# 1NC

### 1st Off

#### Interpretation- - Restrictions must legally mandate a decrease in the quantity produced – regulations are distinct

Anell 89

**Chairman, WTO panel**

**"To examine, in the light of the relevant GATT provisions, the matter referred to the**

**CONTRACTING PARTIES by the United States in document L/6445 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2." 3. On 3 April 1989, the Council was informed that agreement had been reached on the following composition of the Panel (C/164): Composition Chairman: Mr. Lars E.R. Anell Members: Mr. Hugh W. Bartlett Mrs. Carmen Luz Guarda CANADA - IMPORT RESTRICTIONS ON ICE CREAM AND YOGHURT Report of the Panel adopted at the Forty-fifth Session of the CONTRACTING PARTIES on 5 December 1989 (L/6568 - 36S/68)**

<http://www.wto.org/english/tratop_e/dispu_e/88icecrm.pdf>

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

#### Plan changes regulations on how energy is produced not restrictions on how much is produced

#### Two impacts – first is limits - Including regulation cracks the curriculum—even full-time professionals can’t manage that research burden

Stafford 83

<http://felj.org/elj/Energy%20Journals/Vol6_No2_1985_Book_Review2.pdf>

**Associate, Ross, Marsh & Foster, Washington, D.C. The assistance of David L. Wallace, a third**

**year student at the Georgetown University Law Center, in the preparation of this review is greatly appreciated.**

#### FEDERAL REGULATION OF ENERGY by William F. Fox, Jr. Shepard'slMcGraw-Hill, 1983, 846 pages Reviewed by G. William Stafford\* It may safely be said that any effort to catalogue "the entire spectrum of federal regulation of energy"' in a single volume certainly requires an enterprising effort on the part of the author. In this regard, Mr. William F. Fox, Jr., an Associate Professor of Law at Catholic University of America, has undertaken an examination of a vital aspect of United States policy in Federal Regulation of Energy, published in 1983 with an annual pocket supplement available. Despite the complex nature of the subject of his work, Mr. Fox has prepared a text that provides a significant description of many aspects of federal energy regulatory policy. Initially, the book's title may prove somewhat misleading in that it approaches the subject from an historical perspective focused more on substantive than procedural issues. Although a reader gets the impression that the author at time has tried to do too much -at least from the standpoint of the energy practitioner- the historical and technical insights it offers the student of federal energy relation are valuable. Moreover; its detailed explanations of the methods used to tneet federal energy goals are useful for those in the position of initiating energy policy. This strength notwithstanding, it appears unlikely that an energy law practitioner would benefit significantly from its use, other than from its historical point of view. A general impression is that the author may have been overly ambitious in his effort to undertake the monumental task of evaluating laws, regulations, and significant judicial decisions in a single work.

#### Second - precision—restrictions must be a distinct term for debate to occur

**Eric** Heinze **(Senior Lecturer in Law, University of London, Queen Mary. He has held fellowships from the Fulbright Foundation and the French and German governments. He teaches Legal Theory, Constitutional Law, Human Rights and Public International Law. JD Harvard)** 2003 **“The Logic of Liberal Rights A study in the formal analysis of legal discourse” http://mey.homelinux.org/companions/Eric%20Heinze/The%20Logic%20of%20Liberal%20Rights\_%20A%20Study%20in%20%20%28839%29/The%20Logic%20of%20Liberal%20Rights\_%20A%20Study%20in%20%20-%20Eric%20Heinze.pdf**

**Variety of ‘restrictions’**

The term ‘restriction’, defined so broadly, embraces any number of **familiar** concepts: ‘deprivation’, ‘denial’, ‘encroachment’, ‘incursion’, ‘infringement’, ‘interference’, ‘limitation’, ‘regulation’. Those terms commonly comport differences in meaning or nuance, and are not all interchangeable in standard legal usage**. For example, a ‘deprivation’ may be distinguished from a ‘limitation’ or ‘regulation’ in order to denote a full denial of a right (e.g. where private property is wholly appropriated by the state 16 Agents without compensation) as opposed to a partial constraint (e.g. where discrete restrictions are imposed on the use of property which nonetheless remains profitably usable). Similarly,** distinctions between acts and omissions can leave the blanket term ‘restriction’ sounding inapposite when applied to an omission: if a state is accused of not doing enough to give effect to a right, we would not colloquially refer to such inaction as a ‘restriction’**. Moreover, in a case of extreme abuse, such as extrajudicial killing or torture,** it might sound banal to speak merely of a ‘restriction’ on the corresponding right. However, the term ‘restriction’ will be used to include all of those circumstances**, in so far as they all comport a purpose or effect of extinguishing or diminishing the right-seeker’s enjoyment of an asserted right. (The only significant distinction which will be drawn will be between that concept of ‘restriction’ and the concept of ‘breach’ or ‘violation’. The terms ‘breach’ or ‘violation’ will be used to denote a judicial determination about the legality of the restriction.6)** Such an axiom may seem unwelcome, in so far as it obliterates subtleties which one would have thought to be useful in law**. It must be stressed that we are seeking to eliminate that variety of terms not for all purposes, but only for the very narrow purposes of a formal model, for which any distinctions among them are irrelevant.**

#### Kills neg ground- changing regulations should be neg. counterplan ground and they get unpredictable actors making generic link ground impossible to access.

#### Limits and fair division of ground are key to education, limits are necessary for negative research and ground sets up the conditions for equitable debate

#### Topicality is a prima facie burden that should be evaluated through the lens of competing interpretaitons-

### 2nd Off

#### Interpretation: Solar power refers to conversion of the sun’s energy directly into electricity

#### Power means electricity

World English Dictionary no date

[http://dictionary.reference.com/browse/solar+power]

solar power — n

heat radiation from the sun converted into electrical power

#### Violation- plan text only says “solar production” NOT solar power production means they justify- Heat based versions of solar classified as ENERGY, not solar power.

#### Passive solar is heat based

NC Sustainable Energy Association no date

[Solar energy fact sheet, http://energync.org/assets/files/Solar%20Fact%20Sheet.pdf]

Solar energy refers to the conversion of the sun’s rays into useful forms of energy, such as electricity or heat. The amount of solar radiation a location receives depends on a variety of factors including geographic location, time of day, season, local landscape, and local weather. Because of our location in North Carolina, we have excellent solar resources.

How Solar is Used to Create Energy

When converted to thermal (or heat) energy, solar energy can be used to:

 Heat water – for use in homes, buildings, or swimming pools.

 Heat spaces – inside homes, greenhouses, and other buildings.

Solar energy can also be converted into electricity:

 Photovoltaic (PV) or solar cells change sunlight directly into electricity.

 Concentrating Solar Power Plants generate electricity by using the heat from solar thermal collectors to heat a fluid which produces steam. The steam is used to power a turbine and generate electricity.

Passive Solar Heating

A building can be designed to provide natural heating from the sun’s energy. A well-designed building can capture heat in the winter and minimize it in the summer by using heat absorbing building materials and positioning windows and shade structures where they will absorb or reflect the desired amount of heat from the sun.

#### Third, reasons to prefer:

#### Consistent limits- the topic already doesn’t make much sense and they justify efficiency cases that access unpredictable lit bases like housing markets, building materials, and efficiency requirements

#### Extra topical- even if passive solar includes some electricity production elements, as written it also allows efficiency and heating affs and should be rejected on face because Extra-T destroys fairness by giving aff’s unpredictable leverage with advantages and link turns

#### No offense- the topical version of the aff is to fund PV cells for federally assisted housing or to remove barriers on household PV cells

#### Fourth, voting issue- T is a prima facie burden and should be about competing interpretations

### 3rd Off

#### Immigration will pass: 90% there, but will compromise

Moody, 3-27

[Chris, “McCain: Nobody will be ‘totally happy’ with immigration bill,” Yahoo News, March 27, 2013, <http://news.yahoo.com/blogs/ticket/mccain-nobody-totally-happy-immigration-bill-195849266--politics.html> //uwyo-baj]

After wrapping a tour of the U.S.-Mexico border Wednesday, Arizona Republican Sen. John McCain and New York Democratic Sen. Chuck Schumer said the bipartisan group crafting an immigration reform bill was "very close" to finishing the legislation. A draft, he noted, should be ready to be introduced when the Senate reconvenes after Easter. "The bottom line is, we're very close. I'd say we're 90 percent there. We have a few little problems to work on," Schumer told reporters in Arizona after a tour of the U.S. border enforcement facilities. "We're on track to meet our deadline of having a bill when we get back to Congress in April." Schumer and McCain are part of the team of eight senators tasked with crafting an immigration bill that can pass both chambers of Congress. The group unveiled a blueprint of its plan in January. They called it a "tough but fair" approach to solving the nation's illegal immigration problem. In a joint press conference Wednesday, Schumer and McCain reiterated that the bill would need to be "comprehensive" to survive, and would address new ways to secure the border, penalize businesses that hire illegal immigrants and provide a "path to citizenship" for illegal immigrants already in the country. On border security, Schumer said that the federal government doesn't necessarily need more boots on the ground along the border, but it will need to invest in new technology. "We have adequate manpower but not adequate technology," Schumer said. "You can't do it with just one fence or with people lined up." McCain emphasized that lawmakers would be required to make sacrifices to pass the bill, but that he and Schumer planned to use what they learned during their border visit to lobby their colleagues to support the plan. "Nobody is going to be totally happy with this legislation," McCain said. "No one will be because we are having to make compromises, and that's what makes good legislation."

#### Obama PC key-absent leadership, Republicans will rely on lip service

Huerta 3/15

[Alvaro Huerta,The Progressive Media Project, 3/15, 2013, We need real immigration reform, <http://www.bradenton.com/2013/03/15/4437160/we-need-real-immigration-reform.html>, uwyo//amp]

I don't find the deportation of more than 1.6 million undocumented immigrants during Obama's first term in office as "welcoming." Moreover, given that Republican leaders remain hostile and pay only lip service to Latinos and immigrants in this country, it's incumbent on Obama and Democratic leaders to invest the necessary political capital for the benefit of the estimated 11 undocumented immigrants in this country.

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

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

Opponents, including some environmental groups, have expressed concern that Title V will eliminate the federal guarantees of public participation and environmental review from energy development decisions in Indian Country. n78 Further, opponents state that the "language also undercuts the federal trust [\*471] responsibility to Tribes by providing a waiver for the federal government of all liability from energy development." n79 Additionally, "other governments - state, local and foreign - are not required to conduct a NEPA review of actions they approve." n80 Some claim that the bill releases the federal government from its traditional trust responsibility to ensure the protection of the health, environment, and resources of Tribes and undermines federal environmental laws such as NEPA for energy development projects on Indian lands, resulting in a rearrangement of the federal- tribal relationship. n81 For example, during a congressional oversight hearing on NEPA, Zuni tribal member Calbert Seciwa stated "that NEPA was a vital tool in the Zuni Salt Lake Coalition's successful fight to block development of a coal mine near the sacred lake south of Gallup." n82 Environmentalists also criticize the new language. The National Resources Defense Council argued that the provisions remove the federal guarantee of environmental review and public participation. n83 Sharon Buccinio, an attorney for the NRDC argues Title V could remove the application of federal laws, such as NEPA and the National Historic Preservation Act, from energy development decisions on tribal lands. The bill affects land both on and off the reservation. It provides that once the Secretary of the Interior approves a [TERA] providing a process for making energy development decisions, individual energy projects would proceed without federal approval. Since no federal action would occur, the existing guarantees of environmental review and public participation under NEPA would be lost. Concerned tribal community members and communities adjacent to the project would lose the mechanism that they now have to make their voices heard. n84 [\*472] Because of the ongoing concern that TERA tribes could ignore NEPA, Congress added a tribal environmental review process to the TERA. n85 The environmental review process must provide for the identification and evaluation of all significant environmental effects, including effects on cultural resources, identify proposed mitigation measures, and incorporate these measures into the TERA agreement. n86 In addition, the Tribe must ensure that the public is informed of and has the opportunity to comment on the environmental impacts of the proposed action, provide responses to relevant and substantive comments before tribal approval of the TERA agreement, provide sufficient administrative support and technical capability to carry out the environmental review process and allow Tribal oversight of energy development activities by any other party under any TERA agreement to determine whether the activities are in compliance with the TERA and applicable federal environmental law. n87

#### Critical to US economic recovery

Aaron Terrazas, Migration Policy Institute, July 2011, The Economic Integration of Immigrants in the United States: Long- and Short-Term Perspectives, http://www.migrationpolicy.org/pubs/EconomicIntegration.pdf

The fate of immigrants in the United States and their integration into the labor market are impossible to separate from the state of the overall US economy and the fate of all US workers. During periods of economic expansion and relative prosperity, upward economic mobility among the native born generates opportunities for immigrants to gain a foothold in the US labor market and to gradually improve their status over time. In many respects, a growing economy during the 1990s and early 2000s provided ample opportunity for immigrants — and especially their children — to gradually improve their status over time. However, the story of immigrants’ integration into the US labor force during the years leading to the recession was also mixed: In general, the foreign born had high labor force participation, but they were also more likely to occupy low-paying jobs. The most notable advances toward economic integration occur over generations, due in large part to the openness of US educational institutions to the children of immigrants and the historic lack of employment discrimination against workers with an immigrant background. In the wake of the global economic crisis, there is substantial uncertainty regarding the future trajectory of the US economy and labor market. Most forecasts suggest that the next decade will be substantially different from the past26 and it is not clear if previous trends in immigrants’ economic integration will continue. The recession, weak recovery, and prospect of prolonged stagnation as a result of continuing high public debt, could realign the economic and social forces that have historically propelled the the less-educated labor force have been dismal for decades. In some respects, the recession accelerated these trends. While the prospect of greater demand for US manufactured goods from emerging markets might slow gradual decay of the US manufacturing industry, the outlook for the industry remains weak. Steady educational gains throughout the developing world have simultaneously increased downward wage pressure on highly skilled workers who, in the past, generated substantial secondary demand for services that immigrants often provide.

**There is a strong historical correlation between economic decline and war.**

**Mead 9** — Henry Kissinger Senior Fellow at the CFR, Professor at Yale (Walter Russel, "What Doesn't Kill You Makes You Stronger," The New Republic)

So far, such half-hearted experiments not only have failed to work; they have left the societies that have tried them in a progressively worse position, farther behind the front-runners as time goes by. Argentina has lost ground to Chile; Russian development has fallen farther behind that of the Baltic states and Central Europe. Frequently, the crisis has weakened the power of the merchants, industrialists, financiers, and professionals who want to develop a liberal capitalist society integrated into the world. **Crisis can also strengthen the hand of religious extremists, populist radicals, or authoritarian traditionalists** who are determined to resist liberal capitalist society for a variety of reasons. Meanwhile, **the companies and banks based in these societies are often less established and more vulnerable to the consequences of a financial crisis than more established firms in wealthier societies.** As a result, **developing countries** and countries where capitalism has relatively recent and shallow roots **tend to suffer greater economic and political damage when crisis strikes**--as, inevitably, it does. And, consequently, **financial crises often reinforce rather than challenge the global distribution of power and wealth.** This may be happening yet again. **None of which means that we can just sit back and enjoy the recession.** History may suggest that financial crises actually help capitalist great powers maintain their leads--but it has other, less reassuring messages as well. **If financial crises have been a normal part of life** during the 300-year rise of the liberal capitalist system under the Anglophone powers, **so has war**. The wars of the League of Augsburg and the Spanish Succession; the Seven Years War; the American Revolution; the Napoleonic Wars; the two World Wars; the cold war: **The list of wars is almost as long as the list of financial crises. Bad economic times can breed wars.** Europe was a pretty peaceful place in 1928, but **the Depression poisoned German public opinion and helped bring** Adolf **Hitler to power. If the current crisis turns into a depression, what rough beasts might** start slouching toward Moscow, Karachi, Beijing, or New Delhi to **be born**? The United States may not, yet, decline, but, **if we can't get the world economy back on track, we may still have to fight.**

### 4th Off

#### Text:

#### The United States Federal Government should:

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

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

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

#### Counterplan solves the case:

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

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

Nonetheless, there are steps that can be taken to tighten up the approval process and make it friendlier to renewable energy development. The two amendments to the IMDA proposed here [\*133] would provide that the Secretary's failure to act within the time allotted constitutes approval, and that in determining whether a minerals agreement is in the tribe's best interest, the Secretary will defer to the tribe's decision. Under the IMDA, the Secretary has 180 days to approve or disapprove a minerals agreement, or 60 days after compliance with the National Environmental Policy Act (NEPA), whichever is later. n189 The statute specifically provides that the Secretary's failure to meet the deadline is enforceable by a mandamus action in federal court. n190 Making the Secretary's deadline mandatory is useful, but authorizing enforcement by court action is not. Civil suits proceed slowly through the federal courts, and it is unlikely that a writ of mandamus would be issued before the Secretary reached a decision on the minerals agreement. Waiting two years for the court's decision is no better than waiting two years for the Secretary's. A better approach would borrow from the proposed statutory amendments to the TERA process. The proposed TERA amendments would replace a provision giving the Secretary 270 days to approve a TERA, with a provision that 271 days after the tribe submits its TERA application, the TERA "shall" become effective if the Secretary has not disapproved it. n191 A similar amendment to the IMDA could provide that 181 days after the tribe submits a proposed minerals agreement, or 61 days after compliance with NEPA, whichever is later, the agreement "shall" take effect if the Secretary has not disapproved it or has not provided the tribe with written findings of the intent to approve or disapprove the agreement. n192 As with the proposed TERA [\*134] amendment, this would put substantial additional pressure on the Department of the Interior to act quickly. But the benefit to tribes of knowing whether their minerals agreements have been approved, and being able to implement their agreements within a reasonable time, outweigh those concerns. The second way to streamline the approval process for renewable energy resources is to address the substance of the Secretary's review of mineral agreements. The IMDA provides that the Secretary must determine whether a proposed agreement "is in the best interest of the Indian tribe." n193 In so doing, the Secretary "shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement." n194 The statute expressly provides, however, that the Secretary is not responsible for preparing any studies regarding "environmental, socioeconomic, or cultural effects" other than the environmental studies required by NEPA. n195 The regulations, on the other hand, require that the Secretary determine both that the minerals agreement is in the tribe's best interest and that any adverse cultural, social, or environmental impacts do not outweigh the benefits of the agreement. n196 The "best interest" standard is further defined as requiring "the Secretary [to] consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects." n197 The regulations further specify that the "best interest" standard is based on information supplied by the parties "and any other [\*135] information considered relevant by the Secretary." n198 That information may include comparisons to other contracts or offers for similar resources, "insofar as that information is readily available." n199 These standards, derived from judicial determinations that the Secretary must consider all relevant factors in reviewing mineral leases under the IMLA, n200 place considerable decision-making power with the Secretary. During the rulemaking process, in fact, the Department of the Interior rejected a commenter's suggestion that minerals agreements should be approved if the agreements were in compliance with law. The Department noted that the law itself "allows the Secretary the discretion to weigh relevant factors and requires the Secretary to make, on the basis of the Secretary's judgement, a best interest determination." n201 At the time the IMDA was enacted in 1982, federal Indian policy had only recently focused on tribal self-determination, n202 and Indian tribes were still emerging from the uncertainties and destruction of the termination era. n203 The Department of the Interior had experience with considering all relevant factors in the approval of IMLA leases, and carried that standard into the new world of minerals agreements. It took twelve years for the Department to issue IMDA regulations, but the regulations again reflected the central role of the Secretary and the importance of the Secretary's judgment call. In the 1980s and even early 1990s, the Secretary's stringent oversight may have been justified by the imbalance of knowledge and bargaining power between tribes and energy companies. But nearly twenty years have passed since the regulations were [\*136] promulgated in 1994. Indian tribes have thirty years of experience with IMDA minerals agreements, and many of the energy tribes have become sophisticated negotiators of development deals. Certainly tribes are the best determiners of cultural and social impacts, and often of the economic impacts as well. In light of those factors, the standards for approval of IMDA agreements are due for amendment. Amending the statute itself to revisit the appropriate factors may be the best choice, but a simpler and perhaps quicker fix is also available. The Department could amend the regulations to reflect modern realities. Similar to the best interests determination in the regulations for agricultural and other surface leases, the IMDA regulations could provide that in reviewing an IMDA minerals agreement, the Secretary will defer to the tribe's determination that the agreement is in its best interest, to the maximum extent possible. n204 Although the conditional "maximum extent possible" language preserves the Secretary's ultimate authority under the statute, the regulation would ensure that the Secretary will undertake the minerals agreement review process with due respect for the tribe's decision. Even if a deferential review is current practice, embedding it in the regulations strengthens the tribe's role in the decision making process. VII. Conclusion Renewable energy resources are taking on increased importance for tribal economies. While these resources are abundant in Indian country, the federal statutory authority for their development is dispersed and often problematic. Mineral development statutes may or may not apply; other statutes not originally intended for energy development fill the gap, but generally confine tribes to a passive role in renewables development. The recent energy statute solves many of the problems with the other approaches, but creates a process that is [\*137] complex and expensive enough to discourage most tribes from using it. Recent bills would tweak the energy statute and propose broader leasing authority, but none addresses the overarching problem of providing tribes with a way to take an active role in the development of renewable resources without undue expense or federal oversight. The amendments to the IMDA and its regulations proposed here also do not solve that overarching problem entirely. They are intended to suggest steps in the direction of greater tribal self-determination in renewable energy development. They would free tribes to take more active roles in renewable energy projects, while preserving tribes' ability to use the variety of other available statutory approaches. And they would rein in the secretarial approval power by providing that federal inaction benefits the tribes and by reframing the best interests analysis. Under these proposals, Indian tribes could more easily develop their renewable energy resources, and do so with more direct say in the development itself.

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

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

The heart of my proposal is a small and likely uncontroversial amendment to the Indian Mineral Development Act of 1982. The statutory definition of "mineral resources" should be amended to clarify that mineral resources includes all renewable energy resources. Although that is arguably the case now, the clear inclusion of renewable energy resources would remove a point of contention and confusion. At present, the IMDA defines "mineral resources" as "oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources." n179 **Congress should amend the definition** to something like, "oil, gas, uranium, coal, other energy and nonenergy mineral resources, or any renewable energy resources including, but not [\*129] limited to, wind, solar, geothermal, biomass, and hydrologic resources." n180 Language such as this leaves no question that renewable energy resources are included in the scope of the IMDA. Alternatively, the definition could be amended in the regulations without amending the statute itself. The regulatory definition of minerals for purposes of leases and minerals agreements expands on the statutory definition: "both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral." n181 **This definition helps to clarify the** meaning of "other" minerals in the **statute** by specifying such minerals as sand and gravel. The regulatory definition could similarly help clarify the meaning of "other energy" in the statute by specifying that it includes "both renewable and nonrenewable energy sources, including, but not limited to, wind, solar, geothermal, biomass, and hydrologic resources." n182 A statutory amendment would be preferable to a regulatory amendment, but a regulatory amendment could likely be accomplished more quickly. n183 Expanding the minerals definition of the IMDA to specify energy resources regardless of their classification **would broaden**, simplify, and normalize **Indian tribes' ability to engage in renewable energy development**. Any tribe with renewable resources could enter into any type of development agreement that suited its needs. Tribes could employ not only the current structure of leases, but joint ventures, partnerships, and business agreements of all kinds. This simple amendment would thus authorize all Indian tribes to move into more active roles in the [\*130] development of their renewables. **Tribes seeking to partner with non-Indian companies** to develop wind farms, solar collectors, or biomass feedstock operations **would no longer be confined to the passive role of lessor**. And it makes common sense. There is no reason to deny a tribe with wind resources the ability to enter into a joint venture, for example, when a tribe with coal resources may do so. Clarifying that the IMDA may be used for renewables development could, however, impact the tribes' ability to use § 81 easements for wind and solar power development. Under current § 81 regulations, contracts and agreements that encumber Indian lands do not need secretarial approval if they are subject to approval under another statute or regulation, specifically including surface leases, agricultural leases, timber contracts, mineral leases, and minerals agreements. n184 The regulations thus appear to put those types of leases and agreements, including IMDA leases and agreements, outside § 81. If the IMDA definition of minerals is amended to specifically include renewable energy resources, then it may mean that a tribe could no longer use § 81 for renewable energy easements. To prevent this possible unintended consequence, a further amendment to the IMDA may be necessary. The IMDA now provides that nothing in the statute "shall affect" the Indian Mineral Leasing Act "or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe." n185 An amendment to clarify that it also does not affect tribes' authority to enter into § 81 easements would preserve that option for renewable energy development. This amendment would need to be carefully worded, however, if Congress wished to preserve the current practice that § 81 contracts and agreements cannot otherwise be used to substitute for mineral leases and agreements. It is possible that a broader amendment may be necessary to preserve tribes' options under other statutes if the IMDA definition of minerals is expanded to include renewables. The proposed expansion of the IMDA suggested here is not intended to replace any existing authorities, but to supplement them. Just as the IMDA authorization of minerals agreements did not replace [\*131] the IMLA authority to enter into mineral leases, and the TERA process for energy agreements did not replace either IMDA agreements or IMLA leases, n186 the proposed expansion of the IMDA is intended as one more option for tribes. Under the proposed amendment to the IMDA definition of minerals, for example, a tribe seeking to construct a wind farm on tribal land could do so using a lease under § 415, an easement under § 81, a negotiated lease or other minerals agreement under the IMDA, or an agreement pursuant to an approved TERA under ITEDSA. **The tribe could weigh the advantages and drawbacks of each alternative**, **and chose the one that best suits its needs**. Including a statement in the IMDA that it is not intended to replace other existing o**ptions would preserve tribes' self-determination rights** to choose the best approach for that tribe.

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

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

The legislation would also waive Interior’s trust responsibility to the tribes in energy dealings. This trust relationship means the federal government must ensure that tribes get a fair shake when their land is leased for mining, grazing, logging or drilling. In recent years, Indians have sued the Interior Department, accusing the agency of mismanaging billions of dollars it collected from those leases (HCN, 5/12/03: Missing Indian money: Piles or pennies?). But some tribal leaders and environmental groups say there aren’t enough financial and human resources in Indian Country to ensure that tribal energy resources are developed in an environmentally responsible way. They fear that the legislation, dubbed the “Native American Energy Development and Self-Determination Act” before being rolled into a larger, catchall Senate energy bill, would leave tribes vulnerable to exploitation by energy companies. Historically, when tribes have tried to assert their authority over corporations, “they’re challenged at every turn,” says David Getches, a professor of natural resource law at the University of Colorado and one of the founders of the Native American Rights Fund. “When you’re talking about things like power plants, where there are millions of dollars involved, you will see some of the most vigorous challenges ever to tribal sovereignty.” “I think a better name for this legislation would be the ‘Native American Self-Termination Act’,” says Robert Shimek, special projects director for the Indigenous Environmental Network and a member of the Chippewa Tribe. “The way it’s proposed, it reopens the door for dirty projects — projects that nobody else wants.” Shimek is wary of a return to the days when the federal government endorsed projects like the Black Mesa coal mine on the Navajo reservation in northeastern Arizona. In the 1960s, the Peabody Coal Company strip-mined 17,000 acres of tribal lands, and the still-active operation has been blamed for depleting the aquifer and drying up the Hopi Tribe’s sacred springs. “(Tribal lands) were essentially energy colonies for the rest of the country,” says Lester. When the Senate resumes debate on the energy bill this summer, Campbell is expected to offer an amendment addressing some of critics’ concerns, including retaining Interior’s trust responsibility and laying out requirements that tribes would have to follow when conducting environmental reviews.

### 5th Off

#### The 50 states, Washington D.C., and relevant territories should actively involve affected tribal communities in energy policy decision-making and defer to the tribe’s position to the maximum extent possible.

### 6th Off

#### “Sovereignty” is rooted in Westernized conceptions of power relations—as such, focusing the goal of Native politics on sovereignty is problematic when implemented in the framework of the state because it becomes a tool designed for the subjugation of Native peoples. Things like ‘alternative energy incentives’ simply loosen the leash while maintaining the falsehoods of current power relations

Alfred 99 Taiaiake Alfred, professor at the University of Victoria, Peace, Power, Righteousness: An Indigenous Manifesto, Oxford University Press, 1999.

To summarize the argument thus far, sovereignty is an exclusionary concept rooted in an adversarial and coercive Western notion of power. Indigenous peoples can never match the awesome coercive force of the state; so long as sovereignty remains the goal of indigenous politics, therefore, Native communities will occupy a dependent and reactionary position relative to the state. Acceptance of “Aboriginal rights” in the context of state sovereignty represents the culmination of white society’s efforts to assimilate indigenous peoples. Framing indigenous people in the past, as ‘noble but doomed’ relics of an earlier age, allows the colonial state to maintain its legitimacy by preventing the fact of contemporary indigenous peoples’ nationhood to intrude on its own mythology. Native people imperil themselves by accepting formulations of their own identities and rights that prevent them from transcending the past. The state relegates indigenous peoples’ rights to the past, and constrains the development of their societies by allowing only those activities that support its own necessary illusion: that indigenous peoples today do no present a serious challenge to its legitimacy. Thus the state celebrates paint and feathers and Indian dancing, because they reinforce the image of doomed nobility that justified the pretence of European sovereignty on Turtle Island. Tribal casinos, Indian tax-immunity, and aboriginal fisheries, on the other hand, are uncomfortable reminders that—despite the doctrine of state sovereignty—indigenous identities and rights continue to exist. Native leaders have a responsibility to expose the truth and debunk the imperial pretense that supports the doctrine of state sovereignty and white society’s dominion over indigenous nations and their lands. State sovereignty depends on the fabrication of falsehoods that exclude the indigenous voice. Ignorance and racism are the founding principles of the colonial state, and concepts of indigenous sovereignty that don’t challenge these principles in fact serve to perpetuate them. To claim the state’s legitimacy is based on the rule of law is hypocritical and anti-historic. There is no moral justification for state sovereignty. The truth is that Canada and the United States were established only because indigenous peoples were overwhelmed by imported European diseases and were unable to prevent the massive immigration of European populations. Only recently, as indigenous people have learned to manipulate state institutions and gained support from other groups oppressed by the state has the state been forced to change its approach. Recognizing the power of the indigenous challenge, and unable to deny it a voice, the state has attempted to pull indigenous people closer to it. Jt has encouraged them to re-frame and moderate their nationhood demands to accept the fail accompli of colonization, to collaborate in the development of a ‘solution’ that does not challenge the fundamental imperial lie. By allowing indigenous peoples a small measure of self-administration, and by forgoing a small portion of the money derived from the exploitation of indigenous nations’ lands, the state has created incentives for integration into its own sovereignty framework. Those communities that cooperate are the beneficiaries of a patronizing false altruism that sees indigenous peoples as the anachronistic remnants of nations, the descendants of once independent peoples who by a combination of tenacity and luck have managed to survive and must now be potected as minorities. By agreeing to live as artifacts, such co-opted communities guarantee themselves a role in the state mythology through which they hope to secure a limited but perpetual set of rights. In truth the bargain is a pathetic compromise of principle. The reformulation of nationhood to create historical artifacts that lend legitimacy to the political economy of the modern state is nothing less than a betrayal.

#### The alternative is to deconstruct the mythologies of current Native-state power relations. Thus we offer the counter history of imagining the US as having never existed

Churchill 96 (Ward, Prof. of Ethnic Studies @ U. of Colorado, Boulder BA and MA in Communications from Sangamon State, “From a Native Son”,mb)

The question which inevitably arises with regard to indigenous land claims, especially in the United States, is whether they are “realistic.” The answer, of course is , “No, they aren’t.” Further, no form of decolonization has ever been realistic when viewed within the construct of a colonialist paradigm. It wasn’t realistic at the time to expect George Washington’s rag-tag militia to defeat the British military during the American Revolution. Just ask the British. It wasn’t realistic, as the French could tell you, that the Vietnamese should be able to defeat U.S.-backed France in 1954, or that the Algerians would shortly be able to follow in their footsteps. Surely, it wasn’t reasonable to predict that Fidel Castro’s pitiful handful of guerillas would overcome Batista’s regime in Cuba, another U.S. client, after only a few years in the mountains. And the Sandinistas, to be sure, had no prayer of attaining victory over Somoza 20 years later. Henry Kissinger, among others, knew that for a fact. The point is that in each case, in order to begin their struggles at all, anti-colonial fighters around the world have had to abandon orthodox realism in favor of what they knew to be right. To paraphrase Bendit, they accepted as their agenda, a redefinition of reality in terms deemed quite impossible within the conventional wisdom of their oppressors. And in each case, they succeeded in their immediate quest for liberation. The fact that all but one (Cuba) of the examples used subsequently turned out to hold colonizing pretensions of its own does not alter the truth of this—or alter the appropriateness of their efforts to decolonize themselves—in the least. It simply means that decolonization has yet to run its course, that much remains to be done. The battles waged by native nations in North America to free themselves, and the lands upon which they depend for ongoing existence as discernible peoples, from the grip of U.S. (and Canadian) internal colonialism are plainly part of this process of liberation. Given that their very survival depends upon their perseverance in the face of all apparent odds , American Indians have no real alternative but to carry on. They must struggle, and where there is struggle here is always hope. Moreover, the unrealistic or “romantic” dimensions of our aspiration to quite literally dismantle the territorial corpus of the U.S. state begin to erode when one considers that federal domination of Native North America is utterly contingent upon maintenance of a perceived confluence of interests between prevailing governmental/corporate elites and common non- Indian citizens. Herein lies the prospect of long-term success. It is entirely possibly that the consensus of opinion concerning non-Indian “rights” to exploit the land and resources of indigenous nations can be eroded, and that large numbers of non-Indians will join in the struggle to decolonize Native North America. Few non- Indians wish to identify with or defend the naziesque characteristics of US history. To the contrary most seek to deny it in rather vociferous fashion. All things being equal, they are uncomfortable with many of the resulting attributes of federal postures and actively oppose one or more of these, so long as such politics do not intrude into a certain range of closely guarded selfinterests. This is where the crunch comes in the realm of Indian rights issues. Most non-Indians (of all races and ethnicities, and both genders) have been indoctrinated to believe the officially contrived notion that, in the event “the Indians get their land back,” or even if the extent of present federal domination is relaxed, native people will do unto their occupiers exactly as has been done to them; mass dispossession and eviction of non-Indians, especially Euro-Americans is expected to ensue. Hence even progressives who are most eloquently inclined to condemn US imperialism abroad and/or the functions of racism and sexism at home tend to deliver a blank stare of profess open “disinterest” when Indigenous land rights are mentioned. Instead of attempting to come to grips with this most fundamental of all issues the more sophisticated among them seek to divert discussion into “higher priority” or “more important” topics like “issues of class and gender equality” in with “justice” becomes synonymous with a redistribution of power and loot deriving from the occupation of Native North America even while occupation continues. Sometimes, Indians are even slated to receive “their fair share” in the division of spoils accruing from expropriation of their resources. Always, such things are couched in terms of some “greater good” than decolonizing the .6 percent of the U.S. population which is indigenous. Some Marxist and environmentalist groups have taken the argument so far as to deny that Indians possess any rights distinguishable from those of their conquerors. AIM leader Russell Means snapped the picture into sharp focus when he observed n 1987 that: so-called progressives in the United States claiming that Indians are obligated to give up their rights because a much larger group of non-Indians “need” their resources is exactly the same as Ronald Reagan and Elliot Abrams asserting that the rights of 250 million North Americans outweigh the rights of a couple million Nicaraguans (continues). Leaving aside the pronounced and pervasive hypocrisy permeating these positions, which add up to a phenomenon elsewhere described as “settler state colonialism,” the fact is that the specter driving even most radical non-Indians into lockstep with the federal government on questions of native land rights is largely illusory. The alternative reality posed by native liberation struggles is actually much different: While government propagandists are wont to trumpet—as they did during the Maine and Black Hills land disputes of the 1970s—that an Indian win would mean individual non-Indian property owners losing everything, the native position has always been the exact opposite. Overwhelmingly, the lands sought for actual recovery have been governmentally and corporately held. Eviction of small land owners has been pursued only in instances where they have banded together—as they have during certain of the Iroquois claims cases—to prevent Indians from recovering any land at all, and to otherwise deny native rights. Official sources contend this is inconsistent with the fact that all non-Indian title to any portion of North America could be called into question. Once “the dike is breached,” they argue, it’s just a matter of time before “everybody has to start swimming back to Europe, or Africa or wherever.” Although there is considerable technical accuracy to admissions that all non-Indian title to North America is illegitimate, Indians have by and large indicated they would be content to honor the cession agreements entered into by their ancestors, even though the United States has long since defaulted. This would leave somewhere close to two-thirds of the continental United States in non-Indian hands, with the real rather than pretended consent of native people. The remaining one-third, the areas delineated in Map II to which the United States never acquired title at all would be recovered by its rightful owners. The government holds that even at that there is no longer sufficient land available for unceded lands, or their equivalent, to be returned. In fact, the government itself still directly controls more than one-third of the total U.S. land area, about 770 million acres. Each of the states also “owns” large tracts, totaling about 78 million acres. It is thus quite possible— and always has been—for all native claims to be met in full without the loss to non-Indians of a single acre of privately held land. When it is considered that 250 million-odd acres of the “privately” held total are now in the hands of major corporate entities, the real dimension of the “threat” to small land holders (or more accurately, lack of it) stands revealed. Government spokespersons have pointed out that the disposition of public lands does not always conform to treaty areas. While this is true, it in no way precludes some process of negotiated land exchange wherein the boundaries of indigenous nations are redrawn by mutual consent to an exact, or at least a much closer conformity. All that is needed is an honest, open, and binding forum—such as a new bilateral treaty process—with which to proceed. In fact, numerous native peoples have, for a long time, repeatedly and in a variety of ways, expressed a desire to participate in just such a process. Nonetheless, it is argued, there will still be at least some non-Indians “trapped” within such restored areas. Actually, they would not be trapped at all. The federally imposed genetic criteria of “Indian –ness” discussed elsewhere in this book notwithstanding, indigenous nations have the same rights as any other to define citizenry by allegiance (naturalization) rather than by race. Non-Indians could apply for citizenship, or for some form of landed alien status which would allow them to retain their property until they die. In the event they could not reconcile themselves to living under any jurisdiction other than that of the United States, they would obviously have the right to leave, and they should have the right to compensation from their own government (which got them into the mess in the first place). Finally, and one suspects this is the real crux of things from the government/corporate perspective, any such restoration of land and attendant sovereign prerogatives to native nations would result in a truly massive loss of “domestic” resources to the United States, thereby impairing the country’s economic and military capacities (see “Radioactive Colonialism” essay for details). For everyone who queued up to wave flags and tie on yellow ribbons during the United States’ recent imperial adventure in the Persian Gulf, this prospect may induce a certain psychic trauma. But, for progressives at least, it should be precisely the point. When you think about these issues in this way, the great mass of non-Indian in North America really have much to gain and almost nothing to lose, from the success of native people in struggles to reclaim the land which is rightfully ours. The tangible diminishment of US material power which is integral to our victories in this sphere stands to pave the way for realization of most other agendas from anti-imperialism to environmentalism, from African American liberation to feminism, from gay rights to the ending of class privilege- pursued by progressives on this continent. Conversely, succeeding with any or even all of these other agendas would still represent an inherently oppressive situation in their realization is contingent upon an ongoing occupation of Native North America with the consent of Indian people. Any North American revolution which failed to free indigenous territory from non-Indian domination would be simply a continuation of colonialism in another form. Regardless of the angle from which you view the matter, the liberation of Native North America, liberation of the land first and foremost, is the key to fundamental and positive social changes of many other sorts. One thing they say, leads to another. The question has always been, of course, which “thing” is to be the first in the sequence. A preliminary formulation for those serious about radical change in the United State might be “First Priority to First Americans.” Put another way this would mean, “US out of Indian Country.” Inevitably, the logic leads to what we’ve all been so desperately seeking: The United States- at least what we’ve come to know it- out of North America all together. From there is can be permanently banished from the planet. In its stead, surely we can join hands to create something new and infinitely better. That’s our vision of “impossible realism,” isn’t it time we all worked on attaining it?

Case args-

Not suff to solve self-d

Exploitation args- corporations exploit the tribes to suck profit out of them

Consequences 1st/xtinction 1st

Scenario planning good

### Conflict

#### Self-Determination cannot be attained via the state- it must be created by the Native Americans themselves

Peter d'Errico, Legal Studies Department, University of Massachusetts/Amherst. October 24, 1997 American Indian Sovereignty: Now you see it, Now you don’t, http://www.umass.edu/legal/derrico/nowyouseeit.html (DS)

Ultimately, it is land -- and a people's relationship to land -- that is at issue in "indigenous sovereignty" struggles. To know that "sovereignty" is a legal-theological concept allows us to understand these struggles as spiritual projects, involving questions about who "we" are as beings among beings, peoples among peoples. Sovereignty arises from within a people as their unique expression of themselves as a people. It is not produced by court decrees or government grants, but by the actual ability of a people to sustain themselves in a place. This is self-determination. Self-determination of indigenous peoples will be attained "through means other than those provided by a conqueror's rule of law and its discourses of conquest." [Williams, 327.] The "anachronistic premises" [Id.] of the current system of international law -- "discovery" and "state sovereignty" -- must be discarded in order to understand self-determination clearly and see a way to manifest it. This is the real struggle of indigenous peoples: "to redefine radically the conceptions of their rights and status.... to articulat[e] and defin[e] [their] own vision within the global community." [328.] On the plus side for all of us, this struggle has the "potential for broadening perspectives on our human condition." [Id.] As Phillip Deere said, "It is a mistake to talk about an American Indian way of life. We are talking about a human being way of life." [Deere.]

#### Turn: corrupt leaders undermine sovereignty and self-determination

Reynolds ‘4

 [Jerry; “Lobbying scandal highlights peril of tribal feuds”; Indian Country Today; Nov 3, 2004. ProQuest //uwyo-baj]

 "Fiscal mismanagement undermines sovereignty because ... [i]nadequately accounting for the Peoples' money will only deny them the opportunity to take action on important tribal priorities. Corruption undermines sovereignty because it too wastes scarce financial resources and undermines the government's credibility. Administrative dysfunction in tribal government has a corrosive effect on tribal sovereignty in other intangible ways. Notwithstanding the immediate effects of the many faces of mismanagement, if the people have no faith in the manner in which government functions, they will be unlikely to get involved in government affairs. This is a disaster for self-determining capacity. If the most capable and generous people in the community feel that getting involved in government affairs is a waste of time, then the only people who will get involved will be either the least capable or the most selfish. When that happens, tribal government has been reduced to simply a game for a few self-interested players and its role as the defender of the peoples' sovereignty is lost."

#### Natives hate the plan-they want to tap mineral resources. Yamamoto 01

Eric K. , Visiting Professor of Law at UC Berkeley and Jen-L W. Lyman, JD from UHawaii, Spring, 200**1**
(Racializing Environmental Justice, 72 U. Colo. L. Rev. 311, p. Lexis) [Bozman]
For example, as Native communities endeavor to ameliorate conditions of poverty and social dislocation by encouraging the economic development of tribal lands, some increasingly find themselves in conflict with environmentalists, who are sometimes but not always environmental justice advocates. In the mining industry, severalNative American tribes are attempting to tap mineral resources on their reservations. n50 Urged by the increased emphasis on economic self-determination in federal Native American policy in the 1970s, the tribes formed the Council of Energy Resource Tribes to deal [\*322] with both the siting of new mines on Native American lands and the environmental and the cultural problems that might result. n51Those efforts met stiff opposition from some environmental groups concerned mainly with land degradation and pollution. The environmentalists' seeming lack of understanding of the economic and cultural complexity of the Native American groups' decisions have led some Native Americans to express cynicism about environmentalists whosometimes treat them as mascots for the environmental cause. n52

#### All modern environmental law is rooted in anthropocentric Anglo-American values-the case can’t overcome it.Yamamoto 01

Eric K. Yamamoto, Visiting Professor of Law at UC Berkeley and Jen-L W. Lyman, JD from UHawaii, Spring, **01**
(Racializing Environmental Justice, 72 U. Colo. L. Rev. 311, p. Lexis) [Bozman]

From this perspective, modern environmentalism thus implicitly promotes an anthropocentric ethic of nature as property, dismissing the physical, cultural, and spiritual relationship between Native communities and the land. For this reason, Robert A. Williams criticizes American environmental law as "colonized by a perverse system of values which is antithetical to achieving environmental justice for American Indian peoples." n161 The Anglo-American value system, he asserts, "privileges what it labels as "human values' over "environmental values,'" ignoring how "both sets of values are intimately connected to ... the complete set of forces which give meaning and life to our world." n162 For Native peoples, nature is not property. Nature is culture, religion, even family. n163 Nature is home. For these scholars, **prevailing environmentalism**, with its anthropocentric premises, **thus undermines** the very thing it seeks to promote**: genuine environmental justice**.

**-- No extinction**

**Easterbrook 3** (Gregg, Senior Fellow – New Republic, “We’re All Gonna Die!”, Wired Magazine, July, http://www.wired.com/wired/archive/11.07/doomsday.html?pg=1&topic=&topic\_set=)

**If we're talking about**doomsday - **the end of human civilization - many scenarios**simply **don't measure up**. A single nuclear bomb ignited by terrorists, for example, would be awful beyond words, but life would go on. People and machines might converge in ways that you and I would find ghastly, but from the standpoint of the future, they would probably represent an adaptation. **Environmentalcollapsemightmake parts of the globe unpleasant, but considering that the biosphere**has **survived ice ages, itwouldn't be the final curtain**. Depression, which has become 10 times more prevalent in Western nations in the postwar era, might grow so widespread that vast numbers of people would refuse to get out of bed, a possibility that Petranek suggested in a doomsday talk at the Technology Entertainment Design conference in 2002. But Marcel Proust, as miserable as he was, wrote Remembrance of Things Past while lying in bed.

**-- Long time-frame**

Kay 1 (Jane, “Study Takes Historical Peek at Plight of Ocean Ecosystems”, San Francisco Chronicle, 7-26, Lexis)

The **collapse of ecosystems**often **occur over along period**. In one example, **when** Aleut **hunters killed the**Alaskan **sea otter**about **2,500 years ago**, the **population of their**natural **prey**, the sea urchin, **grew larger**than its normal size. In turn, the urchins grazed down the kelp forests, important habitat for a whole host of ocean life. **Then**, when fur traders in the 1800s hunted the otters and sea cows almost to extinction, the **kelp forests disappeared** and didn't start to regenerate until the federal government protected the sea otters in the 20th century. In California, the diversity of spiny lobsters, sheephead fish and abalone kept down the urchin numbers. At present in Alaska, the kelp beds are declining again in areas where killer whales are preying on sea otters. Biologists think the **killer whales switched to otters for food** because there are fewer seals and sea lions to eat.

#### 2. Environmental catastrophes are hype and lies – Statistics go our way.

Dutton 01 - prof of philosophy @ U of Canterbury [Dennis Dutton. “Greener Thank You Think. ‘The Skeptical Environmentalist: Measuring the Real State of the World' by Bjorn Lomborg.” The Washington Post. October 21, 2001.]

That the human race faces environmental problems is unquestionable. That environmental experts have regularly tried to scare us out of our wits with doomsday chants is also beyond dispute. In the 1960s overpopulation was going to cause massive worldwide famine around 1980. A decade later we were being told the world would be out of oil by the 1990s. This was an especially chilly prospect, since, as Newsweek reported in 1975, we were in a climatic cooling trend that was going to reduce agricultural outputs for the rest of the century, leading possibly to a new Ice Age. Bjorn Lomborg, a young statistics professor and political scientist at the University of Aarhus in Denmark, knows all about the enduring appeal -- for journalists, politicians and the public -- of environmental doomsday tales, having swallowed more than a few himself. In 1997, Lomborg -- a self-described left-winger and former Greenpeace member -- came across an article in Wired magazine about Julian Simon, a University of Maryland economist. Simon claimed that the "litany" of the Green movement -- its fears about overpopulation, animal species dying by the hour, deforestation -- was hysterical nonsense, and that the quality of life on the planet was radically improving. Lomborg was shocked by this, and he returned to Denmark to set about doing the research that would refute Simon. He and his team of academicians discovered something sobering and cheering: In every one of his claims, Simon was correct. Moreover, Lomborg found on close analysis that the factual foundation on which the environmental doomsayers stood was deeply flawed: exaggeration, prevarications, white lies and even convenient typographical errors had been absorbed unchallenged into the folklore of environmental disaster scenarios.

#### Prefer our evidence – Environmental apocalypse scenarios are always overblown and recent human advancements solve.

Ronald Bailey 2k, science correspondent, author of Earth Report 2000: Revisiting the True State of the Planet, former Brookes Fellow in Environmental Journalism at the Competitive Enterprise Institute, member of the Society of Environmental Journalists, adjunct scholar at the Cato Institute, May 2000, Reason Magazine, “Earth Day, Then and Now,” http://reason.com/0005/fe.rb.earth.shtml

Earth Day 1970 provoked a torrent of apocalyptic predictions. “We have about five more years at the outside to do something,” ecologist Kenneth Watt declared to a Swarthmore College audience on April 19, 1970. Harvard biologist George Wald estimated that “civilization will end within 15 or 30 years unless immediate action is taken against problems facing mankind.” “We are in an environmental crisis which threatens the survival of this nation, and of the world as a suitable place of human habitation,” wrote Washington University biologist Barry Commoner in the Earth Day issue of the scholarly journal Environment. The day after Earth Day, even the staid New York Times editorial page warned, “Man must stop pollution and conserve his resources, not merely to enhance existence but to save the race from intolerable deterioration and possible extinction.” Very Apocalypse Now. Three decades later, of course, the world hasn’t come to an end; if anything, the planet’s ecological future has never looked so promising. With half a billion people suiting up around the globe for Earth Day 2000, now is a good time to look back on the predictions made at the first Earth Day and see how they’ve held up and what we can learn from them. The short answer: The prophets of doom were not simply wrong, but spectacularly wrong. More important, many contemporary environmental alarmists are similarly mistaken when they continue to insist that the Earth’s future remains an eco-tragedy that has already entered its final act. Such doomsters not only fail to appreciate the huge environmental gains made over the past 30 years, they ignore the simple fact that increased wealth, population, and technological innovation don’t degrade and destroy the environment. Rather, such developments preserve and enrich the environment. If it is impossible to predict fully the future, it is nonetheless possible to learn from the past. And the best lesson we can learn from revisiting the discourse surrounding the very first Earth Day is that passionate concern, however sincere, is no substitute for rational analysis.

### Econ Development

#### Plan causes "fossil fuel colonialism" – becomes an "in" for big business exploitation.

Awehali ’6
(Brian Awehali is an award-winning journalist and former Britannica.com editor. "Awehali," one of several (anglicized) Cherokee spellings for "eagle," and is drawn from the name his great-great-grandmother gave him. It was one of several names he adopted for his public life. His is a tribal member of the Cherokee Nation of Oklahoma, Ani-tsiskwa (bird clan). His journalism has centered on Native American issues – most notably editing Tipping the Sacred Cow (AK Press, 2007), an anthology including contributions from Vandana Shiva, Winona LaDuke, Michael Eric Dyson, Timothy Kreider and Christopher Hitchens. He founded the magazine, LiP: Informed Revolt and is the 2006 Project Censored Award winner. His work has been published in dozens of print and online publications, including The Guardian, Z magazine/ZNet, Counterpunch, The Progressive, The Columbia Journalism Review, The Black World Today, Earth Island Journal, and the 2006 and 2007 volumes of Censored: The Top 25 Censored Stories (Seven Stories Press).¶ "NATIVE ENERGY FUTURES: Renewable Energy %26 the New Rush on Indian Lands" – Loud Canary – 6/05/06 – [http://loudcanary.com/tag/energy/)](http://loudcanary.com/tag/energy/%29%22%20%5Ct%20%22_blank)

Now imagine, if you can, that you run a US-based energy company at a time when increasing resistance to US imperialism, coupled with rising business costs related to political instability, has made getting the oil, coal, and gas from foreign sources more difficult. Imagine that you’re savvy enough to know that your fossil fuel-based business model is about to get dramatically less lucrative. If you didn’t already have them, you’d probably want to start setting up operations in the more business-friendly, less regulated Wild West of Indian Country. If you were really devious—or maybe just smart—you might want to have your cake and eat it too, by getting tax subsidies and favorable terms for developing your next business model while greenwashing your ongoing fossil fuel operations. Wouldn’t you? “Consistent with the President’s National Energy Policy to secure America’s energy future,” testified Theresa Rosier, Counselor to the Assistant Secretary for Indian Affairs, “increased energy development in Indian and Alaska Native communities could help the Nation have more reliable home-grown energy supplies. [The Native American Energy Development and Self-Determination Act of 2003] promotes increased and efficient energy development and production in an environmentally sound manner.” The bill did not ultimately pass, but the idea that “America’s energy future” should be linked to having “more reliable home-grown energy supplies” can be found in other native energy-specific legislation that has passed into law. What this line of thinking fails to take into consideration is that Native America is not actually USAmerica, and that the “supplies” in question belong to sovereign nations, not to the United States or its energy sector. Rosier’s statement conveys quite a lot about how the government and the energy sector intend to market the growing shift away from dependence on foreign energy, and how they plan to deregulate (by using “efficiency” as a selling point) and step up their exploitation (“development”) of “domestic” native energy resources: by spinning it as a way to produce clean energy while helping Native Americans gain greater economic and tribal sovereignty. Of course, if large companies can establish lucrative partnerships with tribes, largely free of regulation and federal oversight, then so much the better. In this regard, a look at the Alaska Native “communities” Rosier mentioned is instructive. In 1971, Alaskan tribal companies were set up by Congress with roughly $1 billion and 44 million acres of land to divide. Although the real reason for establishing these companies had to do with breaking down largely unified tribal opposition to the construction of an oil pipeline, they were pitched at the time as a way to help stimulate tribal economies and mitigate the scale of poverty on tribal lands. “Tribal companies [can] be considered small businesses even after winning billions of dollars in contracts, and there is no limit to the size of the no-bid awards they can win,” reported Michael Scherer in an excellent 2005 Mother Jones article entitled “US: Little Big Companies.” The Alaska tribal companies have, according to Scherer, “become a way for large corporations with no Native American ownership to receive no-bid contracts, an avenue for federal officials to steer work to favored companies, and a device for speeding privatization.” Evidence for this assertion abounds. From 2002 through the end of 2004, the Olgoonik Corporation, owned by the Inupiat Eskimo tribe, garnered revenues in excess of $225 million for construction work on US military bases around the world. Because of its tribal status, Olgoonik procured this work without having to bid against others for it. It then subcontracted most of the work to the infamous multinational corporation Halliburton.

#### Scenario planning is good. In a catastrophe-ridden world—it’s vital to make predictions about the future.

Kurasawa, 2004

[Fuyuki, Professor of Sociology at York University, “Cautionary Tales: The Global Culture of Prevention

and the Work of Foresight.” 2004, Constellations, Vol. 11, No. 4]

Independently of this room for maneuver and the chances of success. Humanitarian, environmental, and techno-scientific activists have convincingly shown that we cannot afford not to engage in preventive labor. contractualist justification, global civil society actors are putting forth a number of arguments countering temporal myopia on rational grounds. They make the case that no generation, and no part of the world, is immune from catastrophe. Complacency and parochialism are deeply flawed in that even if we earn a temporary reprieve, our children and grandchildren will likely not be so fortunate unless steps are taken today. Similarly, though it might be possible to minimize or contain the risks and harms of actions to faraway places over the short-term, parrying the eventual blowback or spillover effect is improbable. In fact, as I argued in the previous section, all but the smallest and most isolated of crises are rapidly becoming globalized due to the existence of transnational circuits of ideas, images, people, and commodities. Regardless of where they live, our descendants will increasingly be subjected to the impact of environmental degradation, the spread of epidemics, gross North-South socioeconomic inequalities, refugee flows, civil wars, and genocides. What may have previously appeared to be temporally and spatially remote risks are ‘coming home to roost’ in ever faster cycles. In a word, then, procrastination makes little sense for three principal reasons: it exponentially raises the costs of eventual future action; it reduces preventive options; and it erodes their effectiveness. With the foreclosing of long-range alternatives, later generations may be left with a single course of action, namely, that of merely reacting to large-scale emergencies as they arise. We need only think of how it gradually becomes more difficult to control climate change, let alone reverse it, or to halt mass atrocities once they are underway. Preventive foresight is grounded in the opposite logic, whereby the decision to work through perils today greatly enhances both the subsequent Moreover, I would contend that farsighted cosmopolitanism is not as remote or idealistic a prospect as it appears to some, for as Falk writes, “[g]lobal justice between temporal communities, however, actually seems to be increasing, as evidenced by various expressions of greater sensitivity to past injustices and future dangers.”36 Global civil society may well be helping a new generational self-conception take root, according to which we view ourselves as the provisional caretakers of our planetary commons. Out of our sense of responsibility for the well-being of those who will follow us, we come to be more concerned about the here and now.

#### Preventing extinction is the highest ethical priority – we should take action to prevent the Other from dying FIRST, only THEN can we consider questions of value to life

Paul Wapner, associate professor and director of the Global Environmental Policy Program at American University, Winter 2003, Dissent, online: http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existence. As I have said, postmodernists accept that there is a physical substratum to the phenomenal world even if they argue about the different meanings we ascribe to it. This acknowledgment of physical existence is crucial. We can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation. Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives." Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### Consequentialism is key to ethical decision making, because it ensures beings are treated as equal—any other approach to ethics is arbitrary because it considers one’s preferences as more important than others

Lillehammer, 2011

[Hallvard, Faculty of Philosophy Cambridge University, “Consequentialism and global ethics.” Forthcoming in M. Boylan, Ed., Global Morality and Justice: A Reader, Westview Press, Online, <http://www.phil.cam.ac.uk/teaching_staff/lillehammer/Consequentialism_and_Global_Ethics-1-2.pdf>] /Wyo-MB

Contemporary discussions of consequentialism and global ethics have been marked by a focus on examples such as that of the shallow pond. In this literature, distinctions are drawn and analogies made between different cases about which both the consequentialist and his or her interlocutor are assumed to have a more or less firm view. One assumption in this literature is that progress can be made by making judgements about simple actual or counterfactual examples, and then employing a principle of equity to the effect that like cases be treated alike, in order to work out what to think about more complex actual cases. It is only fair to say that in practice such attempts to rely only on judgements about simple cases have a tendency to produce trenchant stand-offs. It is important to remember, therefore, that for some consequentialists the appeal to simple cases is neither the only, nor the most basic, ground for their criticism of the ethical status quo. For some of the historically most prominent consequentialists the evidential status of judgements about simple cases depends on their derivability from basic ethical principles (plus knowledge of the relevant facts). Thus, in The Methods of Ethics, Henry Sidgwick argues that ethical thought is grounded in a small number of self-evident axioms of practical reason. The first of these is that we ought to promote our own good. The second is that the good of any one individual is objectively of no more importance than the good of any other (or, in Sidgwick’s notorious metaphor, no individual’s good is more important ‘from the point of view of the Universe’ than that of any other). The third is that we ought to treat like cases alike. Taken together, Sidgwick takes these axioms to imply a form of consequentialism. We ought to promote our own good. Yet since our own good is objectively no more important than the good of anyone else, we ought to promote the good of others as well. And in order to treat like cases alike, we have to weigh our own good against the good of others impartially, all other things being equal. iv It follows that the rightness of our actions is fixed by what is best for the entire universe of ethically relevant beings. To claim otherwise is to claim for oneself and one’s preferences a special status they do not possess. When understood along these lines, consequentialism is by definition a global ethics: the good of everyone should count for everyone, no matter their identity, location, or personal and social attachments, now or hereafter. v Some version of this view is also accepted by a number of contemporary consequentialists, including Peter Singer, who writes that it is ‘preferable to proceed as Sidgwick did: search for undeniable fundamental axioms, [and] build up a moral theory from them’ (Singer 1974, 517; Singer 1981). For these philosophers the question of our ethical duties to others is not only a matter of our responses to cases like the shallow pond. It is also a matter of whether these responses cohere with an ethics based on first principles. If you are to reject the consequentialist challenge, therefore, you will have to show what is wrong with those principles.

#### Preventing death is the first ethical priority – it’s the only impact you can’t recover from.

Zygmunt Bauman, University of Leeds Professor Emeritus of Sociology, 1995, Life In Fragments: Essays In Postmodern Morality, p. 66-71

The being‑for is like living towards‑the‑future: a being filled with anticipation, a being aware of the abyss between future foretold and future that will eventually be; it is this gap which, like a magnet, draws the self towards the Other,as it draws life towards the future, making life into an activity of overcoming, transcending, leaving behind. The self stretches towards the Other, as life stretches towards the future; neither can grasp what it stretches toward, but it is in this hopeful and desperate, never conclusive and never abandoned stretching‑toward that the self is ever anew created and life ever anew lived. In the words of M. M. Bakhtin, it is only in this not‑yet accomplished world of anticipation and trial, leaning toward stubbornly an‑other Other, that life can be lived ‑ not in the world of the `events that occurred'; in the latter world, `it is impossible to live, to act responsibly; in it, I am not needed, in principle I am not there at all." Art, the Other, the future: what unites them, what makes them into three words vainly trying to grasp the same mystery, is the modality of possibility. A curious modality, at home neither in ontology nor epistemology; itself, like that which it tries to catch in its net, `always outside', forever `otherwise than being'. The possibility we are talking about here is not the all‑too‑familiar unsure‑of‑itself, and through that uncertainty flawed, inferior and incomplete being, disdainfully dismissed by triumphant existence as `mere possibility', `just a possibility'; possibility is instead `plus que la reahte' ‑ both the origin and the foundation of being. The hope, says Blanchot, proclaims the possibility of that which evades the possible; `in its limit, this is the hope of the bond recaptured where it is now lost."' The hope is always the hope of *being fu filled,* but what keeps the hope alive and so keeps the being open and on the move is precisely its *unfu filment.* One may say that the paradox *of hope* (and the paradox of possibility founded in hope) is that it may pursue its destination solely through betraying its nature; the most exuberant of energies expends itself in the urge towards rest. Possibility uses up its openness in search of closure. Its image of the better being is its own impoverishment . . . The togetherness of the being‑for is cut out of the same block; it shares in the paradoxical lot of all possibility. It lasts as long as it is unfulfilled, yet it uses itself up in never ending effort of fulfilment, of recapturing the bond, making it tight and immune to all future temptations. In an important, perhaps decisive sense, it is selfdestructive and self‑defeating: its triumph is its death. The Other, like restless and unpredictable art, like the future itself, is a *mystery.* And being‑for‑the‑Other, going towards the Other through the twisted and rocky gorge of affection, brings that mystery into view ‑ makes it into a challenge. That mystery is what has triggered the sentiment in the first place ‑ but cracking that mystery is what the resulting movement is about. The mystery must be unpacked so that the being‑for may focus on the Other: one needs to know what to focus on. (The `demand' is *unspoken,* the responsibility undertaken is *unconditional;* it is up to him or her who follows the demand and takes up the responsibility to decide what the following of that demand and carrying out of that responsibility means in practical terms.) Mystery ‑ noted Max Frisch ‑ (and the Other is a mystery), is an exciting puzzle, but one tends to get tired of that excitement. `And so one creates for oneself an image. This is a loveless act, the betrayal." Creating an image of the Other leads to the substitution of the image for the Other; the Other is now fixed ‑ soothingly and comfortingly. There is nothing to be excited about anymore. I know what the Other needs, I know where my responsibility starts and ends. Whatever the Other may now do will be taken down and used against him. What used to be received as an exciting surprise now looks more like perversion; what used to be adored as exhilarating creativity now feels like wicked levity. Thanatos has taken over from Eros, and the excitement of the ungraspable turned into the dullness and tedium of the grasped. But, as Gyorgy Lukacs observed, `everything one person may know about another is only expectation, only potentiality, only wish or fear, acquiring reality only as a result of what happens later, and this reality, too, dissolves straightaway into potentialities'. Only death, with its finality and irreversibility, puts an end to the musical‑chairs game of the real and the potential ‑ it once and for all closes the embrace of togetherness which was before invitingly open and tempted the lonely self." `Creating an image' is the dress rehearsal of that death. But creating an image is the inner urge, the constant temptation, the *must* of all affection . . . It is the loneliness of being abandoned to an unresolvable ambivalence and an unanchored and formless sentiment which sets in motion the togetherness of being‑for. But what loneliness seeks in togetherness is an end to its present condition ‑ an end to itself. Without knowing ‑ without being capable of knowing ‑ that the hope to replace the vexing loneliness with togetherness is founded solely on its own unfulfilment, and that once loneliness is no more, the togetherness ( the being‑for togetherness) must also collapse, as it cannot survive its own completion. What the loneliness seeks in togetherness (suicidally for its own cravings) is the foreclosing and pre‑empting of the future, cancelling the future before it comes, robbing it of mystery but also of the possibility with which it is pregnant. Unknowingly yet necessarily, it seeks it all to its own detriment, since the success (if there is a success) may only bring it back to where it started and to the condition which prompted it to start on the journey in the first place. The togetherness of being‑for is always in the future, and nowhere else. It is no more once the self proclaims: `I have arrived', `I have done it', `I fulfilled my duty.' The being‑for starts from the realization of the bottomlessness of the task, and ends with the declaration that the infinity has been exhausted. This is the tragedy of being‑for ‑ the reason why it cannot but be death‑bound while simultaneously remaining an undying attraction. In this tragedy, there are many happy moments, but no happy end. Death is always the foreclosure of possibilities, and it comes eventually in its own time, even if not brought forward by the impatience of love. The catch is to direct the affection to staving off the end, and to do this against the affection's nature. What follows is that, if moral relationship is grounded in the being-for togetherness (as it is), then it can exist as a project, and guide the self's conduct only as long as its nature of a project (a not yet-completed project) is not denied. Morality, like the future itself, is forever not‑yet. (And this is why the ethical code, any ethical code, the more so the more perfect it is by its own standards, supports morality the way the rope supports the hanged man.) It is because of our loneliness that we crave togetherness. It is because of our loneliness that we open up to the Other and allow the Other to open up to us. It is because of our loneliness (which is only belied, not overcome, by the hubbub of the being‑with) that we turn into moral selves. And it is only through allowing the togetherness its possibilities which only the future can disclose that we stand a chance of acting morally, and sometimes even of being good, in the present.

#### Great power conflict is possible – resource conflicts, environmental crises and rising powers could spark global war

Dyer, 6

Gwynne Dyer is a London-based independent journalist, 'Has the world really changed since 9/11?,' September 7, http://www.straight.com/has-the-world-really-changed-since-9-11

Without 9/11 there would still be a “terrorist threat”, of course, because there is always some terrorism. It's rarely a big enough threat to justify expanding police powers, let alone launching a “global war” against it, but the fluke success of the 9/11 attacks (which has not been duplicated once in the subsequent five years) created the illusion that terrorism was a major problem. Various special interests climbed aboard the bandwagon, and off we all went. That is a pity, because without 9/11 there would have been no governments justifying torture in the name of fighting terrorism, no “special renditions”, no camps like GuantÃ¡namo. Tens of thousands of people killed in the various invasions of the past five years would still be alive, and western countries with large Muslim minorities would not now face a potential terrorist backlash at home from their own disaffected young Muslims. The United States would not be seen by most of the world as a rogue state. But that's as far as the damage goes. Current U.S. policy and the hostility it arouses elsewhere in the world are both transient things. The Sunni Muslim extremists””they would call themselves Salafis””who were responsible for 9/11 have not seized power in a single country since then, despite the boost they were given by the flailing U.S. response to that attack. The world is actually much the same as it would have been if 9/11 had never happened. Economically, 9/11 and its aftermath have had almost no discernible long-term impact: even the soaring price of oil is mostly due to rising demand in Asia, not to military events in the Middle East. The lack of decisive action on climate change is largely due to Bush policies that were already in place before 9/11. And, strategically, the relations between the great powers have not yet been gravely damaged by the U.S. response to 9/11. There may even be a hidden benefit in the concept of a “war on terror”. It is a profoundly dishonest concept, since it is actually directed mainly against Muslim groups that have grievances against the great powers: Chechens against Russia, Uyghurs against China, Kashmiri Muslims and their Pakistani cousins against India, and practically everybody in the Arab world against the U.S. and Britain. The terrorists' methods are reprehensible but their grievances are often real. However, the determination of the great powers to oppose not only their methods but their goals is also real. That gives them a common enemy and a shared strategy. The main risk at this point in history is that the great powers will drift back into some kind of alliance confrontation. Key resources are getting scarcer, the climate is changing, and the rise of China and India means that the pecking order of the great powers is due to change again in the relatively near future. Any strategic analyst worth his salt, given those preconditions, could draw you up a dozen different scenarios of disaster by lunchtime.

#### Great power conflict is possible – terrorism and regional conflicts

Dibb, 2

Paul, 'The Future of International Coalitions,' *The Washington Quarterly* 25.2 (2002) 131-144, pg. project muse

The assertion that the events of September 11 initiated a fundamentally new era in world politics has become commonplace. The spectacular building of the coalition against terrorism is cited as evidence, as is the almost universal condemnation of the terrorist attacks. On September 12, the prominent French newspaper Le Monde proclaimed, "We are all Americans now." Attendees at the International Institute for Strategic Studies' annual conference, held in Geneva, coincidentally the day after the attacks, came to the conclusion that the world had passed through a defining moment. A war on terrorism had to be waged, a broad coalition needed to be established for this purpose, and the war would have to be conducted with both [End Page 132] diplomatic and military means. The will to fight this war would need to be sustained over a very long haul, and risks would have to be taken to ensure a chance for success. Building a coalition would not be easy and would involve unprecedented cooperation. Conference attendees also believed that, if the United States fails in its taskof freeing the world from the scourge of terrorism, the concept of world order would be relegated to the realm of imaginative literature. The task for the United States, as the custodial power in the international system, is immense. The United States will have an enormous challenge before it to keep its allies and newfound friends focused on a war that may appear to conform to a purely U.S. agenda. Maintaining a coalition against a virtual and hidden enemy will be difficult. New coalition building that has no institutional base such as NATO is a huge task. The United States will have to work hard to keep just NATO behind the effort; a wider coalition will require an intensity of diplomacy and degree of cooperation with culturally different countries that is without precedent. The coexistence of a broad political coalition and a narrow military one will strain diplomatic support for the overall campaign. Maintaining the strength of the coalition will be difficult when disagreements over other elements of U.S. foreign policy intrude. The coalition has an awesome agenda, offering as much scope for disagreement as for cooperation. As Avery Goldstein has observed, believing that the terrorist attacks of September 11 so transformed the post-Cold War world that they have heralded the beginning of an age whose only defining feature will be the global struggle against terrorism would be a mistake. For this realignment to occur, the international community would need to present a united front among almost all statesand mute their disagreements on less pressing matters.

Unmeasurable risks should still be mitigated – 9/11 proves

Posner 04

#### (Richard A., Judge on US Court of Appeals for the 7th circuit, Catastrophe: Risk and Response, 2004, pg. 171-2

We know that people sometimes overreact, from a statistical stand­point, to a slight risk because it is associated with a particularly vivid, attention-seizing event. The 9/11 attacks have been offered as an illustration of this phenomenon.66 But to describe a reaction to a risk as an overreaction is to assume that the risk is slighter than people thought, and this presupposes an ability to quantify the risk, however crudely. We do not have that ability with respect to terrorist attacks. About all that can be said with any confidence about 9/11 is that if the enited States and other nations had done nothing in the wake of the attacks to reduce the probability of a recurrence, the risk of further at­tacks would probably have been great, although we do not know enough about terrorist plans and mentalities to be certain, let alone to know how great. After we took defensive measures, the risk of further large-scale attacks on the U.S. mainland fell. But no one knows by how much and anyway it would be a mistake to dismiss a risk merely be­cause it cannot be quantified and therefore may be small-for it may be great instead. Unfortunately the ability to quantify a risk has no nec­essary connection to its magnitude. We now know that the risk of a suc­cessful terrorist attack on the United States in the summer of 2001 was great, yet the risk could not have been estimated without an amount and quality of data that probably could not have been assembled. To assume that risks can be ignored if they cannot be measured is a head­in-the-sand response. This point is illuminated by the old distinction between "risk" and -uncertainty," where the former refers to a probability that can be es- timated, whether on the basis of observed frequency or of theory, and the latter to a probability that cannot be estimated. Uncertainty in this sense does not, as one might expect, paralyze decision making. We could not function without making decisions in the face of uncertainty. We do that all the time by assigning, usually implicitly, an intuitive probability (what statisticians call a "subjective" probability) to the un­certain event. But it is one thing to act, and another to establish the need to act by conducting fruitful cost-benefit analyses, or using other rational decision-making methods, when the costs or benefits (or both) are uncertain because they are probabilistic and the probabilities are not quantifiable, even approximately. The difficulty is acute in some insurance markets. Insurers determine insurance premiums on the basis of either experience rating, which is to sayan estimate of risk based on the frequency of previous losses by the insured or the class of in­sureds, or exposure risk, which involves estimating risk on the basis of theory or, more commonly, a combination of theory and limited expe­rience (there may be some history of losses, but too thin a one to be statistically significant). Ifa risk cannot be determined by either method, there is uncertainty in the risk-versus-uncertainty sense; and only a gambler, treating uncertainty as a situation of extreme and unknowable variance in possible outcomes, will write insurance when a risk cannot be estimated. Or the government, as with the Terrorism Risk Insurance Act of 2002,67 which requires insurance companies to offer coverage of business property and casualty losses due to terrorism but with the fed­eral government picking up most of the tab.68 The act excludes losses due to nuclear, chemical, or biological attacks, however, so it has lim­ited relevance to the concerns of this book. Insurance companies are permitted to decline to cover such losses, and typically they do. As a result, estimates of the probability of such losses cannot be reliably es­timated from insurance premium rates.

# 2NC- K

### K Turns Case

#### The only way to solve for indigenous rights is to reject the concepts of sovereignty offered to us as a state tool to contain indigenous peoples. That is the second Alfred piece of evidence from the 1nc.

#### The root cause of the colonialist mindset is the integration of Native politics into the framework of the state- attempts at decolonization fail without disengaging state power

Alfred 99 Taiaiake Alfred, professor at the University of Victoria, Peace, Power, Righteousness: An Indigenous Manifesto, Oxford University Press, 1999.

The colonial mentality is recognizable in the gradual assumption of the values, goals, and perspectives that make up the status quo. The development of such a mentality is almost understandable (if not acceptable), given the structural basis of indigenous—state relations and the necessity for Native people to work through the various institutions of control in order to achieve their objectives. Native professionals, for example, find it hard to resist the (assimilative) opportunity structure created by the range of state strategies designed to co-opt and weaken challenges to the state’s hegemony. The structural integration and professionalization of Native politics within a bureaucratic framework controlled, financially and politically, by the state is the main reason for the persistence of the colonial mentality. In the Native context, all local governments, regional bodies, and national representative organizations are chartered and funded by the state. In Canada, for example, band councils, tribal councils, and the Assembly of First Nations are all creatures of the federal government. The fact that the very existence of government institutions within Native communities depends on an essentially foreign government goes largely unexamined and unchallenged by Native politicians. This dependence imposes a set of parameters that constrains the actions and even the thoughts of those working within the system. Attempting to decolonize without addressing the structural imperatives of the colonial system itself is clearly futile. Yet most people accept the idea that we are making steady progress toward the resolution of injustices stemming from colonization. It may take more energy, or more money than is currently being devoted to the process of decolonization, but the issue is always discussed within existing structural and legal frameworks. Most Native people do not see any need for a massive reorientation of the relationship between themselves and the state. This is symptomatic of the colonial mentality.

#### True indigenous politics are ANTITHENTICAL to the concept of sovereignty. In traditional indigenous politics, Individual autonomy and collective decision-making are the basis for all political action. Authority is earned through persuasion and consensus, not presumed based on a position held. The Aff’s model of Sovereignty presumes a top down, authority based model of decision-making that makes traditional indigenousness politics impossible and mentally colonizes attempts at autonomy

Alfred, 1999 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 24-28 ]

Returning to indigenous traditions of leadership will require an intensive effort to understand indigenous political life within the moral and ethical framework established by traditional values. Without obscuring the distinctiveness of individual societies, it is possible to see fundamental similarities in the concept of 'Native leadership' among indigenous cultures. Most agree that the institutions operating in Native communities today have little to do with indigenous belief systems, and that striking commonalities exist among the traditional philosophies that set the parameters for governance. The values that underpin these traditional philosophies constitute a core statement of what indigenous governance is as a style, a structure, and a set of norms. In their most basic values, and even to a certain extent their style, traditional forms of government are not unique: similar characteristics can be found in other systems. The special nature of Native American government consists in the prioritization of those values, the rigorous consistency of its principles with those values, and the patterns and procedures of government, as well as the common set of goals (respect, balance, and harmony) that are recognizable across Native American societies. Adherence to those core values made the achievement of the goals possible; it was because of the symbiotic relationship between the traditional value system and the institutions that evolved within the culture that balance and harmony were its hallmarks. Indigenous governance demands respect for the totality of the belief system. It must be rooted in a traditional value system, operate according to principles derived from that system, and seek to achieve goals that can be justified within that system. This is the founding premise of pre-/ decolonized Native politics-and we are in danger of losing it permanently if the practices and institutions currently in place become any further entrenched (and hence validated). On the west coast of Vancouver Island, I spoke with a Nuu-chah-nulth elder who recognized the danger of continuing to think of governance in the terms of the value system and the institutional structures that have been imposed on Native communities by the state. Hereditary chief Moses Smith used to be a band councillor under the Canadian government's Indian Act system, but now he recognizes the harm that system has done to his community. As a leader, he is now committed to teaching his people's traditional philosophy so that an indigenous form of government can be restored. Lamenting the loss both of traditional values and of the structures that promoted good leadership, Moses said that 'in the old days leaders were taught and values were ingrained in hereditary chiefs. The fundamental value was respect.' In his view, contemporary band councils are not operating according to traditional values, and Native leadership premised on traditional power and knowledge will vanish forever unless 'the traditional perspective is taken up by the new generation'. In choosing between revitalizing indigenous forms of government and maintaining the European forms imposed on them, Native communities have a choice between two radically different kinds of social organization: one based on conscience and the authority of the good, the other on coercion and authoritarianism. The Native concept of governance is based on what a great student of indigenous societies, Russell Barsh, has called the 'primacy of conscience'. There is no central or coercive authority, and decision-making is collective. Leaders rely on their persuasive abilities to achieve a consensus that respects the autonomy of individuals, each of whom is free to dissent from and remain unaffected by the collective decision. The clan or family is the basic unit of social organization, and larger forms of organization, from tribe through nation to confederacy, are all predicated on the political autonomy and economic independence of clan units through family-based control of lands and resources. A crucial feature of the indigenous concept of governance is its respect for individual autonomy. This respect precludes the notion of 'sovereignty'-the idea that there can be a permanent transference of power or authority from the individual to an abstraction of the collective called 'government'. The indigenous tradition sees government as the collective power of the individual members of the nation; there is no separation between society and state. Leadership is exercised by persuading individuals to pool their self-power in the interest of the collective good. By contrast, in the European tradition power is surrendered to the representatives of the majority, whose decisions on what they think is the collective good are then imposed on all citizens. In the indigenous tradition, the idea of self-determination truly starts with the self; political identity-with its inherent freedoms, powers, and responsibilities-is not surrendered to any external entity. Individuals alone determine their interests and destinies. There is no coercion: only the compelling force of conscience based on those inherited and collectively refined principles that structure the society. With the collective inheritance of a cohesive spiritual universe and traditional culture, profound dissent is rare, and is resolved by exemption of the individual from the implementation and implications of the particular decision. When the difference between individual and collective becomes irreconcilable, the individual leaves the group. Collective self-determination depends on the conscious coordination of individual powers of self-determination. The governance process consists in the structured interplay of three kinds of power: individual power, persuasive power, and the power of tradition. These power relations are channelled into forms of decision-making and dispute resolution grounded in the recognition that beyond the individual there exists a natural community of interest: the extended family. Thus in almost all indigenous cultures, the foundational order of government is the clan. And almost all indigenous systems are predicated on a collective decision-making process organized around the clan. It is erosion of this traditional power relationship and the forced dependence on a central government for provision of sustenance that lie at the root of injustice in the indigenous mind. Barsh recognizes a truth that applies to institutions at both the broad and the local level: The evil of modern states is their power to decide who eats.' Along with armed force, they use dependency-which they have created-to induce people's compliance with the will of an abstract authority structure serving the interests of an economic and political elite. It is an affront to justice that individuals are stripped of their power of self-determination and forced to comply with the decisions of a system based on the consciousness and interests of others. The principles underlying European-style representative government through coercive force stand in fundamental opposition to the values from which indigenous leadership and power derive. In indigenous cultures the core values of equality and respect are reflected in the practices of consensus decision-making and dispute resolution through balanced consideration of all interests and views. In indigenous societies governance results from the interaction of leadership and the autonomous power of the individuals who make up the society. Governance in an indigenist sense can be practised only in a decentralized, small-scale environment among people who share a culture. It centres on the achievement of consensus and the creation of collective power, bounded by six principles: • • • it depends on the active participation of individuals; it balances many layers of equal power; it is dispersed; • • • it is situational; it is non-coercive; and it respects diversity. Contemporary politics in Native communities is shaped by the interplay of people who, socially and culturally, are still basically oriented towards this understanding of government,with a set of structures and political relationships that reflect a very different, almost oppositional, understanding. The imposition of colonial political structures is the source of most factionalism within Native communities. Such institutions operate on principles that can never be truly acceptable to people whose orientations and attitudes are derived from a traditional value system. But they are tolerated by cynical community members as a fact of their colonized political lives. As a result, those structures have solidified into major obstacles to the achievement of peace and harmony in Native communities, spawning a non-traditional or anti-traditionalist political subculture among those individuals who draw their status and income from them. The effort needed to bring contemporary political institutions, and the people who inhabit them, into harmony with traditional values is very different from the superficial and purely symbolic efforts at reform that have taken place in many communities. Symbols are crucially important, but they must not be confused with substance: when terminology, costume, and protocol are all that change, while unjust power relationships and colonized attitudes remain untouched, such 'reform' becomes nothing more than a politically correct smokescreen obscuring the fact that no real progress is being made towards realizing traditionalist goals. Cloaking oneself in the mantle of tradition is no substitute for altering one's behaviour, especially where power is concerned. In too many Native communities, adherence to tradition is a shallow fa<;ade masking a greed for power and success as defined by mainstream society. Recognizable by its lack of community values, this selfish hunger for power holds many Native leaders in its grip and keeps them from working to overturn the colonial system.

### AT: Framework

#### The impact of this sort of language is MOST important and a PREREQUISITE to Indian culture, autonomy, and self-determination existing—concepts like sovereignty are western poison that upholds mental colonization and continues genocide by another name. This evidence is comparative—even if they help Indians superficially, mental colonization is a prerequisite.

Alfred, 1999 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. XI-XIV ]

If we are to emerge from this crisis with our nations intact, we must turn away from the values of the mainstream of North American society and begin to act as self-determining peoples. We cannot preserve our nations unless we take action to restore pride in our traditions, achieve economic self-sufficiency, develop independence of mind, and display courage in defence of our lands and rights. Only by committing ourselves to these goals can we hope to look into the future and see ourselves reemerging as peoples ready to take our rightful places in the world. The path to self-determination is uphill and strewn with obstacles, but we must take it; the threat to our existence as indigenous people is so immediate that we cannot afford not to. The only way we can survive is to recover our strength, our wisdom, and our solidarity by honouring and revitalizing the core of our traditional teachings. Only by heeding the voices of our ancestors can we restore our nations and put peace, power, and righteousness back into the hearts and minds of our people. The Condolence ritual pacifies the minds and emboldens the hearts of mourners by transforming loss into strength. In Rotinohshonni culture, it is the essential means of recovering the wisdom seemingly lost with the passing of a respected leader. Condolence is the mourning of a family's loss by those who remain strong and clear-minded. It is a gift promising comfort, recovery of balance, and revival of spirit to those who are suffering. By strengthening family ties, sharing knowledge, and celebrating the power of traditional teachings, the Condolence ritual heals. It fends off destruction of the soul and restores hearts and minds. It revives the spirit of the people and brings forward new leaders embodying ancient wisdom and new hope. This book embodies the same hope. • • • In the past two generations, indigenous people around the world have broken the rusty cage of colonial oppression and exposed the injustices imposed on them. Brave and powerful leaders have challenged the European's self-proclaimed right to rule and ruin our nations. Our people have achieved a victory of the mind: the attitudes that sustained our subjugation can no longer be defended. Confronted with the moral and intellectual defeat of its empire in Indian Country, the former oppressor has presented a more compassionate face. Newcomer governments claim to be forging historic new relationships with indigenous nations, relationships based on mutual respect, sharing, sovereignty, and our inherent rights. Economic development, modern treaties, self-government, compacts, revenue-sharing, and comanagement have become the watchwords of the 'post-colonial' age. But beyond the words, is the promise holding? There have been some improvements. But our reserves are still poor, our governments are still divided and powerless, and our people still suffer. The post-colonial promises cannot ease this pain. The state has shown great skill in shedding the most onerous responsibilities of its rule while holding fast to the lands and authorities that are the foundations of its power. Redefining without reforming, it is letting go of the costly and cumbersome minor features of the colonial relationship and further entrenching in law and practice the real bases of its control. It is ensuring continued access to indigenous lands and resources by insidiously promoting a form of neo-colonial self-government in our communities and forcing our integration into the legal mainstream. Real control remains in the hands of white society because it is still that society's rules that define our life-not through obviously racist laws, but through endless references to the 'market', 'fiscal reality', 'Aboriginal rights', and 'public will'. And it is still the white society's needs that are met. In this supposedly post-colonial world, what does it matter if the reserve is run by Indians, so long as they behave like bureaucrats and carry out the same old policies? Redefined and reworded, the 'new' relationship still abuses indigenous people, albeit more subtly. In this 'new' relationship, indigenous people are still bound to another power's order. The rusty cage may be broken, but a new chain has been strung around the indigenous neck; it offers more room to move, but it still ties our people to white men pulling on the strong end. This book is about recovering what will make self-determination real. It is concerned not with the process through which self-government is negotiated, but with the end goals and the nature of indigenous governments, once decolonization has been achieved. The machinery of indigenous governments may simply replicate European systems. But even if such governments resemble traditional Native American systems on the surface, without strong and healthy leaders committed to traditional values and the preservation of our nationhood they are going to fail. Our children will judge them to have failed because a government that is not based on the traditional principles of respect and harmonious coexistence will inevitably tend to reflect the cold, calculating, and coercive ways of the modern state. The whole of the decolonization process will have been for nothing if indigenous government has no meaningful indigenous character. Worse, if the new governments do not embody a notion of power that is appropriate to indigenous cultures, the goals of the struggle will have been betrayed. Leaders who promote non-indigenous goals and embody non-indigenous values are simply tools used by the state to maintain its control. The spiritual connections and fundamental respect for each other and for the earth that were our ancestors' way and the foundations of our traditional systems must be restored. Resistance to foreign notions of power and control must become a primary commitment-not only as a posture in our relations with the state, but also in the way Native community governments treat our own people. The state's power, including such European concepts as 'taxation', 'citizenship', 'executive authority', and 'sovereignty', must be eradicated from politics in Native communities. In a very real sense, to remain Native-to reflect the essence of indigenous North Americans--our politics must shift to give primacy to concepts grounded in our own cultures. In fact, traditional philosophy is crucially relevant to the contemporary indigenous situation. In the Rotinohshonni tradition, the natural order accepts and celebrates the coexistence of opposites; human purpose consists in the perpetual quest for balance and harmony; and peace is achieved by extending the respect, rights, and responsibilities of family relations to other peoples. Even stripped down to a skeleton, these teachings speak with power to the fundamental questions that a philosophy of governance must address. Among the original peoples of North America, the cultural ideal of respectful coexistence as a tolerant and harmonyseeking first principle of government is widespread. Diametrically opposed to the possessive individualism that is central to the systems imposed on our communities, this single principle expresses the hope that tradition offers for a future beyond division and conflict. With this heritage, why do we indigenous people so often look away from our own wisdom and let other people answer the basic questions for us? At the core of the crisis facing our nations is the fact that we are being led away from our traditional ideals by the people with the authority to control our lives. Some of these people-lawyers, advisers, consultants, managers, government agents-are not Native and therefore cannot be expected to share our ideals. Others, however, are the very people we count on to provide leadership and embody the values at the heart of our societies-to love and sacrifice for their people. Instead, these greedy, corrupt politicians are seduced by the mainstream. To be clear: not all Native leaders are bad, and not all those who do bad things are aware they are on the wrong path. More and more, however, we find our leaders looking, sounding, and behaving just like mainstream politicians. There is unquestionable pathos in the material and social reality of most reserves. Yet above all the crisis we face is a crisis of the mind: a lack of conscience and consciousness. Material poverty and social dysfunction are merely the visible surface of a deep pool of internal suffering. The underlying cause of that suffering is alienation-separation from our heritage and from ourselves. Indigenous nations are slowly dissolving with the continuing loss of language, land, and young people. Although the indigenous peoples of Turtle Island-the land now called Canada and the United States-have survived the most severe and extended genocide in human history, the war is not over yet. Our bodies may live without our languages, lands, or freedom, but they will be hollow shells//// . Even if we survive as individuals, we will no longer be what we Rotinohshonni call Onkwehonwe-the real and original people-because the communities that make us true indigenous people will have been lost. We will be nothing but echoes of proud nations floating across a landscape possessed by others. From the outside, the intensity of the crisis is obscured by the smokescreen of efforts to reduce the most obvious signs of social deprivation and increase the material wealth within Native communities. It is commonly thought that allowing indigenous people a reasonable standard of living will solve all their problems. But there is more to justice than equity. Of course indigenous people have a right to a standard of living equal to that of others. But to stop there and continue to deny their nationhood is to accept the European genocide of 500 years. Attempting to right historical wrongs by equalizing our material conditions is not enough: to accept the simple equality offered lately would mean forgetting what indigenous nations were before those wrongs began. Indigenous people cannot forget.

#### We don’t call for roleplaying or posit ourselves as the state. The 1AC is a productive and effective means of analysis that is necessary for change

**Shulock 99** Nancy, PROFESSOR OF PUBLIC POLICY --- professor of Public Policy and Administration and director of the Institute for Higher Education Leadership & Policy (IHELP) at Sacramento State University, The Paradox of Policy Analysis: If It Is Not Used, Why Do We Produce So Much of It?, Journal of Policy Analysis and Management, Vol. 18, No. 2, 226–244 (1999)

In my view, none of these radical changes is necessary. As interesting as our politics might be with the kinds of changes outlined by proponents of participatory and critical policy analysis, we do not need these changes to justify our investment in policy analysis. Policy analysis already involves discourse, introduces ideas into politics, and affects policy outcomes. The problem is not that policymakers refuse to understand the value of traditional policy analysis or that policy analysts have not learned to be properly interactive with stakeholders and reflective of multiple and nontechnocratic perspectives. The problem, in my view, is only that policy analysts, policymakers, and observers alike do not recognize policy analysis for what it is. Policy analysis has changed, right along with the policy process, to become the provider of ideas and frames, to help sustain the discourse that shapes citizen preferences, and to provide the appearance of rationality in an increasingly complex political environment. Regardless of what the textbooks say, there does not need to be a client in order for ideas from policy analysis to resonate through the policy environment.10¶ Certainly there is room to make our politics more inclusive. But those critics who see policy analysis as a tool of the power elite might be less concerned if they understood that analysts are only adding to the debate—they are unlikely to be handing ready-made policy solutions to elite decisionmakers for implementation. Analysts themselves might be more contented if they started appreciating the appropriation of their ideas by the whole gamut of policy participants and stopped counting the number of times their clients acted upon their proposed solutions. And the cynics disdainful of the purported objectivism of analysis might relax if analysts themselves would acknowledge that they are seeking not truth, but to elevate the level of debate with a compelling, evidence-based presentation of their perspectives. Whereas critics call, unrealistically in my view, for analysts to present competing perspectives on an issue or to “design a discourse among multiple perspectives,” I see no reason why an individual analyst must do this when multiple perspectives are already in abundance, brought by multiple analysts. If we would acknowledge that policy analysis does not occur under a private, contractual process whereby hired hands advise only their clients, we would not worry that clients get only one perspective.¶ Policy analysis is used, far more extensively than is commonly believed. Its use could be appreciated and expanded if policymakers, citizens, and analysts themselves began to present it more accurately, not as a comprehensive, problem-solving, scientific enterprise, but as a contributor to informed discourse. For years Lindblom [1965, 1968, 1979, 1986, 1990] has argued that we should understand policy analysis for the limited tool that it is—just one of several routes to social problem solving, and an inferior route at that. Although I have learned much from Lindblom on this odyssey from traditional to interpretive policy analysis, my point is different. Lindblom sees analysis as having a very limited impact on policy change due to its ill-conceived reliance on science and its deluded attempts to impose comprehensive rationality on an incremental policy process. I, with the benefit of recent insights of Baumgartner, Jones, and others into the dynamics of policy change, see that even with these limitations, policy analysis can have a major impact on policy. Ideas, aided by institutions and embraced by citizens, can reshape the policy landscape. Policy analysis can supply the ideas.

### 2NC Links

Link- when they say tribes should have self-determination, starts from the frame of sovereignty, exclusive control over their own affairs- begin form ontological perspective of sovereignty is that it presupposes all nations/peoples are trying to achieve the nation-state----how authorities are creted

That naturalizes the violence the state system has done, neutral concept, overlooks violence inheren tin the form of the state, aff a perspective of Eurocentric bias, can’t see beyond, screen =/= governance besides Eurocentric ones

Operate within this frame always recreate outcomes that guarantee tribes are on the losing ends of arrangements, never do something like make them actually sovereign because massive threat, hundreds of independent countries within our country, never true self-determination

#### Link-

#### By using renewables as a means for tribes to attain self-determination, the affirmative uses Western epistemology to frame the indigenous as being naturally connected to the environment- this replicates dehumanization and is inherently colonialist

Shepard **Krech** III, PhD and Professor of Anthropology and Environmental Studies at Brown University, 19**99**, “The Ecological Indian: Myth and History”, W. W. Norton & Company, New York: London, acc. 2/15/13, p. 15-27

Even though an invention of Madison Avenue, the Crying Indian is an effective image and advocate because its assumptions are not new. From the moment they encountered the native people of North America and represented them in texts, prints, paintings, sculptures, performances—in all conceivable media—Europeans classified them in order to make them sensible. They made unfamiliar American Indians familiar by using customary taxonomic categories, but in the process often reduced them simplistically to one of two stereotypes or images, one noble and the other not. For a long time, the first has been known as the Noble Savage and the second as the Ignoble Savage. The Noble Savage, the first of the two stereotypes or images, has drawn persistently on benign and increasingly romantic associations; the Ignoble Savage, the second, on a menacing malignancy The first has emphasized the rationality, vigor, and morality of the nature-dwelling native; the second, the cannibalistic, bloodthirsty, inhuman aspects of savage life. Often elements from the two stereotypes have been combined in a single portrait.2 The label savage, which English-speaking people used for North American Indians (and their imagery) for centuries, presents problems today. With its derivation from silvaticus (Latin), cognates sauvage (French), salvage (Spanish), selvaggio (Italian), and the related forms silva, selva, and sylvan—which have woodland, wooded, forest, and wild among principal meanings—savage connoted originally a state of nature.5 But in their theories of social evolution, nineteenth-century anthropologists and sociologists positioned savages on the earliest and lowest rungs of human society. Overwhelmingly derogatory connotations effaced the original woodland meanings of savage and even survived the now-discredited evolutionary schemes. Today. North American Indians frequently say that they are members of a particular tribal group or nation, or that they are Native Americans, American Indians, or (in particular) just Indians. They also refer to themselves as native or indigenous people, and sometimes as aboriginal people. For these reasons, the term Noble Indian (one manifestation of which is the Ecological Indian) is used here for the stereotype or image that others have called Noble Savage, and Indian, native, indigenous, and other terms are used for the people.4 There can be no doubt about the depth of ideas implicit in the image of the Noble Indian. Always present for more than five hundred years (even if overwhelmed by ignoble imagery). Noble Indians have, however, changed in attributes.6 In their earliest embodiment they were peaceful, carefree, unshackled, eloquent, wise people living innocent, naked lives in a golden world of nature. The origins of nature-dwelling nobles are deep in the ancient world. When Columbus speculated that he found the Islands of the Blessed and their natural residents, his readers were not surprised. They commonly linked several mythic places originating in pagan or Christian thought—-notably the Islands of the Blessed, Arcadia, Elysium, the Earthly Paradise, the Garden of Eden, and the Golden Age (collectively ideas of earthly paradise, eternal spring, and innocent life removed in space or time). Allegorical for some but literal for others who located them in geographical space, these places were objects of fancy and search in the New World and elsewhere. The potency of this imagery as a source of ennobling sentiment over two and one-half centuries simply cannot be overstated, as Europeans drew liberally on it to represent the New World and its inhabitants, in the context of a nostalgic longing for the past and a simpler life. Among many affected by Columbus was Peter Martyr, who compiled accounts of discovery and wrote of an American Indian golden world, and Martyr influenced in turn Amerigo Vespucci's famous depictions of New World lives. For centuries, they and others invoked Tacitus and other ancients, and classical analogs like Scythians (stamped by many as simple, frugal, honest, natural folk) in order to make the indigenous people of the New World comprehensible to themselves and their audiences. In Virginia, they depicted Indians leading "gentle, loving, and faithful" lives "void of all guile and treason," exactly "after the manner of the Golden Age." Elsewhere they associated primitiveness with virtue in similar scenes.6 The French, seizing on liberty and equal access to basic resources as characteristic of "savage" life and important virtues to emulate, were without peer over two centuries in developing an imagery of noble indigenousness. Michel de Montaigne. Baron de Lahontan, and Jean-Jacques Rousseau were especially influential in this process. Montaigne drew widely upon Tacitus, missionaries to the New World, and Tupinambas at the French court both to laud the naturalness of Brazilians and to condemn the French as corrupt, greedy, and vain. He used the New World, one historian remarked, "as a stick for beating the Old."7 Lahontan invented a natural, noble "Intelligent Savage" named Adario as a literary device to critique the European scene (including those who left him without property). Others copied Lahontan widely, and in the second half of the eighteenth century the Noble Indian ruled, especially in Rousseau's major works presenting "savage" lite as simple, communal, happy, free, equal, and pure— as inherently good, and exemplified by America's indigenous people. Like other synthesizers with perfect timing, Rousseau was a lightning rod for charged feelings opposed to his, and a touchstone for many who subsequently portrayed Indians as gentle, egalitarian, free people living in pure nature—and in sharp contrast to life in the city and in civilization. One train of influence runs toward and converges with the nature poetry of William Wordsworth, Samuel Taylor Coleridge, and others, which located the Noble Indian's day in the past, and a nearly uninterrupted path runs from Wordsworth to James Fenimore Cooper, best-selling author from the early 1820s through the 1840s and arguably the most important nineteenth-century figure for development of the Noble Indian imagery. Cooper's heroes are all in and of nature. Nature herself, a heroine of unsurpassed dimensions, shares the stage with Leatherstocking, the protagonist of heroic proportions in Cooper's most famous novels. Every manner of Indian can be found in Cooper's novels, Noble and Ignoble, each taking on and reproducing the character of their tribes, and Cooper's must famous Indian heroes are dignified, firm, faultless, wise, graceful, sympathetic, intelligent, and of beautiful bodily pro portions reminiscent of classical sculpture. By 1900. skill in nature, an important attribute of Coopers Noble Indians, encapsulated noble indigenousness. It fit neatly with the day's effort to reform policy in natural resources (water, forests, wildlife, and lauds and parks, from which came managed use in the progressive conservation movement), American Indian affairs, and America's youth. The most important writers for Noble Indiana from roughly 1875 through 1940 were Ernest Thompson Seton and—tor the first time— an Indian: Charles Eastman (Ohiyesa), a Dakota or Sioux. Their influence was pervasive. With Captain Seth Eastman, the famous soldier artist, as his maternal grandfather, Eastman took the white man's road to Dartmouth College and Boston University Medical School. After marriage—his wife was a self-described Yankee nonconformist, avowed romantic, and vivid and accomplished writer—Eastman wrote more than ten best-selling books that ennobled Indians both by resurrecting romantic visions of lives long past and by emphasizing skills in nature, or woodcraft. Eastman sometimes pointedly apposed an idyllic past with a demoralizing present (even if the present was a way station to a positive civilized future), and contrasted Indians who kill animals because they need them with whites who kill them wantonly. In perhaps his most famous work. The Soul of the Indian, Eastman first paid homage to Coleridge, and then painted his boyhood with his relatives as natural, altruistic, and reverent, and his current life as artificial, selfish, and materialistic.8 Both Cooper and Eastman influenced Ernest Thompson Seton, first Chief Scout of the Boy Scouts and charismatic naturalist, artist, author, public speaker, conservationist, and youth-movement activist who reached millions through his writings and activities. One of Seton's major goals was to instill manhood in boys through woodcraft >r outdoor life exemplified by Cooper's "Ideal Indian." Eastman's talk of the need to form character through fishing, signaling, making ire. constructing canoes, forecasting weather, and other skills—what he called the "School of Savagery" or the "natural way"—dovetailed with Seton's aims. And Seton's Ideal Indian was like Eastman's: He was kind, hospitable, cheerful, obedient, reverent, clean, chaste, brave, courteous, honest, sober, thrifty, and provident; he condemned accumulation, waste, and wanton slaughter; and he held land, animals, and all property in common, thereby curbing greed and closing the gulf between rich and poor. The imagerv of Noble Indians shifted again during the extraordinary-era of 1965-75, known primarily for violent antiwar and civil rights movements, assassination, and societal upheaval, when bitter battles were also waged over pesticides, oil spills, flammable rivers, industrial and human waste, and related environmental issues. It was during this period that the Crying Indian came to the fore, reinforcing both practical and ideological slants present in the work of Seton, Eastman, and other predecessors. New Ecological Indians exploded onto the scene. As critics linked many current global predicaments to industrial society, spoke openly of earlier less complex times as being more environmentally friendly, and castigated Christianity for anthropocentrism, they marshaled Ecological Indians (as deployment of the Crying Indian makes clear) to the support of environmental and antitechnocratic causes.1" Ecological Indians constituted fertile soil for those seeking alternative "counterculture!\* lives. In the back to-nature movement, many sought communal life shot through with American Indian tribal metaphors and material culture, as well as native religion-—or any religious tradition, in fact, perceived as more in tune with ecology and in harmony with nature. Greenpeace marked the convergence of ecology, environmentalism, critique of the social order, and images of American Indians as ecological prophets. More widely, environmentalists joined American Indians in their vision quests and struggles, and thought of themselves as "tribalists." In their conscious antitechnocratic critique of Western society, Rousseau was reborn. American Indians embraced the new shift in perception and actively helped construct the new image of themselves. At occupied Alcatraz Island, they argued for social and political rights and advocated forming an Indian center of ecology. A new canon emerged: best-selling native texts in which nature and the environment figured significantly, and that critiqued, implicitly or explicitly, white civilization. Several crossed over notably with the environmental movement, and the new canon's expressions of an animistic world have affected many. By far most influential was Black Elk Speaks, the nineteenth-century biographical, historical, and visionary reminiscences of a Lakota holy man as told to John G. Neihardt, a poet who believed that literature existed to show people how to "live together decently on this planet." Published in 1932 to no stir, this work was rediscovered in the late 1960s and propelled by events into a widely reprinted and translated instant classic." Since those tumultuous days. Noble Indians have saturated public culture. They grace the covers of fiction and non fiction best-sellers, and pervade children's literature. They leap from movies and television screens, fill canvases, take shape in sculptures, find expression in museum and gallery exhibitions, animate dance and other performances, and appear on T-shirts. Time and again the dominant image is of the Indian in nature who understands the systemic consequences of his actions, feels deep sympathy with all living forms, and takes steps to conserve so that earth's harmonies are never unbalanced and resources never in doubt. This is the Ecological Indian. Exemplifying him, the Crying Indian brims over with ecological prescience and wisdom. On matters involving the environment, he is pure and white people are polluting. He cries because he feels a sense of loss, as (he silently proclaims) other American Indians do also. And if he could cry because he and others lived in nature without disturbing its harmonies (or throwing trash upon it), then he possessed authority to speak out against pollution. The immediate forces that brought the Crying Indian into existence, as well as the long history of images of nobility preceding this one, have borne considerable fruit. The Ecological Indian has influenced hiimanitarians concerned about the global environment and health, so-called deep and spiritual ecologists, metaphysicians and new biologists interested in the Gaia hypothesis of an organic earth, ecofeminists, the Rainbow Family and other alternative groups, and self-help advocates.12 Historians and other scholars have called Indians "the first" American environmentalists or ecologists to "respect" environmental limits and the "need to restrain human impact,"' to possess "the secret of how to live in harmony with Mother Earth, to use what she offers without hurting her," and to "[preserve] a wilderness ecological balance wheel."15 Finally (and not least), in Hollywood, the Ecological Indian has become today's orthodoxy to reach millions, as the creators of the Lakotas in Dances with Wolves or of the animated Pocahontas, who talks to Grandmother Willow, the tree, and sings about herons and otters who "are my friends" and the "hoop that never ends," play on their presumed closeness to nature, nobility, and ecological sainthood. Few visual or textual representations of the Native North American have been as persistent over time as this one has, in one form or another, and few others are as embedded in native identity today. The Ecological Indian has embraced conservation, ecology, arid environmentalism; has been premised on a spiritual, sacred attitude toward land and animals, not a practical utilitarian one; and has been applied in North America to all indigenous people. Explicit at several notable moments in the history of Noble Indians (as in the eighteenth century and today), and in the gaze of the Crying Indian, is the fact that the image usually stands against, not alone. Habitually coupled with its opposite, the Nonecological White Man, tile Ecological Indian proclaims both that the American Indian is a nonpolluting ecologist, conservationist, and environmentalist, and that the white man is not. "The Indian," Vine Deloria, Jr., a Lakota author and lawyer, has remarked, '"lived with his land/' In contrast, " The white destroyed his land. He destroyed the planet earth.™1\* But what does it mean to say that Indians are ecologists or conservationists? Because they are the most consistent attributes of the image of the Ecological Indian, the concepts should be defined with care. Embedded in them are certain cultural premises about the meanings of humanity, nature, animate, inanimate, system, balance, and harmony, and their suitability for indigenous American Indian thought or behavior should not be taken as a given. Ecology, to start with, which is concerned mainly with interactions or interrelations between organisms and the animate and inanimate environments m winch tlicv live, has a distinct disciplinary history in which systemic balance, stability, and harmony have been central to ecological metaphors and premises. The idea of a well-regulated nature or of a balance in nature derives from antiquity, and through the centuries has been linked with different divine plans. In the seventeenth century, the balance was connected to God's harmony, and from that time until the late twentieth century, balance and harmony have remained central despite a major paradigmatic change from religion to science in comprehending the natural world. When George Perkins Marsh published Man and Nature; Or, Physical Geography as Modified by Human Action, one of the most critical early works for the development of both conservation and ecology, in 1864, the title initially contemplated was Man the Disturber of Nature s Harmonies. For Marsh and many others, nature in the absence of man was self-regulating, in balance, or in equilibrium; and man if he were "imprudent" could "[disturb] harmonies," producing "exhausted regions."\*'5 Over the last twenty-five years, ecology has been in ferment. For those who favor rigorous, quantitative methodologies and replicable results,j>roof that balance, stability, or harmony exists has been elusive. Ecologists have abandoned these and other long-held assumptions in favor oi chaotic dynamics in systems, and long-term disequilibrium and flux. The ferment is due to the recognition that organisms are as likely to behave unpredictably as predictably; that in the absence of human interference (if that is possible), natural systems are not inherently balanced or harmonious; and that left alone, biological communities do not automatically undergo predictable succession toward some steady-state climax community, which is an illusion. Natural systems, today's ecologists emphasize, are open systems on which random external events like fire or tempest have unpredictable impacts. As the biologist Daniel Botkin emphasized, "Change now appears to be intrinsic and natural at many scales of time and place in the biosphere."16 The implications of this fundamental shift in thought for assumptions about the very people perceived as part of nature, the indigenous people of North America and elsewhere, are profound. In a balanced, harmonious, steady-state nature, indigenous people reproduced balance and harmony. In an open nature in which balance and climax are questionable, they become,, like all people, dynamic forces whose impact, subtle or not, cannot be assumed. Some who write about environmentalism use the term ecology where they mean "environmental"—as in ecology movement. This unfortunate confusion unnecessarily conflates a scientific discipline with a moral and political cause, and muddies the definition of ecology. In this book the two terms are kept separate. Environmentalism has distinct meanings ranging from the belief that the environment and its components have basic rights to remain unmolested, to the idea that technological change and sustainable growth are compatible with proper care for the environment. One of the most inclusive— and, because of its breadth, useful—definitions of environmentalism is "ideologies and practices which inform and flow from a concern for the environment."17 When speaking of Native Americans as ecologists, we do not necessarily mean that they used mathematical or hypothetico-deductive techniques, but we should mean that they have understood and thought about the environment and its interrelating components in systemic ways (even if the system, all increasingly agree, is more metaphor than hard and bounded reality). When we speak of them as environmentalists, we presumably mean showing concern for the state of the environment and perhaps acting on that concern.18 Conservation, the second major attribute of the Ecological Indian, has also acquired different meanings through time, some of which (like the very general idea of "prudent husbanding") have ancient roots. Moreover, as w;ith ecology and environmentalisin, conservation has often been conflated with preservation—as in conservation as "preservation from destructive influences, natural decay or waste."19 Yet it makes sense to differentiate conservation from preservation. At the turn of the twentieth century, at least two separate camps debated conservation and preservation issues (the debates continue today). The most famous pitted Gifford Pinchot; widely regarded as the founder of contemporary conservationist policy in America, against John Muir, the preservationist. The two fought over the fate of Hetch Hetchy, a canyon in Yosemite National Park that thirsty urbanites wanted to make useful by a dam and lake. Pinchot and Muir battled heatedly, Muir's preservation assuming the sacral pristineness of nature and Pinchot s conservation privileging rational planning and efficient use: two very different approaches to environmental relations. Pinchot, who was Theodore Roosevelt's forestry chief, won the day even though Roosevelt had left office by the time Congress legislated damming Hetch Hetchy.2 In 1910, Pinchot wrote that conservation's "first principle" was "development, the use of the natural resources now existing on this continent for the benefit of the people who live here now." The second was "the prevention of waste,1' and the third that "natural resources must be developed and preserved for the benefit of the many, and not merely for the profit of a few."21 Conservationists, as one observer noted in 1970, were "fairly united in attacking instances of apparent waste or unwise use." Waste or unwise use included obtaining products in a manner that proved destructive to the environment when a nondestructive method would do, obtaining less than the maximum sustained yield from resources, ignoring useful by-products of extractive processes, and using energy resources inefficiently.22 Today, conservation is defined in different ways. Some regard it as management "of human use” of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations." Others emphasize that it means "all that man thinks and does to soften his impact upon his natural environment and to satisfy all his own true needs while enabling that environment to continue in healthy working order."25 Narrower definitions—by Bryan Norton and John Passmore, respectively, both philosophers—focus on conservation as\* using a resource "wisely, with the goal of maintaining its future availability or productivity." or as/Jiving;"natural resources for later consumption." The conservationist promotes careful husbandry and sustainable development; if he opposes anything, it is waste. The emphasis in preservation is quite different, "a saving^/rom rather than a saving for" as in conservation, according to Passmore; specifically "the saving of species and wilderness from damage or destruction." For Norton, preservation is protecting^ "an ecosystem or a species, to the extent possible, from the disruptions attendant upon it from human use." The preservationist, in other words, seeks to keep habitats from further deterioration or use even for purposes of conservation.24 If we describe a Native American as a conservationist, we do not mean that he calculates sustainable yield into the distant future or, in a preservationist-like manner, leaves the environment in an undisturbed, pristine state, but rather that he does not waste or "despoil, exhaust, or extinguish," and that he does, with deliberation, leave the environment and resources like animal populations in a usable state for succeeding generations.25 People everywhere creatively construct meaningful frameworks for understanding their past; they everywhere actively invent tradition. "History," as Greg Dening, a historian, reminded us, "is both a metaphor of the past and metonym of the present." No matter who their authors may be, narratives about the Native American past must be read in this light. As Edward Bruner, an anthropologist, underscored, narratives about Native North Americans are contingent on the times in which they were created. They mirror relations between Native Americans and people of European descent. They reflect not just changing national governmental policies toward indigenous people, but understandings of native people that vary from one moment to the next. Given that traditions are often fashioned creatively, it seems unwise to assume uncritically that the image of the Ecological Indian faithfully reflects North American Indian behavior at any time in the past.26 Quite the reverse: For while this image may occasionally serve or have served useful polemical or political ends, images of noble and ignoble indigenousness, including the Ecological Indian, are ultimately dehumanizing. They deny both variation within human groups and commonalities between them. As the historian Richard White remarked, the idea that Indians left no traces of themselves on the land "demeans Indians. It makes them seem simply like an animal species, and thus deprives them of culture."27 In a related vein, Henry M. Brackenridge, a lawyer with archaeology as his avocation, remarked some 180 years ago on a voyage on the Missouri River how "mistaken" are those "who look for primitive innocence and simplicity in what they call the state of nature." As he traveled along the Missouri, Brackenridge mused on the "moral character" of Indians he encountered: "They have amongst them their poor, their envious, their slanderers, their mean and crouching, their haughty and overbearing, their unfeeling and cruel, their weak and vulgar, their dissipated and wicked; and they have also, their brave and wise, their generous and magnanimous, their rich and hospitable, their pious and virtuous, their frank, kind, and affectionate, and in fact, all the diversity of characters that exists amongst the most refined people." One need not believe that moral or emotional or psychological traits are universal (like most anthropologists today, I would assert that to be human is fundamentally to be a cultural being) to appreciate that no simple stereotype satisfied Brackenridge, who refused to reduce Indians to silhouetted nobility or ignobility.28 Yet as its simplistic, seductive appeal works its charm, the Noble Indian persists long beyond memory of when or how it entered currency. At first a projection of Europeans and European-Americans, it eventually became a self-image. American Indians have taken on the Noble Indian/Ecological Indian stereotype, embedding it in their self-fashioning, just as other indigenous people around the world have done with similar primordial ecological and conservationist stereotypes.29 Yet its relationship to native cultures and behavior is deeply problematic. The Noble Indian/Ecological Indian distorts culture. It masks cultural diversity. It occludes its actual connection to the behavior it purports to explain. Moreover, because it has entered the realm of common sense and as received wisdom is perceived as a fundamental truth, it serves to deflect any desire to fathom or confront the evidence for relationships between Indians and the environment.50

### Alternative

Impossible realism means we imagine a world in which the United States never existed- it’s the only way to achieve actual self-determination because it removes the colonizing violence of the state and thinks beyond the fictions that restablize the state and colonialist violence

Impossible realism is key because the reformism of the affirmative is just another action in a long list of attempts to offer “real” self determination to Natives- the first tribal treaties, such as the creation of reservations, the first instance of TERA,e tc. – each of these begins from the wrong perspective in mandating inclusion and recreation of the state- onlyl impossible realism holds the state accountable for its perpetuation of violence

### AT: Perm

#### The Perm still links to the kritik. An inclusion of plan necessitates the mythologized approach of “sovereignty” Native-state power relations that creates the impacts in the first place.

#### The permutation fails—it’s impossible to create change from within the tropes and culture of western politics.

Alfred 99 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 32-33]

So why do people do it? Jack Forbes has described a spectrum of identities, from a very firmly rooted Native nationalism to an opportunistic minority-race identification. Forbes's spectrum points to the lines of cleavage that the state manipulates in its efforts to legitimize its own institutions among Native people. In the war against indigenous nations, the state first alienates individuals from their communities and cultures and then capitalizes on their alienation by turning them into agents who will work to further the state's interests within those communities.

Adapting Forbes's analysis to the present situation, we can mark four major points along the spectrum of identity: (1) the Traditional Nationalist represents the values, principles, and approaches of an indigenous cultural perspective that accepts no compromise with the colonial structure; (2) the Secular Nationalist represents an incomplete or unfulfilled indigenous perspective, stripped of its spiritual element and oriented almost solely towards confronting colonial structures; (3) the Tribal Pragmatist represents an interest-based calculation, a perspective that merges indigenous and mainstream values towards the integration of Native communities within colonial structures; and (4) the Racial Minority ('of Indian descent') represents Western values-a perspective completely separate from indigenous cultures and supportive of the colonial structures that are the sole source of Native identification.

It goes almost without saying that state agencies recruit their Native people among the latter two groups. For people with a traditionalist perspective and a little cultural confidence, co-optation by the state is difficult. Undeniably, many Native people who work in state institutions, or in state-sponsored governments within communities, see themselves as working in the interests of their people. There is a strong, though fundamentally naive, belief among them that it is possible to 'promote change from within'. In retrospect, those who have tried that approach and failed see that belief as more of a justification than a reason. There are many political identities across Native America, and even within single communities the dynamics of personality and psychology produce varying responses to the colonial situation. The people who choose to work for or with the colonial institutions have constructed a political identity for themselves that justifies their participation. This is no excuse for being wrong-and they are--but it indicates the dire need for a stronger sense of traditional values among all Native people. In the absence of a political culture firmly rooted in tradition and a common set of principles based on traditional values, it is not surprising that individuals will tend to stray towards mainstream beliefs and attitudes.

The co-optive intent of the current system is clear to anyone who has worked within it, as is the moral necessity of rejecting the divisive institutions and leaders who emerge from a bureaucratic culture. It is one thing to seek out the heart of whiteness in order to prepare yourself for future battles-'know thine enemy' is still good advice. But it is quite another thing to have your own heart chilled by the experience. Whether in ?- bureaucratic context or an indigenous one, individual conduct and values are crucial in determining who the real leaders are.

#### And, they don’t get a permutation. This is a question of competing methodologies. The permutation would be impossible because it means taking the sovereignty methodology of the 1ac and pairing it to the deconstruction of this methodology. This skews out of 1ac representations. Defending those methodologies is key to negative ground. The aff shouldn’t be allowed to skew out of competing methodologies by arbitrarily claiming they can work together. This ground is key to fairness and a voter.

#### And the alternative is contextually different: undermining discourse of sovereignty more effective than indigenous re-appropriation

Alfred 99 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 58]

To argue on behalf of indigenous nationhood within the dominant Western paradigm is self-defeating. To frame the struggle to achieve justice in terms of indigenous 'claims' against the state is implicitly to accept the fiction of state sovereignty. Indigenous peoples are by definition the original inhabitants of the land. They had complex societies and systems of government. And they never gave consent to European ownership of territory or the establishment of European sovereignty over them (treaties did not do this, according to both historic Native understandings and contemporary legal analysis). These are indisputable realities based on empirically verifiable facts. So why are indigenous efforts to achieve legal recognition of these facts framed as 'claims'? The mythology of the state is hegemonic, and the struggle for justice would be better served by undermining the myth of state sovereignty than by carving out a small and dependent space for indigenous peoples within it.

# 2NC- CASE

2. Environmental catastrophes are hype and lies – Statistics go our way.

Dutton 01 - prof of philosophy @ U of Canterbury [Dennis Dutton. “Greener Thank You Think. ‘The Skeptical Environmentalist: Measuring the Real State of the World' by Bjorn Lomborg.” The Washington Post. October 21, 2001.]

That the human race faces environmental problems is unquestionable. That environmental experts have regularly tried to scare us out of our wits with doomsday chants is also beyond dispute. In the 1960s overpopulation was going to cause massive worldwide famine around 1980. A decade later we were being told the world would be out of oil by the 1990s. This was an especially chilly prospect, since, as Newsweek reported in 1975, we were in a climatic cooling trend that was going to reduce agricultural outputs for the rest of the century, leading possibly to a new Ice Age. Bjorn Lomborg, a young statistics professor and political scientist at the University of Aarhus in Denmark, knows all about the enduring appeal -- for journalists, politicians and the public -- of environmental doomsday tales, having swallowed more than a few himself. In 1997, Lomborg -- a self-described left-winger and former Greenpeace member -- came across an article in Wired magazine about Julian Simon, a University of Maryland economist. Simon claimed that the "litany" of the Green movement -- its fears about overpopulation, animal species dying by the hour, deforestation -- was hysterical nonsense, and that the quality of life on the planet was radically improving. Lomborg was shocked by this, and he returned to Denmark to set about doing the research that would refute Simon. He and his team of academicians discovered something sobering and cheering: In every one of his claims, Simon was correct. Moreover, Lomborg found on close analysis that the factual foundation on which the environmental doomsayers stood was deeply flawed: exaggeration, prevarications, white lies and even convenient typographical errors had been absorbed unchallenged into the folklore of environmental disaster scenarios.

Prefer our evidence – Environmental apocalypse scenarios are always overblown and recent human advancements solve.

Ronald Bailey 2k, science correspondent, author of Earth Report 2000: Revisiting the True State of the Planet, former Brookes Fellow in Environmental Journalism at the Competitive Enterprise Institute, member of the Society of Environmental Journalists, adjunct scholar at the Cato Institute, May 2000, Reason Magazine, “Earth Day, Then and Now,” http://reason.com/0005/fe.rb.earth.shtml

Earth Day 1970 provoked a torrent of apocalyptic predictions. “We have about five more years at the outside to do something,” ecologist Kenneth Watt declared to a Swarthmore College audience on April 19, 1970. Harvard biologist George Wald estimated that “civilization will end within 15 or 30 years unless immediate action is taken against problems facing mankind.” “We are in an environmental crisis which threatens the survival of this nation, and of the world as a suitable place of human habitation,” wrote Washington University biologist Barry Commoner in the Earth Day issue of the scholarly journal Environment. The day after Earth Day, even the staid New York Times editorial page warned, “Man must stop pollution and conserve his resources, not merely to enhance existence but to save the race from intolerable deterioration and possible extinction.” Very Apocalypse Now. Three decades later, of course, the world hasn’t come to an end; if anything, the planet’s ecological future has never looked so promising. With half a billion people suiting up around the globe for Earth Day 2000, now is a good time to look back on the predictions made at the first Earth Day and see how they’ve held up and what we can learn from them. The short answer: The prophets of doom were not simply wrong, but spectacularly wrong. More important, many contemporary environmental alarmists are similarly mistaken when they continue to insist that the Earth’s future remains an eco-tragedy that has already entered its final act. Such doomsters not only fail to appreciate the huge environmental gains made over the past 30 years, they ignore the simple fact that increased wealth, population, and technological innovation don’t degrade and destroy the environment. Rather, such developments preserve and enrich the environment. If it is impossible to predict fully the future, it is nonetheless possible to learn from the past. And the best lesson we can learn from revisiting the discourse surrounding the very first Earth Day is that passionate concern, however sincere, is no substitute for rational analysis.

Their predictions are false –it’s all propaganda

Kaleita, PHD, Assistant Professor Agricultural and Biosystems Engineering 07 [Amy, “Hysteria’s History” Environmental Alarmism in Context”, <http://www.pacificresearch.org/docLib/20070920_Hysteria_History.pdf>]

“We are moving towards the twilight of civilization,”14 and with “[a]nother century like the last, civilization will be facing its final crisis,”15 according to Fairfield Osborn in his 1948 book, *Our Plundered Planet*. Resource alarmists have been shouting statements like this for over a century. They see a severe drought and exclaim that the productive capability of the earth is dwindling and that deserts will take over the world. **They write propaganda** books like Frank Herbert’s *Dune*, meant to show society the “doom” soon to come, in the cloak of a sci-fi adventure novel.16 They take advantage of farmers who fought to survive the Dust Bowl, like a Kansas farmer who concluded that the “whole Great Plains region is already lost to desert that can not be reclaimed through the plans and labors of men.”17 The alarm was displayed prominently in a *New York Times* story titled, “World Seen Facing Food Shortage Due to Lack of Arable Lands.”18 Some hysteria was understandable during the 1940s and ’50s. America had suffered its worst productivity disaster, the Dust Bowl of the 1930s, and images of dust clouding the sun as far east as Washington, D.C., were still vivid in the public memory. The Dust Bowl was a wake-up call that spurred farmers to take greater care in their agricultural practices. Profit and surplus today are worthless if the land is underproductive or even not arable tomorrow. Because the farmers heeded that call, the Dust Bowl, far from dooming the country to famine and desert, demonstrated the ability of man to learn, progress, and overcome. The once-feared desert lands of the North American Great Plains have long since returned to productivity. Indeed, they are some of the most productive agricultural lands in the world. Yet some alarmists continue to ignore these advances. In *The Population Bomb*, Paul Ehrlich claimed that “the agricultural value of Iowa farmland, which is about as good a land as we have, is declining by 1 percent per year.”19 If this prediction had been accurate, the productivity of Iowa fields would have decreased by 40 percent since Ehrlich’s book was released in 1968. Instead, annual per-acre wheat yield has increased from 33 bushels to 66, corn yield from 89 bushels to 166, and soybean yield from 29.5 bushels to 50.5.20 Alarmists consistently ignore or deny the ability of humans to learn, grow, and advance socially and technologically. Swiss biochemist Ehrenfried Pfeiffer clearly states this alarmist view: “Production, rationalization and technicalization have reached a ‘saturation.’ They can not be increased.”21 Yet time and time again we see agricultural production records being broken. Human ingenuity and scientific advances help us better manage our acres and plant higher-yielding varieties that are drought, pest, and disease resistant. Every continent has seen an increase in yield in the last 40 years— with, of course, localized differences. Crop yield worldwide has increased for every commodity type, including fruit by 31 percent, rice by 63 percent, vegetables by 37 percent, and wheat by 148 percent.22 Though soil is one of the most important resources for human existence, another resource has become essential to almost every society and economy around the world: oil. As with food, oil is the target of dire predictions of its impending and unavoidable scarcity. If you do a Google search of “peak oil” you will find about 4.8 million entries, many dedicated to sounding the alarm of oil shortages. “Peak oil” supposedly represents the point in time when the peak of world crude-oil production will be reached, after which production will enter a terminal decline. Once we have run the pump dry, society will begin to collapse as the effects of oil shortages become a grim reality. Predictions of oil shortages have run throughout the last half-century. In 1943, U.S. Secretary of the Navy Frank Knox predicted a serious oil shortage by 1944 and oil exhaustion in the United States by 1963.23 In 1947, the *New York Times* wrote, “Every so often the fear of an oil shortage developing in the United States gains prominent mention. At present, such a campaign is in full swing.” The article explains that the unprecedented demand for oil will cause a shortage of energy.24 The same warnings were still being proclaimed more than two decades later. In 1974, *National Geographic* published “Oil, the Dwindling Treasure.” In this article, M. King Hubert, a U.S. petroleum geologist and strong advocate of the “peak oil” concept, claimed peak oil would be reached by 1995.25 Three years later, the CIA reported that peak oil would be reached by 1987, leading to higher prices and worldwide shortages of gasoline, heating oil, and jet fuel.26

# 1NR- CP

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

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

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

#### Biggest internal link to the aff

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

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

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

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

Nonetheless, there are steps that can be taken to tighten up the approval process and make it friendlier to renewable energy development. The two amendments to the IMDA proposed here [\*133] would provide that the Secretary's failure to act within the time allotted constitutes approval, and that in determining whether a minerals agreement is in the tribe's best interest, the Secretary will defer to the tribe's decision. Under the IMDA, the Secretary has 180 days to approve or disapprove a minerals agreement, or 60 days after compliance with the National Environmental Policy Act (NEPA), whichever is later. n189 The statute specifically provides that the Secretary's failure to meet the deadline is enforceable by a mandamus action in federal court. n190 Making the Secretary's deadline mandatory is useful, but authorizing enforcement by court action is not. Civil suits proceed slowly through the federal courts, and it is unlikely that a writ of mandamus would be issued before the Secretary reached a decision on the minerals agreement. Waiting two years for the court's decision is no better than waiting two years for the Secretary's. A better approach would borrow from the proposed statutory amendments to the TERA process. The proposed TERA amendments would replace a provision giving the Secretary 270 days to approve a TERA, with a provision that 271 days after the tribe submits its TERA application, the TERA "shall" become effective if the Secretary has not disapproved it. n191 A similar amendment to the IMDA could provide that 181 days after the tribe submits a proposed minerals agreement, or 61 days after compliance with NEPA, whichever is later, the agreement "shall" take effect if the Secretary has not disapproved it or has not provided the tribe with written findings of the intent to approve or disapprove the agreement. n192 As with the proposed TERA [\*134] amendment, this would put substantial additional pressure on the Department of the Interior to act quickly. But the benefit to tribes of knowing whether their minerals agreements have been approved, and being able to implement their agreements within a reasonable time, outweigh those concerns. The second way to streamline the approval process for renewable energy resources is to address the substance of the Secretary's review of mineral agreements. The IMDA provides that the Secretary must determine whether a proposed agreement "is in the best interest of the Indian tribe." n193 In so doing, the Secretary "shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement." n194 The statute expressly provides, however, that the Secretary is not responsible for preparing any studies regarding "environmental, socioeconomic, or cultural effects" other than the environmental studies required by NEPA. n195 The regulations, on the other hand, require that the Secretary determine both that the minerals agreement is in the tribe's best interest and that any adverse cultural, social, or environmental impacts do not outweigh the benefits of the agreement. n196 The "best interest" standard is further defined as requiring "the Secretary [to] consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects." n197 The regulations further specify that the "best interest" standard is based on information supplied by the parties "and any other [\*135] information considered relevant by the Secretary." n198 That information may include comparisons to other contracts or offers for similar resources, "insofar as that information is readily available." n199 These standards, derived from judicial determinations that the Secretary must consider all relevant factors in reviewing mineral leases under the IMLA, n200 place considerable decision-making power with the Secretary. During the rulemaking process, in fact, the Department of the Interior rejected a commenter's suggestion that minerals agreements should be approved if the agreements were in compliance with law. The Department noted that the law itself "allows the Secretary the discretion to weigh relevant factors and requires the Secretary to make, on the basis of the Secretary's judgement, a best interest determination." n201 At the time the IMDA was enacted in 1982, federal Indian policy had only recently focused on tribal self-determination, n202 and Indian tribes were still emerging from the uncertainties and destruction of the termination era. n203 The Department of the Interior had experience with considering all relevant factors in the approval of IMLA leases, and carried that standard into the new world of minerals agreements. It took twelve years for the Department to issue IMDA regulations, but the regulations again reflected the central role of the Secretary and the importance of the Secretary's judgment call. In the 1980s and even early 1990s, the Secretary's stringent oversight may have been justified by the imbalance of knowledge and bargaining power between tribes and energy companies. But nearly twenty years have passed since the regulations were [\*136] promulgated in 1994. Indian tribes have thirty years of experience with IMDA minerals agreements, and many of the energy tribes have become sophisticated negotiators of development deals. Certainly tribes are the best determiners of cultural and social impacts, and often of the economic impacts as well. In light of those factors, the standards for approval of IMDA agreements are due for amendment. Amending the statute itself to revisit the appropriate factors may be the best choice, but a simpler and perhaps quicker fix is also available. The Department could amend the regulations to reflect modern realities. Similar to the best interests determination in the regulations for agricultural and other surface leases, the IMDA regulations could provide that in reviewing an IMDA minerals agreement, the Secretary will defer to the tribe's determination that the agreement is in its best interest, to the maximum extent possible. n204 Although the conditional "maximum extent possible" language preserves the Secretary's ultimate authority under the statute, the regulation would ensure that the Secretary will undertake the minerals agreement review process with due respect for the tribe's decision. Even if a deferential review is current practice, embedding it in the regulations strengthens the tribe's role in the decision making process. VII. Conclusion Renewable energy resources are taking on increased importance for tribal economies. While these resources are abundant in Indian country, the federal statutory authority for their development is dispersed and often problematic. Mineral development statutes may or may not apply; other statutes not originally intended for energy development fill the gap, but generally confine tribes to a passive role in renewables development. The recent energy statute solves many of the problems with the other approaches, but creates a process that is [\*137] complex and expensive enough to discourage most tribes from using it. Recent bills would tweak the energy statute and propose broader leasing authority, but none addresses the overarching problem of providing tribes with a way to take an active role in the development of renewable resources without undue expense or federal oversight. The amendments to the IMDA and its regulations proposed here also do not solve that overarching problem entirely. They are intended to suggest steps in the direction of greater tribal self-determination in renewable energy development. They would free tribes to take more active roles in renewable energy projects, while preserving tribes' ability to use the variety of other available statutory approaches. And they would rein in the secretarial approval power by providing that federal inaction benefits the tribes and by reframing the best interests analysis. Under these proposals, Indian tribes could more easily develop their renewable energy resources, and do so with more direct say in the development itself.

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

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

There is no question that the environmental review process under a TERA will be costly, and it will undeniably have the potential to delay implementation of tribal resource decisions. n150 **Nonetheless**, **the TERA provisions for environmental review** of specific tribal development decisions **are not necessarily incompatible with practical sovereignty**. n151 First, like NEPA, the environmental review provisions of ITEDSA mandate a process rather than a substantive outcome. n152 Tribes must identify and evaluate significant environmental effects, identify proposed mitigation measures, and include appropriate mitigation measures in specific instruments. n153 Nothing in this process contemplates a particular substantive decision, but rather that decisions are made in light of full environmental information. The intent, as with NEPA, is that more information leads to more informed, and therefore "better," decision making. n154 Second, public notice and comment on environmental matters has long been a feature of tribal mineral development decisions, by way of the NEPA process. Under current mineral development statutes other than ITEDSA - the Indian Mineral Development Act of 1982 and the Indian Mineral Leasing Act of 1938 - the Secretary must approve each specific lease or development agreement. The Secretary's approval, in turn, constitutes "major federal action," which triggers the environmental review process of NEPA if the action significantly affects the quality of the human environment. n155 Virtually all mineral development has significant enough effects to require an environmental impact statement. n156 An [\*1092] environmental impact statement for tribal mineral development, whether undertaken by the Bureau of Indian Affairs or another federal agency, n157 is subject to public notice and comment in draft form, n158 and the federal agency is required to consider and respond to substantive comments in preparing the final statement. n159 There are at least two important differences between public notice and comment as part of the NEPA process and as part of the TERA process. Like other aspects of the TERA environmental review process, the costs of notice and comment will be borne by the tribe rather than the Bureau of Indian Affairs or other federal governmental agency. This cost-shifting places a significant burden on the tribes. On the other hand, the consideration of and response to comments will be undertaken by the tribe rather than a federal agency. Although tribes have substantial input at the NEPA comment stage, n160 the consideration of all comments and the response to them are matters for the federal agency. **The shift to a tribal environmental review process ensures that comments will be reviewed in light of tribal values**, **priorities**, **and decisions**, **rather than filtered through a federal lens**. Third, although the environmental review process introduces the requirement of public comment on the environmental effects of a proposed instrument, and the requirement that the tribe respond to relevant and substantive comments before it approves the instrument, this type of public participation can serve important tribal interests. n161 First, it allows input by tribal citizens; although tribal members have indirect influence through their voting powers for tribal government officials, public comment allows more direct participation in tribal government. In addition, the public comment provision allows nonmembers who may be affected by the tribe's decisions an opportunity to have their say, and to have the tribe respond directly to their substantive environmental concerns. Not only does that address legitimate interests of reservation residents and neighbors who have no direct say in tribal government, but it helps alleviate the often still-lingering perception that tribal governments are not responsive to valid [\*1093] non-tribal concerns. n162 On the other hand, of course, there is little question that the public comment process also allows those who oppose or fear tribal actions generally to make their misgivings part of the record. Nonetheless, the values of public participation may outweigh the concerns those types of comments can pose. In addition, some tribes pursuing a TERA may already have a tribal environmental review process in place. Tribal environmental policy acts (TEPAs) have long been advocated, n163 and in 2000 the Tulalip Tribes published a guide for Indian tribes interested in developing TEPAs. n164 Tribes that have chosen to develop TEPAs generally cite the importance of "proper and meaningful consideration of environmental, cultural, historical, and ecological factors" before development occurs, n165 and the need "to protect and preserve" the reservation and "to provide a safe and habitable homeland" for the generations. n166 It is difficult to determine how many tribes have TEPAs currently in place, n167 but of those tribal TEPAs readily available online, at least some provide either a public notice and comment process or some method of public participation in [\*1094] the environmental review process. n168 Although those tribes have chosen to include public participation in the environmental review process, and tribes entering into TERAs are required by federal law to do so, there is no indication that such provisions have proven problematic for the tribes that adopted them.

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

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

The heart of my proposal is a small and likely uncontroversial amendment to the Indian Mineral Development Act of 1982. The statutory definition of "mineral resources" should be amended to clarify that mineral resources includes all renewable energy resources. Although that is arguably the case now, the clear inclusion of renewable energy resources would remove a point of contention and confusion. At present, the IMDA defines "mineral resources" as "oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources." n179 **Congress should amend the definition** to something like, "oil, gas, uranium, coal, other energy and nonenergy mineral resources, or any renewable energy resources including, but not [\*129] limited to, wind, solar, geothermal, biomass, and hydrologic resources." n180 Language such as this leaves no question that renewable energy resources are included in the scope of the IMDA. Alternatively, the definition could be amended in the regulations without amending the statute itself. The regulatory definition of minerals for purposes of leases and minerals agreements expands on the statutory definition: "both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral." n181 **This definition helps to clarify the** meaning of "other" minerals in the **statute** by specifying such minerals as sand and gravel. The regulatory definition could similarly help clarify the meaning of "other energy" in the statute by specifying that it includes "both renewable and nonrenewable energy sources, including, but not limited to, wind, solar, geothermal, biomass, and hydrologic resources." n182 A statutory amendment would be preferable to a regulatory amendment, but a regulatory amendment could likely be accomplished more quickly. n183 Expanding the minerals definition of the IMDA to specify energy resources regardless of their classification **would broaden**, simplify, and normalize **Indian tribes' ability to engage in renewable energy development**. Any tribe with renewable resources could enter into any type of development agreement that suited its needs. Tribes could employ not only the current structure of leases, but joint ventures, partnerships, and business agreements of all kinds. This simple amendment would thus authorize all Indian tribes to move into more active roles in the [\*130] development of their renewables. **Tribes seeking to partner with non-Indian companies** to develop wind farms, solar collectors, or biomass feedstock operations **would no longer be confined to the passive role of lessor**. And it makes common sense. There is no reason to deny a tribe with wind resources the ability to enter into a joint venture, for example, when a tribe with coal resources may do so. Clarifying that the IMDA may be used for renewables development could, however, impact the tribes' ability to use § 81 easements for wind and solar power development. Under current § 81 regulations, contracts and agreements that encumber Indian lands do not need secretarial approval if they are subject to approval under another statute or regulation, specifically including surface leases, agricultural leases, timber contracts, mineral leases, and minerals agreements. n184 The regulations thus appear to put those types of leases and agreements, including IMDA leases and agreements, outside § 81. If the IMDA definition of minerals is amended to specifically include renewable energy resources, then it may mean that a tribe could no longer use § 81 for renewable energy easements. To prevent this possible unintended consequence, a further amendment to the IMDA may be necessary. The IMDA now provides that nothing in the statute "shall affect" the Indian Mineral Leasing Act "or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe." n185 An amendment to clarify that it also does not affect tribes' authority to enter into § 81 easements would preserve that option for renewable energy development. This amendment would need to be carefully worded, however, if Congress wished to preserve the current practice that § 81 contracts and agreements cannot otherwise be used to substitute for mineral leases and agreements. It is possible that a broader amendment may be necessary to preserve tribes' options under other statutes if the IMDA definition of minerals is expanded to include renewables. The proposed expansion of the IMDA suggested here is not intended to replace any existing authorities, but to supplement them. Just as the IMDA authorization of minerals agreements did not replace [\*131] the IMLA authority to enter into mineral leases, and the TERA process for energy agreements did not replace either IMDA agreements or IMLA leases, n186 the proposed expansion of the IMDA is intended as one more option for tribes. Under the proposed amendment to the IMDA definition of minerals, for example, a tribe seeking to construct a wind farm on tribal land could do so using a lease under § 415, an easement under § 81, a negotiated lease or other minerals agreement under the IMDA, or an agreement pursuant to an approved TERA under ITEDSA. **The tribe could weigh the advantages and drawbacks of each alternative**, **and chose the one that best suits its needs**. Including a statement in the IMDA that it is not intended to replace other existing o**ptions would preserve tribes' self-determination rights** to choose the best approach for that tribe.

#### IMDA empirically solves resource development

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

For tribes that wish to develop their fossil fuels or other traditional energy resources such as uranium, the existing federal statutory scheme offers fairly limitless possibilities. Tribes can enter into standard leases under the 1938 Indian Mineral Leasing Act (IMLA) n21 or into virtually any kind of negotiated lease or agreement under the 1982 Indian Mineral Development Act (IMDA). n22 The structure of an IMDA development deal is subject to negotiation between the tribe and the non-Indian entity, subject only to the approval of the Secretary of the Interior. Minerals agreements under the IMDA appear to be widely and successfully used. [\*97] There is, however, a definitional issue. The IMLA and IMDA apply to mineral development. The IMDA specifies that minerals include fossil fuels (oil, natural gas, coal), as well as other traditional energy resources (uranium, geothermal). n23 Those minerals named, however, are not intended to be an exclusive list. The IMDA definition includes "other energy or non-energy mineral resources," and the regulations for both statutes refer to "any other energy or non-energy mineral." n24 But the potential for mischief lies in the word "mineral." There is no single, universally-accepted definition of what a mineral is, although most definitions include some or all of the following characteristics: inorganic, solid, usually crystalline, having a definite chemical composition, and formed as a result of geological processes. n25 The International Mineralogical Association defines a mineral as "an element or chemical compound that is normally crystalline and that has been formed as a result of geological processes." n26 Similarly, the Mineralogical Society of America provides that "[a] mineral substance is defined as a naturally occurring, homogeneous solid, inorganically formed, with a well defined chemical composition (or range of compositions), and an ordered atomic arrangement, that has been formed by geological processes, either on earth or in [\*98] extraterrestrial bodies." n27 These definitions of mineral, of course, exclude the most common "minerals" extracted from Indian lands: oil and natural gas. Neither, for example, is a solid or crystalline in structure. Nonetheless, Congress has consistently been explicit that all the fossil fuels are included within the mineral development statutes, n28 and a statutory definition trumps a scientific definition for purposes of law. Consequently, the term "mineral" in Indian law is routinely used to include oil and natural gas. n29 What, then, of the renewable energy resources - wind, solar, and biomass? They are not crystalline in structure, they have not been formed as a result of geological processes, and the one that is a solid is most definitely not inorganic. Are these energy resources "minerals" within the meaning of the IMDA? At the time the IMDA was under consideration and drafting, no one was thinking in terms of wind energy, solar power, or biomass. The focus at the time was on traditional energy sources that had routinely been considered minerals under the IMLA: oil and gas, coal, and uranium. n30 Many of the traditional energy tribes were chafing against the bounds of the IMLA in light of the new federal policy of tribal self-determination. n31 As a result, the discussion and testimony surrounding passage of the IMDA focused on freeing the energy tribes to develop their fuel resources in ways that would benefit the tribes to a far greater degree than standard leasing ever did or could. There is thus no express statutory language about renewable energy resources. And [\*99] although the legislative history and rules of statutory construction provide clues, there is no real clarity. First, there is essentially no discussion in the legislative history of the IMDA about what a "mineral" is, likely because everyone involved understood that "mineral" meant actual minerals plus fossil fuels. Congress did include a definition of "mineral resources" in the statute itself, a definition that tracks that common understanding: "oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources." n32 From that formulation, it appears certain that Congress intended the IMDA to apply broadly. Both the statutory and regulatory language includes "other energy" in the definition of minerals. Remarks by IMDA sponsors in the Congressional Record focused on the need for "energy" development. Senator Melcher spoke of tribal "energy development," and he, Representative Udall, and Representative Bereuter all commented on the need for increased development and production of domestic energy to meet national needs. n33 Moreover, reading the IMDA broadly to apply to all energy resources is consistent with the Indian law canons of construction. The interpretive rules for Indian legislation mandate that statutes be construed in favor of the Indians and that ambiguities be resolved in favor of the tribes. n34 Construing "other energy" in the IMDA definition of minerals broadly in favor of the tribes means that renewable energy resources such as wind, solar, and biomass would be included. If "other energy" is ambiguous, then the canons would require that "energy" be interpreted to include renewable sources in addition to traditional fuel sources. Reading the IMDA in the light most favorable to the tribes, Congress did not intend to restrict its application to traditional minerals, but to open up development alternatives for tribes. On the other hand, the actual wording of the IMDA is "other energy or nonenergy mineral resources." Although this could be parsed as "other energy resources or other nonenergy mineral resources," that is a far more awkward reading than the assumption that the word "mineral" applies to both energy [\*100] resources and nonenergy resources. When Congress intended to include non-"minerals" within the reach of the IMDA, it specified what those resources were. Thus, oil, natural gas, and geothermal resources - none of which comes within the usual definitions of a mineral - are expressly included. Given this specificity, the typical rule of statutory construction, that the inclusion of some implies the exclusion of all others, n35 would mandate that non-"mineral" resources not included in the statutory definition be excluded. The Supreme Court has announced, however, that "standard principles of statutory construction do not have their usual force in cases involving Indian law." n36 More specifically, the Court has rejected the use of the inclusion/exclusion principle in Indian law cases. In Bryan v. Itasca County, the state of Minnesota argued that Public Law 280, n37 providing that the "civil laws of such State" applied in Indian country, granted the state the authority to impose a personal property tax on a mobile home owned by tribal members and located on trust lands. n38 The state based its argument on a second provision of Public Law 280, which stated that nothing in that statute authorized the "taxation of real or personal property" held in trust. n39 The state thus argued that "civil laws" must include the general authority to tax within Indian country, because otherwise the specific exclusion for taxation of trust property had no meaning. n40 Under the state's approach, the state could tax non-trust personal property (such as the mobile home) because Public Law 280 excluded only taxation of trust property. The Court unanimously rejected the state's approach. Noting that the statute was ambiguous, the Court stated that "we must be guided" by the Indian law canons of construction and resolve the statutory ambiguity in favor of the Indians. n41 As strong as the preference for the Indian law canons of construction may be, however, the Supreme Court has not [\*101] hesitated to abandon these canons when it suits. n42 As a result, while the IMDA perhaps should be interpreted broadly to apply to energy resources as well as traditional minerals and fossil fuels, an interpretation favoring Indian tribes is by no means guaranteed. Thus, whether the IMDA would apply to non-"mineral" energy resources - that is, renewables other than geothermal - is uncertain. And uncertainty impedes development. n43 A good illustration of the problem that uncertainty creates is the situation that led to passage of the IMDA itself. Tribes chafing under the IMLA restrictions in the 1970s began to negotiate non-lease development deals, and between 1975 and 1980, the Secretary of the Interior approved a number of these deals, relying either on the tribe's authority to contract or on the theory that modern mineral "leases" needed to include more than the standard IMLA lease form. n44 In essence, Interior began to define "lease" in broad terms. As more and more tribes submitted negotiated agreements, however, Interior became increasingly ambivalent about its role. n45 An Assistant Secretary for Indian Affairs noted that "the most serious [problem with using the IMLA [\*102] as authority] is that it authorized development of tribal oil and gas resources only by leasing," and not by other types of ventures. n46 He added that the use of a tribal contracting statute n47 was also "inadequate," and concluded that "there is a question whether we have adequate authority to approve those nonlease ventures even by utilizing both acts." n48 That uncertainty led the Interior Solicitor to question the approval of non-lease agreements in 1980, n49 throwing the validity of existing approved agreements into doubt. It took passage of the IMDA in 1982 to resolve the issue of tribal authority to use non-lease options for mineral development. The IMDA was a clear "fix," and it effectively grandfathered in the existing approved agreements. n50 The same thing could happen if the Secretary of the Interior were to treat solar power, say, as a mineral under the IMDA. But just as Interior became squeamish about its approach to non-lease arrangements in 1980, so Interior could react squeamishly to treating sunlight as a mineral. If that were to happen, Congress would undoubtedly enact a legislative fix (such as the IMDA for non-leases), and existing agreements would undoubtedly be grandfathered in. But the period of uncertainty between Interior's doubts and congressional action is a wasted period. It is wasted time for Indian tribes, their non-Indian partners, and domestic energy production. It is much more preferable to have appropriate legislation in place before deals are struck, removing a potential impediment to renewable energy development.