# 1AC

### 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

#### 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

#### Aff 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.

### Centralization-

#### Absent policy shifts, dangerous centralization of renewables will continue-

Fown 11

(Prof. of Biology at Ohio state, Why Big Solar is a Colossally Bad Idea, 10 Reasons Decentralized Solar is Much Better Clean Technica, April 27, 2011 By Aaron Fown, <http://cleantechnica.com/2011/04/27/why-big-solar-is-a-colossally-bad-idea-10-reasons-decentralized-solar-is-much-better/>)

Of late there has been much talk about moving towards a solar energy future. This is a positive development (albeit one that is almost too late) and has been driven, no doubt, by recent studies that have shown that solar and wind power are now amongst the cheapest forms of power generation, several critical breakthroughs in related fields, and big moves by some major players. However, it seems that a lot of money is being thrown at a particular type of solar power plant; massive centralized solar plants. It is my opinion that this is a massive mistake.¶ We have an opportunity to build a new power system to replace our failing grid with something more resilient, more efficient and more egalitarian, and if we don’t take this opportunity we will be stuck with mild changes to the old system. I feel that big solar is actually a real threat to our future, or at least our best possible future, and we need to focus a bit on it now before the form of our electrical system is set in stone.¶ In fairness, centralized solar does have a few benefits, so let’s start with them before I explain why a decentralized system would be a much better choice.¶ 1. A centralized solar plant requires fewer engineers and workers to build and maintain the solar power collectors than a distributed system, on a per megawatt basis. This means there is less up front cost, and you employ fewer people. I guess that might help the stock price, since Wall St. tends to invest against employing people.¶ 2. A large solar installation, or better, many of them spread across many states, provides a consistent money stream for the plant owner, especially after the upfront cost of the plant is paid off.¶ 3. A large solar installation can take the place of a coal or nuclear plant, providing energy without the many downsides of the older technologies.¶ Notice anything about these benefits? The first two are primarily beneficial to the plant operator, and not to the community that the solar plant is in.¶ 1. A decentralized solar collection scheme is far more energy efficient than a centralized one. More than 30% of our electricity is lost in transmission in our current system, and a centralized solar plant is no different than the current system in this way. A decentralized system can supply power to where it is needed directly most of the time, only using the grid to offload surplus power.¶ 2. A decentralized solar strategy will employ far more people per megawatt than a centralized one, employing small businesses and technicians to maintain and install systems wherever they are needed. We really need jobs right now, so this should be a big selling point.¶ 3. A decentralized solar system will be far more resilient to natural disasters, as there will be no single points of failure that can bring down the whole grid, as there is with centralized power generation. Do you remember the blackout of 2003? A bad solar storm could be far worse.¶ 4. A decentralized solar system utilizes unused space on rooftops and in yards to generate power, whereas a centralized system, requires the development of new land destroying habitats while generating no more power. Indeed, given the amount of unused roof space in the US, you could completely solve our energy issues by covering only a small fraction of it with solar collectors. Add solar collectors built into roads and pathways, and we have all of the space we need to solve the energy crisis for good without clearing any more land.¶ 5. A decentralized solar strategy gives power to the people, in more ways than one. Since the people are generating electricity, they are also generating capital continuously in the form of free electrons. The result is that the community is made richer across the board, by producing a useful, valuable commodity directly under the control of middle and lower class people.¶ 6. A decentralized solar strategy provides market space for lots of technologies to compete directly, without the generally anti-competitive nature of big monolithic construction contracts crowding out the small players. In the short run, this will provide more opportunities for small businesses to grow. In the long run, this enriched competition will produce a more efficient and refined product.¶ 7. Rooftop systems shade the structure underneath, cutting energy usage in the summer months. This is an additional energy savings above and beyond the major issue of transmission losses.¶ 8. A decentralized solar collection strategy preserves a place for things such as solar water heaters, which are a much more efficient way to heat water than generating power miles away, losing a significant portion of it by shoving it through wires, and then heating more wires to heat water. The difference in efficiency for this one task is enormous.¶ 9. A decentralized solar strategy doesn’t require huge governmental loan guarantees to get off the ground. It doesn’t require government help at all, though it would be nice if local governments would get out of the way and let people set up these systems without bureaucratic hassles or ridiculous energy buy back schemes. If the government gets involved, it could be in the form of rebates or tax abatements, which are proven to be a more effective way of distributing public funds into the economy than big monolithic projects. Or it could be in the form of innovative projects that use the acres of rooftops on civic structures to generate power instead of just more heat. Even if you are utterly skeptical of governmental action, you could just think of it as a handy way of reducing the hot air coming out of your local legislative bodies, while finally putting them to some useful work.¶ 10. This one is often missed: the secondary costs of a centralized power system, like beefed up transmission lines, large ugly transformer stations, and so on are rarely calculated into the cost of concentrating lots of megawatts in one place, but all of those expensive accessories are going to have to be paid for somehow.¶ What about wind? Well, it turns out that wind generators work best when they are spaced out generously, and so the laws of physics are already working against a whole lot of centralization. Many of the early attempts at a highly centralized wind generator were a failure because the closely packed mills created turbulence that reduced efficiency and in some cases caused damage. The closest things out there are some very successful county projects, but in those cases people in rural areas rent out a parcel of their own land for the windmill to be erected on. It works, it’s easy money, and it’s out of the bag. You should assume that everything I am arguing for here can work just fine with all of the wind power we can muster.

Squo policies are biased towards corporations- need to unlock site for local tribal ownership to solve

Kelly and Ratner 09

(Majorie, business journalist and consultant in alternative enterprise design at Tellus Institute in Boston. She is co-founder of Corporation 20/20, an initiative to explore enterprise designs that integrate social, environmental, and financial aims and was President of the Board of Williamson Street Grocery Cooperative, and Shanna, Principal of Yellow Wood Associates, Inc., a consulting firm located in St. Albans, Vermont, specializing in rural community economic development. She has over 24 years experience managing research initiatives and analyzing rural economic development opportunities, Wealth Creation in Rural America project of the Ford Foundation, “Keeping Wealth Local: Shared Ownership and Wealth Control For Rural Communities,” 2009, http://www.tellus.org/publications/files/Keeping%20Wealth%20Local%20-%20Kelly.pdf//wyo-mm)

In the past, tribal ownership has extended primarily to land and housing, as well as some economic entities, including casinos and other businesses. Today tribal ownership faces potentially significant new opportunities in renewable energy. As activist Winona LaDuke, executive director of Honor the Earth, has written, “Tribes have the potential to provide almost 15 percent of the country’s electricity with wind power.” Strengths and weaknesses: LaDuke offered a prescient summary of the strengths and weakness of tribal ownership in her writing. “Ojibwe prophesies speak of a time in the Seventh Fire when our people see two paths ahead,” she wrote. “One path is well worn and scorched. The other is new and green.”72 As tribes seek to take the green path, developing wind power on tribal lands, designing tribal ownership in the right way could be central to making sure the wealth stays local. One problem is that these ownership forms have shown significant potential for abuse, because tribal companies have at times served as ways to receive no-bid contracts for federal funds, exempt from many regulations. Mother Jones wrote in 2005, for example, about the Olgoonik Corporation in Alaska, owned by the Inupiat Eskimo tribe, which in the early 2000s received $225 million to build military bases around the world, then subcontracted most of the work to Halliburton.73 A second problem is that much renewable energy development is driven by tax incentives, while the income of tribal members often falls short of the level needed to benefit from those tax incentives. Perversely, this can mean that wind development makes financial sense only when ownership is held by those outside the tribe. This problem can be solved with a design similar to the “ownership transfer corporation,” where ownership is held initially by outsiders but is formally structured to transfer to tribal or community members over time, as tax incentives are exhausted. However, Mark Willers, CEO of the farmer-owned Minwind in Luverne, Minn. — who called such arrangements “flips” — warmed that they often do not work out to community benefit. He told of wind farms in Minnesota where initial investors built as cheaply as possible and passed on equipment that too often broke down or was of substandard quality. To succeed, ownership transfer corporations would need to be controlled by the tribe from the start, which would take careful design of governance and management incentives. Range of applications: • native ownership: The most powerful recent example of tribal ownership is NativeEnergy, a company that leverages demand for carbon offsets to bring funding to new Native American, family farm, and community-owned renewable energy projects. The company, which became majority Indian-owned in 2005, is moving forward with plans for a distributed wind project on eight different reservations.74 • ownership transfer corporation: This is a model that has been used in infrastructure projects around the world, where governments invite private investors to build infrastructure projects such as power stations, toll roads, canals, and tunnels. Private owners are given sufficient time to recover their investment with an attractive return, after which ownership reverts to the government or becomes a public good. Such a design might be used, for example, to develop wind energy installations, allowing investors to benefit from tax incentives, with ownership reverting over time to a tribe. Purchase by the tribe would not be required; rather, the mechanism could be the issuance of dual-class shares — investor shares and stakeholder shares — with investor shares being allocated initial, time-limited rights, and with ownership transferring over time to those holding stakeholder shares.75 Governance: In the case of tribal ownership, governance may be shaping up to be as important as ownership. The 2005 Energy Policy Act gives incentives to energy companies to partner with Indian tribes in developing tribal resources, but it also rolls back environmental and historic preservation protections on those developments. Whether new opportunities truly benefit tribes will depend to a large extent on both tribal ownership, and on ongoing tribal governance in the community interest. Expertise required: Tribal energy development requires technical assistance with energy, business development, and the design of ownership and governance.

#### Switching to decentralized, local ownership key to resist centralized modes of control and increase tribal sovereignty-

Powell 06

(Dana, Assistant Professor of Anthropology, Appalachian State Technologies of Existence: The indigenous environmental justice movement, www.cfeps.org/ss2008/ss08r/harcourt/harcourt3\_powell.pdf)

In her work with the indigenous movement in Ecuador, Catherine Walsh speaks of the movement’s building of local alternatives as ‘the resignifying in meaning and practice of ‘development’ (Walsh, 2002: 7). Development, with its long history of top-down, state-driven, regulatory, and often export- and expert-oriented goals, is being increasingly challenged by indigenous social movements in the Americas seeking to decentralize and gain local control over various aspects of governance, economic growth, cultural projects, and natural resources. Not completely unlike the Ecuadorian Pachakutik movement Walsh describes, the movement for ‘environmental justice’ in indigenous communities in the US is experimenting with alternative strategies to restructure the production of power to advance democracy and sovereignty for indigenous communities.This essay addresses the possible resignification of development being produced by the practices and discourses of a particular indigenous movement in the US, which addresses controversies over natural resource management on reservation lands. In particular, I consider the emergence of renewable energy projects within the movement as new modes of economic, ecological, and cultural development, countering the history of biopolitical regimes of natural resource extraction, which have marked indigenous experience in North America since Contact. I argue that these emerging technologies not only resist but also propose alternatives to the dominant models of energy production in the US.

#### Challenging centralized strangle-hold on renewables is critical to challenge biopolitical, colonial history that’s served as the justification for tribal extermination

Powell 06

(Dana, Assistant Professor of Anthropology, Appalachian State Technologies of Existence: The indigenous environmental justice movement, www.cfeps.org/ss2008/ss08r/harcourt/harcourt3\_powell.pdf)

A similar history runs through Native America, as this ‘Fourth World’ population was a target of regulation, management, and biological speculation from the moment of Contact, over 500 years ago. Indigenous populations worldwide have experienced the effects of biopower, especially in terms of the management and extraction of natural resources (including bodies and, more recently, genetic information), but in the Americas the situation is geo-historically particular, given the sweeping catastrophe of disease, decimating what some have estimated to be 95 per cent of the pre-Contact population. Another particularity of the North American situation is that, over the long history of occupation since 1492, tribal populations have been alternately exterminated, removed, recombined, relocated, and politically reorganized by state institutions, often under the guise of care and patrimony. In the 19th and early 20th centuries, tribes as populations were regulated and made to live through land enclosures, creating spatial patterns of security, on frontier lands considered undesirable to European colonists. This desirability was, however, based on the visible alone; the resources that laid beneath the surface of the often barren, dry reservations would emerge in the 20th century as some of the most coveted commodities on earth (Figure 2). In sum, thinking of the history of development as a biopolitical operation to manage the life of populations of indigenous peoples in the Americas allows us to see the regulatory operations of the state, sometimes glossed as integrationist policies, as has been the trend in Latin America with the history of indigenismo (Sawyer, 2004), and sometimes framed as patrimony and treaty responsibility, as in the United States, with the ‘Indian New Deal’ in the 1930s (Collier, 1938). Moreover, it provides a way of understanding the history of state-driven development models as regimes of controlling, regulating, and organizing particular bodies and environments ^ the antithesis of the liberal, humanitarian projects these regimes have often claimed to be. Finally, as I move to discuss the IEJM and the emergence of wind and solar power projects on reservations, these technologies of resistance and existence can be thought of as counter-projects to the biopower of 20th century models of development, which have exacted significant ecological and cultural costs from tribes, in service of a reductive, disembedded view of economic growth.

#### Absent shift to renewables, it makes colonialist violence inevitable-

Powell 06

(Dana, Assistant Professor of Anthropology, Appalachian State Technologies of Existence: The indigenous environmental justice movement, www.cfeps.org/ss2008/ss08r/harcourt/harcourt3\_powell.pdf)

Situated within the broader IEJM in North America, these projects mark a shift towards wind energy activism within the movement, which traces its own history of resistance to the recent action of the 1960s and 1970s, but more deeply to the resistance that has always been a part of the colonial experience of being occupied and ‘developed’. The Rosebud turbine is a communitybased development project imagined and executed by local and regional activists and engineers, but funded by a combination of national foundations and federal agencies, including the Environmental Protection Agency, the Department of Energy, Department of Interior and US Department of Agriculture, making for complex and contradictory alliances between tribes and the state. The project is also situated within the context of environmental and political debates on energy development around the state of South Dakota, where plans are underway to develop 2000 MW of coal-fired power by the end of 2010 (LaDuke, 2004). The wind turbine is moving to centre stage as a potential solution to many of movement’s primary concerns: climate and ecological change, natural resource conflicts, cultural preservation, globalization, and tribal sovereignty. Twenty years earlier and1100 miles south, Hopi engineers, activists, and tribal leaders began to install solar photovoltaic panels on rooftops of residential homes, bringing electricity to families who had been living off the grid, without electricity. Projects on the Hopi and Navajo reservations have proliferated over the past two decades, with the Hopi solar business NativeSun and engineer Debby Tewa leading the way. In recent years, these projects have connected with the emerging wind power projects in the Plains region, through the work of the national Native NGOs, HTE, and the IEN, and have become central to these groups’ common visions and overlapping strategies of environmental justice and sustainable development on tribal lands. In the last two years, these two national networks have collaborated with grassroots environmental and cultural protection organizations to install additional technologies on Newe Segobia, or Western Shoshone territory, on the Pine Ridge Lakota reservation, and on the Navajo reservation. These installations have become intermeshed with ongoing indigenous environmental justice campaigns focused on conflicts centring primarily on aspects of energy production, such as the recent conflicts over the proposed mining of the sacred Zuni Salt Lake; the proposed federal nuclear waste storage sites on the Skull Valley Goshute reservation and at Yucca Mountain, Nevada; and uranium mining on the Navajo and Hopi reservations. In several of these cases, the environmental justice activists are challenging tribal governments’ contracts with regional utilities and/or federal agencies.Without a long digression into the history and politics of natural resource use and development on reservation lands, suffice to say it is not always but is often a site of intense internal debate and conflict for tribes themselves. The significance of the relatively recent emergence of wind and solar technologies as tribal development projects is that tribes are increasingly connecting into this network of renewable energy activism as a means of economic growth, ecological protection, and cultural preservation. Seemingly an oxymoron ^ to preserve ‘tradition’ with the use of high-tech machines ^ advocates of wind and solar power emphasize that cultural preservation is itself about flexible practices, change, and honouring worldviews in which the modernist distinction between nature and culture is nonsensical. In other words, when some of the most important cultural resources are the land itself (i.e., mountains for ceremonies, waters for fishing, soils for growing indigenous foods), to protect nature is also to protect culture. As Bruno Latour has also argued, this natures-cultures epistemology is also ontology ^ a different way of knowing, inhabiting and engaging the world (Latour, 1993, 2005). Wind turbines and solar photovoltaic panels are articulating with this worldview, and at the same time articulating with many tribes’ desires to move beyond fossil fuel extraction as a primary means of economic development, and towards natural resource practices that are more ‘sustainable’. The wind and the sun introduce new elements of common property to be harnessed for alternative development projects and increased decentralization and ownership over the means of power production. Technologies of existence This recent emergence of renewable energy technologies on reservations inspires analysis of natural resource conflicts to move beyond models of resistance in understanding controversies and social struggles over resource management and energy production to seeing the ways in which concepts such as ‘sustainability’ are being resignified through the introduction of what I argue are imaginative technologies of existence. I stress existence over resistance not to obscure the contestations of federal, tribal, and utility consortium proposals for natural resource development, which have been importantly detailed elsewhere (Gedicks, 2001), but to emphasize the creative, imaginative work of the movement in envisioning and enacting alternative ways for tribes to self-sustain and grow healthy economies, ecologies, cultures, and bodies in an integrated manner. There are other technologies of existence engaging particular, situated natural resource conflicts within the movement: recovery of customary foods and harvesting practices, coalition-building around water rights and resources, restoration of salmon and sturgeon populations, and projects involving information and film media as a means of preserving and producing the ‘natural’ resource of culture itself. This constellation of resources ^ energy, food, water, and culture ^ are of central concern to the IEJM and creating sustainable methods of generating each advances the ‘good life’ towards which the movement’s work strives. In this sense, wind and solar projects on reservations are not technologies of existence to ‘make live’ in the biopolitical sense of a population’s ensured biological survival and micro-practices of regulation, but technologies that articulate with desire, history, localization, imagination, and being in a way in which the meaning of ‘existence’ exceeds a definition of continued biological survival or reproduction. These technologies are about a particular quality of existence that speaks to the late Latin root of the word,existentia, which comes from the earlier Latin exsistere, meaning ‘come into being,’ itself a combination of ex ‘out’ þ sistere‘take a stand’ (O.A.D., 2001). Thus, when ‘existence’ recovers the notions of coming into being, externality, and taking a stand, what it means to live and to grow is inherently active and perhaps even risky. Sustainability, then, in the context of the IEJM, is a bold existence and set of practices informed by a particular history of struggle and oriented towards a future of well-being, in which the economic, the ecological, and the cultural are interdependent and mutually constitutive.

#### 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).

#### Decentralized energy overcomes the issues of centralized energy for Natives-

Bronin 12-

(Sara C., Associate Professor of Law and the faculty program director of the Center for Energy and Environmental Law, Associate Professor of Law and the faculty program director of the Center for Energy and Environmental Law, edited by Sarah A. and Ezra, Tribes, Land, and the Environment, Ch. 5: “The Promise and Perils of Renewable Energy on Tribal Lands,” Pg. 115//wyo-mm)

The potential for energy sprawl may actually be more significant on and near tribal lands than elsewhere. Many tribal lands are vast territories with populations living far less densely than in urban areas, so unless distributed generation is used to deploy small-scale renewable energy to smaller groups of end users, infrastructure within tribal lands must be built across long distances. For those end users off tribal lands, to whom sales may be part of the economic calculus of the project, transmission of energy from a tribal generating facility may also be space-consuming. Even if an energy project is situated at or near a border, getting energy from a tribal energy project to non-Indian end users could require extensive (not to mention expensive, at perhaps $10,000 a linear mile) transmission and distribution infrastructure.

#### 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.

# THE PLAN- READ THE PAPER!!!

### 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.

#### 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

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)

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

### 1AC no DA’s

#### Preferring war impacts over Native Americans masks the system of racial domination that makes inequality and racism worse

Doan 03

(Ashley W. Associate Dean for Academic Administration and Associate Professor of Sociology at the University of Hartford and Eduardo Bonilla-Silva is Associate Professor of Sociology at Texas A & M University, White Out: The Continuing Significance of Racism, 2003, p. 12)

A core element in the relationship between the transparency of "whiteness" and the reproduction of white hegemony is what could be termed the normalization or "universalization" (Gabriel 1998:12) of whiteness. The combination of existing domination with transparency enables "whiteness" to be cast—but not named—as the larger society, the cultural mainstream, and the nation. As Toni Morrison (1992:47) has observed, "deep within the word 'American' is its association with race... American means white." Politically, this means that government activities promoting white interests can masquerade as those of American society as a whole. Throughout American history, the U.S. government has acted to protect white power—from immigration restriction to Native American policyto co-opting African-American challenges to the racial order (e.g., Piven and Cloward 1971; Nagcl 1996). To the extent that the prevailing political ideology portrays the state as a neutral agent in a pluralistic democracy, such state actions are cast as representing the interests of the "larger society." This legitimation of the actions of the "racial state" (Omi and Winant 1986:110-113) eases the tasks of domination and reproduction of the system of racial stratification. In such a context, even legal decisions that maintain racial boundaries or fail to challenge white interests can be presented as the neutral adjudication of "constitutional" issues (cf. C. Harris 1993; Haney Lopez 1996). Given this masking of relatively overt state actions, the racial content of other government activities that exacerbate racial inequality (e.g., federal housing policy, urban policy, social welfare policy—cf. Massey and Denton 1993; Oliver and Shapiro 1995; Lipsitz 1998) is even less likely to be detected.

#### Fixation on short-term impacts obscures and normalizes systemic 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.

#### Interdependence checks war-

Deudney and Ikenberry 09

(Daniel and John, “Why Liberal Democracy Will Prevail,” Foreign Affairs, Jan/Feb 2009, http://web.clas.ufl.edu/users/zselden/coursereading2011/Deudney%20autocrat.pdf)

This bleak outlook is based on an exaggeration of recent developments and ignores powerful countervailing factors and forces. Indeed, contrary to what the revivalists describe, the most striking features of the contemporary international landscape are the intensification of economic globalization, thickening institutions, and shared problems of interdependence. The overall structure of the international system today is quite unlike that of the nineteenth century. Compared to older orders, the contemporary liberal-centered international order provides a set of constraints and opportunities — of pushes and pulls — that reduce the likelihood of severe conflict while creating strong imperatives for cooperative problem solving. Those invoking the nineteenth century as a model for the twenty-first also fail to acknowledge the extent to which war as a path to conflict resolution and great-power expansion has become largely obsolete. Most important, nuclear weapons have transformed great-power war from a routine feature of international politics into an exercise in national suicide. With all of the great powers possessing nuclear weapons and ample means to rapidly expand their deterrent forces, warfare among these states has truly become an option of last resort. The prospect of such great losses has instilled in the great powers a level of caution and restraint that effectively precludes major revisionist efforts. Furthermore, the diffusion of small arms and the near universality of nationalism have severely limited the ability of great powers to conquer and occupy territory inhabited by resisting populations (as Algeria, Vietnam, Afghanistan, and now Iraq have demonstrated). Unlike during the days of empire building in the nineteenth century, states today cannot translate great asymmetries of power into effective territorial control; at most, they can hope for loose hegemonic relationships that require them to give something in return. Also unlike in the nineteenth century, today the density of trade, investment, and production networks across international borders raises even more the costs of war. A Chinese invasion of Taiwan, to take one of the most plausible cases of a future interstate war, would pose for the Chinese communist regime daunting economic costs, both domestic and international. Taken together, these changes in the economy of violence mean that the international system is far more primed for peace than the autocratic revivalists acknowledge.

#### War impacts impossible- shifts in attitudes solve

Fettweis 06

(Christopher J Fettweis, National Security Decision Making Department, US Naval War College, December 06, “A Revolution in International Relation Theory: Or, What If Mueller Is Right?”, International Studies Review, Volume 8, Issue 4, Wiley)

The obsolescence-of-major-war argument is familiar enough to need little introduction (Mueller 1989, 1995, 2004; see also Rosecrance 1986, 1999; Ray 1989; Kaysen 1990; Van Evera 1990–1991; Kegley 1993; Jervis 2002; Mandelbaum 2002). In its most basic and common form, the thesis holds that a broad shift in attitudes toward warfare has occurred within the most powerful states of the international system, virtually removing the possibility for the kind of war that pits the strongest states against each other. Major wars, fought by the most powerful members of the international system, are, in Michael Mandelbaum's (1998/1999:20) words, “somewhere between impossible and unlikely.” The argument is founded upon a traditional liberal faith in the possibility of moral progressMARKED MARKED within the society marked of great powers, which has created for the first time “an almost universal sense that the deliberate launching of a war can no longer be justified” (Ray 1989:425; also Luard 1986, 1989). To use Francis Fukayama's (1992) phrase, it is the “autonomous power of ideas” that has brought major war to an end. Whereas past leaders were at times compelled by the masses to use force in the defense of the national honor, today popular pressures urge peaceful resolutions to disputes between industrialized states. This normative shift has all but removed warfare from the set of options before policymakers, making it a highly unlikely outcome. Mueller (1989:11) has referred to the abolition of slavery and dueling as precedents. “Dueling, a form of violence famed and fabled for centuries, is avoided not merely because it has ceased to seem ‘necessary,’ but because it has sunk from thought as a viable, conscious possibility. You can't fight a duel if the idea of doing so never occurs to you or your opponent.” By extension, states cannot fight wars if doing so does not occur to them or to their opponent. Major war has become, in Mueller's words, “sub-rationally unthinkable.”

#### War inherently unlikely- checked by multiple factors-

Robb 12

(Doug, Lieutenant, US Navy Why the Age of Great Power War is Over, [www.usni.org/magazines/proceedings/2012-05/now-hear-why-age-great-power-war-over](http://www.usni.org/magazines/proceedings/2012-05/now-hear-why-age-great-power-war-over))

Whereas in years past, when nations allied with their neighbors in ephemeral bonds of convenience, today’s global politics are tempered by permanent international organizations, regional military alliances, and formal economic partnerships. Thanks in large part to the prevalence of liberal democracies, these groups are able to moderate international disputes and provide forums for nations to air grievances, assuage security concerns, and negotiate settlements—thereby making war a distant (and distasteful) option. As a result, China (and any other global power) has much to lose by flouting international opinion, as evidenced by its advocacy of the recent Syrian uprising, which has drawn widespread condemnation. In addition to geopolitical and diplomacy issues, globalization continues to transform the world. This interdependence has blurred the lines between economic security and physical security. Increasingly, great-power interests demand cooperation rather than conflict. To that end, maritime nations such as the United States and China desire open sea lines of communication and protected trade routes, a common security challenge that could bring these powers together, rather than drive them apart (witness China’s response to the issue of piracy in its backyard). Facing these security tasks cooperatively is both mutually advantageous and common sense. Democratic Peace Theory—championed by Thomas Paine and international relations theorists such as New York Times columnist Thomas Friedman—presumes that great-power war will likely occur between a democratic and non-democratic state. However, as information flows freely and people find outlets for and access to new ideas, authoritarian leaders will find it harder to cultivate popular support for total war—an argument advanced by philosopher Immanuel Kant in his 1795 essay “Perpetual Peace.” Consider, for example, China’s unceasing attempts to control Internet access. The 2011 Arab Spring demonstrated that organized opposition to unpopular despotic rule has begun to reshape the political order, a change galvanized largely by social media. Moreover, few would argue that China today is not socially more liberal, economically more capitalistic, and governmentally more inclusive than during Mao Tse-tung’s regime. As these trends continue, nations will find large-scale conflict increasingly disagreeable. In terms of the military, ongoing fiscal constraints and socio-economic problems likely will marginalize defense issues. All the more reason why great powers will find it mutually beneficial to work together to find solutions to common security problems, such as countering drug smuggling, piracy, climate change, human trafficking, and terrorism—missions that Admiral Robert F. Willard, former Commander, U.S. Pacific Command, called “deterrence and reassurance.” As the Cold War demonstrated, nuclear weapons are a formidable deterrent against unlimited war. They make conflict irrational; in other words, the concept of mutually assured destruction—however unpalatable—actually had a stabilizing effect on both national behaviors and nuclear policies for decades. These tools thus render great-power war infinitely less likely by guaranteeing catastrophic results for both sides. As Bob Dylan warned, “When you ain’t got nothing, you ain’t got nothing to lose.” Great-power war is not an end in itself, but rather a way for nations to achieve their strategic aims. In the current security environment, such a war is equal parts costly, counterproductive, archaic, and improbable.

# 2AC

### 2AC A2 Restrictions Not Regulations

#### First, we meet- A restriction is a regulatory constraint

Farlex, ’12 (Farlex collection, Princeton University, 2012, WordNet 3.0, Print)//CC

restriction - an act of limiting or restricting (as by regulation)

#### Second, counter-interp: a “Restriction” is a limitation on the use of property

**Texas** Supreme Court **’10** CAUSE NO. 08-01-18,007-CV-A, Final Judgment, http://www.supreme.courts.state.tx.us/ebriefs/12/12046401.pdf

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

#### Third, we meet: approval process prohibits development absent Secretary consent

**U.S. Code ‘5** 25 U.S.C. § 3504 : US Code - Section 3504: Leases, business agreements, and rights-of-way involving energy development or transmission, 2005,

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

#### Fourth, Counter-interpretation: restrictions includes statutory requirements that DIRECTLY BLOCK land access for production

DOI, USDA, DOE 2008

[“Inventory of Onshore Federal Oil and Natural Gas Resources and Restrictions to Their Development”, <http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/0.Par.68195.File.dat/EPCA2008lo_1.pdf> //wyo-tjc]

Additional statutory and discretionary requirements beyond lease stipulations impact Federal land access for oil and gas development. Many of these impacts were not quantified because GIS data do not exist, or they are issues that are not amenable to quantitative analysis. Many of these requirements can be considered restrictions on drilling because they have effects similar to stipulations on oil and gas development activities. These issues can directly or indirectly impact Federal land accessibility for oil and gas development. Tables 4-1 through 4-16 present office-specific issues that were recorded from discussions with BLM and FS staff during field visits. Average APD processing time was calculated for each office using input from the offices supplemented by an analysis of BLM’s Automated Fluid Minerals Support System (AFMSS).47

#### Fifth, We meet and have the best interp- plan reduces the NEPA requirement which is the LARGEST AND MOST DIRECT restriction

DOI, USDA, DOE 2008

[“Inventory of Onshore Federal Oil and Natural Gas Resources and Restrictions to Their Development”, <http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/0.Par.68195.File.dat/EPCA2008lo_1.pdf> //wyo-tjc]

4.1 Issues Directly Impacting Access

The National Environmental Policy Act of 1969. The NEPA is the nation’s central environmental statute. It requires Federal agencies to consider environmental impacts before an action is taken. The NEPA process is intended to help public officials make better decisions based on an understanding of their environmental consequences. The NEPA is embedded into the fabric of Federal land management decision-making and has become the most important procedural public land management statute because it requires agencies to comply with its processes in all situations where major actions are contemplated. When an activity or action is proposed on Federal lands, an interdisciplinary review of the environmental effects of the proposal is conducted and made available to citizens and public officials. The review can take one of four forms: • a categorical exclusion (CX) • documentation of NEPA adequacy (DNA) • an environmental assessment (EA) • an environmental impact statement (EIS) The NEPA process can impact oil and gas development in terms of cost and time delays. Typically an EIS or EA is drafted in consultation with the cooperating agencies, presented for public comment, and reviewed by multiple agencies. A simple EIS can take 24 to 36 months to complete, while those with more complex issues may require three to six years to complete. The land use planning process as a whole takes in excess of 36 months, particularly if there is oil and gas involved. The NEPA documents analyze alternatives to the proposed action and must include a “no action” alternative. Impacts are classified as direct, indirect, and cumulative, and include the evaluation of economic impacts to counties and states to be considered, as well as impacts on resources. When considering oil and gas leasing, the BLM has identified the need to obtain additional data on such issues as air quality and clean water as a part of the cumulative impact analysis required by the NEPA and land use planning processes. This has been cited as an overarching issue that affects oil and gas lease parcel nominations. This lack of data can result in leasing delays when existing documents are deemed inadequate. The net result is that potential applicants are often aware of the problem and make decisions not to develop in areas that will be or could be held up by the NEPA process. With respect to the NEPA process itself, concern was expressed by some government officials that individual documents provide “piecemeal” information and that better environmental decisions could be made based on larger scale studies that look at the “bigger picture.” For example, wildlife habitat fragmentation is better characterized when it is examined in the context of larger rather than smaller areas. Delays can increase costs for oil and gas operations because, rather than waiting for the Federal agency to complete the work, operators frequently pay a third-party contractor to perform the necessary work. Section 366 of Energy Policy Act of 2005 (EPAct 2005) sets a deadline for the consideration of applications for permits. The permit must be issued within 30 days (if NEPA and other legal requirements have been met), or defer the decision and provide a notice to the applicant.

#### Sixth, Reject their interpretation:

#### A- It’s arbitrary: there is no significant difference between prohibitions and regulations THAT restrict

#### B- It conflates BANS with RESTRICTIONS-

BLM 2

[Bureau of Land Management, “Energy and Public Lands”, <http://www.blm.gov/wo/st/en/res/Education_in_BLM/Learning_Landscapes/For_Teachers/science_and_children/energy/index/energy2.html> //wyo-tjc]

Alternative energy production from federal lands lags behind conventional energy production, though the amount is still significant. For example, federal geothermal resources produce about 7.5 billion kilowatt-hours of electricity per year, 47 percent of all electricity generated from U.S. geothermal energy. There are 2,960 wind turbines on public lands in California alone, producing electricity for about 300,000 people. Federal hydropower facilities produce about 17 percent of all hydropower produced in the United States.

Most U.S. geothermal resources are in the western states, where most public lands are located. The sunny southwest has the greatest potential for solar energy production. Wind resources are more widespread, and there are federal lands in many of the most favorable areas.

The Secretaries of the Interior, Energy, and Agriculture are in the process of identifying renewable energy siting opportunities and reevaluating access restrictions on federal lands. Development limitations, including environmental considerations, must also be assessed. Federal agencies will also consider development incentives such as reduced site rental fees to encourage industry to more aggressively pursue renewable energy production.

Because of the growing U.S. thirst for energy and increasing public unease with dependence on foreign oil sources, pressure on the public lands to meet U.S. energy demands is intensifying. Public lands are available for energy development only after they have been evaluated through the land use planning process. If development of energy resources conflicts with management or use of other resources, development restrictions or impact mitigation measures may be imposed, or mineral production may be banned altogether.

BLM and other land managers have the delicate task of weighing energy production against competing public land uses, seeking a balance that both best serves the American public and sustains the health of the land. This is often a difficult undertaking, as conflicts over the Arctic National Wildlife Refuge (ANWR) illustrate. This pristine, controversial area—by current law off-limits to energy development—hosts native tribes, a vast wilderness teeming with wildlife, and significant oil and gas reserves. Wildlife and wilderness proponents oppose any development whatsoever; the oil industry and the current administration view ANWR as a step toward energy independence; and the native peoples—some of whom stand to gain, some to lose—are split on the subject. In addition to carefully considering what is fact and what is opinion, everyone involved in making decisions about ANWR and energy in general will need to seek innovative approaches and work collaboratively to find alternatives that can be accepted by all.

#### C- links more to limits

Bernard Hoekman and Petros C. Mavroidis (World Bank Development Research Group) October 2002 “Economic Development, Competition Policy, and the World Trade Organization” http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2002/11/22/000094946\_02111404425138/Rendered/PDF/multi0page.pdf

Under the "effects" doctrine (or subjective territoriality), countries may take action¶ against foreign practices that have negative effects in their markets. Cartels are an¶ example. The WTO may be relevant in this connection through GATT Art. XI, which¶ states: "no prohibition or restriction ... shall be instituted or maintained ... on the exportation or sale for export". Export cartels are a restriction on exportation. As with national treatment, the threshold issue is whether the export cartel can be attributed to government behavior. On this, a GATT panel (Japan - Semiconductors) argued that a "but for" test should be used, i.e., to what extent the observed behavior would have taken place absent government involvement. Unfortunately the precise degree of government involvement was not specified and thus it is doubtful whether mere 'tolerance' of a cartel suffices. Arguably, however, even passive behavior could be caught by Art. XI, given that the term "restriction" invites a wider reading than the terms "law", "regulation" or "requirement" figuring in Art. I1.4. A legislative (rule making) initiative could usefully clarify this gray area.

#### D- No aff meets-

Hagerty ‘11 - Specialist in Energy and Natural Resources Policy for the Congressional Research Service

Curry L. Hagerty is, May 6, 2011, “Outer Continental Shelf Moratoria on Oil and Gas Development”, http://www.fas.org/sgp/crs/misc/R41132.pdf

Bureau of Ocean Energy Management, Regulation and Enforcement

(BOEMRE)32

Footnote 32 Begins…

32 BOEMRE is a bureau in the U.S. Department of the Interior that manages the nation’s oil, gas, renewable, and other¶ mineral resources on the outer continental shelf (OCS). Secretarial Order 3299, “Establishment of the Bureau of Ocean¶ Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources¶ Revenue,” issued May 19, 2010, renamed the Minerals Management Service (MMS) as BOEMRE. This order was¶ amended on June 18, 2010, to extend the deadline for development of a schedule for implementing agency¶ reorganization from “within thirty (30) days,” or by June 19, 2010, to “by July 9, 2010.”

Footnote 32 End…

As mentioned above, regulated oil and gas activities on the OCS are administered pursuant to the¶ Outer Continental Shelf Lands Act (OCSLA). The chief agency for administering the oil and gas¶ leasing program is the Bureau of Ocean Energy Management, Regulation and Enforcement¶ (BOEMRE) in the Department of the Interior.¶ To clarify, BOEMRE is authorized to administer the leasing program, but it is not required to¶ lease specific areas. BOEMRE can opt to defer oil and gas development in any OCS area, even¶ when such action may appear to be inconsistent with other federal policies. BOEMRE has¶ deferred offering OCS areas numerous times over the years in response to recommendations from¶ state governors, stakeholders, and others.33¶ In rare cases, BOEMRE has designated OCS leasing in moratorium areas. In the current Five-¶ Year Plan, which took effect on July 1, 2007, BOEMRE (then the Minerals Management Service,¶ or MMS) proposed a lease sale in an area under moratorium offshore of the commonwealth of¶ Virginia.34 Sale 220 was proposed while the area was under a moratorium prohibiting leasing¶ activities; by 2009, however, the area was no longer under moratorium, and was eligible for¶ leasing consideration. Since that time Sale 220 has been removed from the lease sale schedule.

#### Seventh, Err affirmative—the topic is massively neg-biased because of a lack of fed-key warrants and the states counterplan, and huge backfile generics because of past energy topics

Eighth, Competing interpretations is bad—comparisons are just as subjective as reasonability and their frame encourages a race to the bottom. We shouldn’t lose if our aff makes debate harder as long as it is still possible and educational.

### Incentives don’t solve

#### Federal incentives destroy sovereignty---tribes should be able to fail on their own if they want

Dreveskracht 11—Judicial Law Clerk, Judge Kathleen Kay, United States District Court for the Western District of Louisiana; L.L.M. in Sustainable International Development, University of Washington School of Law, 2010; J.D., University of Arizona (Ryan, Native Nation Economic Development via the Implementation of Solar Projects: How to Make It Work, <http://law.wlu.edu/deptimages/Law%20Review/68-1Dreveskracht.pdf>)

Native nations that are highly dependent on federal funding to maintain their economic development projects often fail. 463 Aside from the mere fact that the money comes from the federal government, giving the federal government a disproportionate degree of influence in tribal affairs, many federal dollars are program-specific, "developed in federal offices or Congress, often with little attention to the diversity of Native nations, their circumstances, and their capacities." 464 The result is that the federal government is in the driver’s seat, § Marked 14:23 § setting the direction that the program takes—forcing tribes into a reactive and dependent, instead of a proactive and self-determined, approach. 465 This then produces a local attitude toward tribal institutions that perceives the institutions as pipelines for money, rather than nation-building forces. 466 However, as noted by Professor Haughton, "[c]ommunities generally do want to be more empowered, but alternatively they do not necessarily want these processes of empowerment to be the cover for reduced state engagement and funding in community level activity." 467 A solution may be block grants for solar projects that, if the Native Nation itself identifies the project as important, place more decision-making power in Indian hands. 468 However, such a solution requires the development of capable institutions to manage the project. 469 When tribes have ownership over their own institutions, project managers are held accountable for their actions, and money flows in the right direction. 470 Also, the federal government should not be a decision-maker in the implementation of a solar project, but rather, it should be an advisor and resource. 471 The government should develop a program of evaluation that, if necessary, reflects the needs and concerns of the tribe’s citizens, not those of the funding agency and its constituencies. 472 Finally, it is important for funding agencies to recognize "that self-governing nations will make mistakes, and that sovereignty involves the freedom to make mistakes, to be accountable for them, and to learn from them." 473

### 2AC General A2 Reform CP

#### First, perm do both

#### Second, perm do plan and ALL or ANY of the planks- we reserve clarification to account for Block and 2NR shifts

#### Third, any combination of reform is insufficient- still leaves triggers in place that happen BEFORE the formal TERA review

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

Yet, as of February 2011, only one commercial scale renewable energy project is operating in Indian country. 9 What gives?¶ On April 1, 2011, the U.S. House of Representatives, Committee on Natural Resources, set out to find the answer. 10 In his opening statement, Committee Chairman Don Young set the tone for testimony to follow: “[B]ecause of outdated or duplicative federal regulations and laws, tribes often feel that the federal government is treating them unfairly…. These rules and policies often slow energy development and discourage businesses to invest on tribal lands.” 11 Tribal officials identified the following impediments:¶ • Erroneous Bureau of Indian Affairs (BIA) records, which cause significant delay in the preparation of environmental documents and overall land records necessary for the approval of business transactions. 12¶ • A lack of BIA staffing necessary to review and approve the required instrumentalities within a timely fashion. 13¶ • The inability to enter into long-term fixed price contracts necessary to underpin the commercial framework needed for long-term projects. 14¶ • A lack of standardization and coordination between Department of the Interior (DOI) offices. 15¶ • A lack of DOI communication with state and local governments – with tribes bearing the brunt of the cost via legal attacks on their sovereignty. 16¶ • General apprehension to issue National Environmental Protection Act (NEPA) compliance decisions at the Environmental Protection Agency, likely due to fear of litigation. 17¶ • BIA delays in approving Rights-of-Way. 18¶ • The practical inability to tax non-Indian energy developments on leased lands due to state and local governments in many instances already taxing the project. 19¶ • Tribes’, as owners, inability to take advantage of the production/investment tax credits and accelerated depreciation incentives available to non-Indian project investors. 20¶ Stripped down, many the hindrances referred to in Hearing testimony are a direct result of the federal approval process. Pursuant to 25 U.S.C. § 415, transactions involving the transfer of an interest in Indian trust land must be approved by the BIA. 21 But even where the tribe structures the project without leasing its land, 25 U.S.C. § 81 requires that the BIA approve contracts that could “encumber” Indian lands for a period of seven or more years. 22 Secretarial approval is also necessary for rights of-way on Indian lands. 23 In these instances the BIA approval process constitutes a “federal action,” which triggers a slew of federal laws that the BIA must comply with. 24 This includes NEPA, the National Historic Preservation Act, and the Endangered Species Act, among others. Compliance with NEPA alone can take over 12 years to complete and can generate millions of dollars in additional cost 25 – not to mention the inevitable litigation that will ensue. 26 Although there has been some headway in removal of the outdated tribal energy regime, according to recent congressional testimony there is much work to be done.¶ The Road to Nowhere¶ Congress began to address the development of renewables in Indian country in the early nineties. Such legislation included the EPAct of 1992, 27 which authorized the Department of Energy (DOE) to provide grants and loans to tribes wishing to develop solar and wind energy; the Indian Energy Resource Development Program, 28 which awarded development grants, federally-backed loans, and purchasing preferences to Indian tribes pursuing energy development projects 29 ; culminating in the Indian Energy Act of 2005 (IEA), 30 the most comprehensive Indian-specific energy legislation to date.¶ Until 2005, much of the federal push for energy development had focused on creating incentives for investment rather than a restructuring of the antiquated legal structures involved. 31 Much of the IEA, however, was devoted to the creation of a new framework for the management and oversight of energy development in Indian country – the Tribal Energy Resource Agreement (TERA). 32 This section of the IEA allowed a tribe to enter into a master agreement (the TERA) with the Secretary of the Interior, granting the tribe the ability to enter into leases and other business agreements and to grant rights of way across tribal lands without Secretarial approval. 33¶ To date, however, no tribe has entered into a TERA. For many tribes, the cost simply outweighs the benefits 34 – TERAs allow tribes the leeway to skip secretarial approval for specific projects, “but only on terms dictated by the federal government rather than on the tribes’ own terms.” 35 First, in applying for the TERA, the tribe must consult with the director of the DOI before submitting the application. 36 The director must hold a public comment period on the proposed TERA application and may conduct a NEPA review of the activities proposed. 37 Thereafter, the DOI has 270 days to approve the TERA. 38 Second, the TERA requires that tribes create a NEPA-like environmental review process. 39 This “tribal NEPA” must have a procedure for public comment and for “consultation with affected States regarding off-reservation impacts” of the project. 40 Third, the TERA must include a clause guaranteeing that the tribe and its partner will comply “with all applicable environmental laws.” 41 In so doing, tribes must allow the Secretary to review the tribe’s performance under the TERA – annually for the first three years and biannually thereafter. 42 If in the course of such a review the Secretary finds “imminent jeopardy to a physical trust asset,” the Secretary is allowed to take any action necessary to protect the asset, including assuming responsibility over the project. 43 Fourth, the TERA must address public availability of information and record keeping by designating “a person … authorized by the tribe to maintain and disseminate to requesting members of the public current copies of tribal laws, regulations or procedures that establish or describe tribal remedies that petitioning parties must exhaust before instituting appeals ….” 44 Finally, agreements for developing alternative energies are subject to a 30-year limit, renewable only once for another 30-year term. 45

#### Fourth, CP solves NEITHER the restriction NOR production:

#### Federal approval requirements freeze out tribal interest in development, that’s the 1ac Kronk evidence and

#### only sequencing self-determination first can solve

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

The Road Ahead¶ The doctrine of self-determination acknowledges that tribal control over development is the best way to strengthen tribal governance and improve economic selfsufficiency. 52 According to much of the testimony offered at the recent Hearing before the Subcommittee on Indian and Alaska Native Affairs, self-determination must also include freedom from the yoke of federal energy oversight and regulation.¶ On May, 4-5, 2011, the U.S. Department of Energy (DOE) held its first Tribal Summit. 53 The goal of the Summit, much like that of the most recent Hearing, is to identify and “break down bureaucratic barriers that have prevented tribal nations from developing clean energy with the ultimate goal of prosperity and energy security for both Indian country and the nation as a whole.” 54 For many, the Summit reflects the nation’s “continued commitment to partnering with Native Americans to support the development of clean energy projects on tribal lands ….” 55 But will it be enough?¶ Having identified “unnecessary laws and regulations” hindering alternative energy development in Indian country, it is now time for Congress to write necessary legislation to allow tribes to pursue energy self-determination. 56 If the words of Doc Hastings, Chairman of the House Committee on Natural Resources, hold any bearing, the current regulation of energy resources in Indian country may soon be upset: “Tribes know best how to meet their own land management objectives.” 57 This axiom should not be lost. Indeed, in order to effectively realize the twin goals of promoting tribal self-determination and encouraging the efficient development of tribal energy resources, 58 it will be necessary to emphasize the former to bring about the latter.

### Liability

#### Next, the liability waivers plank:

#### They should be maintained- it’s key to self-determination

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

One reason revision is not needed is that the Indian Energy Act’s explicit recognition of the trust responsibility offers assurance that this responsibility remains intact. 279 The Act can be compared with the Indian Mineral Development Act of 1982. 280 Professor Judith V. Royster asserts that in that Act, Congress intended to sustain the trust responsibility despite the inclusion of a similar limitation on federal liability. 281 Though Professor Royster expresses some reservations based on differences between the Indian Mineral Development Act and the Indian Energy Act, she ultimately concludes that the concerns about the trust responsibility are unfounded. 282¶ Another reason the limitation on federal liability does not need to be changed is that tribes must be willing to take responsibility when assuming control over resource development. The TERA framework envisions a process in which the Secretary no longer approves specific development agreements. 283 It is sensible not to require that the federal government be liable for damages related to such agreements. 284 More importantly, it is in tribes’ own interests to accept the risks attendant to developing their resources. 285 Freedom from government control necessarily entails forgoing some federal protection. 286 The Indian Energy Act includes several provisions to build tribal capacity to take on development projects. 287 Tribes must evaluate when their capacity enables them to use a TERA to take control over resource development. They have the ability to opt in or remain under the preexisting framework for development, with federal approval and greater federal oversight and responsibility. 288 When they do take control, they should embrace the attendant risks, because “sovereignty without such risks is a contradiction in terms.” 289¶

#### AND the Counterplan is also a direct opportunity cost with sovereignty- Kronk concludes eliminating approval restrictions is SUPERIOR

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

[\*849] The discussion below offers two suggestions for reform. These options, though somewhat contradictory, would both improve upon the existing TERA regulations. Whether one proposal is found more persuasive than the other may turn "partly on how one conceptualizes the trust doctrine. It can be seen as a federal duty to protect tribes' right of self-governance and autonomy, or as a way to justify federal power and control over tribal affairs." n138 Senators Bingaman's and Campbell's comments on the then-pending TERA provisions exemplify this difference of viewpoint on the federal government's trust responsibility to federally-recognized tribes.¶ The first proposal approaches the federal trust responsibility from the perspective of promoting tribal sovereignty and self-determination: the TERA regulations maintain federal decision-making authority over energy development in Indian country, which is unnecessary and perhaps even detrimental to the overarching goal of tribal self-determination and energy development. Alternatively, the second proposal for reform adopts a "federal" or "paternalistic" perspective of the federal trust responsibility: the federal government maintains a significant role in energy development in Indian country and therefore should be liable for decisions made under TERA (presumably to protect the economic stability of tribal governments). In considering these proposals, one must be mindful of the fact that the role of the federal government in tribal decision-making is a hotly contested issued. n139 Moreover, these two options for reform are presented in recognition of the existing trade-offs between the tribal trust responsibility and full tribal sovereignty. As Professor Ezra Rosser explained§ Marked 14:25 § , "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

#### CP links to politics—bipartisan support for liability waiver

**Indianz.com 03—**GOP Leaders Release second draft of energy bill, September 30, 64.38.12.138/News/archives/001714.asp?print=1

GOP leaders release second draft of energy bill¶ TUESDAY, SEPTEMBER 30, 2003 ¶ Republicans crafting the national energy policy bill released a new version of the controversial Indian energy title on Monday, saying they incorporated the suggestions of Democrats.¶ Key among the changes is language that seeks to reinforce the federal government's trust responsibilities. New provisions affirm an ongoing trust relationship with tribes that choose to speed up development of their lands.¶ Left unchanged, however, is the section that waives the Department of Interior's liability for mismanagement that might occur on those lands. This has been the most contentious part of the bill, raising charges by some Democrats and some tribes that it would undermine the entire tribal-federal relationship.¶ But the section has been modified to the point where the waiver only applies under a certain set of conditions. For example, if a tribe negotiates an agreement with a third party whose terms are not in compliance with pre-approved tribal regulations and federal law the government's liability remains intact.¶ Another revision calls on the government to protect the rights of tribes when third parties violate federal law or tribal agreements and that the government shall always "act in good faith and in the best interests of the Indian tribes."¶ In releasing the new set of changes, Sen. Pete Domenici (R-N.M.) and Rep. Billy Tauzin (R-La.) said they reflected "bipartisan input." "We have made excellent progress on this energy conference," they said in a joint statement.¶ Sen. Jeff Bingaman (D-N.M.), the ranking member of the Senate Energy and Resources Committee, asked for, and received, language that requires Interior to develop regulations that allow for "site inspections" of tribal energy projects. Another Bingaman section allows tribes to receive federal funding to develop what are known as tribal energy resource agreements (TERAs).¶ The TERAs are at the heart of the streamlined process envisioned by the bill. Once a TERA is approved by Interior, tribes can enter into leases, business agreements and rights-of-way without seeking federal approval for each separate project.¶ Republican supporters, including Sen. Ben Nighthorse Campbell (R-Colo.) note that the TERA process is entirely voluntary. Tribes worried about releasing the government of its liability don't have to participate.¶ Some tribes and tribal organizations, including the Council of Energy Resource Tribes (CERT), back the new process. Waiting for federal approval can cause business deals to evaporate or go sour, they say.¶ Others believe the bill could have some negative impacts. The Navajo Nation, the largest tribe in the country, and the National Congress of American Indians (NCAI), raised concerns about the section on liability, charging that it would encourage Interior to shirk its responsibilities.¶ The Department of Energy estimates that 10 percent of the nation's untapped energy resources are on Indian land. Many tribes have eagerly tapped their coal, natural gas and other assets.

### T/F

#### Zero uniqueness- wind is high AND inevitable, both here and globally

Saari 2/11

(Emily, SMCM graduate and web producer, tck tck tck The Global Campaign for Climate Action, “2012 was a banner year for wind: Competitive pricing, record growth,” February 11, 2013, http://tcktcktck.org/2013/02/wind-is-cheaper-than-coal-for-the-first-time/48235//wyo-mm)

Posting a year of record success in several nations, the wind industry once again demonstrated the ability of the renewable energy sector to grow amidst negative economic trends. In Australia, wind is now a cheaper source of electricity than both natural gas and coal. Overall, the industry increased its total capacity by 19% worldwide, and it could meet up to a fifth of global electricity demand by 2030. In Spain, wind is the primary source of energy in the nation. Since November, Spain’s wind farms have produced six terawatt-hours of electricity per month, exceeding the production capacity of both nuclear and coal-fired power plants. The nation is on track to produce 40% of its energy from renewable sources by 2020. The U.S. and China both installed more than 13 gigawatts of new wind capacity each. Europe introduced a record 12.4 gigawatts, with Germany leading the way in growth and the emergence of new markets in Sweden, Romania, and Poland. “While China paused for breath, both the U.S. and European markets had exceptionally strong years,” said Steve Sawyer, Secretary General of the Global Wind Energy Council. “Asia still led global markets, but with North America a close second, and Europe not far behind.” The solid growth of the wind energy industry in 2012 will come as good news to businesses, trade unions, and health experts. Sustained progress on renewable energy capacity, however, is still at risk of being undermined by a lack of reliable support from policy makers. To meet domestic emissions reductions goals, countries around the world need to support the growth of the renewable industry and end active support of the fossil fuel industry.

### AT: Politics

#### Impact framing:

#### Don’t prefer extinction level impacts- survival politics obscure violence committed against the racialized body- makes racism more tacit and violent- that’s Doane- immigration is a unique example of this because it’s used to prop up the white privileged regime like ballot claiming- if we win this frame is problematic- you assign low-risk to the DA bc it makes genocidal politics inevitable

#### Focus on spectacular politics create fixation on improbable and mask systemic violence- leaves the root causes of destruction and violence intact - that’s Nixon- turns the DA because it makes conflicts in the long-run worse

#### No immigration deal now

Nakamura 8:45 this morning

Nakamura, David: journalist for the Washington Post. "Rubio: No deal yet on immigration reform bill." *Washington Post*. Washington Post, 31 Mar 2013. Web. 31 Mar 2013. <http://www.washingtonpost.com/blogs/post-politics/wp/2013/03/31/rubio-no-deal-yet-on-immigration-reform-bill/>.

A key Republican lawmaker said Sunday that a bipartisan group of senators does not yet have an agreement on a proposal to overhaul the nation’s immigration laws, despite making progress in recent days. Sen. Marco Rubio (R-Fla.), a member of the eight-person group, said in a statement that he is encouraged by reports that labor and business leaders have reached a deal over a new visa program for low-skilled foreign workers. That program was considered crucial for the senators to move forward on the comprehensive legislation, which also will feature a path to citizenship for the nation’s 11 million illegal immigrants. But Rubio emphasized, “reports that the bipartisan group of eight senators have agreed on a legislative proposal are premature.” He said the group has “made substantial progress” and he expected the group to eventually reach agreement. But he added that the legislation will require “a healthy public debate,” including committee hearings and input from other senators to offer amendments. Rubio, whose parents emigrated from Cuba, is considered a key GOP member of the group and a potential presidential candidate in 2016 who has support in the Hispanic community at a time when Republicans are attempting to broaden their appeal to minority voters.

#### Case impact turns immigration- Temporary visa programs are the final consolidation of human labor into pure commodity form—humans literally become rendered to the same level as corn, gas or any other commodity

Rudrappa in 9

[Sharmila, associate professor of sociology and is affiliated with the Center for Asian American Studies and the Center for Women's and Gender Studies at the University of Texas at Austin, University of San Francisco Law Review, “The Evolving Definition of the Immigrant Worker”, Fall 2009, p. lexis//wyo-tjc]

Finally, labor markets need to be replenished with new workers. This involves not only biological procreation and caring for children, but also educating, training, developing skill sets, and nurturing ideological [\*365] orientations in individuals, all of which are anchored in families, neighborhoods, and nation-states. The state incurs costs in reproducing labor, which can run especially high both in economic and political terms when potential workers cannot be incorporated into the labor market. 56 Thus, for all these reasons - the challenges inherent in incorporating, allocating, controlling, and reproducing labor - the notion of a self-regulating, economically-driven labor market is a myth, argues Peck. 57 States face the constant challenge of regulating labor markets; "state intervention in the labor market is perhaps best characterized as a continuous process of regulatory experimentation and learning," involving legislative or institutional reform, welfare, or training policy. 58 The convergence of labor and labor markets to pure commodity form does not occur automatically; instead, labor markets are socio-political constructions, with states actively facilitating the creation of supply, demand, surplus, and scarcity within national boundaries. 59 The state, through various policies and laws, attempts to regulate the supply of labor and deems the very sociality of labor processes as secondary to production needs. State processes regarding immigration, workers' rights, access to citizenship, and processes of racialization all push the labor of certain individuals into resembling purer commodity forms. One very effective way by which states attempt to regulate labor markets is through racialized guest worker programs. [\*366] III. Regulating Labor Markets Through Guest Worker Programs The incorporation, allocation, control, and reproduction of workers can be more finely manipulated by the state through bringing in foreigners - almost always racial others - to work in § Marked 14:27 § front of computer screens, on agricultural fields, and on construction sites for a stipulated period of time. Because guest workers can be brought in when states face rapid economic expansion and have labor "shortages" or sent out of the country during economic downturns, guest workers are very much like corn, gasoline, and car parts. That is, they can be deployed in the market much like goods. Work visas and permits can be increased or decreased, carefully calculated to suit market demands and political expediencies.

PC not real/irrelevant-

Hirsh Feb. 7th

[Michael Hirsh, Feb. 7 There’s No Such Thing as Political Capital, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207]

The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history.

#### Relations resilient, particularly on tech issues like the plan

**Mancuso, 08**

Mario Mancuso 8, Under Secretary of Commerce, Bureau of Industry and Security U.S. Department of Commerce, 6/2/8, "The Future of the U.S.-India High Technology Relationship", http://www.bis.doc.gov/news/2008/mancuso06052008.htm

The strength of today’s U.S. and India relationship is real, and underscores what visionary governments can accomplish for their people by acknowledging change and seizing opportunities. Shared interests and values, and improved economic and trade relations, have transformed the U.S.-India bilateral relationship into a "strategic partnership." And while tender points remain, the DNA of our partnership is more differentiated, healthy, and resilient than ever before. Of the many dialogues that nurture our bilateral economic relationship, few have been as vibrant or had as much impact as the U.S.-India High Technology Cooperation Group (HTCG).

#### DOE launching new clean energy projects and Obama pushing solar now-

Sustainable Business 3/27

(Sustainable Business, “DOE Launches Clean Energy Manufacturing Initiative,” March 27, 2013, <http://www.sustainablebusiness.com/index.cfm/go/news.display/id/24707//wyo-mm>)

The Department of Energy (DOE) announced an initiative to boost US manufacturing of clean energy products, the Clean Energy Manufacturing Initiative (CEMI). The goal is to accelerate US-based manufacturing of cost-competitive clean energy technologies, such as wind, solar, geothermal, batteries and biofuels. Another goal is to increase competitiveness in US manufacturing generally by helping the sector adopt greater energy efficiency, combined heat and power (CHP) and other energy sources that improve energy productivity. Under the Recovery Act, manufacturers that make cleantech equipment were eligible for a 30% tax credit, but Obama could not get it renewed - this is another way at supporting his goals for advanced manufacturing in the US. DOE has already awarded $23 million for R&D projects that can enhance manufacturing in these areas, and released a $15 million funding opportunity to reduce the manufacturing costs of solar PV and concentrating solar over the next few years. "We are at a critical moment in the history of energy in our nation. Over just the last seven years, global investment in the clean energy sector has grown nearly five-fold to over $260 billion and these markets will grow into the trillions of dollars in the years to come," says David Danielson, Assistant Secretary for Energy Efficiency and Renewable Energy. "Our nation faces a stark choice: the energy technologies of the future can be developed and manufactured in America for export around the world, or we can cede global leadership and import these technologies from other nations. As part of President Obama's plan to revitalize American manufacturing, the Clean Energy Manufacturing Initiative will seize this opportunity to ensure U.S. leadership in the clean energy sector and advance the global competitiveness of American manufacturers," he says.

### DA-

#### The DA creates a tyranny of the people that makes Native subjugation inevitable

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

At times, it seems that the parties, particularly Interior, lose sight of what this case is really about. The case is nearly a decade old, the docket sheet contains over 3000 entries, and the issues are such that the parties are engaged in perpetual, heated litigation on several fronts simultaneously. [\*\*2] But when one strips away the convoluted statutes, the technical legal complexities, the elaborate collateral proceedings, and the layers upon layers of interrelated orders and opinions from this Court and the Court of Appeals, what remains is the raw, shocking, humiliating truth at the bottom: After all these years, our government still treats Native American Indians as if they were somehow less than deserving of the respect that should be afforded to everyone in a society where all people are supposed to be equal.¶ For those harboring hope that the stories of murder, dispossession, forced marches, assimilationist policy programs, and other incidents of cultural genocide against § Marked 14:29 § the Indians are merely the echoes of a horrible, bigoted government-past that has been sanitized by the good deeds of more recent history, this case serves as an appalling reminder of the evils that result when large numbers of the politically powerless are placed at the mercy of institutions engendered and controlled by a politically powerful few. It reminds us that even today our great democratic enterprise remains unfinished. And it reminds us, finally, that the terrible power of government, and the frailty [\*\*3] of the restraints on the exercise of that power, are never fully revealed until government turns against the people.¶ The Indians who brought this case are beneficiaries of a land trust created and maintained by the government. The Departments of the Interior and Treasury, as the government's Trustee-Delegates, were entrusted more than a century ago with both stewardship of the lands placed in trust and management and distribution of the revenue generated from those lands for the benefit of the Indians. Of course, it is unlikely that those who concocted the idea of this trust had the Indians' best interests at heart--after all, the original General Allotment Act that created the trust was passed in 1887, at a time when the government was engaged in an "effort to eradicate Indian culture" that was fueled, in part, "by a greed for the land holdings of the tribes[.]" Cobell v. Babbitt ("Cobell V"),91 F. Supp. 2d 1, 7-8 (D.D.C. 1999). But regardless of the motivations of the originators of the trust, one would expect, or at least hope, that the modern Interior department and its modern administrators would manage it in a way that reflects our modern understandings [\*\*4] of how the government should treat people. Alas, our "modern" Interior department has time and again demonstrated that it is a dinosaur--the morally and culturally oblivious hand-me-down of a disgracefully racist and imperialist government that should have been buried a century ago, the last pathetic outpost of the indifference and anglocentrism we thought we had left behind.

#### The Aff’s focus on deliberative approaches to public policy makes participation in policy decisions by those without their hands on the levers of power possible

Hickman, 12

[Larry, director of the Center for Dewey Studies and professor of philosophy at Southern Illinois University Carbondale, “Citizen Participation: more or less?” Online, http://www.secularhumanism.org/index.php?section=fi&page=hickman\_28\_6] /Wyo-MB

Progressives such as John Dewey have tended to take a very different view from that of Caplan, Lippmann, and the Roberts Court. In his 1927 book The Public and Its Problems, Dewey mounted an energetic response to Lippmann. He encouraged support for a free and vigorous press whose task would be to make the results of research in the social sciences available to every citizen. He denied that the “ordinary citizen” lacked sufficient intelligence or interest to participate in public affairs. And he called for greater support for a type of public education that would increase the critical skills that every citizen requires to cut through the web of disinformation that tends to be disseminated by governments, corporations, and other forces seeking to impede full discussion of matters affecting the public good. If ordinary citizens were as distracted as Lippmann claimed, Dewey suggested, they would hardly be amenable to control by the educated elites in any event. And if experts were cut off from the needs and concerns of the general population, then their databases would dry up. § Marked 14:28 § They and their reports would become increasingly irrelevant. Of course, Dewey was not advocating a pure form of participatory democracy. He recognized that men and women have different talents, needs, and interests and that when they associate themselves in groups larger than a mere handful, there is a tendency toward specialization in the various tasks required to support the continued existence of the group. One of those areas of specialization is the ability to act on behalf of other members of a group—or what Dewey termed a public—in ways that its members find acceptable. In sum, in order for a public to exist, it must have members who are able to take the lead in articulating its goals and interests and in representing those goals and interests to other publics. Dewey was in fact calling for a form of deliberative democracy that would achieve a creative balance between participation and representation. He realized that deliberative democracies cannot function in the absence of experts in various fields and representatives who take decisions on behalf of a voting public. On one side, while participation within civic affairs could hardly be required, it should nevertheless be open to anyone willing to develop the skills necessary for involvement in the processes of public debate and decision making. On the other side, efficient government requires both representatives who are sensitive to public problems and experts who can advise those representatives on technical matters.

#### No link: assumptions of state-based, top-down approaches result from squo oppressive policies- that’s 1AC Kronk- plan removes these restrictions to employ energy autonomy

#### No- sovereignty=political struggle

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)

While there was no shared understanding of exactly what sovereignty entailed, over time “the concept of sovereignty … crystallized political struggle” in South Dakota, Arizona, and elsewhere around the country (Biolsi 2001, p. 178). As noted in a study of federal Indian policy conducted in the 1980s, “questions of political status are at the heart of policy debates on Indian affairs,” reflected in “the preoccupation of Indian policy analysts with the concept of sovereignty” (Gross 1989, pp. 4, 7) and the many tribal signs erected by the early 1980s “proclaiming their nationhood” (Deloria and Lytle 1984, p. 7). The distinctive goals and strategies of this movement developed and took identifiable shape between 1970 and the mid-1980s; the data presented focus on this period.

#### Sovereignty rhetoric is good- key to open up space of resistance

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)

Second, inattention to the ISM is also due to the ill fit between this “awkward” movement (Polletta 2006) and the predominant contentious politics (CP) or “polity” approach to social movements (McAdam, Tarrow, and Tilly 2001). This polity approach (see table 2) conceptualizes domination as centered on the state, understands politics as oriented to the formal political arena, and examines the conditions shaping movement emergence and success. Social movements are conceptualized as entities targeting the state, motivated by taken-for-granted grievances, and seeking policy changes by exerting pressure outside of conventional political channels. Through the lens of this analytical perspective, it is difficult to perceive and explain the existence and actions of an indigenous sovereignty movement. The ISM did not primarily mobilize sustained political pressure against state policy makers through noninstitutional or protest means; that is, they did not centrally engage in contentious politics per se. Furthermore, as noted above, the movement sought recognition of tribes’ status as sovereign nations rather than simply or straightforwardly seeking substantive policy changes. In addition, because settler colonialism is not identified in the social movements literature as a dimension of sociopolitical relations in the United States, it is difficult for scholars employing the structurally oriented contentious politics approach to perceive the existence of a movement reflecting colonial relations. Instead, theory directs such scholars toward race, class, gender, and other acknowledged economic and political cleavages as potential sources of challenges to power. Cumulatively, the very qualities that signal the existence of a large-scale social movement for the polity approach are only marginally apparent regarding the ISM, with much of the core action outside the theory’s analytical focus.

#### Perm do both- the rhetoric empowers tribes

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)

Well before the collapse of Red Power, a tribally based project to institutionalize this understanding of tribal status had begun to take shape. Partly overlapping the protest movement in composition, this project was not centrally directed, as tribes continued to experience challenges in closely coordinating actions (Witmer and Bohmke 2007, p. 131). Nonetheless, hundreds of tribes around the United States increasingly shared similar goals, common inspirations, and a playbook focusing on advancing tribal self-determination. In the 1970s, the terminology of sovereignty was adopted as part of tribes’ long-standing struggle to regain the right to make their own choices and to control their own collective fate. In 1974 the NCAI issued its own Declaration of Sovereignty (NCAI 1974), and in that same year an “Indian town hall” meeting was convened in Arizona regarding “sovereignty and intergovernmental relations.” Written records of the latter provide a rare illustration of the development of sovereignty as the terminology of choice and as the framework through which tribes would continue and expand their previous efforts to gain more power over their own affairs. Speaking directly to this theme, the chairman of the Salt River Pima-Maricopa Indian Community asserted, “We have this sovereignty which we have to prove to non-Indians, that this is ours; that we are nations within a nation; and that we have these treaties and these agreements with the Federal government” (Arizona Commission of Indian Affairs 1974, p. 19). That the proliferation of sovereignty talk was a new development is strongly suggested by the observations of Indian lawyer Philip “Sam” Deloria, who noted at the event that “five or six years ago you didn’t hear people talk too much about tribal sovereignty” (Arizona Commission of Indian Affairs 1974, p. 41). As suggested above, the sovereignty focus was not really new, as the underlying demand for self-determination had been maintained for generations through oral stories that were also augmented, albeit unevenly, by formal legal knowledge. This desire had been maintained across drastic shifts in federal Indian policy that reflected broader cultural and political transformations and generated nearly constant duress for tribal communities. Vine Deloria, Jr., NCAI president between 1964 and 1966, recalled that the generation of leaders who drove tribal assertiveness in the 1960s “knew their stuff. They knew tribal sovereignty. They even knew Felix Cohen’s Handbook [detailing the legal lineage of tribal sovereignty]. Somebody would tell them tribes were just social groups or fraternal organizations or whatever, and they’d say, ‘The hell we are. Just look at Cohen, page 122. That’s your government’s publication. We’re independent governments!’” (Wilkinson 2005, p. 127).

# 1AR

### DA

#### The DA creates a tyranny of the people that makes Native subjugation inevitable

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

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

### PLtxDA

### PC

#### Nixon is offense- refusing to address structural violence first acts as a threat multiplier- crises can only escalate if we refuse to address the everyday environmental degradation or systemic inequalities that foster desperation

#### (\_\_\_) STRUCTURAL VIOLENCE OUTWEIGHS AND LIES AT THE ROOT CAUSE OF ALL OTHER FORMS OF VIOLENCE

Gilligan 96

[James, Professor of Psychiatry at Harvard Medical and Director of the Center for the Study of Violence “Violence: Our Deadly Epidemic and Its Causes,” p191-196]cn

The 14 to 18 million deaths a year caused by structural violence compare with about 100,000 deaths per year from armed conflict. Comparing this frequency of deaths from structural violence to the frequency of those caused by major military and political violence, such as World War II (an estimated 49 million military and civilian deaths, including those by genocide-or about eight million per year, 1939-1945), the Indonesian massacre of 1965-66 (perhaps 575,000) deaths), the Vietnam war (possibly two million, 1954-1973), and even a hypothetical nuclear exchange between the U.S. and the U.S.S.R . (232 million), it was clear that even war cannot begin to compare with structural violence, which continues year after year. In other words, every fifteen years, on the average, as many people die because of relative poverty as would be killed by the Nazi genocide of the Jews over a six-year period. This is, in effect. the equivalent of an ongoing, unending~ in fact accelerating, thermonuclear war, or genocide, perpetrated on the weak and poor every year of every decade, throughout the world. Structural violence is also the main cause of behavioral violence on a socially and epidemiologically significant scale (from homicide and suicide to war and genocide). The question as to which of the two forms of violence-structural or behavioral-is more important, dangerous, or lethal is moot, for they are inextricably related to each other, as cause to effect.

#### Food shortages don’t cause war

Chang 11

(Gordon G Chang, Graduated Cornell Law School, Lawyer and writer and former trustee of Cornell, “Global Food Wars,” Forbes, 2/21/11 <http://blogs.forbes.com/gordonchang/2011/02/21/global-food-wars/>)

In any event, food-price increases have apparently been factors in the unrest now sweeping North Africa and the Middle East. The poor spend up to half their disposable income on edibles, making rapid food inflation a cause of concern for dictators, strongmen, and assorted autocrats everywhere. So even if humankind does not go to war over bad harvests, Paskal may be right when she contends that climate change may end up altering the global map. This is not the first time in human history that food shortages looked like they would be the motor of violent geopolitical change. Yet amazing agronomic advances, especially Norman Borlaug’s Green Revolution in the middle of the 20th century, have consistently proved the pessimists wrong. In these days when capitalism is being blamed for most everything, it’s important to remember the power of human innovation in free societies—and the efficiency of free markets.

And conseq/util may be good but you must first ask who is included in those calculations- squo doesn’t include Indigenous peoples because viewed as subhuman-that’s Lissovoy/Jacques- not included in those calculations mean snot inherently ethical or preferable, means you don’t solve your extinction claims because util only saves a few

Enviro catastrophe outweighs, lack of new approach to the environment renders it inanimate, means we overconsume and push the earth beyond natural capacities, extinction

#### {YELLOW] War impacts impossible- shifts in attitudes solve

Fettweis 06

(Christopher J Fettweis, National Security Decision Making Department, US Naval War College, December 06, “A Revolution in International Relation Theory: Or, What If Mueller Is Right?”, International Studies Review, Volume 8, Issue 4, Wiley)

The obsolescence-of-major-war argument is familiar enough to need little introduction (Mueller 1989, 1995, 2004; see also Rosecrance 1986, 1999; Ray 1989; Kaysen 1990; Van Evera 1990–1991; Kegley 1993; Jervis 2002; Mandelbaum 2002). In its most basic and common form, the thesis holds that a broad shift in attitudes toward warfare has occurred within the most powerful states of the international system, virtually removing the possibility for the kind of war that pits the strongest states against each other. Major wars, fought by the most powerful members of the international system, are, in Michael Mandelbaum's (1998/1999:20) words, “somewhere between impossible and unlikely.” The argument is founded upon a traditional liberal faith in the possibility of moral progress within the society of great powers, which has created for the first time “an almost universal sense that the deliberate launching of a war can no longer be justified” (Ray 1989:425; also Luard 1986, 1989). To use Francis Fukayama's (1992) phrase, it is the “autonomous power of ideas” that has brought major war to an end. Whereas past leaders were at times compelled by the masses to use force in the defense of the national honor, today popular pressures urge peaceful resolutions to disputes between industrialized states. This normative shift has all but removed warfare from the set of options before policymakers, making it a highly unlikely outcome. Mueller (1989:11) has referred to the abolition of slavery and dueling as precedents. “Dueling, a form of violence famed and fabled for centuries, is avoided not merely because it has ceased to seem ‘necessary,’ but because it has sunk from thought as a viable, conscious possibility. You can't fight a duel if the idea of doing so never occurs to you or your opponent.” By extension, states cannot fight wars if doing so does not occur to them or to their opponent. Major war has become, in Mueller's words, “sub-rationally unthinkable.”

#### That Also turns racism

Rudrappa in 9

[Sharmila, associate professor of sociology and is affiliated with the Center for Asian American Studies and the Center for Women's and Gender Studies at the University of Texas at Austin, University of San Francisco Law Review, “The Evolving Definition of the Immigrant Worker”, Fall 2009, p. lexis//wyo-tjc]

IN RESPONSE TO SUSAN SONTAG'S celebration of English-speaking Indians' abilities to somehow magically, on their own volition, insert themselves in the global economy as call center workers, Harish Trivedi coined the term "cyber-coolie." Indian call center workers, Trivedi noted, were "cyber-coolies of our global age, working not on sugar plantations but on flickering screens, and lashed into submission through vigilant and punitive monitoring, each slip in accent or lapse in pretence meaning a cut in wages." 2 I use the terms cyber-coolie and techno-braceros to describe the large numbers of Indian information technology workers in the United States. 3 These techno- [\*354] braceros, like the Mexican braceros and Indian and Chinese coolies before them, are guest workers in this country, deployed for capital's benefit and expunged from the nation when the need dissipates. The terms techno-bracero and cyber-coolie are used here not in a derogatory sense, but rather in a descriptive manner. These terms gesture at the legal conditions of work, which partially shape the work experiences of these high-tech guest workers in the United States. The terms also elaborate on the anxieties expressed by Max Frisch, who famously commented on Switzerland's experience with guest workers: "It has called for workers, and has been given human beings." 4 Guest worker programs that bring Mexicans, Chinese, Central Americans, or Indians into the United States do not want people with their historical, cultural, and social complexities; instead, the intentions of these programs are to import, for a short period of time, abstract workers who are divorced from everything that makes them human. All that is wanted is their capacity to work - a working body that can be plugged in and un-problematically unplugged out of production processes, with no life outside the shop floor. While cognizant of the fact that racial formations affect Indian immigrants quite differently than they affect Mexican newcomers, I still hold on to the terms techno-braceros and cyber-coolies because it allows me to examine the legal terms of racialized labor incorporation in the United States. I suggest that the culture of labor can help draw linkages between these seemingly disparate racial groups and open up new ways of thinking about racialized labor in the United States. Foreign labor procurement in the Americas has had racial dimensions from slavery to the present. Examining the rise of multiculturalism in the United States, Asian American scholar Lisa Lowe posited that as a nation-state the United States is concerned with maintaining a national citizenry bound by race, language, and culture, whereas capitalism requires only "abstract labor." 5 In a similar vein, this Essay argues that guest worker programs that bring Chinese, Central Americans, or Indians to the United States resolve the tensions around the importation of foreign workers to serve labor market needs and the incorporation of these "unassimilables" into the national body. These [\*355] programs are structured to render inconsequential much of what makes workers human; that is, their historical, cultural, and social complexities. The nation-state balances this importation of labor with its own need for a homogenous citizenry by focusing on the social productions of "difference" - of restrictive particularity and illegitimacy marked by race, nation, geographical origins, and gender. Through its policies, the United States has created, preserved, and reproduced the specifically racialized and gendered character of labor power. This Essay examines how guest worker programs in the United States have pushed non-white workers into commodity status, further disempowering them, while simultaneously benefiting capital. Part I reviews guest worker programs in the United States, identifying the legal similarities between non-white migrant workers, regardless of national origins. Part II reasons that labor is not inherently a commodity and examines the processes involved in encouraging workers to sell their labor. Part III examines the United States nation-state's role in pushing non-white guest workers' labor into commodity form through its racialized guest worker programs.

1. He's not spending PC on it - others (Senate and Hosue) are taking care of it.. not him. Means passage inetiable

#### Even if he were spending PC it fails with house republicans - i think this part is just true. Those guys hate him and this is the poison the well stuff. PC not real- Obama can’t leverage political power with a divided Congress, empirics prove

Elfers 3/27

(Rich, columnist, Enumclaw Courier Herald, “Political power struggle always in play,” March 27, 2013, http://www.courierherald.com/opinion/200273791.html//wyo-mm)

How much power does any U.S. president have in affecting domestic issues versus the power he can exercise in foreign affairs? Many Americans believe our president has enormous authority in both arenas based upon promises and criticisms during his presidential campaign. According to our Constitution, that view is in error. Let’s examine where power really resides and how it is actually exercised. Power in our federal government is divided into three branches: the president, Congress and the courts. Our government was set up this way to keep any one group or individual from gaining too much power. Congress really is the branch that can affect the economy the most. It can pass laws that help or hinder business activity, raise or lower taxes, pass greater or lesser regulation, increase or decrease entitlement programs like Social Security, Medicare and unemployment insurance, and expand or reduce defense spending. All of these Congressional decisions have an enormous impact upon the economy. Presidents can and do make promises to create jobs during elections, but the reality is that they can only exhort or pressure Congress to act. Blaming any president, Democrat or Republican, for the state of the economy is placing responsibility in the wrong place. Most of you have observed how little President Obama can do with a Republican House that holds opposing priorities and goals for running the country. The president can send out emails and encourage his followers to write or call their Congressional representatives and senators. He can give speeches around the nation and draw attention to issues. The president can urge his supporters to write letters to the editor to force Congress to listen, but he can’t get laws passed without Congressional approval.