# 1NC

**Off 1**

#### Interpretation: You must defend an instrumental implementation of the plan.

#### Resolved” before a colon reflects a legislative forum

Army Officer School, ‘4

(5-12, “# 12, Punctuation – The Colon and Semicolon”, <http://usawocc.army.mil/IMI/wg12.htm>)

**The colon introduces** the following: a.  A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. b.  A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) c.  A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? d.  A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. e.  After the introduction of a business letter: Dear Sirs: (colon) Dear Madam: (colon) f.  The details following an announcement For sale: (colon) large lakeside cabin with dock g. **A formal resolution, after the word "resolved:"¶ Resolved: (colon) That this council petition the mayor.**

#### Vote Negative:

#### 1 Education- The number one reason policies don’t happen is because of political considerations we should evaluate those implications.

#### 2 Fairness- Politics and process CP’s are the only solid negative ground.

### Off 2

#### Indian Country is not in the United States- foreign country

**US Department of State Manual ’12**

“7 Fam 1113 Not Included in the Meaning of “in the United States” http://www.state.gov/documents/organization/86755.pdf

Before U.S. v. Wong Kim Ark, the only occasion on which the Supreme ¶ Court had considered the meaning of the 14th Amendment‟s phrase ¶ “subject to the jurisdiction” of the United States was in Elk v. Wilkins, 112 ¶ U.S. 94 (1884). That case hinged on whether a Native American who ¶ severed ties with the tribe and lived among whites was a U.S. citizen and ¶ entitled to vote. The Court held that the plaintiff had been born subject ¶ to tribal rather than U.S. jurisdiction and could not become a U.S. citizen ¶ merely by leaving the tribe and moving within the jurisdiction of the ¶ United States. The Court stated that: “The Indian tribes, being within ¶ the territorial limits of the United States, were not, strictly speaking, ¶ foreign States; but they were alien nations, distinct political communities, ¶ with whom the United States might and habitually did deal through ¶ treaties or acts of Congress. They were never deemed citizens of the ¶ United States except under explicit provisions of treaty or statute to that U.S. Department of State Foreign Affairs Manual Volume 7 - Consular Affairs¶ 7 FAM 1110 Page 10 of 13¶ effect, either declaring a certain tribe, or such members of it as chose to ¶ remain behind on the removal of the tribe westward, to be citizens, or ¶ authorizing individuals of particular tribes to become citizens upon ¶ application for naturalization.”

#### Key to fairness- Opens the floodgates to affs like Porto Rico, and foreign bases, means we can’t get a disad

#### Education should learn about education localities

**Off 3**

**Interpretation – Restrictions on production prohibit, Aff only reduces a regulation on production.**

**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.

**On is exclusive**

**Graham 16**

(Arthur Butler, "Brief for Appellants – Wilson v. Dorflinger %26 Sons", Court of Appeals – State of New York, Reg. 108, Fol. 387, 1916, p. 11-12)

**The Standard Dictionary defines** the word "**on**" as follows: "In or into such **a position with reference to something,** as a vehicle, a table, or a stage, as to be in contact with and supported by it; in a position, state or condition of adherence; as, he got on before the wagon had fully stopped." In Webster's International Dictionary, we find as follows: "on--The general signification of 'on' is situation, motion or condition with respect to contact with, the surface or upper part of a thing, and supported by it; placed or lying in contact with the surface; as, the book lies on the table, which stands on the floor of a house on an island." It is submitted that an elevator is not operated on streets or on highways, as a car, truck or wagon is operated, and that **by the use of the word "on" the Legislature intended to include only those** appliances **therein enumerated,** namely, cars, trucks, and wagons. An elevator is not operated on anything, but is operated in or inside a shaft, and is controlled by guides, which deprive the operator of the power to change the course of the lift from right to left. Clearly the Legislature intended to include in Group 41, only those cars, trucks and wagons whose direction and guidance are controlled by the operator, in whatever direction he may deem advisable.

#### TERA process just makes it harder- does not prohibit the development of renewables

Fosland 2012

[Benjamin J., Law Clerk to Chief Judge David W. Gratton, Idaho Court of Appeals, 2011–¶ 2012; J.D., cum laude, Gonzaga University School of Law, 2011; B.A., honors, University of ¶ Montana, 2008. “A CASE OF NOT-SO-FATAL FLAWS: ¶ RE-EVALUATING THE INDIAN TRIBAL ¶ ENERGY DEVELOPMENT AND ¶ SELF-DETERMINATION ACT” Idaho Law Review, Vol. 48 ¶ p. 453-4]

There have been many different criticisms leveled at ITEDSA and ¶ the tribal energy resource agreement system. Perceived challenges facing the resource agreement system include: (1) the lack of financial,¶ technical, and scientific resources available to tribes; (2) the effects of ¶ public input requirements on tribal decision making; and, (3) the uncertain state of the federal government’s trust responsibility in regard to ¶ tribes that enter into tribal energy resource agreements (TERAs).¶ 64¶ On ¶ close examination, however, the notion that the new statute’s flaws will ¶ prevent tribes from taking advantage of the system lacks merit. Many of ¶ the challenges outlined above are by no means insurmountable. As such, ¶ TERAs should be seen for what they are: the best option for tribes who ¶ want to maximize their control over the development of tribal energy ¶ resources.

**Voting issue – Fairness and education.**

**1. Including reg’s unlimits.**

**Doub 76**

Energy Regulation: A Quagmire for Energy Policy Annual Review of Energy Vol. 1: 715-725 (Volume publication date November 1976) DOI: 10.1146/annurev.eg.01.110176.003435LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street NW, Washington, DC 20036 Mr. Doub is a principal in the law firm of Doub and Muntzing, which he formed in 1977. Previously he was a partner in the law firm of LeBoeuf, Lamb, Leiby and MacRae. He was a member of the U.S. Atomic Energy Commission in 1971 - 1974. He served as a member of the Executive Advisory Committee to the Federal Power Commission in 1968 - 1971 and was appointed by the President of the United States to the President's Air Quality Advisory Board in 1970. He is a member of the American Bar Association, Maryland State Bar Association, and Federal Bar Association. He is immediate past Chairman of the U.S. National Committee of the World Energy Conference and a member of the Atomic Industrial Forum. He currently serves as a member of the nuclear export policy committees of both the Atomic Industrial Forum and the American Nuclear Energy Council. Mr. Doub graduated from Washington and Jefferson College (B.A., 1953) and the University of Maryland School of Law in 1956. He is married, has two children, and resides in Potomac, Md. He was born September 3, 1931, in Cumberland, Md. http://0-www.annualreviews.org.library.lausys.georgetown.edu/doi/pdf/10.1146/annurev.eg.01.110176.003435

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

**2. Precision – A distinction between regulation and restrictions is key.**

**Sinha 6**

http://www.indiankanoon.org/doc/437310/ Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J :

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

### Off 4

#### Immigration will pass

Washington Times 3-28

“Immigration Bill Agreement Very Close; Guest Workers Still a Hurdle for Business, Labor Leaders,” lexis

Members of the "Gang of Eight" tasked with carving out a comprehensive immigration package said Wednesday that they hope to file a bill when they return to Washington from their Easter break, and suggested that they are on the verge of a deal between business and labor leaders on visas for low-skilled workers.¶ The high-profile immigration talks stalled out last week when the U.S. Chamber of Commerce and the AFL-CIO failed to agree on the details of a proposed guest-worker program, a snag that has bogged down ongoing negotiations.¶ But after touring the border on Wednesday, Democrats Sens. Charles E. Schumer of New York and Michael F. Bennet of Colorado, as well as Sens. John McCain and Jeff Flake, both Arizona Republicans, sounded optimistic about their chances of filing a bill next month.¶ "Bottom line, we're very close," Mr. Schumer told reporters. "I'd say we're 90 percent there. We have a few little problems, we've been on the phone all day with our four other colleagues."¶

**PC Key**

**Foley 1/15** Elise is a writer @ Huff Post Politics. “Obama Gears Up For Immigration Reform Push In Second Term,” 2013, http://www.huffingtonpost.com/2013/01/15/obama-immigration-reform\_n\_2463388.html

**Obama** has repeatedly said he **will push hard for immigration reform in his second term**, and administration officials have said that other contentious legislative initiatives -- including **gun control and the debt ceiling -- won't be allowed to get in the way.** At least at first glance, **he seems to have politics on his side**. GOP lawmakers are entering -- or, in some cases, re-entering -- the immigration debate in the wake of disastrous results for their party's presidential nominee with Latino voters, who support reform by large measures. **Based on those new political realities, "it would be a suicidal impulse for Republicans in Congress to continue to block [reform],**" David Axelrod, a longtime adviser to the president, told The Huffington Post.¶ Now **there's the question of how Obama gets there.** While confrontation might work with Republicans on other issues -- the debt ceiling, for example -- the consensus is that the GOP is serious enough about reform that **the president** can, and **must, play the role of broker and statesman to get a deal.¶** It starts with a lesson from his first term. Republicans have demanded that the border be secured first, before other elements of immigration reform. Yet the administration has been by many measures the strictest ever on immigration enforcement, and devotes massive sums to policing the borders. The White House has met many of the desired metrics for border security, although there is always more to be done, but Republicans are still calling for more before they will consider reform. Enforcing the border, but not sufficiently touting its record of doing so, the White House has learned, won't be enough to win over Republicans.¶ In a briefing with The Huffington Post, a senior administration official said the White House believes it has met enforcement goals and must now move to a comprehensive solution. **The administration is highly skeptical of claims from Republicans that immigration reform can or should be done in a piecemeal fashion.** Going down **that road**, the White House worries, **could** result in passage of the less politically complicated pieces, such as an enforcement mechanism and high-skilled worker visas, while **leaving out** more contentious items such as **a pathway to citizenship for undocumented immigrants.**¶ "Enforcement is certainly part of the picture," the official said. "But if you go back and look at the 2006 and 2007 bills, if you go back and look at John McCain's 10-point 'This is what I've got to get done before I'm prepared to talk about immigration,' and then you look at what we're actually doing, it's like 'check, check, check.' We're there. The border is as secure as it's been in a generation or two, so it's really time."¶ **One key in the second term, advocates say, will be convincing skeptics** such as Republican Sen. John Cornyn of Texas that the Obama administration held up its end of the bargain by proving a commitment to enforcement. **The White House also needs to convince GOP lawmakers that there's support from their constituents for immigration reform**, which could be aided by conservative evangelical leaders and members of the business community who are pushing for a bill.¶ Immigrant advocates want more targeted deportations that focus on criminals, while opponents of comprehensive immigration reform say there's too little enforcement and not enough assurances that reform wouldn't be followed by another wave of unauthorized immigration. The Obama administration has made some progress on both fronts, but some advocates worry that the president hasn't done enough to emphasize it. The latest deportation figures were released in the ultimate Friday news dump: mid-afternoon Friday on Dec. 21, a prime travel time four days before Christmas.¶ Last week, the enforcement-is-working argument was bolstered by a report from the nonpartisan Migration Policy Institute, which found that the government is pouring more money into its immigration agencies than the other federal law-enforcement efforts combined. There are some clear metrics to point to on the border in particular, and Doris Meissner, an author of the report and a former commissioner of the U.S. Immigration and Naturalization Service, said she hopes putting out more information can add to the immigration debate.¶ "I've been surprised, frankly, that the administration hasn't done more to lay out its record," she said, adding the administration has kept many of its metrics under wraps.¶ There are already lawmakers working on a broad agreement. Eight senators, coined the gang of eight, are working on a bipartisan immigration bill. It's still in its early stages, but nonmembers of the "gang," such as Sen. Marco Rubio (R-Fla.) are also talking about reform.¶ It's still unclear what exact role **the president** will play, but sources say he **does plan to lead on the issue.** Rep. Zoe Lofgren (D-Calif.), the top Democrat on the House immigration subcommittee, said the White House seems sensitive to the fact that **Republicans and Democrats need to work out the issue in Congress** -- no one is expecting a fiscal cliff-style arrangement jammed by leadership -- while keeping the president heavily involved.

**Plan is unpopular – causes congressional fights**

**Kronk**, Associate Professor of Law at Kansas,**12** (Elizabeth Ann, Associate Professor of Law at the University of Kansas, Director, Tribal Law and Government Center, “Tribal Energy Resource Agreements: The Unintended “Great Mischief for Indian Energy Development” and the Resulting Need for Reform29 Pace Envtl. L. Rev. 811 (2012), 5-21.http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1705andcontext=pelr)

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

**Immigration key to economy- boosts all sectors**

**Klein 1-29**

Ezra is a Bloomberg and Washington Post Columnist, “To Fix the U.S. Economy, Fix Immigration,” <http://www.bloomberg.com/news/2013-01-29/to-fix-the-u-s-economy-fix-immigration.html>

¶ Washington tends to have a narrow view of what counts as “economic policy.” Anything we do to the tax code is in. So is any stimulus we pass, or any deficit reduction we try. Most of this mistakes the federal budget for the economy.¶ The truth is, **the most important piece of economic policy we pass -- or don’t pass -- in 2013 may be** something we don’t think of as economic policy at all: **immigration reform.**¶ ¶ Congress certainly doesn’t consider it economic policy, at least not officially. Immigration laws go through the House and Senate judiciary committees. But consider a few facts about immigrants in the American economy: About a tenth of the U.S. population is foreign-born. **More than a quarter of U.S. technology and engineering businesses started from 1995 to 2005 had a foreign-born owne**r. In Silicon Valley, half of all tech startups had a foreign-born founder.¶ Immigrants begin businesses and file patents at a much higher rate than their native-born counterparts, and while there are disputes about the effect immigrants have on the wages of low-income Americans, **there’s little dispute about their effect on wages overall: They lift them**.¶ The economic case for immigration is best made by way of analogy. Everyone agrees that aging economies with low birth rates are in trouble; this, for example, is a thoroughly conventional view of Japan. It’s even conventional wisdom about the U.S. **The retirement of the baby boomers is correctly understood as an economic challenge**. The ratio of working Americans to retirees will fall from 5-to-1 today to 3-to-1 in 2050. Fewer workers and more retirees is tough on any economy.¶ Importing Workers¶ There’s nothing controversial about that analysis. But if that’s not controversial, then immigration shouldn’t be, either. Immigration is essentially the importation of new workers. It’s akin to raising the birth rate, only easier, because most of the newcomers are old enough to work. And because living in the U.S. is considered such a blessing that even very skilled, very industrious workers are willing to leave their home countries and come to ours, the U.S. has an unusual amount to gain from immigration. **When it comes to the global draft for talent, we almost always get the first-round picks** -- at least, if we want them, and if we make it relatively easy for them to come here.¶ From the vantage of naked self-interest, the wonder isn’t that we might fix our broken immigration system in 2013. It’s that we might not.¶ **Few economic problems wouldn’t be improved by more immigration**. If you’re wo**rried about deficits, more young, healthy workers paying into Social Security and Medicare are an obvious boon**. **If you’re concerned about the slowdown in new company formation and its attendant effects on economic growth, more immigrant entrepreneurs should cheer you**. If you’re worried about the dearth of science and engineering majors in our universities, an influx of foreign-born students is the most obvious solution you’ll find.

¶ Politicians of both parties recognize this. “Our goal is to advance policies that make a difference in peoples’ lives, and that means we want to advance pro-growth reforms that are good for the economy,” Republican Representative Paul Ryan said at a recent Wall Street Journal breakfast. The first pro-growth reform he named? Immigration.¶ Many immigration opponents object to “amnesty” -- allowing people who broke the law to reap the benefits of legal status. That’s a moral question, and while I prefer not to stand on principle when we have 11 million people already living in the shadows in the U.S., it’s beyond the scope of this column. The main economic concern about allowing more immigration or legalizing the status of those who are already here is that immigrants will undermine the wages of the least-skilled Americans. In reality, it’s not clear that will happen.¶ Complementary Skills¶ In addition to growing the size of the national pie, unskilled immigrants tend to have what economists call complementary skills to U.S. workers. If one worker speaks English and another doesn’t, for example, they generally don’t pursue the same job.¶ In that way, it’s useful again to compare immigration with native birth rates. Increasing the number of native-born workers leads to more direct competition, because two native-born workers are probably more similar than an immigrant and a native worker. Yet most everyone cheers if they hear that the U.S. birth rate has ticked up.¶ Some workers are hurt by immigration, but they are typically already struggling. The best way to help them is with more training, better health care, a more generous earned income tax credit and so on. Those benefits are easier to provide in a growing economy with more young workers than in a sluggish one with chronic budget deficits. Immigration isn’t what really ails them, and it isn’t what stands in the way of aiding them.¶ Will immigrants use those same social services, as some immigration opponents contend, adding to the cost of the nation’s welfare state? Yes, but not as often as they’ll pay into it. In 2007, the Congressional Budget Office analyzed the issue while assessing President George W. Bush’s proposed immigration reforms. It found that **legalizing undocumented immigrants would increase federal revenue by $48 billio**n while costing only $23 billion in increased public services -- and that’s before accounting for the broader economic benefits of immigration.¶ There are few free lunches in public policy. But taking advantage of our unique position as a country where the world’s best, brightest and hardest-working desperately want to live is surely one. In the end, **economies aren’t mainly about budgets and tax cod**es, though Congress occasionally pretends otherwise. **They’re about workers and business owners. Immigration reform is a way to get more of both.**

**Decline causes war**

**Kemp 10**

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. **The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates**, further weakening the global economy. As a result, **energy demand falls** and the price of fossil fuels plummets, **leading to a financial crisis** for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to **political unrest: and nurtures different radical groups**, including, but not limited to, Islamic extremists. The **internal stability of some countries is challenged**, and there are more “failed states.” Most serious is the **collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran**, always worried about an extremist Pakistan, expands and **weaponizes its nuclear program. That further enhances nuclear proliferation** in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and **the possibility of a nuclear terrorist attack** in either the Western world or in the oil-producing states **may lead to a further devastating collapse** of the world economic market, with a tsunami-like impact on stability. In this scenario, **major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.**

### Off 5

#### The USFG should enter into binding consultation with Native American tribal governments over whether restrictions that allow the Secretary of the Interior to block production of coal, crude oil, natural gas, nuclear power, wind power and solar power in Tribal Energy Resource Agreements should end. The tribal governments will be given prior veto power over the implementation of the plan.

#### Certainty and immediacy of the plan means its competative

#### Tribes want consultation- not asking turns the case

Kronk 11

[Elizabeth, Univ of Kansas School of Law, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1952000>, mg]

Today, despite political acrimony on many domestic issues, both political parties and the majority of the American public seem to agree that the country should find new, domestic sources of energy. When looking for potential domestic energy resources, Indian country stands out as ideal territory for various types of energy development, as “[t]he Bureau of Indian Affairs estimates that while Indian land comprises only five percent of the land area in the United States, it contains an estimated ten percent of all energy resources in the United States.” In addition to traditional energy resources, Indian country also has substantial potential to provide alternative energy resources. Recognizing the potential key role that tribes will play in the development of the country’s domestic energy resources, Congress and federal agencies recognize that tribes should be included in future plans to develop energy resources. Moreover, many tribes are also interested in energy development to potentially promote tribal sovereignty and self-determination when it can be done in a manner that is consistent with tribal customs and traditions.¶ Recognizing the many potential benefits of increased energy development in Indian country, the Energy Policy Act of 2005 includes a provision designed to spur energy development in Indian country, Tribal Energy Resource Agreements (TERAs). Assuming a federally-recognized tribe can meet the numerous established criteria, the tribe may enter into a TERA with the Secretary of Interior. Once a TERA exists, the tribe is responsible for managing energy development within its territory. Additionally, TERAs allow tribes to avoid some federal requirements, such as project compliance with the National Environmental Policy Act (although the tribe must put an environmental assessment program into place before a TERA will be approved). Despite these incentives, no tribe to date has entered into a TERA. ¶ The article explores the reasons for the lack of tribal interest in TERAs. In particular, the article focuses on the provision that waives federal liability once a tribe has entered into a TERA. The article concludes that this waiver of federal liability is a significant contributor to the lack of tribal interest in TERA provisions. Because the article assumes that energy development in Indian country is beneficial to both tribal governments and the federal government and the TERA provisions should, therefore, be reformed to spur tribal interest, the article proposes potential solutions or TERA reforms that would likely lead to increased tribal interest. ¶

#### Turns self determination

Streater 12

[Scott, Greenwire, 8/15/12, <http://www.eenews.net/public/Greenwire/2012/05/15/2>, mg]

**A**n American Indian **tribe has filed a** federal **lawsuit** against the Interior Department **in an effort to stop** what would become **California's largest wind farm on public land.**¶ The lawsuit filed late yesterday in U.S. District Court for the Southern District of California in San Diego by the Quechan Tribe of the Fort Yuma Indian Reservation says the proposed wind project's 112 turbines would cause "irreparable injury" by destroying "culturally and visually significant lands and resources." It accuses the Bureau of Land Management of essentially ignoring the tribe's concerns.¶ The lawsuit comes just days after Interior Secretary Ken Salazar signed a record of decision (ROD) authorizing San Francisco-based Pattern Energy Group LP to build the Ocotillo Express Wind Energy Facility on more than 10,000 acres of BLM land in Southern California's Imperial County (Greenwire, May 14).¶ The Quechan Tribe, which wants a federal judge to throw out the ROD and to order a temporary injunction blocking construction until the lawsuit is resolved, has scheduled a news conference today in front of Pattern Energy Group's offices in La Jolla, Calif., to announce their action.¶ The ROD Salazar signed Friday approved a scaled-down version of the project proposal that proponents say sought to avoid culturally significant landmarks. BLM consulted with as many as 14 area American Indian tribes and cut more than 2,200 acres from the project boundaries after an extensive archaeological and cultural survey uncovered numerous ancient tribal artifacts and sacred locations.¶ The Quechan Tribe, which has about 3,500 members in California and Arizona, was among those consulted by BLM. But according to the 33-page complaint, the tribe's efforts to participate in the permitting process were "impaired by Interior's failure to exchange and share information with the Tribe, and Interior's failure to consider or incorporate the Tribe's comments and concerns in the planning process."¶ The tribe had expressed numerous concerns to BLM in the months leading up to Salazar signing the ROD, according to the lawsuit, which says the project site "contains geoglyphs, petroglyphs, sleeping circles, milling features, agave roasting pits, ceramics and rare artifacts," and that "construction of the current [project] design without direct impact to sites and artifacts will be impossible."¶ Ronda Aguerro, the Quechan Tribe's vice president, wrote in a Dec. 9 letter to BLM California State Director Jim Kenna that the project area "holds tremendous spiritual essence for the Quechan Tribe." And Aguerro pointed to the project's location near Carrizo Mountain, an area "recounted and held sacred in our Creation Story, songs, and other oral traditions."¶ "To allow a project of such magnitude to be erected next to one of our sacred sites -- which helps form our identity as Quechan -- would be a desecration of our culture and way of life," she wrote.¶ John Bathke, the tribe's historic preservation officer in Yuma, Ariz., said in an interview that despite the religious and spiritual significance of the site, BLM never made any serious attempt to address the tribe's concerns.¶ "**BLM did consult, but what the federal law and the directives have asked for is** meaningful consultation**. We met with them, but** they didn't listen to our concerns**,"** Bathke said. "The meetings with the federal government have been a mere formality **and have not resulted in any meaningful protections of our cultural resources.** It **appears the current administration wants to approve this and many other projects** as part of their [election] campaign, **and basically** renewable energy is coming at the expense of Indian culture**."**

### Off 6

#### CP Text:

#### The United States federal government should:

#### · Reinstate federal liability in Tribal Energy Resource Agreements.

#### · Allow identification and incorporation of environmental mitigation measures at the discretion of individuals entering into Tribal Energy Resource Agreements.

#### · Stream-line approval of Tribal Energy Resource Agreements and automatically approve Tribal Energy Resource Agreement proposals pending 271 days if inaction is taken on behalf of the Secretary of the Interior.

#### Counterplan solves self determination

**Royster**, 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)

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.

#### Solves but doesn’t link to politics

Kronk, assistant professor of law – Texas Tech University, ‘12

(Elizabeth Ann, 29 Pace Envtl. L. Rev. 811)

B. An Alternative Possibility for Reform: Reinstate Federal Liability under the TERA Provisions¶ As an alternative, a second recommendation for reforming the existing TERA provisions would call for reinstatement of federal liability so as **to increase tribal participation** in TERAs. This second proposal is also **an improvement over the status quo** in that it will (with any luck) alleviate tribal concerns related to the federal government's responsibility to tribes. Such a revision would arguably be consistent with the federal government's trust responsibility to tribes. As "the ability to hold the federal government liable for breach is at the heart of its trust obligation toward tribes," n163 the waiver of federal governmental liability [\*856] seems to be inconsistent with this federal trust obligation. **Removing the waiver would** also **allay fears that "private entities** such as energy companies **will** exploit tribal resources and **take unfair advantage of tribes**." n164 This is because the federal government would likely maintain a more active role in energy development under TERAs. Moreover, this proposal would likely be consistent with the federal viewpoint, such as the one expressed by Senator Bingaman, which envisions the federal government maintaining a significant role in Indian country.¶ Congress apparently intended the TERA provisions to be consistent with the federal government's trust responsibility to tribes. For example, one subsection of the TERA provisions refers specifically to the federal trust responsibility, affirming that the trust responsibility remains in effect. This provision mandates that the Secretary "act in accordance with the trust responsibility of the United States relating to mineral and other trust resources ... in good faith and in the best interests of the Indian tribes." It also notes that with the exception of the waiver of Secretarial approval allowed through the TERA framework, the Indian Energy Act does not "absolve the United States from any responsibility to Indians or Indian tribes, including ... those which derive from the trust relationship." n165¶ In addition to apparent consistency with the federal trust responsibility, federal liability under the TERA provisions is appropriate given that the federal government maintains a significant role in the development of energy within Indian country even under the TERA agreements. For example, under the TERA provisions, the federal government retains "inherently Federal functions." n166 Moreover, as discussed above, the federal government maintains a significant oversight role through the existing TERA provisions because it has a mandatory environmental review process which tribes must incorporate into TERAs. The failure to relinquish oversight to tribes ensures that the federal government will maintain a strong management role, even after a tribe enters into a TERA with the Secretary of the [\*857] Interior. Given that the federal government maintains a substantial oversight role under the TERA provisions (which it views as consistent with its federal trust responsibility), the federal government should remain liable for decisions made under TERAs. In addition to the strong administrative role that the federal government would still play under approved TERAs, it also maintains an important role as a tribal "reviewer." Under the TERA provisions, the federal government must review the tribe's performance under the TERA on a regular basis. n167 Although the existing TERA provisions certainly mark an increased opportunity for tribes to participate in decision-making related to energy development within Indian country, the federal government's role should remain significant. The proposal to reinstate federal liability under the TERA provisions, therefore, recognizes the significant role that the federal government still plays under the existing TERA provisions.¶ If Senator Bingaman's viewpoint is any indication, Congress may be unwilling to relinquish federal oversight over energy development within Indian country. As a result, the first proposal for reform discussed above may prove to be unacceptable to Congress. Assuming this is the case, this second proposal allows the federal government to maintain an oversight role in Indian county and reinstates the federal government's liability. Based on the legislative history detailed above, **reinstatement of the federal government's liability would likely address many of the concerns § Marked 09:25 § raised by tribes regarding the existing TERA provisions**. In this way, this second proposal would also constitute an improvement over the status quo.¶ VI. CONCLUSION¶ For a variety of reasons, America needs to increase energy production from domestic sources. Indian tribes may prove the perfect partners for the federal government to achieve its goal of increased domestic production of energy. These tribes have the available natural resources, and experience managing these resources, to make them excellent partners. Increased energy [\*858] production within Indian country would serve federal interests and tribal interests, as such endeavors would **increase tribal sovereignty and self-determination** while promoting economic diversification within Indian country. Congress recognized this potentially beneficial relationship with tribes when it passed the TERA provisions of the Energy Policy Act of 2005. The existing TERA provisions arguably "streamline" the process of energy production within Indian country. Under these provisions, tribes that enter into a TERA with the Secretary of Interior may be relieved of Secretarial oversight in certain regards. Despite the benefits of such "streamlining," at the time of this writing, no tribe has entered into a TERA agreement with the Secretary of Interior.¶ In an effort to understand the potential reasons for lack of tribal engagement with TERA, this article has explored the legislative history associated with the TERA provisions. A review of the legislative history has illustrated that concerns related to the then-pending TERA provisions generally fell into three categories: (1) concerns associated with the federal government's trust responsibility to tribes; (2) concerns associated with federally-mandated environmental review provisions; and (3) concerns associated with the general waiver of federal liability.¶ Based on the review of applicable legislative history and the concerns expressed therein, this article proposes reform of the TERA provisions. In particular, this article proposes two potential reforms. The first represents a tribal sovereignty perspective. Under the first proposal, the tribes should be liable (i.e., a waiver of federal government liability should be maintained) only if tribes are the true decision-makers. In this regard, the first proposal argues for the removal of federal mandates, such as the conditions of environmental review and administrative oversight. The reform would allow tribes to truly make decisions regarding energy development within their territories.¶ Because Congress may not accept this proposal, the article also proposes an option for reform that maintains the federal mandates and oversight role of the federal government, but reinstates the federal government's liability under the TERA provisions. Such a reinstitution of federal liability is consistent [\*859] with the federal government's trust responsibility to tribes. Although the two proposals are contradictory, **both represent improvements over the status quo and**, should either be adopted by Congress, **would encourage tribes to enter into TERAs with the Secretary of Interior**.

#### Prevents corporate exploitation and neo-colonial control

Mills 11 (Andrew D, Energy and Resources Group at UC Berkeley, Wind Energy in Indian Country: Turning to Wind for the Seventh Generation,")

Broadly, the idea of dependency is summarized in the common phrase “the development of underdevelopment.” Dependency is a critique of the idea of the economic base in that underdeveloped regions become specialists in providing raw materials and resources that are used in developed regions to create manufactured goods. Substantial value is added to products in the latter stages of processing, but very little of that value is transferred to the developing region. Furthermore, when large multi-national companies control the extraction of the resources the developing region often forgoes the opportunity to build capacity in the production of the base resource. Instead, the local economy simply provides access to the resource and unskilled or semiskilled laborers (See Palma 1989 and Kay 1991). Beyond the lack of opportunity to capture value, the dependency critique argues that the success of developing a base resource can distort the structure of the regional economy. Instead of entrepreneurs developing a strong, diversified economy, the businesses that do emerge in the regional economy are oriented toward providing services to the large industrial companies that extract resources (Gunton 2003, 69). The services provided by the government can become focused on increasing the development of just one sector and income to the government becomes tied to the production of the resource. The economy of the entire region and the services provided by the government become linked to the price of the export resource. Moreover, if the resource is depleteable, the economy contracts as the resource becomes more and more difficult to extract in comparison to alternative resources. One measure of the degree of specialization in the production of energy resources is called the “oil dependency” metric. The “oil dependency” of the Navajo Nation is the ratio of the value of the energy exports (oil, coal, and gas) to the gross regional product of the Navajo Nation (Ross 2001). A rough approximation of the “oil dependency” for the Navajo Nation was found to be 1.1 using data available in the Comprehensive Economic Development Strategy of the Navajo Nation (Choudhary 2003) and energy prices from the Energy Information Agency. The most oil dependent national economy in the world is Angola (68.5). Norway, which exports a considerable amount of oil has an oil dependency of 13.5. The 25th of the top 25 most oil dependent nations has an oil dependency of 3.5 (Ross 2001). Although the Navajo Nation would not be considered as “oil dependent” as these other countries, it is also important to realize that 15- 20% of the Navajo Nation annual funds are from royalties on energy resources. If the grants from external sources like the federal government are not included in the sources of annual funds, then the share of energy resources increases to 25-50% of the Navajo Nation budget (Choudhary 2003, 65 - Table 7). Furthermore, the second largest recipient of revenues from the Navajo General Fund is the Division of Natural Resources (ibid, 64 – Table 6C). Overall these statistics indicate that the Navajo Nation is oriented toward a heavy reliance and focus on energy development. Discussions of the Navajo economy in the context of dependency often focus on the importance of the tribe being in control of energy development. By control, most authors are referring to the right to dictate the pace and laws surrounding energy development on their lands (Owens 1979, Ruffing 1980). However, gaining control of energy development is only one part of the dependency critique. The second part is that even with control over the pace and quality of energy development the Navajo government needs to steer the economy in diverse directions so that the economy does not become specialized in providing services to energy extraction companies. One could easily argue that the Navajo Nation is focusing significant efforts on increasing the level of energy development at the expense of supporting alternative development pathways (for example, the speech by Shirley and Trujillo to the World Bank, 2003). Many authors draw from dependency theories to show why the Navajo Nation is locked into an energy development pathway. One of the more important historical reasons for the orientation of the Navajo government toward energy development was that the Navajo government was first formed in 1922 by the federal government to act as a representative of the Navajo interests in signing oil leases on Navajo land. As part of organizing the relationship between the federal government, the Navajo Business Council (as it was first called) and energy developers, the Interior Department set policy such that the Navajo government would own all of the mineral resources on tribal land, rather than individual Navajo owning rights to the mineral resources (Wilkins 2002, 101-3). At the end of World War II, the still fledgling tribal government turned to economic development to improve the conditions in Navajoland in hopes that young people would not feel forced to live elsewhere (Iverson and Roessel 2002, 189). In a process LaDuke and Churchill refer to as “Radioactive Colonialism”, the driver of economic development became, with pressure from energy companies and the Bureau of Indian Affairs (BIA), revenues from leasing land for large-scale extraction of the Navajo’s mineral resources by private non-Navajo enterprises. The Vanadium Corporation of America and Kerr-McGee provided $6.5 million in uranium mining revenues and jobs for Navajo miners. The miners worked under dangerous and unhealthy conditions, but many of the jobs were the only wage employment ever brought to the southeastern part of the reservation. An oil boom in Navajoland between 1958-62 provided tens of millions of dollars in revenues to the tribal government (Iverson and Roessel 2002, 218-20). The Tribal Council used the revenues to provide services to many of the Navajo and increasingly employed Navajo in government related jobs. The government officials and workers, along with the few that obtained jobs in the capital-intensive extractive industries formed a class with similar economic interests. Their wealth and power increased with increasing energy development. LaDuke and Churchill explain: “With this reduction in self-sufficiency came the transfer of economic power to a neo-colonial structure lodged in the US/tribal council relationship: ‘development aid’ from the US, an ‘educational system’ geared to training the cruder labor needs of industrialism, and employment contracts with mining and other resource extraction concerns… for now dependent Indian citizens.”(LaDuke and Churchill 1985, 110) The relationship between economic development and energy development was further extended in the 1960’s with the development of large coalmines and power plants on Navajo lands. The federal government played numerous roles in support of connecting energy developers and the tribal government. One example that illustrates the diverse ways in which the federal government encouraged energy development with tribes was a stipulation in the contracts for cooling water for the Mohave Generating Station in Nevada that specified that the owners of Mohave could only use the Colorado River for cooling water as long as the power plant used “Indian Coal”6 (also see Wiley and Gottlieb 1982, 41-53; and Wilkinson 1996, 1999 for more of the history of coal development in the Western Navajo Nation). Recommendations for economic development in initial stages of the self-determination era focused not on how to build a diverse economy, but how to take control of energy development and ensure that the Navajo Nation received the best deal for their resources. In describing the role of policy in energy development on the Navajo Nation one author focuses on the capital-intensive nature of energy development. Whereas one recommendation might be to shift the focus to other development pathways, her recommendation was to take steps to ensure that the jobs that are created by energy development go toward tribal members. She recommended that provisions should be included in contracts for training and preference hire for tribal members with all energy development projects (Ruffing 1980, 56-7). A major transition point in the history of energy development on Navajo lands involved the Chairman of the Navajo Nation, Peter McDonald, declaring that changes needed to take place before the Navajo Nation would support continued development of energy resources on their land in the 1970’s. Two major points he stressed included making sure that energy development was being carried out for the benefit of the Navajo people and that the tribe should be given opportunities to participate in and control energy development (Robbins 1979, 116). The main critique of both these stances from dependency theory is that even with control over energy development, it is still a capital-intensive, highly technical, and tightly controlled industry (Owens 1979, 4). The Navajo Nation can participate in energy development, but not without creating distortions in the orientation of the economy and government. In this same vein, it is difficult to argue that wind energy is inherently different that other forms of energy development from the dependency perspective. While it is possible for the Navajo Nation to take steps to ensure that the tribe will obtain the maximum benefit from wind development, such as ensuring that tribal members and Navajo owned businesses have preference in hiring, it is not likely that the tribe can become a self-sufficient wind developer without severely distorting the priorities of the economy and Navajo government. The alternative is to allow a specialized, large company from off the reservation to develop the wind farm, with the possibility that a Navajo partner can take part in the ownership of the wind farm. While the Navajo Nation may now have the institutional structure in place to control wind energy development on their land, wind development is still subject to the dependency critique.

#### Turns the aff

Mills 11 (Andrew D, Energy and Resources Group at UC Berkeley, Wind Energy in Indian Country: Turning to Wind for the Seventh Generation,")

To allow the market mechanism to be the sole director of the fate of human beings and their natural environment… would result in the demolition of society…. Labor cannot be shoved about, used indiscriminately, or even left unused without affecting also the human individual who happened to be the bearer of that particular commodity. In disposing of a man’s labor power the system would incidentally, dispose of the physical, psychological, and moral entity ‘man’ attached to that tag. Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation through vice, perversion, crime, and starvation. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted…, the power to produce food and raw materials destroyed (Karl Polanyi quoted in Block 2001, 75-6). Polanyi argues that there is a moral impediment to disembedding the economy from society. It is simply wrong to treat nature and human beings as objects whose value is determined entirely by the market. Subordinating the organization of nature and human beings to market forces violates principles that have governed societies for centuries: nature and human life have almost always been recognized as having a sacred dimension (Block 2001, xvii – xxxix). In trying to understand the impacts of energy development on families that were directly impacted by energy development on the Navajo Nation, a group of anthropologists in the early 1980’s applied enthoscience methods to unearth the social impacts of energy development. Instead of applying a cost benefit analysis approach whereby the economic value of the social costs were compared to the economic benefits of energy development, the researchers recognized that they must begin with a framework that allows for some costs to a way of life to not have a simple monetary value. Essentially they recognized that what determines the quality of life in not always based on the monetary value of resources. Instead, if energy development were to occur and cause impacts, certain mitigating steps would need to be in place to prevent severe deterioration in the way of life for families impacted by energy development. The researchers evaluated the impacts by first establishing the possible costs to the way of life. Then instead of looking at benefits to offset the costs, they evaluated possible mitigations to the costs that would be required before the impacted families could even begin to assess any benefits that would accompany energy development (Schoepfle et al. 1984, 887-8).

### Case

#### Fearing nuclear weapons is the only way to prevent nuclear omnicide.

Harvard Nuclear Study Group 83

(“Living With Nuclear Weapons,” p. 47)

The question is grisly, but nonetheless it must be asked. Nuclear war [sic] ca**nnot be avoided simply by refusing to think about it**. Indeed the task of reducing the likelihood of nuclear war should begin with an effort to **understand how it might start**. When strategists in Washington or Moscow study the possible origins of nuclear war, they discuss “scenarios,” imagined sequences of future events that could trigger the use of nuclear weaponry. Scenarios are, of course, speculative exercises. They often leave out the political developments that might lead to the use of force in order to focus on military dangers. That nuclear war scenarios are even more speculative than most is something for which we can be thankful, for it reflects humanity’s fortunate lack of experience with atomic warfare since 1945. But imaginary as they are, nuclear scenarios can help identify problems not understood or dangers not yet prevented because they have not been foreseen.

**Libidinal economy doesn’t explain violence**

Havi **Carel 6**, Senior Lecturer in Philosophy at the University of the West of England, “Life and Death in Freud and Heidegger”, Google Books

Secondly, the constancy principle on which these ideas are based is incompatible with observational data. **Once the passive model of the nervous system has been discarded, there was no need for external excitation in order for discharge to take place, and more generally, "the behavioural picture seemed to negate the notion of drive, as a separate energizer of behaviour**" {Hcbb. 1982. p.35). According to Holt, **the nervous system is not passive; it does not take in and conduct out energy from the environment, and it shows no tendency to discharge its impulses. 'The principle of constancy is quite without any biological basis**" (1965, p. 109). He goes on to present the difficulties that arise from the pleasure principle as linked to a tension-reduction theory. **The notion of tension is "conveniently ambiguous**": it has phenomenological, physiological and abstract meaning. But **empirical evidence against the theory of tension reduction has been "mounting steadily" and any further attempts to link pleasure with a reduction of physiological tension are "decisively refuted**" (1965, pp. 1102). Additionally, **the organism and the mental system are no longer considered closed systems. So the main arguments for the economic view collapse, as does the entropic argument for the death drive** (1965, p. 114). A final, more general criticism of Freud's economic theory is sounded by Compton, who argues, "Freud fills in psychological discontinuities with neurological hypotheses" (1981, p. 195). **The Nirvana principle is part and parcel of the economic view and the incomplete and erroneous assumptions about the nervous system** (Hobson, 1988, p.277). It is an extension ad extremis of the pleasure principle, and as such is vulnerable to all the above criticisms. The overall contemporary view provides strong support for discarding the Nirvana principle and reconstructing the death drive as aggression.

#### Extinction outweighs

L Schwartz, medical ethicist, 2002, Medical ethics: a case based approach, www.fleshandbones.com/readingroom/pdf/399.pdf

Supporters of the sanctity of life ethic dismiss considerations about quality and quantity because, they assert: • all life is worth living under any condition because of • the inherent value of life. The upshot of the theory is that quality of life, although desirable, is irrelevant to assessing the value of a life because all life is inherently valuable. Many supporters of the sanctity of life criterion say this is true only of human life, but there are religious groups who claim sanctity extends to all life. Either way, the sanctity of life principle states that all human life is worthy of preservation and hence eliminates the justifiability of abortion, euthanasia and rational suicide and, at extremes, withdrawal of futile treatment: The sanctity of life ethic holds that every human life is intrinsically good, that no life is more valuable than another, that lives not fully developed (embryonic and fetal stages) and lives with no great potential (the suffering lives of the terminally ill or the pathetic lives of the severely handicapped) are still sacred. The condition of a life does not reduce its value or justify its termination.6 So, whereas to determine the value of a life on its quality asserts that there is a relevant difference between the type of life and the fact of life, this distinction is rejected by sanctity arguments as irrelevant. The sanctity criterion tends to be associated with religious beliefs. The Judeo-Christian rationale is usually that lives are inherently valuable because they are gifts from God and not ours to end as we wish. In a sense, our lives are on loan to us and, as such, must be treated with respect. In Islam, the suffering associated with reduced quality of life is also considered a divine endowment and therefore ought to The value of life: who decides and how? 115 be borne without assistance, as the suffering is said to lead to enlightenment and divine reward. However, religious arguments are not required to defend sanctity beliefs. It is enough simply to say that all human lives are deserving of equal respect not because of what they have to offer or have offered or potentially will offer, but because they exist. The notion of inalienable human rights attributes force to the value of human life with the assertion that it needs no justification. This is the primary merit of the sanctity of life ethic – that a life requires no justification – but justification is required for the premature termination of that life. In this sense, the principle acts as a forceful bulwark against devaluing human life. Article 3 of the United Nations Declaration of Human rights asserts simply that: Everyone has the right to life, liberty and security of person.7 No argument is made to justify this claim because no argument is necessary. However, it will be necessary to justify any violation of this right.

#### Aff doesn’t solve self-determination

Porter 98

Porter, Director – Tribal Law and Government Center @ U Kansas, ‘98¶ (Robert B., 31 U. Mich. J.L. Reform 899)

Nevertheless, no matter how much responsibility we assume **for the redevelopment of our** **sovereignty**, **the** United States **remains a barrier to** our forward **progress**. **America**, **because of its geography**, its **people**, its **culture**, **and** its **media**, **is an overwhelming influence** on the Indigenous nations located within its borders. n9 As a result, **tremendous forces inhibit** the preservation and **strengthening** of the unique fabric of **our nations and** thus **form considerable obstacles to our redevelopment**. n10¶ One of the most **significant barriers** to our redevelopment **lie**s **in** the body of **American law**. Since its founding, the United States has developed an extensive body of law - so-called [\*902] "federal Indian law" - to define and regulate its relationship with the Indian nations remaining within its borders. n11 While this law may seem to have a neutral purpose, it would be more accurate to say that "**federal Indian law**" **is** really "federal Indian control law" because it has the twofold mission of establishing **the legal base**s **for** American **colonization of the continent** n12 **and perpetuating** American power and **control over the Indian nations**. n13 Unfortunately, in addition to this foundational problem, **the law itself is not simple or uniform**. Federal **Indian control** law **is a hodgepodge of statutes**, **cases**, **executive orders**, **and** administrative **regulations that embody a wide variety of divergent policies towards the Indian nations** since the time the United States was established. n14 Because old laws reflecting **these old policies have rarely been repealed** when new ones reflecting new policies have been adopted, n15 **any efforts** that might be taken by the Indian nations and the federal government **to strengthen Indian self-determination must first cut through the legal muck created by over 200 years of** prior federal **efforts to accomplish precisely the opposite** § Marked 09:27 § result.¶ As I see it, this legal minefield profoundly effects tribal sovereignty. For example, **conflicting federal laws** - such as those that provide for the federal government's protective trust responsibility over Indian affairs n16 and those that allow federal, [\*903] state, and private interests to interfere with tribal self-government n17 - make it impossible **for the Indian nations to exercise** fully their sovereign right of **self-determination**. As past efforts to destroy our sovereign existence continue to have their corrosive effect, so too, in my view, does the natural result of those efforts: the destruction of Indigenous culture and the eventual assimilation of Indian people into American society. n18 Inevitably, **in the absence of any affirmative efforts to decolonize** both the Indian nations and federal Indian control law, I believe that **our distinct native identity will continue to erode**, **and with it**, **the existence of our nations**.

**Aff is a short-term fix – doesn’t solve sovereignty**

Cornell and Kalt ‘6

Cornell – director of the Udall Center for Studies in Public Policy AND\*\* Kalt – Ford Foundation Professor of International Political Economy (Cornell. Stephen. Joseph P.Kalt. “Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t.” http://jopna.net/pubs/jopna\_2005-02\_Approaches.pdf)

That effort has taken a number of different forms over the years as the federal government tried different reservation development strategies. In the last quarter of the twentieth century, a growing number of tribes—faced with desperate economic conditions and operating under the federal policy of self-determination—also joined the effort. Many tribal governments moved economic development to the top of their policy agendas, sometimes complementing federal efforts, sometimes operating at cross-purposes. But in most cases, **a *single* approach dominated both federal and tribal activities. We call this approach the “standard” approach**. Characteristics of **the Standard Approach** This approach has five primary characteristics: it **is short-term and non-strategic; it lets persons or organizations other than the Indian nation set the development agenda; it views development as *primarily an economic problem*; it views indigenous culture as an obstacle to development; and it encourages narrowly defined and often self-serving leadership**. These are generalizations. Not every case of reservation economic development that we describe as following the standard approach follows it in its entirety. Some aspects of the approach might be apparent in some cases while others may be missing. Additionally, Indian nations seldom talk about development in exactly these terms. Nonetheless, these characteristics provide a general description of what federal and tribal development efforts, regardless of intent, frequently have looked like. Far too often, consciously or otherwise, this is how development has been done in Indian Country. Each characteristic of the standard approach deserves elaboration. 1. In the standard approach, decision-making is short-term and non-strategic. **Viewed as a single population, reservation Indians are among the very poorest Americans, with high indices of** unemployment, ill health, inadequate housing, and an assortment of other problems associated with poverty. **The need for jobs and income is enormous. In an era of self- determination, this situation puts intense pressure on tribal politicians to “get something going!” Grim social and economic conditions, combined with disgruntled and often desperate constituents, encourage a *focus* on short-term fixes instead of fundamental issues**. “**Get something going!” becomes “get *anything* going!”** **It leaves strategic questions § Marked 09:28 § such as “what kind of society are we trying to build?” or “How do we get there from here?” or “How do all these projects fit together?” for another day that seldom comes, overwhelmed by the need to *generate immediate results* for reservation residents**. **Short terms of elected office, common in many tribal governments, have similar effects**. With only two years in which to produce results, **few politicians have incentives to think about long-term strategies.** **They will face reelection long before most such strategies become productive**. **These same factors also encourage a focus on starting businesses instead of sustaining them**. **It’s grand openings, ribbon-cuttings, and new initiatives, not second rounds of investment or fourth- year business anniversaries, that gain media attention**, community support, and votes at election time. Newly-elected leaders who want to make their mark on the community are going to be more interested in starting something new than in sustaining what the previous administration—whom they probably opposed at election time—put in place. This means that **prospective businesses**, **whether genuinely promising or not, often get more attention from tribal leadership than established ones do**. Finally, there is a tendency to look for home-runs: where’s the killer project that will transform the local economy? **Grandiose plans take the place of potentially more effective—if less dramatic— incremental building of a broadly based economy**.

# 2NC

## T restriction

**Enviro Review not a restriction**

**Enviro Review is a requirement—doesn’t restrict**

**County of Santa Clara ‘13**

<http://www.sccgov.org/sites/planning/PermitsDevelopment/EnvironmentalProtection/AssessmentProcedures/Pages/Procedures.aspx> updated: 2/19/2013 11:25 AM

Environmental review involves the evaluation of the potential impact of a project upon the environment. **Environmental review is a legal requirement** for a variety of project types, including land development, change in land use, and change in regulations applicable to land use and development. Such evaluation is mandated by the California Environmental Quality Act (CEQA)​.

**The purpose** of environmental review **is** **to**:

**Inform** governmental **decision-makers** and the public of the potential environmental effects of proposed activities.

Identify the ways that environmental damage can be avoided or significantly reduced.

Prevent environmental degradation resulting from proposed land developments by requiring changes in projects through the use of alternatives or mitigation measures when the County finds that the changes are feasible.

**Disclose** to the public the **reasons** **why** **the County approved the project** in the manner chosen **if** **significant environmental effects remain**.

**Precision: NEPA specific**

**Precision test: EPA says restrictions ZERO times, says require 7 times, and regulate 11 times**

**EPA ’12—NEPA homepage**

<http://www.epa.gov/compliance/basics/nepa.html>

Basic Information

The National Environmental Policy Act (NEPA) [42 U.S.C. 4321 et seq.] was signed into law on January 1, 1970. The Act establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within the federal agencies. The Act also establishes the Council on Environmental Quality (CEQ). The complete text of the law is available for review at NEPAnet.

NEPA **Requirements**

Oversight of NEPA

Implementation

The NEPA Process

EA and EIS Components

Federal Agency Roles

EPA's Role

The Public's Role

NEPA **Requirements**

Title I of NEPA contains a Declaration of National Environmental Policy which **requires** the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 **requires** federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. These statements are commonly referred to as environmental impact statements (EISs).

Title II of NEPA establishes the Council on Environmental Quality (CEQ).

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Oversight Of NEPA

The Council on Environmental Quality, which is headed by a fulltime Chair, oversees NEPA. A staff assists the Council. The duties and functions of the Council are listed in Title II, Section 204 of NEPA and include:

Gathering information on the conditions and trends in environmental quality

Evaluating federal programs in light of the goals established in Title I of the Act

Developing and promoting national policies to improve environmental quality

Conducting studies, surveys, research, and analyses relating to ecosystems and environmental quality.

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Implementation

In 1978, CEQ promulgated **regulations** [40 CFR Parts 1500-15081] implementing NEPA which are binding on all federal agencies. The **regulations** address the procedural provisions of NEPA and the administration of the NEPA process, including preparation of EISs. To date, the only change in the NEPA **regulations** occurred on May 27, 1986, when CEQ amended Section 1502.22 of its **regulations** to clarify how agencies are to carry out their environmental evaluations in situations where information is incomplete or unavailable.

CEQ has also issued guidance on various aspects of the **regulations** including: an information document on "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act," Scoping Guidance, and Guidance Regarding NEPA **Regulations**. Additionally, most federal agencies have promulgated their own NEPA **regulations** and **guidance** which generally follow the CEQ procedures but are tailored for the specific mission and activities of the agency.

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The NEPA Process

The NEPA process consists of an evaluation of the environmental effects of a federal undertaking including its alternatives. There are three levels of analysis: categorical exclusion determination; preparation of an environmental assessment/finding of no significant impact (EA/FONSI); and preparation of an environmental impact statement (EIS).

Categorical Exclusion: At the first level, an undertaking may be categorically excluded from a detailed environmental analysis if it meets certain criteria which a federal agency has previously determined as having no significant environmental impact. A number of agencies have developed lists of actions which are normally categorically excluded from environmental evaluation under their NEPA **regulations**.

EA/FONSI: At the second level of analysis, a federal agency prepares a written environmental assessment (EA) to determine whether or not a federal undertaking would significantly affect the environment. If the answer is no, the agency issues a finding of no significant impact (FONSI). The FONSI may address measures which an agency will take to mitigate potentially significant impacts.

EIS: If the EA determines that the environmental consequences of a proposed federal undertaking may be significant, an EIS is prepared. An EIS is a more detailed evaluation of the proposed action and alternatives. The public, other federal agencies and outside parties may provide input into the preparation of an EIS and then comment on the draft EIS when it is completed.

If a federal agency anticipates that an undertaking may significantly impact the environment, or if a project is environmentally controversial, a federal agency may choose to prepare an EIS without having to first prepare an EA.

After a final EIS is prepared and at the time of its decision, a federal agency will prepare a public record of its decision addressing how the findings of the EIS, including consideration of alternatives, were incorporated into the agency's decision-making process.

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EA And EIS Components

An EA is described in Section 1508.9 of the CEQ NEPA **regulations**. Generally, an EA includes brief discussions of the following:

The need for the proposal

Alternatives (when there is an unresolved conflict concerning alternative uses of available resources)

The environmental impacts of the proposed action and alternatives

A listing of agencies and persons consulted.

An EIS, which is described in Part 1502 of the **regulations**, should include:

Discussions of the purpose of and need for the action

Alternatives

The affected environment

The environmental consequences of the proposed action

Lists of preparers, agencies, organizations and persons to whom the statement is sent

An index

An appendix (if any)

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Federal Agency Role

The role of a federal agency in the NEPA process depends on the agency's expertise and relationship to the proposed undertaking. The agency carrying out the federal action is responsible for complying with the **requirements** of NEPA.

Lead Agency: In some cases, there may be more than one federal agency involved in an undertaking. In this situation, a lead agency is designated to supervise preparation of the environmental analysis. Federal agencies, together with state, tribal or local agencies, may act as joint lead agencies.

Cooperating Agency: A federal, state, tribal or local agency having special expertise with respect to an environmental issue or jurisdiction by law may be a cooperating agency in the NEPA process. A cooperating agency has the responsibility to assist the lead agency by participating in the NEPA process at the earliest possible time; by participating in the scoping process; in developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise; and in making available staff support at the lead agency's request to enhance the lead agency's interdisciplinary capabilities.

Council of Environmental Quality (CEQ): Under Section 1504 of CEQ's NEPA **regulations**, federal agencies may refer to CEQ on interagency disagreements concerning proposed federal actions that might cause unsatisfactory environmental effects. CEQ's role, when it accepts a referral, is generally to develop findings and recommendations, consistent with the policy goals of Section 101 of NEPA.

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EPA's Role

The Environmental Protection Agency (EPA), like other federal agencies, prepares and reviews NEPA documents. However, EPA has a unique responsibility in the NEPA review process. Under Section 309 of the Clean Air Act, EPA is **required** to review and publicly comment on the environmental impacts of major federal actions, including actions which are the subject of EISs. If EPA determines that the action is environmentally unsatisfactory, it is **required** by Section 309 to refer the matter to CEQ.

In accordance with a Memorandum of Agreement between EPA and CEQ, EPA carries out the operational duties associated with the administrative aspects of the EIS filing process. The Office of Federal Activities in EPA has been designated the official recipient in EPA of all EISs prepared by federal agencies.

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The Public's Role

The public has an important role in the NEPA process, particularly during scoping, in providing input on what issues should be addressed in an EIS and in commenting on the findings in an agency's NEPA documents. The public can participate in the NEPA process by attending NEPA-related hearings or public meetings and by submitting comments directly to the lead agency. The lead agency must take into consideration all comments received from the public and other parties on NEPA documents during the comment period.

**2NC brightline**

**LITMUS TEST—can you comply? If you can, it is regulation, not restriction**

**Mohammed 7** - Kerala High Court Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, 1997 Equivalent citations: AIR 1997 Ker 121 Author: P Mohammed Bench: P Mohammed, <http://indiankanoon.org/doc/255504/?type=print>)

10. Microlight aircrafts or **hang gliders shall not be flown over** an assembly of **persons** or over congested areas or restricted areas including cantonment areas, defence installations etc. unless prior permission in writing is obtained from appropriate authorities. **These provisions do not create any restrictions**. **There is no total prohibition of operation of** microlight aircraft or **hang gliders.** **The distinction between 'regulation' and 'restriction' must be clearly perceived**. The '**regulation'** is a process which **aids main function** within the legal precinct **whereas 'restriction'** is a process which **prevents the function** without legal sanction. Regulation is allowable but restriction is objectionable. What is contained in the impugned clauses is, only regulations and not restrictions, complete or partial. They are issued with authority conferred on the first respondent, under Rule 133A of the Aircraft Rules consistent with the provisions contained in the Aircraft Act 1934 relating to the operation, use etc. of aircrafts flying in India. Microlight aircrafts, hang gliders and powered hang gliders are all coming within the definition of 'aircraft' contained in Section 2( 1) of the Act. Section 5 of the Act authorises the Central Government to make rules regulating among other things use and operation of aircraft and lor securing the safety of aircraft operation. Rule 133A authorises the first respondent to issue directions relating to the operation and use of the aircraft. Thus the analysis of the above provisions would sufficiently indicate that the impugned clauses contained in Exts. P4 and P5 arc purely measures regulating the use and operation of aircrafts.

**AT: CI – ‘conditions on production’**

**Conditions and restrictions are distinct—key to predictability**

**Pashman**, justice – New Jersey Supreme Court, 3/25/**’63**

(Morris, “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. LEXIS 479)

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. **It is within** these **rules of construction that** this **policy must be construed.**

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

**A2 Regulations restrict**

**Restriction is a subset of regulation**

**US District Court 9**—Judge Thomas E. Johnson, US District Court for the Southern District of West Virginia, http://law.justia.com/cases/federal/district-courts/west-virginia/wvsdce/5:2009cv00152/61171/33

9 The fourth prong of the Central Hudson test refers to "regulation" of speech. 447 U.S. at 567. **"Regulation" could be construed broadly as applying** [\*\*29] **a system of laws, including penalties,** affecting a particular manner of commercial speech. **However**, in subsequent cases, **the** Supreme **Court has employed the narrower word, "restriction," in place of "regulation**." See, e.g., Bd. of Trs. v. Fox, 492 U.S. 469, 476, 109 S. Ct. 3028, 106 L. Ed. 2d 388 (1989) ("[G]overnment restrictions upon commercial speech may be no more broad or no more expansive than 'necessary' to serve its substantial interests").

**A2 regulations have the effect of restricting**

**Nope, even if regs substantially reduce the ability to produce energy, that not a restriction on energy production**

**Texas Environmental Commission ‘03**

http://info.sos.state.tx.us/pls/pub/regviewer$ext.RegPage?sl=T&app=2&p\_dir=F&p\_rloc=123384&p\_tloc=59029&p\_ploc=39513&pg=4&p\_reg=200407114&ti=&pt=&ch=&rl=&z\_chk=48145

Andrews, Eden, HUWCD, Richland, and Seminole commented that the rule proposal may not physically take or seize property, but has the effect of negatively impacting private property. They also commented that the increased cost of water will negatively impact the price of real estate in rural Texas.

The commission disagrees that these rules are a taking of private property. The commission recognizes that the Texas Constitution and United States Constitution guarantee that private property shall not be taken for public use without just compensation. However, **these rules are not a restriction on the use or development of private property** to the benefit of the public. Moreover, **a decrease in property values does not constitute an automatic "taking"** of the property. Courts have recognized that **regulations may diminish property value to some extent without being compensable** **as long as the regulation does not** significantly drop the property value, interfere with the use and enjoyment of the property, or **deprive the property of all economical benefit or productive use**. In this case, the governmental action does not impair the existing use of the property nor does it make the property incapable of earning a reasonable rate of return. Accordingly, the commission has determined that these rules do not represent a taking of private property.

**Impairing energy production is NOT a restriction**

**Martin ‘10**

Winter, 2010

Susan Lorde Martin (Cypres Family Distinguished Professor of Legal Studies in Business and Director, Center for Teaching and Scholarly Excellence, Hofstra University. J.D., Hofstra University School of Law; A.B., Barnard) 20 Fordham Envtl. Law Rev. 427

In upstate New York, residents attempted to have the court annul final approval of an environmental impact statement created in support of a proposed wind farm by claiming that the approved setback requirements would amount to a de facto constitutional taking. n168 The court decided that the wind farm would be located on land owned by the developer and that the setbacks would not restrict neighboring property owners and, therefore, with no direct encroachment on private property even though its use might be impaired, no constitutional taking would occur. n169

### A2: Reasonability

#### Reasonability is impossible – it’s arbitrary and undermines research and preparation

Resnick ‘01

Resnick, assistant professor of political science – Yeshiva University, ‘1

(Evan, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2)

In matters of national security, establishing **a clear definition of terms is a precondition** for effective policymaking. **Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk** alienating their constituencies. They also risk **exacerbating misperceptions** and hostility among those the policies target. **Scholars who commit the same error undercut their ability to conduct valuable empirical research**. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

#### You aren’t reasonably topical- You don’t defend USFG action, this never makes any damn sense for why it matters.

#### Also irrelevant to our offense- If you destroy a stasis point or switch side debate we outweigh.

#### CI better:

#### A Predictable- Like a Disad clear offense outweighs.

#### B Prevents Judge intervention- No clear method means people intervene for what they want instead of what’s better for the community.

## FW

### A2: State Demands/Insturmentalization Bad

#### State action and coercion key to solve existential problems and turns corporate dominance

Mansbridge ’11

Jane is the Charles Adams Professor at the John F. Kennedy School of Government at Harvard, “On the Importance of Getting Things Done,” <http://journals.cambridge.org/download.php?file=%2FPSC%2FPSC45_01%2FS104909651100165Xa.pdf&code=61d04501e14285b50244640216120c97>

T¶ rend plus inaction equals¶ drift. When a¶ trend has external causes¶ and no one can act to intervene, that inaction leads to¶ drift—the unimpeded trajectory of change. Drift in the¶ United States produces the¶ domination of American¶ democracy by business interests. Drift in international¶ decisions produces global¶ warming. Speciﬁc institutional designs for government, such as the US separation of¶ powers, can cause the inaction that facilitates drift. More fundamentally, ingrained patterns of thinking can cause inaction. Here¶ I argue that the long and multifaceted resistance tradition in the¶ West contributes to inaction by focusing on stopping, rather than¶ using, coercion.¶ By contrast, a political theory of democratic action explicitly¶ recognizes that solving collective action problems requires lawgiving, and that lawgiving requires coercion—getting people to¶ do what they would not otherwise do through the threat of sanction and the use of force. The work of democracy is to make that¶ coercion somewhat more legitimate. Thus, while a theory of democratic action should incorporate resistance, it should not—and¶ cannot—be driven by resistance.¶ In the United States and on the planet, we now face problems¶ vaster than any that James Madison conceived, involving interdependence on a global scale and potential catastrophe for unborn¶ generations. Serious attempts to deal with these problems continue to be stymied, in part by a view of democracy that is in many¶ of its strands a theory of individual and collective resistance, not a¶ theory of collective action.

, for the sake of unborn¶ generations.

### Roleplaying Good

#### Prefer our framework – Policy role-play doesn’t indoctrinate or get stale – makes best Real World education.

Joyner ‘99

(Christopher C., Professor of International Law at Georgetown, “Teaching International Law”, 5 Ilsa. J. Int’l & Comp. L. 377, Lexis)

Use of the **debate can be an effective pedagogical tool** for education in the social sciences. Debates, like other **role-playing simulations, help students understand different perspectives on a policy issue by adopting a perspective as their own. But,** unlike other simulation games, **debates do not require that a student participate directly in order to realize the benefit of the game**. Instead of developing policy alternatives and experiencing the consequences of different choices in a traditional role-playing game, **debates present** the **alternatives** and consequences **in a** formal, **rhetorical fashion** before a judgmental audience. **Having the** class **audience serve as jury helps each student develop a well-thought-out opinion** on the issue **by providing contrasting** facts and **views and enabling** audience **members to pose challenges to each** debating **team**. These **debates ask** undergraduate **students to examine** the international legal **implications of various** United States foreign **policy actions.** Their chief tasks are to assess the aims of the policy in question, determine their relevance to United States national interests, ascertain what legal principles are involved, and conclude how the United States policy in question squares with relevant principles of international law. **Debate questions are formulated as resolutions**, along the lines of: "Resolved: The United States should deny most-favored-nation status to China on human rights grounds;" or "Resolved: The United States should resort to military force to ensure inspection of Iraq's possible nuclear, chemical and biological weapons facilities;" or "Resolved: The United States' invasion of Grenada in 1983 was a lawful use of force;" or "Resolved: The United States should kill Saddam Hussein." **In addressing both sides** of these legal propositions, **the student debaters must consult** the **vast literature** of international law, especially the nearly 100 professional law-school-sponsored international law journals now being published in the United States. This literature furnishes an incredibly rich body of legal analysis that often treats topics affecting United States foreign policy, as well as other more esoteric international legal subjects. Although most of these journals are accessible in good law schools, they are largely unknown to the political science community specializing in international relations, much less to the average undergraduate. **By assessing** the role of international law in **United States** foreign **policy**- making, **students realize that United States actions do not always measure up to** international legal **expectations**; that at times, international legal strictures get compromised for the sake of perceived national interests, and that concepts and principles of international law, like domestic law, can be interpreted and twisted in order to justify United States policy in various international circumstances. In this way, **the debate format gives students the benefits ascribed to simulations** and other action learning techniques, **in that it makes them become actively engaged with their subjects, and not be mere passive consumers. Rather than spectators, students become** legal **advocates,** **observing, reacting to, and structuring political** and legal **perceptions to fit the merits of their case.** The debate exercises carry several specific educational objectives. First, **students** on each team must work together to refine a cogent argument that compellingly asserts their legal position on a foreign policy issue confronting the United States. In this way, they **gain greater insight into the real-world** legal **dilemmas faced by policy makers.** Second, as they work with other members of their team, they realize the complexities of applying and implementing international law, and the difficulty of bridging the gaps between United States policy and international legal principles, either by reworking the former or creatively reinterpreting the latter. Finally, **research** for the debates **forces students to become familiarized with contemporary issues** on the United States foreign policy agenda and the role that international law plays in formulating and executing these policies. n8 The **debate** thus **becomes an excellent vehicle for pushing students beyond stale arguments** over principles **into the real world of policy analysis**, political critique, and legal defense.

### A2: Movements

#### Activism in debate doesn’t work

Solt ‘04

(Roger, Debate Coach – U. Kentucky, “Debate’s Culture of Narcissism”, Contemporary Argumentation and Debate, Vol. 25, p. 46)

In another early formulation, critical argument was deemed preferable because, unlike arguments resting on the illusory notion of policy fiat, it could have a real world political impact. This approach seems to have waned in recent years, and it has done so for good reason. The idea of policy fiat is sometimes dismissed as utopian, but the notion that a winning ballot in a college debate round could trigger a world-transforming social movement **borders on megalomania**. Beyond college debate’s few hundred active participants, some fraction of America’s hundreds of millions probably has a vague intimation that something like college debate exists. (They do, after all, watch “The Apprentice.”) But they are certainly not attentive to its outcomes, no newspaper reports debate results (“kritik of capitalism 3, capitalism 1”), nor do they understand its intricacies. And those relative few who do know something about debate know that it is a competitive game and that a judge’s ballot does not signify conviction or ideological conversion (as those of use who have voted for arguments like “nuclear war good” can readily attest.) People do not make fundamental moral and political judgments based on individual debate rounds; nor should they. Reflective people surely have better bases for their beliefs than the outcomes of fast, short, competitive debates.

## CP

### CBA Good- For CP

**Picking least bad practical option key**

**Finnis, ‘80**

John Finnis, deontologist, teaches jurisprudence and constitutional Law. He has been Professor of Law & Legal Philosophy since 1989,1980, Natural Law and Natural Rights, pg. 111-2

**The sixth requirement** has obvious connections with the fifth, but introduces a new range of problems for practical reason, problems which go to the heart of ‘morality’. For this **is** the requirement **that one bring about good in the world** (in one’s own life and the lives of others) **by actions that are efficient** for their (reasonable) purpose (s). **One must not waste** one’s **opportunities by using inefficient methods**. One’s **actions should be judged by their effectiveness**, by their fitness for their purpose, by their utility, **their consequences… There is a wide range of contexts in which it is possible and only reasonable to calculate, measure, compare, weigh, and assess the consequences of alternative decisions**. Where a choice must be made it is reasonable to prefer human good to the good of animals. Where a choice must be made it is reasonable to prefer basic human goods (such as life) to merely instru­mental goods (such as property). **Where damage is inevitable, it is reasonable to prefer** stunning to wounding, wounding to maiming, maiming to death: i.e. **lesser rather than greater damage** to one-and-the-same basic good in one-and-the-same instantiation. **Where one way of participating in a human good includes** both **all the good** aspects and **effects of its alternative, and more, it is reasonable to prefer that way: a remedy that both relieves pain and heals is to be preferred to the one that merely relieves pain**. Where a person or a society has created a personal or social hierarchy of practical norms and orienta­tions, through reasonable choice of commitments, **one can** in many cases **reasonably measure the benefits and disadvantages of alternatives**. (Consider a man who ha decided to become a scholar, or a society that has decided to go to war.) Where one ~is considering objects or activities in which there is reasonably a market, the market provides a common de­nominator (currency) and enables a comparison to be made of prices, costs, and profits. Where there are alternative techniques or facilities for achieving definite, objectives, cost— benefit analysis will make possible a certain range of reasonable comparisons between techniques or facilities. Over a wide range of preferences and wants, it is reasonable for an individual or society to seek o maximize the satisfaction of those preferences or wants.

# 1NR

# Politics

## Framework Arg

**Generic**

**Evaluating political costs and understanding tradeoffs key to prevent genocide**

**Lanz 8**

(David, Mediation Support Project for Swisspeace, “Conflict Management and Opportunity Cost: the International Response to the Darfur Crisis”)

There are no simple solutions for the contradictions outlined above – they represent complicated dilemmas and tricky trade-offs. It would be naïve to call for more coordination among external actors in Darfur, as the difference of their approaches is structural and refl ects their respective interests and contexts. There are, however, two lessons that we can learn. The fi rst is that resources are scarce and effective confl ict management requires priorities. It is not possible to simultaneously run a humanitarian operation, deploy peacekeepers, try the Sudanese President in an international court, negotiate a peace agreement, and foster the democratic transition of Sudan. We need to think about what is most important and concentrate our resources – money, political capital, personnel – to achieve this objective. The second lesson is that actors working in or on confl ict, whatever approach they take, must be aware that their decisions and actions have opportunity costs and that they can “do harm.” As David Kennedy writes, “the darker sides can swamp the benefi ts of humanitarian work, and well-intentioned people can fi nd themselves unwittingly entrenching the very things they have sought voice to denounce.”30 Also, those involved in the grand scheme of managing confl ict Darfur must realise that they are in essence projecting their morals and a Western political agenda and that, consequently, their good intentions may not be perceived as such, especially in the Arab world. Indeed, moving from selfcentred and self-righteous dogmatism to a pragmatic assessment of causes and consequences would be a big step, and it would certainly improve our ability to manage conflicts in Darfur and elsewhere.

**You should evaluate our politics DA. Their dogmatic refusal to consider political process implications is grounded in the same destructive blindness the aff criticizes.**

David **Chandler**, Centre for the Study of Democracy - University of Westminster, **‘3**

(British Journal of Politics and International Relations 5.3, “Rhetoric without responsibility”)

The attention to the articulation of a political mission, beyond the petty partisanship of left and right, through foreign policy activism abroad has been an important resource of authority and credibility for western political leaders. The ability to project or symbolise unifying ‘values’ has become a core leadership attribute. George W. Bush’s shaky start to the US presidency was transformed by his speech to Congress in the wake of the World Trade Centre and Pentagon attacks, in which he staked out his claim to represent and protect America’s ethical values against the terrorist ‘heirs of all the murderous ideologies of the 20th century’ (Bush 2001). Similarly, Tony Blair was at his most presidential in the wake of the attacks, arguing that values were what distinguished the two sides of the coming conflict: ‘We are democratic. They are not. We have respect for human life. They do not. We hold essentially liberal values. They do not’ (The Guardian, 27 March 1999). Peter Hain, minister of state at the UK Foreign Office, also focused on the ‘values that the terrorists attacked’ in his call for political unity around ‘tough action’ (The Guardian, 24 September 2001). By association with the cause of the victims of international conflicts, western governments can easily gain a moral authority that cannot be secured through the domestic political process. Even general election victories, the defining point of the domestic political process, no longer bring authority or legitimacy. This was clear in the contested victory of George W. Bush in the 2000 elections, which turned on the problem of the ‘hanging’ chad in Florida. However, the problem of deriving legitimacy from elections is a much broader one, with declining voter turnouts. In the British elections in 2001 Tony Blair achieved a landslide second term mandate, but there was little sense of euphoria—this was a hollow victory on a 50 per cent turnout which meant only one in four of the electorate voted for New Labour. The demise of the framework of traditional party politics, the source of western governments’ domestic malaise, is directly associated with the search for an external source of legitimacy. This process is illustrated in Michael Ignatieff’s quote from the writings of British war reporter Don McCullin: But what are my politics? I certainly take the side of the underprivileged. I could never say I was politically neutral. But whether I’m of the right or the left—I can’t say ... I feel, in my guts, at one with the victims. And I find there’s integrity in that stance (Ignatieff 1998, 22–23). Ignatieff suggests that the external projection of legitimacy or moral mission stems from the collapse of the left/right political framework, stating that ‘there are no good causes left—only victims of bad causes’ (ibid., 23). Governments, like many gap-year students, seek to define and find themselves through their engagement with the problems experienced by those in far-off countries. This search for a moral grounding through solidarity with the ‘victims of bad causes’ has led to an increasingly moralised ‘black and white’ or ‘good versus evil’ view of crisis situations in the non-western world.10 The jet-setting UK prime minister, Tony Blair, has been much criticised for appearing to deprioritise the domestic agenda in the wake of September 11, yet even his critics admit that his ‘moral mission’ in the international sphere has been crucial to enhancing his domestic standing. The search for ethical or moral approaches emphasising the government’s moral authority has inexorably led to a domestic shift in priorities making international policy-making increasingly high profile in relation to other policy areas. The emphasis on ethical foreign policy commitments enables western governments to declare an **unequivocal** moral stance, which helps to **mitigate** **awkward** **questions** of government mission and **political** **coherence** in the domestic sphere. The contrast between the moral certainty possible in selected areas of foreign policy and the uncertainties of domestic policy-making was unintentionally highlighted when President George Bush congratulated Tony Blair on his willingness to take a stand over Afghanistan and Iraq: ‘The thing I admire about this prime minister is that he doesn’t need a poll or a focus group to convince him of the difference between right and wrong’ (UKGovernment 2002). Tony Blair, like Bush himself, of course relies heavily on polls and focus groups for every domestic initiative. It is only in the sphere of foreign policy that it appears there are opportunities for western leaders to project a self-image of purpose, mission and political clarity. This is because it is easier to promote a position which can be claimed to be based on clear ethical values, rather than the vagaries of compromise and political pragmatism, in foreign policy than it is in domestic policy. There are three big advantages: first, the object of policy activism, and criticism, is a foreign government; second, the British or American government is not so accountable for matching rhetoric to international actions; and third, credit can be claimed for any positive outcome of international policy, while any negative outcome can be blamed on the actions or inaction of the government or population of the country concerned. The following sections highlight that the lack of connection between rhetorical demands and accountability for policy-making or **policy** **outcomes** has made selected high-profile examples of ethical foreign policy-making a **strong card** for western governments, under pressure to consolidate their standing and authority at home.

## AT Parania

#### Our approach to the 1AC is valid

Owen ‘2

(David Owen, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation **of ontology** and epistemologypromotes theory-construction from philosophical first principles, it cultivates **a** theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general **explanations** for classes of phenomena **is a question** for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

## AT Popular

### Native Review 2NC

#### Plan generates a backlash from environmentalists who want some federal oversight that’s 1NC Kronk.

**NEPA is the THIRD RAIL for ECO-GROUPS**

**Carver 12**

<http://www.theunderdome.net/site-map/territory/network/expanded-infrastructures>

Erik Carver is an architectural designer and artist based in New York City. He has worked individually on residential and institutional design, co-founded collaborative groups—Advanced Architecture, common room, and Seru. He teaches at Rensselaer Polytechnic Institute. Erik received a Masters of Architecture from Princeton University and a bachelor’s degree from University of California San Diego.

Government projects must go through a process of public review under the 1969 National Environmental Policy Act. A critic of this process, Vishaan Chakrabarti argues: "The rubber really hits the road on this when you talk to people in Washington about why there wasn't more infrastructure placed into the stimulus bill. And **the answer is really simple**: they tried. Actually, the White House did take a run at NEPA early on **and was completely beat back by the environmental lobby** in Congress who said, “**You cannot. It is a sacred cow. You can't touch it.**

## Extra Impact

### Key to women’s rights

#### Immigration key to women’s rights

LJ World 3-27

Lawrence Journal World, “Sandra Fluke Says Immigration Reform Crucial to Women’s Movement,” <http://www2.ljworld.com/news/2013/mar/27/sandra-fluke-says-immigration-reform-crucial-women/>

Sandra Fluke took a different-than-expected tack in her speech at Kansas University on Wednesday night, by making the case that women's rights and immigrant rights are one and the same.¶ The women's rights advocate said that all Americans must, citing the name of her speech, "make their voices heard" to stand up for the often underrepresented group.¶ “Our immigrant brothers’ fight and our immigrant sisters’ fight is our fight too,” she said. “I think it’s incumbent upon all of us to be an ally.”¶ Fluke, who rose to prominence last year after testifying before a U.S. House panel about the need for contraception access and subsequently being called a "slut" and "prostitute" by conservative talker Rush Limbaugh, gave the 2013 Emily Taylor and Marilyn Stokstad Women's Leadership Lecture in the Woodruff Auditorium at the Kansas Union before a crowd of hundreds. She chose to focus on immigration reform because of Congress' current focus on the issue. “This is our generation’s chance to get this right," she said.¶ She contended that the U.S. has an “employment-based” immigration system. Four out of five job visas go to men, she remarked, while women can wait as long as 20 years to reunite with their families in the States. Same-sex couples are unable to immigrate together because, thanks to the Defense of Marriage Act, their unions aren’t recognized by the federal government. Federal-immigration reform, she said, must focus on “family unity,” or “the right of all families to stay together regardless” of the circumstances. A new immigration system must also allow for stay-at-home mothers, she said.¶ Immigrant women are also at an increased risk for violence, Fluke asserted, whether because of smugglers, human traffickers or exploitative partners. Many are “trapped in modern-day slavery,” she said. Domestic-abuse victims are less likely to call the police because of the threat of deportation. U Visas prevent that problem by giving crime victims a path to citizenship; that policy must be expanded, Fluke said.¶ Women are also more likely to lack health insurance because they work at jobs that don’t offer it, she said, so they end up turning to emergency rooms for care.¶ For the 11 million undocumented immigrants in the U.S., more than half of them women, “Their voices are not strong enough on their own,” Fluke said. “They need the rest of us” — Americans, or as Fluke called them, the “U.S.-born descendants of immigrants.”¶ “I fervently hope we don’t miss our chance to make our voices heard,” she said, “to make women’s history for the next women’s history month.”

## Econ Decline -> Inequality

#### And voting neg solves it –

# Case

### Util

**All lives are infinitely valuable, the only ethical option is to maximize the number saved**

**Cummisky, 96**

(David, professor of philosophy at Bates, Kantian Consequentialism, p. 131)

Finally, **even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one**—**because dignity cannot be added and summed in this way**—this **point still does not justify deontologieal constraints**. On the extreme interpretation, **why would not killing one person be a stronger obligation than saving two persons**? If I **am concerned with the priceless dignity of each**, it would seem that 1 may still saw two; it **is just that my reason cannot be that the two compensate for the loss of the** one. Consider Hills example of a priceless object: If **I can save two of three priceless statutes only by destroying one. Then 1 cannot claim that saving two makes up for the loss of the one.** § Marked 10:09 § But Similarly, the loss of the two is not outweighed by the one that was not destroyed. Indeed, **even if dignity cannot be simply summed up. How is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible?** Even if two do not simply outweigh and thus compensate for the lass of the one, **each is priceless**: **thus, I have good reason to save as many as I can**. In short, it is not clear how the extreme interpretation justifies the ordinary killing'letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.\*

### High Impact Outweighs

#### Even if our impacts are extremely unlikely they still outweigh—it’s more devastating than repetitive systemic harm

**Sunstein 2007** – Felix Frankfurter Professor of Law at Harvard Law School, clerked for Justice Marshall in the Supreme Court (Cass, Harvard University Press, “Worst-case scenarios”, pages 138-9)

A Catastrophic Harm Precautionary Principle, of the modest kind just sketched, raises several questions. The most obvious is whether a low-probability risk of catastrophe might not deserve more attention than higher-probability risks, even when the expected value appears to be equal. The reason is that the loss of 200 million people may be more than 1,000 times worse than the loss of 2,000 people. Pause over the real-world meaning of a loss of 200 million people in the United States. The nation would find it extremely hard to recover. Private and public institutions would be damaged for a long time, perhaps forever. **What kind of government would emerge? What would its economy look like? Future generations would inevitably suffer.** The effect of a catastrophe greatly outruns a simple multiplication of a certain number of lives lost. The overall "cost" of losing two-thirds of the American population is far more than 100,000 times the cost of losing 2,000 people.

The same point holds when the numbers are smaller. Following the collapse of a dam that left 120 people dead and 4,000 homeless in Buffalo Creek, Virginia, psychiatric researchers continued to find significant psychological and sociological changes two years after the disaster occurred. Survivors still suffered a loss of direction and energy, along with other disabling character changes.41 One evaluator attributed this "Buffalo Creek Syndrome" specifically to "the loss of traditional bonds of kinship and neighborliness."42

Genuine catastrophes, involving tens of thousands or millions of deaths, would magnify that loss to an unimaginable degree. A detailed literature on the "social amplification of risk" explores the secondary social losses that greatly outrun the initial effects of given events.43 The harm done by the attacks of 9/11, for instance, far exceeded the deaths on that day, horrendous as those were. § Marked 10:09 § One telling example: Many people switched, in the aftermath of the attack, to driving long distances rather than flying, and the switch produced almost as many highway deaths as the attacks themselves, simply because driving is more dangerous than flying.44 The attacks had huge effects on other behaviors of individuals, businesses, and governments, resulting in costs of hundreds of billions of dollars, along with continuing fear, anxiety, and many thousands of additional deaths from the Afghanistan and Iraq wars.

We might therefore identify a second version of the Catastrophic Harm Precautionary Principle, also attuned to expected value but emphasizing some features of catastrophic risk that might otherwise be neglected**: Regulators should consider the expected value of catastrophic risks, even when the worst-case scenario is highly unlikely.** In assessing expected value, regulators **should consider the distinctive features of catastrophic harm, including the "social amplification” of such harm.** Regulators should choose cost-effective measures to reduce those risks and should attempt to compare the expected value of the risk with the expected value of precautionary measures.

### A2: Root Cause/Violence Proximate

**Their inevitability claim is overdetermination- specific factors and explanations outweigh**

**Sagan 00**.

[Scott D Sagan, prof of Poli Sci Stanford, ACCIDENTAL WAR IN THEORY AND PRACTICE 2-8-00 www.sscnet.ucla.edu/polisci/faculty/trachtenberg/cv/sagan.doc]

**To make reasonable judgements** in such matters **it is essential**, in my view, **to avoid the common "fallacy of overdetermination**." **Looking backwards** at historical events, **it is** always **tempting to underestimate** the importance of the **immediate causes of a war and argue that the likelihood of conflict was so high** that the **war would have broken out sooner or later** even **without the specific incident that set it off.** If **taken too far**, however, **this tendency eliminates the role of contingency in history and diminishes our ability to perceive the alternative pathways that were present § Marked 10:10 § to historical actors**. **The point is** perhaps **best made through a counterfactual about the Cold War**. **During the** 1962 **Cuban Missile Crisis, a** bizarre **false warning** incident in the U.S. radar systems facing Cuba **led officers** at the North American Air Defense Command **to believe that the U.S. was under attack** and that a nuclear weapon was about to go off in Florida. Now **imagine the counterfactual event that this false warning was reported and believed by U.S. leaders and resulted in a U.S. nuclear "retaliation"** against the Russians. **How would future historians have seen the causes of World War III?** **One can easily imagine arguments stressing** that the **war between the U.S. and the USSR was inevitable**. War was overdetermined: **given the deep political hostility** of the two superpowers, the conflicting ideology, the escalating arms race, nuclear war would have occurred eventually. **If not during that specific crisis over Cuba, then over the next one** in Berlin, or the Middle East, or Korea. From that perspective, focusing on this particular accidental event as a cause of war would be seen as misleading. **Yet, we all now know, of course that a nuclear war was neither inevitable nor overdetermined during the Cold War.**

### Psychoanalysis

**No empirical basis for applying psychology to state action**

**Epstein**, senior lecturer in government and IR – University of Sydney, **‘10**

(Charlotte, “Who speaks? Discourse, the subject and the study of identity in international politics,” European Journal of International Relations XX(X) 1–24)

One key advantage of the Wendtian move, granted even by his critics (see Flockhart, 2006), is that it simply does away with the level-of-analysis problem altogether. If states really are persons, then we can apply everything we know about people to understand how they behave. The study of individual identity is not only theoretically justified but it is warranted. **This cohesive self borrowed from** social psychology is what **allows Wendt to bridge the different levels of analysis and travel between the self of the individual and that of the state, by way of** a third term, ‘**group self’**, which is simply **an aggregate of individual selves.** Thus for Wendt (1999: 225) ‘the state is simply a “group Self” capable of **group level cognition’**. Yet that the individual possesses a self does not logically entail that the state possesses one too. It is in this leap, from the individual to the state, that IR’s **fallacy** of composition **surfaces** most clearly.

Moving beyond Wendt but maintaining the psychological self as the basis for theorizing the state

Wendt’s bold ontological claim is far from having attracted unanimous support (see nota­bly, Flockhart, 2006; Jackson, 2004; Neumann, 2004; Schiff, 2008; Wight, 2004). **One line of critique of the states-as-persons thesis has taken shape around** the **resort to psy­chological theories,** specifically, around the respective merits of Identity Theory (Wendt) and SIT (Flockhart, 2006; Greenhill, 2008; Mercer, 2005) **for understanding state behav­iour**.9 Importantly for my argument, that the state has a self, and that this self is pre-social, remains unquestioned in this further entrenching of the psychological turn. Instead questions have revolved around how this pre-social self (Wendt’s ‘Ego’) behaves once it encounters the other (Alter): whether, at that point (and not before), it takes on roles prescribed by pre-existing cultures (whether Hobbessian, Lockean or Kantian) or whether instead other, less culturally specific, dynamics rooted in more universally human char­acteristics better explain state interactions. SIT in particular emphasizes the individual’s basic need to belong, and it highlights the dynamics of in-/out-group categorizations as a key determinant of behaviour (Billig, 2004). SIT seems to have attracted increasing interest from IR scholars, interestingly, for both critiquing (Greenhill, 2008; Mercer, 1995) and rescuing constructivism (Flockhart, 2006).

For Trine Flockart (2006: 89–91), SIT can provide constructivism with a different basis for developing a theory of agency that steers clear of the states-as-persons thesis while filling an important gap in the socialization literature, which has tended to focus on norms rather than the actors adopting them. She shows that a state’s adherence to a new norm is best understood as the act of joining a group that shares a set of norms and val­ues, for example the North Atlantic Treaty Organization (NATO). What SIT draws out are the benefits that accrue to the actor from belonging to a group, namely increased self-esteem and a clear cognitive map for categorizing other states as ‘in-’ or ‘out-group’ members and, from there, for orientating states’ self–other relationships.

Whilst coming at it from a stance explicitly critical of constructivism, for Jonathan Mercer (2005: 1995) the use of psychology remains key to correcting the systematic evacuation of the role of emotion and other ‘non-rational’ phenomena in rational choice and behaviourist analyses, which has significantly impaired the understanding of inter­national politics. SIT serves to draw out the emotional component of some of the key drivers of international politics, such as trust, reputation and even choice (Mercer, 2005: 90–95; see also Mercer, 1995). Brian Greenhill (2008) for his part uses SIT amongst a broader array of psychological theories to analyse the phenomenon of self–other recog­nition and, from there, to take issue with the late Wendtian assumption that mutual recognition can provide an adequate basis for the formation of a collective identity amongst states.

**The main problem with this psychological turn is the** very utilitarian, almost **mecha­nistic**, **approach to non-rational phenomena** it proposes, which tends to evacuate the role of meaning. In other words, **it** further **shores up the pre-social dimension of the concept of self** that is at issue here. Indeed norms (Flockhart, 2006), emotions (Mercer, 2005) and recognition (Greenhill, 2008) are hardly appraised as symbolic phenomena. In fact, in the dynamics of in- versus out-group categorization emphasized by SIT, language counts for very little. Significantly, in the design of the original experiments upon which this approach was founded (Tajfel, 1978), whether two group members communicate at all, let alone share the same language, is non-pertinent. It is enough that two individuals should know (say because they have been told so in their respec­tive languages for the purposes of the experiment) that they belong to the same group for them to favour one another over a third individual. **The primary determinant of individual behaviour** thus emphasized **is a pre-verbal, primordial desire** to belong, which seems closer to pack animal behaviour than to anything distinctly human. **What the group stands for, what specific set of meanings and values binds it together, is unimportant. What matters primarily is that the group is valued positively**, since posi­tive valuation is what returns accrued self-esteem to the individual. In IR Jonathan Mercer’s (2005) account of the relationship between identity, emotion and behaviour reads more like a series of buttons mechanically pushed in a sequence of the sort: posi­tive identification produces emotion (such as trust), which in turn generates specific patterns of in-/out-group discrimination.

Similarly, Trine Flockhart (2006: 96) approaches the socializee’s ‘desire to belong’ in terms of the psychological (and ultimately social) benefits and the feel-good factor that accrues from increased self-esteem. At the far opposite of Lacan, the concept of desire here is reduced to a Benthamite type of pleasure- or utility-maximization where mean­ing is nowhere to be seen. More telling still is the need to downplay the role of the Other in justifying her initial resort to SIT. For Flockhart (2006: 94), in a post-Cold War con­text, ‘identities cannot be constructed purely in relation to the “Other”’. Perhaps so; but not if what ‘the other’ refers to is the generic, dynamic scheme undergirding the very concept of identity. At issue here is the confusion between the reference to a specific other, for which Lacan coined the concept of *le petit autre*, and the reference to *l’Autre*, or Other, which is that symbolic instance that is essential to the making of *all* selves. As such it is not clear what meaning Flockhart’s (2006: 94) capitalization of the ‘Other’ actually holds.

The individual self as a proxy for the state’s self

Another way in which **the concept of self has been** centrally involved in **circumventing the level-of-analysis problem** in IR has been to treat the self of the individual as a proxy for the self of the state. The literature on norms in particular has highlighted the role of individuals in orchestrating norm shifts, in both the positions of socializer (norm entre­preneurs) and socializee. It has shown for example how some state leaders are more sus­ceptible than others to concerns about reputation and legitimacy and thus more amenable to being convinced of the need to adopt a new norm, of human rights or democratization, for example (Finnemore and Sikkink, 1998; Keck and Sikkink, 1998; Risse, 2001). It is these specific **psychological qualities** pertaining to their selves (for example, those of Gorbachev; Risse, 2001) that ultimately **enable the norm shift to occur.** Once again **the individual** self ultimately **remains** **the basis for explaining** the **change in state behaviour.**

To summarize the points made so far, **whether the state is literally considered as a person** by ontological overreach, whether **so only by analogy, or whether the person stands as a proxy for the state, the ‘self’** of that person **has been** consistently **taken as the reference point for studying state identities.** Both in Wendt’s states-as-persons thesis, and in the broader psychological turn within constructivism and beyond, the debate has con­sistently revolved around the need to evaluate which of the essentialist assumptions about human nature are the most useful for explaining state behaviour. It has never ques­tioned the validity of starting from these assumptions in the first place. That is, **what is left unexamined is this assumption is that what works for individuals will work for states** too. **This is IR’s central fallacy of composition, by which it has persistently eschewed** rather than resolved **the level-of-analysis problem.** Indeed, **in the absence of a clear dem­onstration of a logical identity** (of the type A=A) **between states and individuals, the assumption that individual interactions will explain what states do rests on** little more than a leap of faith**, or** indeed an **analogy.**