### Inherency

#### The Indian Tribal Energy Development and Self Determination Act, or ITESDA, would allow for tribal ownership and joint ventures of renewable projects, but the requirement that American Indians enter a Tribal Energy Resource Agreement, or TERA, with the Secretary of Interior precludes their development because of the high costs required

Royster, Co-Director, Native American Law Center, Tulsa, ’12

Judith V. Royster, Chapman Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” *Stanford Environmental Law Journal*, 31 Stan. Envtl. L.J. 91 (March), pp. 117-120, Lexis [ACG CEDA]

IV. ITEDSA: The Solution That Isn't  
Perhaps the solution is one nice neat statutory package that would authorize a tribe to develop any or all of its energy resources - without regard to whether those resources constitute "minerals" or not - using whatever type of development deal the tribe believes is best. And one exists. Under the Indian Tribal Energy Development and Self-Determination Act (ITEDSA) of 2005,122 tribes may enter into leases or agreements of any kind for the development of any energy resource. ITEDSA solves many of the problems noted here with the scattershot statutory approach.

First, it unambiguously applies to all energy resources. Although the statute does not contain a definition of energy resources, the implementing regulations define energy resources as "both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrological resources.”123 There is simply no question, as there is with the minerals statutes, that renewable energy sources are covered along with traditional energy minerals.

Second, ITEDSA normalizes the lease and agreement term. With the exception of oil and gas leases, which may be entered into for the standard ten years and so long thereafter as the oil or gas is produced in paying quantities,124 all leases and agreements run for a maximum of thirty years, with an option to renew at the discretion of the tribe.125 Having a single term applicable to all energy development eliminates the confusion of twenty-five years [117-118] for surface leases, ten years for agricultural leases, and five years to accomplish forest products harvesting. Moreover, the thirty-year term is sufficiently long, especially with a thirty-year renewal option, to justify the necessary investments by the non-Indian parties.

Third, ITEDSA adopts the best innovation of the 1982 IMDA: it opens up the tribal role beyond that of passive lessor or seller. Tribes are authorized to enter into leases or business agreements, without limitation on the kind or structure, "for the purpose of energy resource development on tribal land."126 Business agreements are broadly defined in the regulations as "any permit, contract, joint venture, option, or other agreement that furthers any activity related to locating, producing, transporting, or marketing energy resources on tribal land," and "any other business agreement entered into or subject to administration under a TERA [tribal energy resource agreement]."127 A tribe would thus be free, for example, to enter into a joint operating agreement for the construction and operation of solar collectors**, something that is unavailable, or at best uncertain, under current statutory authority**. The IMDA allows joint ventures, but its applicability to renewable energy resources is questionable: § 415 allows the placement of solar panels and collectors on tribal land, but it is restricted to leases only. ITEDSA eliminates the problems inherent in using these statutes for renewable energy production by authorizing non-lease arrangements for alternative energy production.

Fourth, ITEDSA goes a leap beyond most current statutes, and eliminates the cumbersome step of secretarial approval for every lease and business agreement. Under ITEDSA, tribes may enter into these instruments on their own authorization, without involving the Secretary of the Interior.128 This provision eliminates one of the drawbacks of the existing development statutes - mineral, surface, forest, and agricultural. As discussed earlier, those statutes generally require the approval of the Secretary of the Interior for each lease, agreement, or sale, with its attendant time delays and the possibility that the Secretary could deny development desired by the tribe.

ITEDSA thus presents a solution to the problems with other [118-119] development statutes discussed in Parts II and III. So what is the drawback? The drawback to ITEDSA is that an Indian tribe, to enter into energy leases and agreements without specific secretarial approval, must first enter into a tribal energy resource agreement (TERA) with the Secretary of the Interior.129 The development of a TERA requires a tribe to meet a number of statutory criteria, develop an extensive tribal environmental review process for each energy development project, and demonstrate to the Secretary that the tribe has "sufficient capacity to regulate the development" of its energy resources.130 At present, only a handful of tribes even potentially meets the last requirement. Although several tribes have expressed interest in developing a TERA,131 by mid-2011 no tribe had submitted a TERA application.132

This signifies that ITEDSA, designed as a solution, in fact is not one for the vast majority of tribes with energy resources. The front-end costs of time, money, and staffing to develop a TERA and shepherd it through the approval process are substantial, if not prohibitive.133 The back-end costs of providing an environmental review process and addressing public input into tribal decisions and compliance are similarly substantial. These costs mean that ITEDSA may ultimately be useful to only a small cadre of tribes with considerable energy resources to develop.134 For a tribe [119-120] seeking to place a few solar collectors on tribal land or harvest forest residues as biomass, however, the TERA process may be more of a barrier than an opportunity.135

#### This federal interference has blocked energy development on indigenous lands

Dreveskracht, Lawyer, Galanda Broadman, 11/27

2012, Ryan Dreveskracht, Associate, Galanda Broadman, PLLC, of Seattle, an American Indian majority-owned law firm, “Alternative Energy in American Indian Country: Catering to both Sides of the Coin,” Energy Law Journal, Vol. 33:431, page 432-448, [Language Edited: Indigenized] [DLP CST]

Yet, as of May 2012, “only one commercial-scale renewable energy project [is operating] in all of [indigenous] Indian country.”72 In short, the federal government has failed to allow [nations] tribes to enter the alternative energy market at all.73 Therefore, if a tribe chose to develop its own lands in a similar manner to that of the “Imperial” and “Genesis” projects – save for the disturbance of its areas of cultural and spiritual significance – the project would have been stopped dead in its tracks long before those non-Indian projects.

1. Questions and Answers

On April 1, 2011, the Committee on Natural Resources in the U.S. House of Representatives set out to finally determine (1) just why federal law poses such a hindrance to Native American alternative energy development, and (2) what needs to be done to find a solution.74 In his opening statement, Committee Chairman Don Young set the tone for testimony to follow: “[B]ecause of outdated or duplicative federal regulations and laws, tribes often feel that the federal government is treating them unfairly. . . . These rules and policies often slow energy development and discourage businesses to invest on tribal lands.”75 Tribal [indigenous] officials identified the following impediments:

### Plan

**Plan: The United States federal government should end the requirement that American Indians in the United States enter into a Tribal Energy Resource Agreement prior to forming non-leasing business agreements for solar and wind projects.**

### Contention 1: Indigenous Economic Development

#### Trust “protection” in the status quo manifests as colonialism – indigenous nations are forced to make exploitative and environmentally harmful agreements in a false choice between destitution and devastation

Gough, Intertribal Council on Utility Policy, 9

Gough 9—Intertribal Council On Utility Policy; paper submitted by Honor the Earth, the Intertribal Council on Utility Policy, the Indigenous Environmental Network, and the International  Indian Treaty Council (Bob, Energy Justice in Native America, A Policy Paper for Consideration by the Obama Administration and the 111th Congress, [www.mynewsletterbuilder.com/email/newsletter/1409857447](http://www.mynewsletterbuilder.com/email/newsletter/1409857447)) [DLP WPT] [Language edited – indigenized/nationized]

HISTORY OF EXPLOITATION AND ENERGY INJUSTICE

The history of resource exploitation, including conventional energy resources, in Indian Country has most recently been highlighted by the Cobell lawsuit against the Department of the Interior on behalf of individual Indian land owners, which requires both accountability of the federal trustees and a just settlement for the Indian plaintiffs. The programmatic exploitation of conventional energy resources has run an equally long and often deadly course in [indigenous] Indian Country, with a distinctly colonial flavor where [nations] tribes have supplied access to abundant natural resources under trust protection at rock bottom prices in sweetheart deals promoted by the federal government, yet often go un-served or underserved by the benefits of such development. Even the most recent federal energy legislation and incentives are still designed to encourage the development of tribal resources by outside corporate interests without ownership or equity participation of the host tribes.

The toxic legacy left by fossil fuel and uranium development on tribal lands remains today and will persist for generations, even without additional development. Mines and electrical generation facilities have had devastating health and cultural impacts in Indian country at all stages of the energy cycle- cancer from radioactive mining waste to respiratory illness caused by coal-fired power plant and oil refinery air emissions on and near [indigenous] Native lands. Native [indigenous] communities have been targeted in all proposals for long-term nuclear waste storage.

Compensation for uranium miners and their families has not been fulfilled from the last nuclear era, and every [indigenous] tribal government with uranium resources has opposed new uranium mining developments, including in the Grand Canyon, as an immoral and untenable burden for Native American communities. In addition, energy-related deforestation has serious climate change and human rights impacts for Indigenous communities globally. Approximately 20% of climate change-inducing emissions come from deforestation and land use, often from unsustainable energy projects, biofuel (agrofuel) and other monocrop development fueled by a need to satisfy tremendous foreign and World Bank debt obligations. On an international level, the US has yet to sign onto the United Nations Declaration of the Rights of Indigenous Peoples, we believe signing onto this important agreement is an essential early step in the context of the administration’s dealings with Native America.

When considering energy and climate change policy, it is important that the White House and federal agencies consider the history of energy and mineral exploitation and [nations] tribes, and the potential to create a dramatic change with innovative policies. Too often [nations] tribes are presented with a false choice: either develop polluting energy resources or remain in dire poverty. Economic development need not come at the cost of maintaining cultural identity and thriving ecosystems. Providing incentives to develop further fossil fuels and uranium in Indian country will only continue the pattern of ignoring the well-being of [nations] tribes and Alaska Native villages in favor of short-sighted proposals that exploit the vulnerabilities of poor, politically isolated communities.

#### As a result indigenous nations are the most impoverished and suffer the most in the country

Gough, Intertribal Council on Utility Policy, 9

Gough 9—Intertribal Council On Utility Policy; paper submitted by Honor the Earth, the Intertribal Council on Utility Policy, the Indigenous Environmental Network, and the International  Indian Treaty Council (Bob, Energy Justice in Native America, A Policy Paper for Consideration by the Obama Administration and the 111th Congress, [www.mynewsletterbuilder.com/email/newsletter/1409857447](http://www.mynewsletterbuilder.com/email/newsletter/1409857447)) [DLP WPT] [Language edited – indigenized/nationized]

Ironically, whiles some Native Nations and their reservation communities have borne the brunt of destructive energy development that has reaped massive profits for some, they are the poorest in the country, with high unemployment rates and inadequate housing.

The unemployment rate on Indian reservations is more than twice the national rate.

The median age in Indian Country is about 18 years, with a young and rapidly growing population in need of both jobs and housing.

The poverty rate for Native Americans is 26%; more than twice the national average.

More than 11% of Indian homes do not have complete plumbing. About 14% of reservation households are without electricity, 10 times the national rate.

In rural Alaska where Alaska Natives predominately reside, 33% of the homes lack modern water and sanitation facilities.

Energy distribution systems on rural reservations are extremely vulnerable to extended power outages during winter storms threatening the lives of reservation residents.

Reservation communities are at a statistically greater risk from extreme weather related mortality nationwide, especially from cold, heat and drought associated with a rapidly changing climate.

Reservations are waiting on more than 200,000 needed new houses.

About 1/3 of reservation homes are trailers, generally with completely inadequate weatherization.

Inefficient homes are a financial liability, leaving owners vulnerable to energy price volatility.

Fuel assistance programs provide millions of dollars of assistance to tribal communities. While necessary in the short term, they do nothing to address the cycle of fuel poverty due to leaky inefficient homes, and the need for a localized fuel economy.

Internationally, the present levels of deforestation and climate-related disasters are creating huge populations of environmental refugees. It is anticipated that within 20 years, we will be spending some 20% of world GDP on climate change related mitigation and disasters.

Unemployment rates, poverty and the need for efficiency improvements and renewable energy provide an ideal opportunity on tribal reservations and Alaska Native villages for maximizing the impact of a green jobs initiative. Local jobs weatherizing buildings, constructing, installing and maintaining renewable energy technology could be created. This has huge financial implications for rural economies, and for the overall US economy.

#### This affects over 5 million people in the US alone

US Census Bureau, 12

2012, US Census Bureau, “American Indian and Alaska Native Heritage Month: November 2012,” October 25, 2012, http://www.census.gov/newsroom/releases/archives/facts\_for\_features\_special\_editions/cb12-ff22.html [DLP CEDA]

Population

5.1 million

As of the 2011 American Community Survey, the nation's population of American Indians and Alaska Natives, including those of more than one race. They made up 1.6 percent of the total population. Of this total, about half were American Indian and Alaska Native only, and about half were American Indian and Alaska Native in combination with one or more other races.

#### Lack of economic opportunity breeds dependence and threatens indigenous survival

Ahmat, Executive Director, Cape York Land Council, ’3

Richard Ahmat, “Doing Indigenous Social Business and Enterprise: the View from Cape York,” Address to the Indigenous Enterprise Summit, Canberra - 21 May, 2003, http://www.partnerships.org.au/Library/doing\_indigenous\_social\_business.htm [D8T]

We do not believe that there is any fatal contradiction between our culture and identity as an indigenous people and the development of a real economy. Indeed we argue that the greatest threat to the long-term survival of our culture is our passive welfare economic condition. It is our situation of dependency which is breaking down our social fabric, and this social breakdown is resulting in the loss of our languages and our culture. The cultural traditions of socially dysfunctional people will not last long in this world - they will soon pass away. Cultural survival therefore makes economic development urgent and necessary.

#### Renewable energy development is the nexus-point for self-determination

Arizona Law Review ‘10

Bethany C. Sullivan, J.D. Candidate, University of Arizona James E. Rogers College of Law. “NOTE: Changing Winds: Reconfiguring the Legal Framework for Renewable-Energy Development in Indian Country,” 52 Ariz. L. Rev. 823, Fall [JSN] [Language edited – Indigenized]

Improving tribal ability to develop renewable energy would not only alleviate some of these economic pressures, but would also resonate with many tribes' traditional values regarding sustainable use of the Earth's resources. The Navajo Nation Code itself pronounces the "duty and responsibility of the Dine [the Navajo people] to protect and preserve the beauty of the natural world for future generations." n19 Technologies such as wind-and solar-based energy generation comport readily with this ethic and stand in stark contrast to the historic exploitation of Indian natural resources through coal mining and hydroelectric dams - uses that left permanent scars on the landscape. n20

Not only do practical and moral considerations support the development of tribal alternative energy projects, but Congress also has a legal imperative to do so. This imperative stems from the federal government's long-standing trust responsibility for American Indians. n21 Congress, embracing this responsibility without qualification, has stated that it is the "principal goal of Federal Indian policy ... to promote tribal economic development, tribal self-sufficiency, and strong tribal government." n22 For the last several decades, federal Indian policy has been firmly anchored in the concept of self-determination. This concept [\*828] **encompasses notions of tribal [indigenous] growth and self-sufficiency as directed by each tribe [nation] itself, representing a distinct shift away from federal control** and management of tribal resources and services. n23 The role envisioned for the federal government is on the sidelines, working to assist tribes in their path to self-determination. n24 However, while the effect of this policy can be seen in the growth and development of tribal governments, courts, and business enterprises, the reality is that most tribes are still far from embodying self-determination to the fullest. n25

#### Alternative energy is great for indigenous economies – can produce 1 trillion dollars in revenue

Dreveskracht, Lawyer, Galanda Broadman, 11/27

2012, Ryan Dreveskracht, Associate, Galanda Broadman, PLLC, of Seattle, an American Indian majority-owned law firm, “Alternative Energy in American Indian Country: Catering to both Sides of the Coin,” Energy Law Journal, Vol. 33:431, page 432-448, [Language Edited: Indigenized] [DLP CST]

An estimated $1 trillion in revenue is possible were [indigenous] Indian country to fully develop its energy resources.67 With tribes already feeling the brunt of global warming,68 the environmental benefits of using alternative energies to support the next generation are increasingly being explored.69 With unemployment levels that are disproportionately high in Indian country,70 perhaps equally important is that alternative energies are job-creating hothouses.71

#### Indigenous ownership or investment in renewables is necessary to prevent leakage and spur reinvestment

Miskwish, president Laguna Resource Services Inc, 10  
Michael Connolly, Laguna Resource Services Inc is an environmental consulting firm and a principal with High Pass Energy, Inc. He served 17 years as a councilman for the Campo Band of Kumeyaay including as tribal treasurer, May 2010, “CAPTURING THE FULL BENEFIT OF ON-RESERVATION RENEWABLE ENERGY,”, 7 American Bar Association Section of Environment, Energy, and Resources, NATIVE AM. RESOURCES COMM. NEWSLETTER 3, [DLP ACG CEDA] [Language edited – Indigenized]

Under this scenario we now fold in some of the big issues that come up with on-reservation development. For many tribes there has been a recurring theme of Indian resources extracted or used with little or no significant economic gain for the community at large. In fact, the process of exploitation of resources on Indian [indigenous] lands has significant similarities to the third world economic colonialism of the early twentieth century. Resources were taken from Indian lands for a royalty payment that was often deemed “fair” by government representatives with very little stake in the community.

These resources then went to other locations where they were transformed into products sold into the commercial product flow of modern society. The “value added” to these materials was significantly skewed toward the off-reservation economy. The end result of decades of economic colonialism has been a basic mistrust of “passive” deals which simply extract resources and don’t include a direct involvement of the tribes as investors or owners, and fail to reinvest in the long-term tribal economy.

#### The option of indigenous ownership enables true self-determination. Active control over projects ensures they reflect indigenous priorities, economically and otherwise.

Royster, Co-Director, Native American Law Center, Tulsa, ’12

Judith V. Royster, Chapman Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” *Stanford Environmental Law Journal*, 31 Stan. Envtl. L.J. 91 (March), pp. 114-115, Lexis [ACG CEDA]

The second major disadvantage with the approaches discussed in this Section is that none allows Indian tribes to take on the active role in development that is authorized in IMDA minerals agreements. As noted earlier, tribes using the IMDA for mineral [114-115] development may enter into negotiated leases or "any joint venture, operating, production sharing, service, managerial … or other agreement" with a non-Indian company.114 Tribes may choose any role that best suits their needs, from the relatively passive lessor through the partnership of a joint venture to a service contract in which the tribe merely hires a company to perform the mining activities.115 Moreover, tribes are not confined to the types of agreements listed in the IMDA,116 and many minerals agreements have been hybrid arrangements.117

By contrast, as noted throughout the discussion above, none of the nonminerals statutes envisions an active tribal role in development. Tribes may either bypass the statutes altogether and develop their renewable energy resources themselves, or serve as lessors, servient estate holders, or sellers.118 Unlike the IMDA, none of these statutes provides for the vast middle ground of tribal partnerships with non-Indian energy companies. And that vast middle ground is crucial. Tribes with some ownership component in energy projects not only retain a more significant say in the project itself, but may realize greater revenues, increased professional opportunities for tribal members, and the ability to "create a management team with a long-term stake in the community."119

#### Preventing “leakage” creates a multiplier effect, spurring development.

Dreveskracht, U.S. District Court Law Clerk, ’11

Ryan David Dreveskracht, Judicial Law Clerk, Judge Kathleen Kay, United States District Court for the Western District of Louisiana; L.L.M. in Sustainable International Development, University of Washington School of Law, 2010; J.D., University of Arizona James E. Rogers College of Law, 2009. “Native Nation Economic Development via the Implementation of Solar Projects: How to Make It Work,” *Washington & Lee Law Review*, 68 Wash & Lee L. Rev. 27, (Winter), pp. 74-76, Lexis [ACG CEDA]

Tribes need to keep investments circulating within the infrastructure. This means, to the largest extent possible, creating and keeping jobs and money in Indian country.269 Known as "leakage" in economic lingo,270 Indian country is often unable to keep capital in Indian country because, rather than buying Indian goods and services, Indians (individually and collectively) often buy non-Indian goods and services.271 [74-75] For example, "at virtually every Indian casino, hotel or resort in America, the bathroom products are furnished by the likes of Sysco, not Sister Sky [(a tribally owned company)]; the beverages are provided by Coke or Pepsi, not Yakama Juice [(a tribally owned company)]; and the farmed salmon is supplied by non-Indian fishermen."272 Energy is not an exception.273 Implementing solar projects on reservations that serve the local communities keeps money in Indian country, available for Indian development in other sectors, preventing leakage.274 Likewise, known as "brain-drain," tribes have a tough time keeping educated and talented individuals on the reservation because there is nowhere to employ their expertise--or, if there is, the pay is not commensurate with similar positions outside of Indian country.275 If a tribe chooses to implement a solar project, high-tech trades in Indian country are likely to proliferate;276 reinvestment in tribal businesses and homes, and the modernization of reservation infrastructure, is likely to occur;277 and a solar panel manufacturing company may be lured to tribal lands.278 This would likely help to create jobs, and would be a sustainable industry if the demand for solar projects around the country continues to grow as predicted.279 Tribes [75-76] should be sure that these jobs go to Indians, giving educated Indians a reason to come home.280

### Contention 2

### Advantage 1 – US Energy Policies devalue indigenous populations

#### Tribal Energy Resource Agreements undercut self-determination by dictating conditions under which indigenous peoples can control their resources

Unger, 10

Unger 10—J.D. Candidate, Loyola Law School. M.A., Linguistic Anthropology, University of Texas at Austin (Kathleen, CHANGE IS IN THE WIND: SELF-DETERMINATION AND WIND POWER THROUGH TRIBAL ENERGY RESOURCE AGREEMENTS, <http://www.tribesandclimatechange.org/docs/tribes_24.pdf>) [DLP WPT] [Language edited – Indigenized/nationized]

In fact, the TERA legislation and regulations specify in great detail the provisions that a [nations] tribe’s TERA and its subsequent development agreements must contain.293 This high level of federal regulation appears logically inconsistent with real tribal control over economic and resource development.294 The issue at the heart of self-determination is [nations] tribes’ right to make their own laws and govern themselves.295 As noted previously, much of the concern over TERAs for natural resource development arose in the context of mineral resources, because of the high potential for adverse impacts resulting from their development. When the federal government dictates the terms under which [nations] tribes can take control over resource development, this right remains unfulfilled.296 But because wind power does not share this potential, it can provide an opening for a less rigid structure than the present TERA framework allows. Given the imperative to develop wind power, now may be the perfect time to consider this possibility.297

#### These paternalistic policies devalue indigenous peoples to passive objects lacking autonomy

Carriere, Law, Tulane, ’94

Jeanne Carriere, *Iowa Law Review*, pp. 591-2 [Language edited, indigenized]

Though linked with empowerment and identity, the subject is not totally autonomous, but emerges through interaction. According to psychoanalytic theorist Jacques Lacan, the subject develops through a “lack” (or, in more political, less psychoanalytic terms, struggle). That is, the subject defines itself by encountering that which it perceives as different from it, the Other, and by enunciating the perceived difference. It can authorize tyranny over those who are different to the extent that it views them as objects, excluded from participation in the discourse, rather than as subjects.

The [Indigenous person] Native American frequently emerges in Euro-American discourse not as a subject, but as the *object* of Euro-American knowledge; not as speaking, but as spoken about by a Euro-American subject; not as self-defining, but as defined. The dominance of Euro-American culture meant that once it imputed characteristics to the [Indigenous Person] Native American, he had them, for he had neither the voice to speak for himself, nor the power to act for himself. As Edward W. Said observed concerning the knowledge of a colonized culture, “To have such knowledge of such a thing is to dominate it, to have authority over it. And authority here means for ‘us’ to deny autonomy to ‘it’…since we know it and it exists, in a sense, as we know it.

#### These processes negate the value to life and justify extermination.

Michael **Dillon**, Politics and IR, Lancaster, **99** *Political Theory* 27(2):

Quite the reverse. The subject was never a firm foundation for justice, much less a hospitable vehicle for the reception of the call of another Justice. It was never in possession of that self-possession which was supposed to secure the certainty of itself, of a self-possession that would enable it ultimately to adjudicate everything. The very indexicality required of sovereign subjectivity gave rise rather to a commensurability much more amenable to the expendability required of the political and material economies of mass societies than it did to the singular, invaluable, and uncanny uniqueness of the self. The value of the subject became the standard unit of currency for the political arithmetic of states and the political economies of capitalism. They trade in it still to devastating global effect. The technologisation of the political has become manifest and global.

Economies of evaluation necessarily require calculability. Thus no valuation without mensuration and no mensuration without indexation. Once rendered calculable, however, units of account are necessarily submissible not only to valuation but also, of course, to devaluation. Devaluation, logically, can extend to the point of counting as nothing. Hence, no mensuration without demensuration either. There is nothing abstract about this: the declension of economies of value leads to the zero point of holocaust. However liberating and emancipating systems of value—rights—may claim to be, for example, they run the risk of counting out the invaluable. Counted out, the invaluable may then lose its purchase on life. Herewith, then, the necessity of championing the invaluable itself.

#### “Amoral utilitarianism” serves only to rationalize genocide against expendable populations and mask the underlying racism in seemingly humanitarian gestures

Cook-Lynn, Prof Emerita Native American Studies at Eastern Washington Univ, 12

2012, Elizabeth Cook-Lynn, of the Crow Creek Sioux Nation, writer, poet, and professor Emerita of Native American Studies at Eastern Washington University, awarded Oyate Igluwitaya award given by Native university students in South Dakota to those who “aid in the ability of The People to see clearly in the company of each other,” received 2009 lifetime achievement award from the Native Writers Circle of the Americans, co-founded Wíčazo Ša Review ("Red Pencil"), an academic journal devoted to the development of Native American studies, “A Separate Country: Postcoloniality and American Indian Nations,” [DLP D8], pg. 50-52 [Language edited – indigenized]

Goldhagen tells us that the euphemism "amoral utilitarianism" disguises the hatred, racial enmity, and plain savagery behind it, allowing the murders of thousands of unoffending Native populations in defense of the cause of colonization throughout the globe. This doctrine of elimi¬nationism could be said to have been originally promulgated by the early democrat John Stuart Mill, whose "Essay on Liberty" in the mid-1800s was an answer to the question of what to do with a population that does not seem to advance what is good for the majority. Mill was opposed to universal suffrage because of what was considered the extreme unfitness of the working class. Such thinking addressed the problem of finding social balance with a blanket of morality thrown in, but in the end nothing was allowed to threaten the reign of conservative Englishmen (and Americans by extension). There is precedence, therefore, for the elimination of an unwanted people, Goldhagen suggests. Democratizers used terms such as "amoral utilitarianism" to lend an air of retributive justice and compassion to the awful reality of outright mass elimination of an unwanted people. The colonization of Indian nations has become the theory and practice by which the United States has taken over the continent from its unwilling indigenous nations, suggesting that they vanish, and when they did not, making them beggars through elements of economics and irresistible ro¬mance. It continues on its path toward eliminationism by law, yet giving lip service to self-determination. Colonization as we know it rarely sup¬ports its claim that it teaches public virtues, though in the United States, beginning in kindergarten, colonization is still taught as a form of "prog¬ress" and as a method for achieving justice.

The mass murder of Jews by the Nazis, exemplar of twentieth-century eliminationism, is probably the most horrific event of our time, and the theft of American Indian lands—though resulting in endemic poverty and death, along with the relentless rise of aggressive state government power over tribal nation autonomy—seems almost benign by comparison. Evidence of plunder and death in recent cases, however, rendering [indigenous peoples] American Indians the most poverty-stricken and undereducated class in the country, suggests that the elimination of indigenous presence is ongoing, to say nothing of the many episodes of outright massacre of Indians throughout the centuries. This condition of American Indians has been brought about through the use of colonization on what is left of the Indian estate and has been an assault on humanity in general and on American Indians in particular. Just saying that, however, does not mean that colonization will go away, nor will it be described as criminal in the democratic United States.

Instead, the United States continues to be the main colonizer throughout the world and an aggressive assimilator of our era, an example of successful imperial progress toward capitalistic democracy.

American attempts at mass murder and the elimination of American Indians in the first encounter has been rationalized as the necessary acts of a nation trying to be born. Indians were shot on sight by the Pilgrims and settlers even into subsequent centuries. In spite of the Thanksgiving drama so familiar to our children, attempts to rid the scene of Natives were ongo¬ing. The United States spent a couple of centuries devising a strategy to round them up and pen them up (colonize them) as a movement of slow and deliberate elimination. Relocation and control in the nineteenth and twentieth century were inevitable, as colonizers refused to recognize Na¬tive America as a land occupied by many indigenous nations for thousands of years.

There are in the course of human history many eras of nationalistic slaughter or murder of unoffending peoples; such acts are "always politi¬cal," says Goldhagen, and often end in warfare.2 In writing of these eras in the context of extermination, he introduces a vocabulary to clarify what it is that colonialism does, even if its intentions are not clear. Few schol¬ars have gone as far as Goldhagen in this investigation of the elimination of unwanted populations, and not many have associated his theory with classical historiography concerning American Indians. He is among those scholars who argue that there is little difference between the eliminations that occurred in previous centuries and those that are occurring in our time, in Germany and Armenia and Africa. The argument has been made that earlier mass murders and eliminations were the result of "imperialist Europeans acting without moral restraint, or amorally, to secure [land for] non-Europeans."3 If both the perpetrators and the victims inhabit the same country, as in the case of white Americans and Indians, people are happy to excuse elimination in a highly meditative way. What that has meant for [indigenous peoples] American Indians is that their early dispossession and murder, warfare and subsequent colonization can be separated from the "real" criminal act of savage killing. A simple working definition in the name of humanitarian acts can be devised, genocide can be denied, and legislation can go forward as though no crime, amoral or otherwise, has been committed.

### Solvency

#### Solar would be economically viable on 83 reservations immediately

Uconn Law Review, April 2012

Jessica R. A. Hamilton, Executive Editor on the Editorial Board of the Connecticut Law Review, April 2012, Connecticut Law Review Volume 44 Number 4, “FINDING NEW POWER IN THE WIND, THE EARTH, AND THE SUN: A SURVEY OF THE REGULATION OF ALTERNATIVE ENERGY GENERATED ON AMERICAN INDIAN RESERVATIONS IN THE UNITED STATES AND FIRST NATION RESERVES IN CANADA,” [DLP PRE]

A. *Concentrating Solar Power and Photovoltaics*

Solar energy can be converted into electricity by one of two means, both of which can be readily implemented on reserves and reservations. The first is concentrating solar power technology, which converts solar energy into electricity via reflective surfaces to concentrate sunlight onto a receiver at 80 to 3,000 times the normal, un-refracted power, thereby producing extremely high temperatures, which are used to create steam to drive a turbine and generate electrical power.46 These systems require direct radiation from the sun and must always point directly at the sun to track it as it moves across the sky, thereby limiting its use to sunny, arid locations such as those found in the southwest U.S. desert.47 This type of technology has not been as popular in Canada due to the nation’s more temperate and overcast climate. The Canadian federal government, however, has begun to explore the feasibility of installing concentrating solar power generators in Western Canada, where there are high directbeam solar resources in the summer.48

Due to the cost of operating and maintaining concentrated solar power systems, as well as economies of scale, these systems remain significantly more expensive to construct and maintain than other renewable energy sources.49 As a result, regions that possess higher levels of solar insolation, a measure of solar radiation on a given surface area at a given time, are more economically favorable due to the higher capacity factors that can be achieved, with a degree of 6–8 kWH/m2/day of solar insolation recommended for optimal performance.50 This sufficient degree of isolation is available on eighty-three reservations in the United States, making these locations ideal bases, geographically, for establishing concentrating solar power systems.51 While no similar studies on solar isolation requirements have been conducted in Canada, the recent success of a concentrating solar power system in Medicine Hat, Alberta52 suggests that the more expansive, remote, western First Nations could be equally well-suited to host high capacity concentrated solar power systems.

#### Wind would be economically viable on 77 reservations immediately

National Wildlife Federation 10

March 23, 2010, “The New Energy Future in Indian Country: Confronting Climate Change, Creating Jobs, and Conserving Nations,” Confronting Global Warming Report, released in collaboration with National Tribal Environmental Council, Native American Rights Fund, and the Intertribal Council on Utility Policy, [DLP PRE]

TRIBAL OPPORTUNITY

Many Tribal lands, particularly those in the Great Plains and Alaska’s coastal native villages, have high potential for utility-scale wind farms. In 2009, the Bureau of Indian Affairs identified 77 reservations that could support viable wind-based economies.7 The Natural Renewable Energy Laboratory determined that tribal lands alone could meet 14 percent of the nation’s energy needs.8

#### Government control as decision maker destroys any chance of solvency – indigenous decision making is key to economic development

Royster, Law Prof, Tulsa, ’8

Judith v., Prof law and Co-Director, Native American Law Center, University of Tulsa College of Law, Stephen Cornell and Joseph Kalt, Ph.D. Director Professor of Sociology and of Public Administration and Policy Faculty Associate, Native Nations Institute—AND—Ford Foundation Professor of International Political Economy, Emeritus, Co-Director Harvard Proj. on American Indian Econ. Development, “PRACTICAL SOVEREIGNTY, POLITICAL SOVEREIGNTY, AND THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELFDETERMINATION ACT”, <http://law.lclark.edu/live/files/9506-lcb124art6roysterpdf> [DLP WFU TRN] [Language edited – indigenized]

More important than political sovereignty, however, is what Cornell and Kalt refer to as “practical sovereignty,” that is: putting “practical decision-making power in the hands of [indigenous] Indian nations.” 11 The concept of practical sovereignty builds upon political sovereignty, but moves beyond law and policy to actual on-the-ground governance. Practical sovereignty “puts the development agenda in [indigenous] Indian hands” and “marries decisions and their consequences, leading to better decisions.” 12 Tribes [nations] exercising actual decision-making powers “consistently out-perform outside decision-makers.” 13 So central is practical sovereignty to successful economic development that Cornell and Kalt state categorically that: After fifteen years of research and work in Indian Country, we cannot find a single case of sustained economic development in which an entity other than the Indian nation is making the major decisions about development strategy, resource use, or internal organization. In short, practical sovereignty appears to be a necessary (but not sufficient) condition for reservation economic development. 14

Thus, practical sovereignty “does not guarantee success,” 15 but success without it is rare to nonexistent.

Practical sovereignty, no less than political sovereignty, requires reducing the role of the federal government. Federal decision-making is “the default mode” of reservation economic development, 16 but also the approach that does not work. 17 Indeed, Cornell and Kalt identify federal control over economic decision-making as “the core problem in the standard approach to development and a primary hindrance reservation prosperity.” 18 In order to further successful tribal economic development, then, the federal government must make the difficult transition from decision-maker to advisor, from controlling the process to providing information and technical assistance and serving as a resource for tribes. 19

#### Advocacy with respect to government recognition of self-determination has a reparative effect, acknowledging injustice and personhood. It establishes a policy template built around a commitment to justice

Tsosie, Law Prof, ASU, ’7 - Indigenized

Rebecca Tsosie, “Acknowledging the Past to Heal the Future: The Role of Reparations for Native Nations,” in *Reparations: Interdisciplinary Inquiries* (Jon Miller & Rahul Kumar, eds.), p. 59 [ACG NVY]

**2.5.3. Reconciliation and Reparations**

According to Matsuda, the idea of reparations builds upon the Constitutional norm of liberty and ‘recognizes the personhood of victims’.49 Lack of legal redress for racist acts continues the injury perpetrated by the initial wrongdoing by signifying ‘the political nonpersonhood of victims.’50 The grant of reparations, on the other hand, declares: ‘You exist. Your experience of deprivation is real. You are entitled to compensation for that deprivation. This nation and its laws acknowledge you’.51

Although many citizens view the concept of reparations as coextensive with *monetary* compensation, the idea of reparations is much more complex and has social, economic and political dimensions. In fact, some groups would dispute that monetary damages could ever be a satisfactory replacement for the loss of certain tangible resources. For example, the Lakota seek the return of the Black Hills and refuse to take compensation in the form of damages. The idea of reparations clearly must involve recognition of Native [indigenous] peoples’ rights to enjoy their distinctive cultural and political identity. Thus, many Native American claimants argue for recognition of their rights to practice their religion at certain sacred sites and for their political right to ‘self-determination’. Finally, the concept of reparations may depend as much on process as on substance for its effectiveness at achieving true reconciliation. As Matsuda notes, the ‘very process of determining the validity of claims will force collective examination of the historical record. The discovery and acknowledgment of past wrongs will educate us and help us to avoid repeating the same errors’.52 In that respect, Assistant Secretary Gover's apology engaged the forward-thinking [63-64] questions of what it might mean to ‘heal’ Native communities and what the BIA's moral responsibility might be in this process. The apology itself intended to commence this process in at least three different respects. First, it is intended to set a moral boundary against which to measure future behavior:

‘Never again will this agency stand silent when hate and violence are committed against Indians. Never again will we allow policy to proceed from the assumption that Indians possess less human genius than other races. Never again will we be complicit in the theft of Indian property. Never again will we appoint false leaders who serve purposes other than those of the tribes. Never again will we allow unflattering and stereotypical images of Indian people to deface the halls of government or lead the American people to shallow and ignorant beliefs about Indians. Never again will we attack your religions, your languages, your rituals, or any of your tribal ways. Never again will we seize your children, nor teach them to be ashamed of who they are. Never again.’

Secondly, the apology is intended to inspire a policy template to deal with legal and political redress for past wrongs, which are often reflected by the current needs of Native communities. It is clear from Gover’s remarks that the harms are much too complex and serious for a ‘quick fix’. Perhaps Native economies can be bolstered by gaming policies. Perhaps Native governments can be supported by the self-determination and self-governance acts and policies. But the process of healing for Native communities will require a much more nuanced version of federal policy dedicated to a moral, as well as legal, commitment to the notion of self-determination. What does it mean to facilitate ‘tribal self-determination’ if the tribal government is still under the control of the federal government and its larger agenda to American citizens? What does it mean to support ‘tribal autonomy’ if the majority of the tribal population lacks the educational and material resources to be fully autonomous citizens of either their own government or the U.S.? If a significant portion of Native adults are incarcerated and in poverty, if a significant portion of Native families are torn apart by substance abuse and domestic violence? These are the paradoxes of contemporary Indian policy that Gover acknowledges, and with which the process of healing must engage.

Finally, Assistant Secretary Gover's apology is intended, on a spiritual level, to set in motion the process of redirecting blame, healing spiritual trauma, and promoting a larger sense of collective responsibility on the part of the US government and its citizens. Importantly, the apology *alone* cannot actually do any of those things. Rather, it is intended to start that process in motion and begin a dialog about what must be done to heal the past. As Gover says, ‘we desperately wish that we could change this history, but of course we cannot’. The most that can be done is to ‘accept the moral responsibility for putting things right’.