ What would basing traditional values on inviolable grounds mean? Requirements would include an upper limit on consumption, no high grading of renewable resources, and rejection of pure private property institutions for land management. n98 These requirements would remove most extractive industry from reservation lands. When resources are removed from the market, much higher prices would be demanded for those resources and those prices would more closely resemble the resources' real value in the ecosystem. In addition, common property regimes could be strengthened so that new developments would have to meet strict rules limiting impact on animal and plant communities. Finally, corporate interests would have to meet strict demands for business practices, in this case, demands dictated by local tribal decision-makers.¶ These suggestions do not mean that tribes would automatically become "green." It is likely that many tribes would increase exploitive practices. However, it is the assumption of this Article that violence begets violence. By replacing violent relationships between governments with respect for others, tribal customs can more easily find their way into environmental decision-making. Thus, stemming one source of violence may also stem other sources of violence, including environmental degradation. Creating relationships of harmony means that all the connections in our world are at peace. Making environmental policy more peaceful would be one step on the road to harmony.¶ Contemporary tribal environmental policy can and should embrace these values; more than that, the global community should be open to also adopting these values. Traditional values can be used for global environmental governance. Using traditional values as a model for post-modern development would put tribal elders, storytellers, and healers at the vanguard of global consulting. With ever growing emphasis on sustainable development, biodiversity protection, habitat preservation and other issues, the [\*249] global community should take a second look at the values that tribal people have to offer for a livable planet.¶ Conclusion¶ ¶ Contemporary environmental policy on reservations is authorized by congressional plenary power and removes final control of the resources from the people to whom they were promised. This forces a separation of the tribe from the land and the relationships that tribal customs anticipate. Moreover, environmental policy dictated by a federal government that controls Indian land in spite of prior treaty relationships extends a colonial violence into contemporary federal Indian law and policy. This violent political relationship is convenient to extractive industry and conducive to abuse of Indian land. Consequently, both earth and tribes have suffered. We argue that control of the resource base should be returned to the expectation set forth in the original treaties. This would allow for the possibility of more sustainable tribal values to enter contemporary settings while restoring the sacred trust of these government-to-government arrangements. We do not expect this transition to be easy; however, we do expect the outcome to be much better than the current, violent environmental policy system.¶ In addition, the earth itself is not unscathed in this drama. Ancient tribal traditions quite often were based in theological respect for living earth, harmony with others, and equitable power arrangements. n99 In raiding the lives of American Indians, the possibility of green theological foundations for contemporary tribal governance has been seriously compromised. The abrogation of treaties and creation of institutions like the Indian Reorganization Act structured Indian life away from sustainable uses of nature. This changed longstanding relationships that proved to be generally healthy for all inhabitants as well as the land. Modern, western visions of people and nature, as shown in this Article, have largely been based in conquest, which cannot be sustained. n100¶ Violence done between people and to nature becomes an existential problem as the effects of these actions come full circle. Studies in global environmental politics regularly note that dominant [\*250] relationships with nature are fundamentally unsustainable and will ultimately mean terrific devastation that is a threat to global human survival. n101 Stemming this threat requires the very same changes needed in American Indian federal environmental policy - an end to institutionalized collective violence between groups of people and nature which is responsible for this mosaic of destruction.

#### Plan key to give tribes control over their resources and land and combat paternalistic attitudes that form tribes as victims of exploitation and those to be exploited

Tsosie 10

(Rebecca, edited by Sherry L. Smith and Brian Frehner, Indians & Energy Exploitation and Opportunity in the American Southwest, Chapter 11: “Cultural Sovereignty and Tribal Energy Development: Creating a Land Ethic for the Twenty-first century,” Pgs. 277-278//wyo-mm)

The future of tribal energy policy is dependent upon the robust expression of cultural sovereignty within Native Nations and in tribal communities. The lesson from Brian Frehner’s chapter 3 examination of Angie Debo’s work on oil exploitation and the Oklahoma tribes is quite telling: cultural “outsiders” should not attempt to characterize Native peoples as “victims of exploitation” and then tell them what they should do. This approach is paternalistic, insulting, and potentially quite harmful. Self-determination is the process of autonomous decision making, and it must be expressed through the multiple sets of values and perspectives that characterize contemporary tribal societies. As Powell and Long (chapter 10) observe, “landscapes damaged by uranium and coal mining are the same landscapes that offer possibilities for new forms of power and new partnerships among tribal governments, grassroots activists, federal agencies, energy entrepreneurs, and even industry.” This is a holistic process that focuses on the legacy of the past as much as the potential of the future. The process depends upon dialogue and engagement and on the willingness of Native communities to determine which aspects of themselves are the result of “external” forces and which aspects are truly “internal” to the people as they have always been, attached to certain lands and guided by “sacred epistemologies.” Binary, categorical judgments will only obscure the multiple possibilities in the future. This is perhaps best illustrated by what transpired at a meeting of the United Nations General Assembly on December 11, 1992. Oren Lyons, Faithkeeper of the Six Nations of the Iroquois Confederacy, and Thomas Banyaca, a traditional elder from the Hop Nation, held up a depiction of an ancient rock drawing located on the Hopi Reservation. Mr. Banyaca explained: This rock drawing shows part of the Hopi prophecy. There are two paths. The first with technology but separate from natural and spiritual law leads to these jagged lines representing chaos. The lower path is one that remains in harmony with natural law. Here we see a line that represents a choice like a bridge joining the paths. If we return to spiritual harmony and live from our hearts, we can experience a paradise in this world. If we continue only on this upper path, we will come to destruction.20

### 1AC SD

#### First, federal colonialism:

#### Restrictions on TERAs are undermining tribal self-determination and mandating environmental review prevents tribes from having sovereignty over energy decisions

Kronk 12

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

In addition to concerns related to the status of the federal trust relationship following passage of the TERA provisions, commentators also expressed trepidation regarding the mandatory environmental review provisions included in the thenpending Act. In testimony before the Senate Committee on Indian Affairs, Arvin Trujillo, Director of Navajo Natural Resources, highlighted that federal control of tribal affairs, such as mandating environmental review in Indian country, is at odds with Indian self-determination.76 During the same hearing, Frank E. Maynes, tribal attorney for the Southern Ute Indian Tribal Chairman, expounded on concerns surrounding a federally-mandated process: The leasing and rights-of-way proposals of both pieces of legislation propose a trade that may be unacceptable to some tribes. You eliminate the Secretarial approval in exchange for tribes’ regulations that require consultation with State officials, some type of public notification, and ultimately private citizen challenges of approved leases and rights-of-way. Traditional notions of tribal sovereignty protect tribes from incursion of States and non-members in the decisionmaking process. The Southern Ute Tribe believes this is the wrong approach. We think that Congress should be concerned with whether or not the tribes are capable of making informed decisions in the first place and if they are capable of making those informed decisions, they should take the responsibility for their mistakes as well as for their goods decisions.77 Mr. Maynes went on to explain that the proposed TERA provisions would treat tribal lands like public lands by essentially mandating that tribes adopt NEPA-like environmental regulations.78 Such mandatory regulations require tribes to comply with environmental regulations not applicable to the states.79 President Joe Shirley, Jr., of the Navajo Nation, shared these concerns related to potential infringement on tribal sovereignty in comments he submitted to the Senate Committee on Indian Affairs.80 He explained that such regulations were unnecessary as they were largely duplicative of existing federal environmental requirements already applicable in Indian country.81 One commentator, after reviewing the applicable legislative history, concluded that the mandated environmental review requirements would be “contrary to the twin-goals of fostering tribal selfdetermination and promoting the efficient development of tribal minerals.”82

#### Absent plan natives are locked in a cycle of dependence and prevents energy development—this makes self-determination impossible

Kronk 12

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

Furthermore, reduction of the federal government’s role in energy development within Indian country correlates with the federal government’s goal to promote tribal self-determination.153 Although some tribes may not be in a position to take an increased role in decision-making within their territories, those that are in the position should be encouraged to take an increasingly active role, thereby empowering the appropriate tribes to be self-determinating.154 The failure of the federal government to recognize that many tribes are capable of independent decision-making would see tribal nations “frozen in a perpetual state of tutelage.”155

#### And self-determination key to check colonial relations-

Glaser 10

(Leah S., edited by Sherry L. Smith and Brian Frehner, Indians & Energy Exploitation and Opportunity in the American Southwest, Ch. 8: “An Absolute Paragon of Paradoxes,” pg 161//wyo-mm)

In the year 2000, amidst California’s energy crisis, Enron’s spectacular collapse, and deregulation across the electrical industry, the US Department of Energy sponsored a report, far less publicized, revealing gross violations of democratic equality and distributive justice.1 More than 14 percent of American Indian households located on reservations lacked electricity, compared with less than 1.5 percent of non-Indian Americans. Indians paid the highest electrical rates in proportion to their income and consumed the least amount of energy per household. The report revealed that Arizona’s tribes experienced the greatest problems accessing electricity, even though hydroelectric dams, coal deposits, oil, and uranium, mines made those reservations the centers of power production for the greater Southwest. Such startling statistics expose the colonial and elite power structures though which outside energy developers have historically victimized and exploited Native people, socially, environmentally, and economically2.

#### Colonialist violence allows the government to view colonized bodies as sub-human, this makes forms of violent subjugation thinkable and domination inevitable

Lissovoy, 2010

[Noah, University of Texas at Austin, Dept. of Curriculum and Instruction, “Decolonial Pedagogy and the Ethics of Global.” Discourse: Studies in the Cultural Politics of Education, Vol. 31, No. 3, July 2010, 279-293, Accessed online via Academic search premier] /Wyo-MB

In a second moment, and in the context of a disavowal of colonialist violence, the totalizing conceptions of European philosophy and the finality and authoritativeness of its abstract assertions of the very truth of Being worked to repeat the disappearance of the other 􏰀 this time at the level of philosophy itself 􏰀 that the violent campaigns of imperialism and the ‘civilizing mission’ of the church undertook concretely against actual bodies and minds. While this epistemological violation cloaked itself discursively in the soaring periods and spectacular subver- sions of the bourgeois philosophical tradition, in the colonies themselves it produced the calculations and rationalizations of genocide and cultural annihilation. Maldonado-Torres (2008) calls this a ‘master morality’ premised on an absolute refusal to engage the colonized person as ethical being; for Mills (1997), this is the discursive norming of non-white bodies as sub-human. This systematic blindness to the actual violence of conquest, and to the fact of philosophy’s historical complicity in the projects of material, epistemological, and spiritual subjugation, results in a crucial gap or failure in the dominant discourses of ethics and politics, even as they congeal into the hegemonic common senses of everyday life. Unable to confront and comprehend the fact of domination, whiteness and Eurocentrism nevertheless continue to assert themselves as the origin of authentic moral experience and understanding (e.g. in the detached ratiocination of contemporary analytic philosophy, or in the discourse of resentment undergirding the moral pedagogy of the culture industry).

#### Self-determination through renewable energy key to combat fossil fuel colonialism and prevent endless cycles of violence against Native Americans-

Gough 9

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

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

#### Wind/Solar offer a unique site in fostering self-determination and combating resource injustices-

Voggesser 10

(Garrit, edited by Sherry L. Smith and Brian Frehner, Indians & Energy Exploitation and Opportunity in the American Southwest, Chapter 4: “The Evolution of Federal Energy Policy for Tribal Lands and the Renewable Energy Future,” Pgs. 74-75//wyo-mm)

Despite warnings as far back as the 1950s and 1960s, worldwide discussion and understanding of climate change have only recently emerged. There is growing consensus that global warming discriminates—those most vulnerable are the least responsible yet the most affected. American Indians and indigenous peoples around the world face serious harm to their economies, health, natural resources, and cultures. This has prompted inter-tribal organizations, such as the Indigenous Environmental Network, to create programs focusing on “climate justice.” In the 1970s Amory Lovins proposed a shift from hard to soft energy technologies, from unsustainable energy technologies detrimental to the environment to sustainable, flexible, and more environmentally friendly energy development approaches. Fifteen years ago, Dean Suagee, an environmental attorney and a member of the Cherokee Tribe, wrote, “The time has come for political leaders to realize that soft energy paths are…the key to dealing with global warming.” Moreover, Suagee concluded, soft paths such as renewable energy give tribes a sustainable approach to economic development.50 Tribal lands contain many of the nation’s renewable energy resources. Reservations in the West, particularly the Southwest, have the most direct solar radiation. Northern Plains reservations contain significant wind energy potential, and many western reservations have geothermal energy. Reservations across the nation contain biomass resources. Wind energy potential on tribal lands alone can meet at least 15029 percent of the nation’s energy needs, and solar electric potential on tribal lands is 4.5 times greater than the total US electrical generation in 2004. Advocates argue that renewable energy can partly atone for the legacy of natural resource injustice to tribes. In addition to the economic and environmental benefits, Suagee has noted, renewable energy can honor the values held “by many Indian people to balance relationships among the natural world and human beings.”51 In the past ten years, many tribes took advantage of this opportunity to benefit their communities. For instance, the Citizen Potawatomi Band developed geothermal power to heat tribal enterprises. The Assiniboine and Sioux, Northern Cheyenne, and Rosebud Sioux tribes developed wind energy. The Ramona Band of Cahuilla Indians developed ecotourism facilities powered by multiple renewable energy resources. Many tribes in the Southwest developed solar energy projects, and dozens of tribes throughout the West conducted assessments of their renewable energy resources and implemented energy efficiency projects.52 Meanwhile, tribal colleges across the West—such as Turtle Mountain Community College in North Dakota, the Crownpoint Institute for Technology in New Mexico, and the Blackfeet Community College in Montana—installed geothermal heat pimps to heat and cool their campuses and wind turbines to meet energy needs. The Blackfeet Community College became the first to utilize wind power, in 1996, and the Turtle Mountain College became the first college anywhere to be completely powered by renewable energy. Many of these colleges developed a curriculum to teach students about renewable energy methods, build tribal capacity, and arm tribes with the knowledge to make informed decisions regarding energy development. These projects demonstrate that renewable energy offered tribes a path to self-determination and alternative options for economic growth so that tribes could truly make their own decisions about what future energy development means to their communities.53

#### Expanding tribal self-determination in energy production is key to projects on tribal lands

Unger 09

(Kathleen R. Unger, JD Candidate at Loyola Law School Los Angeles, Masters in Linguistic Anthropology from the University of Texas at Austin, Fall 2009, “Change Is In The Wind: Self-Determination And Wind Power Through Tribal Energy Resource Agreements”, Loyola of Los Angeles Law Review, 43 Loy. L.A. L. Rev. 329, lexis, acc 12/10/12)

To meet these goals, however, tribal resource development must also promote self-determination through tribal control over development projects. Economic development on tribal lands succeeds best where control over the development activity is in tribal hands rather than in the hands of the federal government or another outsider. n43 Past federal policies tended to place control in the hands of the federal government or non-Indian developers. n44 For example, in the past, the federal government was entirely in charge of deciding the course of natural resource development on tribal lands. n45 The government often accomplished this development through lease agreements with outsiders, initially for grazing and mining, and later for other mineral development processes as well. n46 The royalty payments to tribes under these leases were low, and tribes were unable to negotiate for better lease terms, leaving them at a disadvantage. n47 More generally, the federal government retained the ability to direct the course of development under these policies. n48 [\*337] More recently, a shift in federal policy has lessened the extreme federal control over tribal resource development. The doctrine of self-determination, which has guided much of federal policy toward American Indians over the past decades, acknowledges that giving tribes control over how their resources are developed is the best way to improve economic self-sufficiency and to strengthen tribal governmental and economic structures. n49 Thus, promoting self-determination should be a central consideration in the development of tribal energy resources.

#### Thus,

#### The United States federal government should end Title V Section 3504 of the Energy Policy Act of 2005 restrictions that require Secretary of the Interior approval for the production of wind and/or solar power in the United States.

### 1AC Solvency Module

#### Despite efforts to stream-line energy development, continued federal paternalism and oversight stifles use of TERAs in the status quo- reducing restrictions is necessary and sufficient to spur energy development

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

Mirroring this desire, many tribes are also becoming interested in energy development opportunities:¶ Perhaps more importantly, tribes are beginning to perceive renewable energy development in a positive light, as something [\*816] that is consistent with tribal culture and values. Many tribal leaders now see renewable energy as a vehicle for economic development in areas that may no longer be (or never were) suitable for agricultural development. Some also see this as a way for tribes to play a positive role in the nation's energy future. n20¶ Accordingly, energy development in Indian country is attractive to the federal government. It both advances the federal interests discussed above, and provides some tribes a method to achieve economic diversification, promote tribal sovereignty and self-determination, and provide employment and other economic assistance to tribal members.¶ Despite the foregoing, extensive energy development within Indian country has yet to happen. Former Senator Campbell explained why this may be the case:¶ The answer lies partly in the fact that energy resource development is by its very nature capital intensive. Most tribes do not have the financial resources to fund extensive energy projects on their own and so must partner with private industry, or other outside entities, by leasing out their energy resources for development in return for royalty payments... . The unique legal and political relationship between the United States and Indian tribes sometime makes this leasing process cumbersome.¶ ... .¶ The Committee on Indian Affairs has been informed over the year that the Secretarial approval process is often so lengthy that outside parties, who otherwise would like to partner with Indian tribes to develop their energy resources are reluctant to become entangled in the bureaucratic red tape that inevitably accompanies the leasing of Tribal resources. n21¶ Recognizing the importance of energy development in Indian country, the need to promote such development, and the fact that the existing structure for energy development in Indian country may actually act as a disincentive to private investors, Congress [\*817] passed the Indian Tribal Energy Development and Self-Determination Act of 2005 as part of the Energy Policy Act of 2005. n22 In relevant part, the Act allows tribes who have met certain requirements to "enter into a lease or business agreement for the purpose of energy resource development on tribal land" without review by or approval of the Secretary of the Interior, which would otherwise be required under applicable federal law. n23 In order to qualify, a tribe must enter into a Tribal Energy Resource Agreement (TERA) with the Secretary of the Interior. n24 The Secretary must approve the TERA if the tribe meets several requirements. n25 One of these requirements is of particular importance to this article. Tribes are required to "establish requirements for environmental review," n26 which must mirror the requirements of the National Environmental Policy Act (NEPA). n27 In addition, the Indian Tribal Energy Development [\*818] and Self-Determination Act of 2005 expounds upon the federal government's trust responsibility to tribes as related to TERAs. Specifically, the Act states:¶ Nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive orders, or agreements between the United States and any Indian tribe. n28¶ However, the Act goes on to provide that "the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement." n29 The Act's mandated environmental review, statement on the federal government's trust responsibility, and general waiver of the federal government's liability will all be discussed in much greater detail below as they relate to why tribes have not taken advantage of the Act's TERA provisions.¶ From the text of the Act, it may be inferred that Congress hoped to promote energy development in Indian country by "streamlining" the bureaucratic process (i.e., removing the requirement of Secretarial approval for tribes that enter into a TERA with the Department of Interior). In 2003, Senator Domenici confirmed this conclusion, explaining the purpose of the then-proposed TERA provisions as follows:¶ The Indian people of the United States are the proprietors of large amounts of property. On this property and in this property lie various assets and resources ... .¶ ¶ The purpose of this bill will be to say to our Indian people, if you want to develop resources in the field of energy that lie within your lands, we are giving you the authority to do so and hopefully in a streamlined manner so that it will not be forever bogged down in the red-tape and bureaucracy of Indian lands [\*819] being subject to the Federal Government's fiduciary relationships. n30¶ Tribal representatives initially indicated support for the TERA provisions, as the TERAs allowed for increased tribal self-determination and also encouraged efficiency in energy development in Indian country. n31¶ In addition to tribal and federal governmental interests in the TERA provisions, third party investors may also be interested in TERAs, because "if a TERA is properly structured, a mineral developer should gain greater certainty and efficiency in the development of energy resources on tribal lands." n32 In this way, the TERA provisions represent a rare instance in the history of tribal-federal relations where both tribes and the federal government may benefit from a partnership. However, despite [\*820] this possibility, not a single tribe has taken advantage of the "streamlining" opportunity presented by the TERA provisions.¶ Despite the attractiveness of increased energy development in Indian country, tribes have failed to take advantage of the existing TERA provisions because they represent a mixture of federal paternalism, oversight, and limited liability that is not attractive to tribes. This article examines more deeply why tribes have, to date, failed to take advantage of the TERA provisions and then makes recommendations as to how TERA might be reformed in order to increase tribal participation. Accordingly, Section II examines the underlying purpose of the TERA provisions and associated legislative history. Three categories of tribal concerns related to the TERA provisions emerge following a review of the applicable legislative history. Each of these categories is explored in depth. Next, Section III discusses the general ability of tribes to develop their energy resources. This Section also discusses why such development may be generally attractive to tribes. The Section concludes that some tribes have both the capacity to, and economic interest in, developing their energy resources. Given the foregoing, Section IV theorizes that tribes have failed to enter into TERA agreements due to the concerns represented in the related legislative history. As a result, Section V presents two alternative proposals for reform, arguing that should either proposal be adopted by Congress, the likelihood that tribes would be willing to enter into TERA agreements would increase. Ultimately, this article concludes that adoption of either of the proposed TERA reforms will spur tribal promulgation of TERAs with the Secretary of Interior.

#### All elements of the plan are necessary to solve- renewables are key because they allow direct ownership and TERA reforms are key because it is necessary for real self-determination- anything else falls short

Unger 10—Clerk, Hon. Ferdinand Fernandez , U.S. Court of Appeals for the Ninth Circuit, JD Loyola Law School, MA - Linguistic Anthropology, University of Texas at Austin (Kathleen, CHANGE IS IN THE WIND: SELF-DETERMINATION AND WIND POWER THROUGH TRIBAL ENERGY

A fourth change that should be made to the TERA structure is that it should be reworked to encourage direct tribal participation in development projects. Though the Indian Energy Act’s asserted aim is to allow tribes to take control of development on their lands, in reality the TERA legislation is geared more toward having tribes take over the regulatory role of the federal government, while private development is still the most likely medium through which resource development will take place. 290 Because research has suggested that economic development is more successful when tribes are actively involved, 291 this model should be rethought. In part, rethinking the tribe-as-regulator model will involve considering whether the TERA framework works to enable truly self-determined resource development by tribes. The framework has been called a “guarded effort” to allow tribes to determine the course of resource development on their lands. 292 But a guarded effort may not be enough to foster real self-determination.¶ In fact, the TERA legislation and regulations specify in great detail the provisions that a tribe’s TERA and its subsequent development agreements must contain. 293 This high level of federal regulation appears logically inconsistent with real tribal control over economic and resource development. 294 The issue at the heart of self-determination is tribes’ right to make their own laws and govern themselves. 295 When the federal government dictates the terms under which tribes can take control over resource development, this right remains unfulfilled. ¶ As noted previously, much of the concern over TERAs for natural resource development arose in the context of mineral resources, because of the high potential for adverse impacts resulting from their development. 296 But because wind power does not share this potential, 297 it can provide an opening for a less rigid structure than the present TERA framework allows. Given the imperative to develop wind power, now may be the perfect time to consider this possibility.¶ VII. CONCLUSION¶ Indian tribes and the DOI should view the TERA framework as providing an opportunity for tribes to take charge of resource development when their capacity is sufficiently advanced. Because of its lesser environmental impacts, wind power provides a significant opportunity for tribes to use TERAs to step into an active development role.¶ Not only do the characteristics of wind power make it particularly well suited for use of the TERA structure, but wind power is also particularly appropriate for development by a tribal energy resource development organization made up of several tribes. Allowing a tribal energy resource development organization to enter into a wind power TERA would enable the development of this renewable resource through large-scale projects that can help meet the nation’s energy needs in a sustainable way and also help meet tribes’ needs for sustainable economic development.¶ In addition, a wind power TERA provides an opportunity for tribes to have an ownership interest in the development of their resources rather than remaining only regulators of development undertaken by others. 298 This ownership enables tribes to take greater control over development projects, thereby furthering the goal of self-determination.¶ Finally, TERAs enhance self-determination by giving tribes the power of choice over development decisions. 299 Because the TERA structure is a voluntary framework for development, tribes can choose to use this tool or to forgo it in favor of the preexisting, more protective framework. Moreover, TERAs allow tribes to choose tribal control, and thus self-determination, in place of federal protection under the trust doctrine. 300 There may be less need for a robust trust doctrine after the past several decades, in which the self-determination principle has influenced federal Indian policy and has led to greater tribal autonomy—and through the choice TERAs offer, they can be seen as harmonizing the trust obligation with that present reality.301¶ However, it is worth considering whether the TERA framework goes far enough in fostering self-determination. Making some changes to the TERA structure, as this Note suggests, can help tribes achieve the goal of developing wind power in a self-determined way. But now may be the time to make broader changes to the federal legal framework that governs tribal resource development, to truly unleash the power of tribal wind.

#### Restrictions on TERAs destroy sustainable renewable development- only the plan can spur TERA adoption AND solve for sovereignty- any counterplan freezes tribes in permanent servitude

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

#### The 1AC’s examination of the material and epistemological elements of Native Americans is key to challenge and destabilize institutions that have initiated violence and unlock opportunity for overall indigenous communities-

Steinman 12

(Erich, Pitzer College Chicago Journals, “Settler Colonial Power and the American Indian Sovereignty Movement: Forms of Domination, Strategies of Transformation,” January 2012, JSTOR)

The multi-institutional politics model offers a framework capable of analyzing the Indian Sovereignty Movement and identifying the aspects of contemporary settler colonialism it challenged. Rather than seeing power as something held by the state, the MIP model suggests that power consists of both material and cognitive elements located in multiple institutions or fields throughout society. Importantly, both aspects of power must be continually reproduced as institutions are “constantly shifting” (Epstein 2007, p. 101). In this case, a key shift was the transformation of American racial ideology in response to the civil rights movement. The emergent contradiction between American racial ideology and assimilationist federal Indian policy weakened the institutions structuring the place of American Indians. This institutional destabilization created a significant cultural or cognitive macrolevel opportunity and, in the context of the overall indigenous renascence, contributed to the experience of tribal “free spaces” in which indigenous strategists could newly imagine and promote sovereignty-based alternatives. Simultaneously, and augmented by the radical flank of militant Red Power protest, this institutional destabilization created conditions conducive to the circulation and possible acceptance of tribal alternatives within various fields. As stated by Kelly Moore, what makes institutions fascinating is that “important rules and relationships that constitute them are not formalized and are thus constantly subject to negotiation from within and without” (Moore 1999, p. 100). This makes institutions continually vulnerable to multiple forms of disruption and the introduction of alternatives, rather than requiring change efforts to simply wield pressure as a battering ram against the state and other power holders. Disruption and the promotion of alternative material arrangements and schemas are facilitated by contradictions of various kinds—across fields, between practices and schemas, and so on—and by overlapping fields. Such conditions loosen relations of domination and put multiple configurations of material relations and divergent schemas in play for possible use in any particular field.

#### Our recognition of slow impacts is critical to interrogating the violent spectacular politics that frame our current decisions, absent plan it allows us to normalize violence

Nixon 10

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

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

#### Sovereignty is critical to create space for traditional Euro-American domination-

Steinman 12

(Erich, Pitzer College Chicago Journals, “Settler Colonial Power and the American Indian Sovereignty Movement: Forms of Domination, Strategies of Transformation,” January 2012, JSTOR)

The Indian Sovereignty Movement, or “self-determination movement” (Champagne 2008, pp. 1681–86), grew out of efforts by federally recognized Indian tribes, the pan-tribal National Congress of American Indians (NCAI), and other Indian advocates to develop an alternative to the federal policy of termination announced in the 1950s. Termination meant the disbanding of a tribe and the end of the special legal status that federally recognized tribes hold, a status that reflects historic treaties with the federal government and a variety of other federal acknowledgments of distinct tribal status. Newly bolstered by funds from War on Poverty community action programs, tribal governments in the 1960s began to expand their own capacities and influence on reservations (Champagne 2008, p. 1683), which had previously been dominated by the Bureau of Indian Affairs (BIA). Simultaneously, members of many tribal communities asserted treaty rights to hunt, fish, and use other natural resources as declared in treaties but which had been only minimally or sporadically enjoyed in practice due to state government prosecution and legal uncertainty (Cornell 1988, p. 189). Unevenly, and often sparked by local conditions or conflicts, tribal communities increasingly reasserted the right to make their own decisions. Such efforts represented a new iteration of continuous and varied Indian resistance to Euro-American domination. Nancy Lurie, based on widespread travels in Indian country in the early 1960s, perceived a “renascence, rebirth … [in which] the leadership is diffuse, emphasis and action vary from place to place,” and in which, in contrast to some previous reform periods, initiative had come from Indians themselves (Lurie 1972, p. 303). While coterminous with the black civil rights struggle, Lurie reported that, in contrast, Indian grievances “can always be traced to ‘broken treaties’” (1972, p. 298) rather than to claims for equality and inclusion. These struggles retained a long-standing emphasis on tribal nationhood, conveyed a fierce attachment to tribal affiliations, and were also informed by an increasingly salient pan-Indian identity (Cornell 1988, pp. 106–27). This renascence emerged in urban areas as well as reservations and was differently informed by new associations of insurgent Indian youth as well as by established networks of tribal leaders and traditionalist elders (Steiner 1968).

Fostering cooperative mechanisms between the tribes and state allows us to combat the logic that the state is always violent

Steinman 12

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Thus, the strategy of cooperation and coexistence was not just a novel proactive approach creating new possibilities, but it explicitly challenged the widely operative schema of inherent opposition between Indian and American and between state and tribe. This schema reflected the core tension between settler claims and a continued indigenous presence and provided a thoroughly combative and zero-sum logic of action. An expression of disciplinary power, it produced deeply valued identities that, in the context of contemporary uncertainty about the place of tribes in American society, both motivated action and were themselves mobilized to display opposition. The repertoire of action readily available within this schema was narrow. Explicitly targeting this schema at the state-tribal level, DeLaCruz’s Commission on State Tribal Relations directly argued that the default assumption of inevitable conflict and competition between states and tribes was incorrect: “The greatest barrier to improved tribal-state relations is the set of attitudes and expectations … shaped by the … emphasis on conflict. … Because of such expectations, there remains political profit in classic demagoguery, racism, and base appeals” (Commission on State Tribal Relations 1984, p. 25). While DeLaCruz did not also identify it, settler colonialism similarly informed these social relations and the sociopolitical environment.