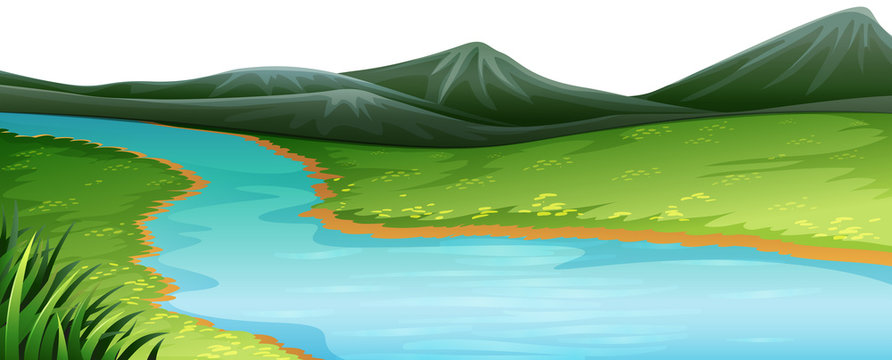
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River Rights – Neg



Contents

[States CP 5](#_Toc81994192)

[1NC---States CP 6](#_Toc81994193)

[2NC---S---OV 7](#_Toc81994194)

[2NC---S---International Model 8](#_Toc81994195)

[2NC---AT: Federal Preemption 9](#_Toc81994196)

[2NC---AT: State Preemption 13](#_Toc81994197)

[2NC – AT: Perm do Both – General 14](#_Toc81994198)

[2NC – AT: Perm do Both – Coop FIsm 15](#_Toc81994199)

[AT: Strike Down 16](#_Toc81994200)

[Federalism DA 18](#_Toc81994201)

[1NC – DA 19](#_Toc81994202)

[Link 24](#_Toc81994203)

[Link – Generic 25](#_Toc81994204)

[Link – Water Allocation 27](#_Toc81994205)

[Link – Congress 30](#_Toc81994206)

[UQ 31](#_Toc81994207)

[UQ – General 32](#_Toc81994208)

[UQ – Water 38](#_Toc81994209)

[Internal 43](#_Toc81994210)

[2NC – Spillover 44](#_Toc81994211)

[Impact 47](#_Toc81994212)

[Impact – Warming 48](#_Toc81994213)

[Impact – Solves Civil Conflict 50](#_Toc81994214)

[Impact – Solves Warming 52](#_Toc81994215)

[Impact – Warming Terminal 65](#_Toc81994216)

[Water Colonialism Kritik 67](#_Toc81994217)

[1NC - K 68](#_Toc81994218)

[1NC - K 69](#_Toc81994219)

[1NC - K 70](#_Toc81994220)

[1NC - K 71](#_Toc81994221)

[LINK 72](#_Toc81994222)

[L---Water As Resource 73](#_Toc81994223)

[L---Water Governance 75](#_Toc81994224)

[L---Indigenous Water Governance 76](#_Toc81994225)

[IMPACT 81](#_Toc81994226)

[!---Framing/Prioritization 82](#_Toc81994227)

[!---Root Cause---Water 83](#_Toc81994228)

[!---Root Cause---Biodiversity 84](#_Toc81994229)

[!---Root Cause---Drinking Water 85](#_Toc81994230)

[ALTERNATIVE/FRAMEWORK 86](#_Toc81994231)

[FW---Top-Shelf 87](#_Toc81994232)

[FW---Critique Key 88](#_Toc81994233)

[FW---AT Fairness 89](#_Toc81994234)

[Alt Solvency / Brink 90](#_Toc81994235)

[ANSWERS TO 91](#_Toc81994236)

[AT PDB---Resource Link 92](#_Toc81994237)

[AT PDB---Governance Link 94](#_Toc81994238)

[AT Ecological Indian Counter-K 95](#_Toc81994239)

[AT Indigenous People Want Aff 99](#_Toc81994240)

[AT Pessimism Bad 101](#_Toc81994241)

[Case Negative 102](#_Toc81994242)

[AT: Sustainability 103](#_Toc81994243)

[Impact Defense 108](#_Toc81994244)

[1NC---Bio-D Defense 109](#_Toc81994245)

[2NC---Bio-D Defense 110](#_Toc81994246)

[--AT: Sixth Mass Extinction 114](#_Toc81994247)

[1NC---Resource Wars Defense 115](#_Toc81994248)

[1NC---Water Wars Defense 116](#_Toc81994249)

[2NC---Water Wars Defense 118](#_Toc81994250)

[1NC----I-Law Defense 122](#_Toc81994251)

[2NC---I-Law Defense 123](#_Toc81994252)

[2NC---LOAC Fails 124](#_Toc81994253)

[Solvency/IL 125](#_Toc81994254)

[1NC---RoN Solvency 126](#_Toc81994255)

[2NC---S---Enforcement 127](#_Toc81994256)

[2NC---S---“Substantial Injury” 130](#_Toc81994257)

[2NC---S---Guardianship 132](#_Toc81994258)

[2NC---S---Courts 133](#_Toc81994259)

[1NC---No Degrowth 136](#_Toc81994260)

[2NC---No Degrowth 137](#_Toc81994261)

[1NC---AT: International Leadership 139](#_Toc81994262)

[2NC---AT: International Leadership 140](#_Toc81994263)

# States CP

### 1NC---States CP

#### The fifty United States should designate rivers as legal persons, implemented through a co-management framework.

#### Solves and spills up

ELC 20 – Earth Law Center, collaboration with; The Cyrus R. Vance Center for International Justice, and International Rivers; 2020, “Rights of Rivers,” https://3waryu2g9363hdvii1ci666p-wpengine.netdna-ssl.com/wp-content/uploads/sites/86/2020/09/Right-of-Rivers-Report-V3-Digital-compressed.pdf

Thus far, Rights of Nature provisions in the United States—normally framed as rights of standing—have had little impact. No body of nature has successfully asserted its right to sue. However, it should be noted that rights are gaining traction in Native American law, and the Third Circuit Court of Appeals has not completely ruled out the future assertion of rights in federal court. Because Native American law has greater sovereignty than local government ordinances, Native American statutes may have a stronger chance of withstanding lawsuits by extraction corporations. Furthermore, the example of Nottingham, New Hampshire suggests that Rights of Nature may have moral and political force as part of a wider campaign. Weaker Rights of Nature laws, such as Santa Monica’s sustainability ordinance, are also important: They contain fewer environmental protections, but are more likely to withstand lawsuits and could drive changes in legal culture over time. Finally, state constitutions protecting environmental rights other than Rights of Nature appear to have been more effective.283

**{Footnote 283 Begins}** See e.g. Robinson Twp. v. Commonwealth of Pennsylvania, 623 Pa. 564 (2013) concerning environmental rights contained in the State Constitution of Pennsylvania. For further discussion of the rights of nature in Pennsylvania, see Erin West, Could the Ohio River have rights? A moment to grant rights to the environment tests the power of local control, Environment Health News (Feb. 4, 2020). <https://www.ehn.org/ohio-river-naturerights-2645014867.html?rebelltitem=4#rebelltitem4> **{Footnote 283 Ends}**

### 2NC---S---OV

#### The counterplan establishes the same right at the state-level---no aff evidence assumes how massive the counterplan’s legal revolution is.

#### Spills up---it’s a moral and political force that permeates legal culture---that’s ELC

#### Policy leadership and bargaining guarantee federal entrenchment

Barry G. **Rabe 08**, Professor of Public Policy, Professor of Environmental Policy, Professor of Political Science, Professor of the Environment, and Director of the Center for Local, State, and Urban Policy at the University of Michigan. “States on steroids: the intergovernmental odyssey of American climate policy” The Review of Policy Research. Gale Academic One File.

The recent trend toward state-driven policy is not unprecedented in American federalism. In many instances, early state policy engagement has provided models that were ultimately embraced as national policy by the federal government. This has been evident in a range of social policy domains, including health care and education, and can either result in federal preemption that obliterates earlier state roles or a more collaborative system of shared governance (Manna, 2006; Teske, 2004). In some instances, states have taken the lead and essentially sustained policy leadership through multistate collaboration and the absence of federal engagement. Such policy arenas as occupational licensure and regulation and oversight of organ donations have remained largely state-dominated, despite occasional federal exploration of legislation or regulation. To date, American climate policy is following the latter pattern, with prolonged federal inability to construct policy, leaving substantial opportunity for state engagement and innovation. At the same time, Congress continues to weigh a variety of policy options, many of which could ultimately encourage, constrain, or preempt existing state policies. However, the institutional impediments to any federal action remain significant, suggesting that there may well be continued state latitude to play a lead role for some time to come. In turn, this could ultimately give a number of states a strong bargaining role in any future federal policy formation or implementation, given their sunk institutional and policy investments. Many states now possess a considerable body of climate policy expertise that may well rival or surpass federal institutions (Rabe, 2004, 2007b).

### 2NC---S---International Model

#### States solve leadership and modelling

Vicki Arroyo 16, is the Executive Director of the Georgetown Climate Center at Georgetown Law where she also serves as the Assistant Dean of Centers and Institutes, the Director of the Environmental Law Program. With Kathryn A. Zyla, Gabe Pacyniak, and Melissa Deas. 2016. “State Innovation on Climate Change: Reducing Emissions from Key Sectors While Preparing for a “New Normal”http://harvardlpr.com/wp-content/uploads/2016/06/10.2\_5\_ArroyoZylaPacyniakDeas.pdf

States have also engaged on the international front—working with other provinces and states to share best practices, link programs with other states and provinces, and support a global agreement. Often, state leaders attend international negotiations and share their positive experiences in transforming their energy sector while pointing to the severe climate change related impacts they are already facing: impacts they cannot avoid without concerted global action.19 In December 2015, Governors Jerry Brown (CA), Jay Inslee (WA), and Peter Shumlin (VT) and many mayors participated in the international climate negotiations in Paris (COP21) urging action.20

### 2NC---AT: Federal Preemption

#### Changing state constitutions and passing legislation granting rights to rivers is unprecedented---it’s not assumed by preemption evidence about localities acting------States have significantly more constitutional room to maneuver---Pennsylvania proves---that’s ELC

#### Parallel legal doctrines succeeded at the State-level

Dinah Shelton 15, Professor Emeritus of International Law, George Washington University Law School, 2015, “Nature as a Legal Person,” https://journals.openedition.org/vertigo/16188?lang=en

Public Trust: A Move towards Legal Personality?

The doctrine of public trust in Roman law held that navigable waters, the sea, and the land along the seashore constituted a common asset open for use by all.10 From Roman law antecedents, early English common law distinguished between private property which could be owned by individuals and certain common resources which the monarch held in inalienable trust for present and future generations. Many common law courts have adopted and applied this law, conferring trusteeship or guardianship on the government, with an initial focus on fishing rights, access to the shore, and navigable waters and the lands beneath them.11 The domain of common property cannot be destroyed or alienated by the legislature or the executive.12 After the 1970 publication of an influential law review article by Joe Sax,13 courts in the United States (US) began to expand the doctrine and apply it to other resources, including wildlife and public lands.14

15 States in the U.S. have the power to provide their citizens with rights additional to those contain (...)

16 For a listing of all environmental provisions in state constitutions, see Bret Adams et al., Enviro (...)

17 See Ala. Const. art. VIII; Cal. Const. art. X, § 2; Fla. Const. art. II, § 7; Haw. Const. art. XI; (...)

8US state constitutions revised or amended from 1970 to the present have incorporated pubic trust doctrine to provide greater protection to the environment.15 In fact, every state constitution drafted after 1959 explicitly addresses conservation of nature and environmental protection.16 One group among these constitutions calls for the acquisition and regulation of natural resources as part of the public trust. Another set of constitutional provisions expressly recognizes the right of citizens to a safe, clean or healthy environment, in a manner that also implies a stewardship over natural resources.17

The first constitutional recognition of environmental rights in the U.S. appeared in Pennsylvania in connection with the first Earth Day.18 The author of the proposal said he intended to “give our natural environment the same kind of constitutional protection that [is] given our political rights.”19 The proposed amendment was approved overwhelmingly by voters in the state, on May, 18, 1971.20 The provision, now Article I, section 27 of the state constitution, sets forth (emphasis added):

Section 27. Natural resources and the public estate

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

10There are several evident features about this text. First, it declares the “people’s” right to environmental amenities with a directive to the state to act as a trustee for the “public natural resources” of the state. The resources mentioned are declared to be common property and held for future as well as present generations.

Many state constitutional provisions, like the Pennsylvania provision quoted above, refer to long-established doctrines of public trust.21 Pennsylvania courts have interpreted the state constitutional provision to mandate the management of public natural resources of the state.22 A three-part test has emerged for judging the legality of state action under the constitutional provision,23 but it must be noted that an overriding aspect of the test is its deference to decisions made by the government.24

25 Haw. Const. art. XI, § 1.

12Hawaii's constitution goes further than that of Pennsylvania, creating a public trust over all of the state's natural resources: For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

#### Trends prove---States are increasingly winning protection for non-human entities

ALDF 17 – Animal Legal Defense Fund, “Animals’ Legal Status,” https://aldf.org/issue/animals-legal-status/

There are already non-human persons under the law. For example, corporations and ships are defined as persons for limited legal purposes. There is also a growing “environmental personhood” movement in which entities of nature, such as rivers, have been granted legal personhood to provide a means of protection from exploitation.[2] In a couple of rulings outside the U.S., individual great apes have been declared persons in a limited context

Legal personhood is not a “one size fits all” designation and does not necessarily convey all the legal rights granted to human persons under the law. Rather, it simply elevates an entity’s status under the law and confers legally recognizable interests, which are specific to the needs and nature of that entity. So, for example, recognizing a dog as a legal person would not give her the right to vote. However, it might give her the right to not be used in a painful experiment or the right to have a court appoint a guardian to protect her legal rights.

Nonhuman animals are not the only living beings that historically have been characterized as property under the law. Slaves, women, and children were all at one time defined as property. As society progressed, these groups were reclassified from legal things to legal persons.

Legal Status as a Continuum

While replacing animals’ property status with legal personhood represents one ideal, property and personhood are not necessarily mutually exclusive categories. Being defined as property does not preclude also being a legal person, as in the above example of ships and corporations. Therefore, property and personhood can be considered points on a continuum rather than binary categories.

Animals can have a hybrid status where they are recognized as both property and persons under the law. However, as long as they are still classified as property they will not be “full persons” – one end of the property/personhood continuum that grants the strongest legal recognition of interests. Because “animals” are a diverse group, with varied capacities, and different societal uses, legal personhood would look different for different species of animals, based on what they need to thrive.

Sometimes More than Property: Distinctions and Evolution in the Law

Although classified as property, the legal system treats animals distinctly in some cases. For example, unlike all other forms of property, animals are protected by criminal cruelty laws. As of 2017, animals can be the beneficiaries of legally enforceable trusts in all 50 states, and a majority of states allow them to be included in domestic violence protection orders

Similarly, some courts have held that non-economic damages are available when people suffer emotional harm as a result of tortious misconduct aimed at their animal companion. And federal and state laws have evolved over the past decade to address the needs of those with companion animals during natural disasters and emergency evacuations.

Recently, some states have enacted legislation requiring courts to consider the interests of companion animals in divorce and dissolution proceedings, in contrast to the strict property analysis that has long been the standard in determining ownership (or custody) of an animal. The traditional property analysis treats companion animals like furniture or other material assets to be equitably divided, but these new laws mention the “well-being” or “care” of the animal, thereby recognizing that animals have interests of their own that should be considered.

Additionally, some state legislatures have addressed animal sentience. For example, as a result of legislation that the Animal Legal Defense Fund helped draft and pass in 2013, Oregon law recognizes that “animals are sentient beings capable of experiencing pain, stress and fear.” Importantly, it also states that “animals should be cared for in ways that minimize pain, stress, fear and suffering.”

Another promising development is that animals are increasingly achieving crime victim status, particularly as it relates to which victims “count” at sentencing. Both federal and state courts have recognized that each individual animal who suffered as a result of a crime is a crime victim for sentencing purposes. In one state, Connecticut, special advocates can speak directly on behalf of animal victims throughout the entirety of a criminal animal cruelty case, and more states are currently considering enacting this Courtroom Animal Advocate Program model.

#### No preemption if all fifty act

Barry G. **Rabe 11**, Professor of Public Policy, Professor of Environmental Policy, Professor of Political Science, Professor of the Environment, and Director of the Center for Local, State, and Urban Policy at the University of Michigan. “Contested Federalism and American Climate Policy” The Journal of Federalism volume 41 number 3. http://closup.umich.edu/people/barry-rabe/publications/Publius-Contested\_Federalism.pdf

One option for federal governments that move into a state-dominated policy arena is complete takeover, eviscerating any state role and imposing federal domination in the process. Congress has frequently used its delegated powers to enact ‘‘preemption statutes’’ that can eliminate or restrict any prior state regulatory policy in a particular area. In some instances, preemption reflects a federal effort to eliminate state-by-state variation or set a federal standard well below that of the most aggressive states. Between 1995 and 2004, for example, a Republican Congress enacted seventy-five preemption statutes, many of which reflected ‘‘pressure from business interest groups for the establishment of harmonious regulatory policies’’ across state boundaries (Zimmerman 2005, 361). Preemption can also be used in instances where Congress deems states unable or unwilling to establish a needed regulatory presence, perhaps in instances in which state policy processes are deemed ‘‘captured’’ by business and industry. In recent decades, preemption has been applied to a wide range of economic functions, from restricting state oversight of mutual funds to establishing uniform nutritional labeling on food items (Teske 2005). Any number of preemption options could be applied in the climate arena, including carbon cap-and-trade, and is most likely in instances when the total number of active states is more limited or their policy implementation remains in early stages. This approach was clearly on the agenda of the 111th Congress, building on some earlier policy proposals when enactment seemed highly unlikely.

#### That’s especially true in court battles

Barry G. **Rabe 08**, Professor of Public Policy, Professor of Environmental Policy, Professor of Political Science, Professor of the Environment, and Director of the Center for Local, State, and Urban Policy at the University of Michigan. “States on steroids: the intergovernmental odyssey of American climate policy” The Review of Policy Research. Gale Academic One File.

Many scholars scoffed at the very possibility of "bottom-up" American climate policy during the previous decade, but several factors have converged to place states in increasingly central roles. First, many states have framed early steps that would have the effect of reducing greenhouse gases as being in their economic self-interest. This helps explain the expanding state government interest in developing a set of technologies and skills to promote renewable energy, energy conservation, and expertise to foster a low-carbon economy. Indeed, virtually every governor has now embraced the notion of developing "home grown" energy sources, at least in part, in order to foster long-term economic development. This has resulted in an active exploration of various policy tools that might achieve these goals alongside reduction of greenhouse gas emissions. Second, a growing number of states are beginning to experience significant impacts that may be attributable to climate change, whether through violent storms, forest fires, species migration, prolonged droughts, or changing vectors of disease transmission. Some of these are having the classic effect of "triggering events" that create an impetus for a policy response, however modest the climate impact that any unilateral state efforts to reduce greenhouse gas emissions may be (Repetto, 2006). Third, some states have consciously chosen to be "first movers," often taking bold steps with the explicit intent of trying to take national leadership roles on climate policy. In some instances, such as California's legislation to restrict carbon emissions from vehicles and New York's efforts in the northeast to establish a regional carbon emissions trading zone, states are also trying to establish models that will influence their neighbors to join them and possibly position themselves to influence any future federal policy. In this regard, states are similar to corporations; some seek an early and active role, sensing potential strategic advantages over their more recalcitrant competitors (Hoffman, 2006; Kamieniecki, 2006). Fourth, state capitals have proven very fertile areas for the development of epistemic communities and policy networks advocating climate policy. In many instances, earlier state efforts reflected leadership from higher levels of state agencies working in environmental protection, energy, or other areas relevant to climate (Montpetit, 2003; Rabe, 2004). These policy entrepreneurs continue to operate but increasingly partner with other forces, such as legislators and advocacy groups, to form policy networks that build support for policy strategies that are particularly appealing to an individual state (Selin & VanDeveer, 2007). Fifth, states also provide venues for alternative approaches to policy formation, including direct democracy and litigation that confronts federal institutions. Ballot propositions are proving an increasingly popular way to advance climate initiatives in cases where representative institutions stall. At the same time, the 2007 U.S. Supreme Court verdict in Massachusetts et al. v. U.S. Environmental Protection Agency indicates that a collective of states can wage and ultimately win an intergovernmental court battle that may serve to force a reluctant federal agency to designate carbon dioxide as an air pollutant. The decision in this case is already triggering additional multistate efforts to use the federal courts as a venue to challenge other decisions by the private sector or federal agencies.

### 2NC---AT: State Preemption

#### States preempt local laws---the counterplan removes that barrier by having State legislators take action

Nicole Pallotta 21, Senior Policy Program Manager, Animal Legal Defense Fund, 3/29/21, “Legal Rights Recognized for Rivers in Florida and Quebec,” https://aldf.org/article/legal-rights-recognized-for-rivers-in-florida-and-quebec/

In November 2020, voters in Orange County, Florida, overwhelmingly approved a charter amendment recognizing natural rights for the Wekiva River, Econlockhatchee River, and all waterways in the county. Spurred by concerns about deteriorating water quality, the charter grants all county waterways the right to exist, to flow, to be protected against pollution, and to maintain a healthy ecosystem. 6

In addition to rights for the waters themselves, the Right to Clean Water Charter Amendment — also known as the Wekiva River and Econlockhatchee River Bill of Rights (or WEBOR) — grants all citizens in the county a right to clean water. Importantly, it also empowers them to ensure the law is upheld, by creating a “private right of action and standing for citizens of Orange County to enforce these rights and injunctive remedies.” As discussed above, standing provisions like this are a crucial component of rights of nature legislation.

The Animal Legal Defense Fund formally endorsed the WEBOR, worked directly with Speak Up Wekiva, the Florida-based environmental organization that ran the campaign, and sent out action alerts to Orange County voters.

Potential Challenges

It is uncertain how each of these developments will play out. But what is clear is that they are part of a larger — and growing — movement. Writing about Quebec’s Magpie River, Canada’s National Observer notes:

It is unclear how this will affect attempts to build developments on the river, including dams, moving forward, as legal personhood for nature doesn’t exist in Canadian law and could be challenged in court. Minganie, Innu council and several environmental groups — collectively called the Alliance — hope international precedents set in New Zealand, Ecuador and several other countries will help pressure the Quebec government to formally protect the river.

Florida’s ordinance may face a more direct challenge. Despite it being approved by nearly 90% of voters across the political spectrum, the WEBOR faces potential preemption by the Clean Waterways Act, a state law passed in July 2020 — during the campaign to get the WEBOR on the ballot — that contains a provision “prohibiting local governments from recognizing or granting certain legal rights to the natural environment.”

Speak Up Wekiva, which spearheaded the ballot initiative, filed a federal lawsuit challenging the state law on constitutional grounds. 8 The group withdrew its lawsuit after the initiative passed, as director Chuck O’Neal explained to WMFE:

We filed this lawsuit during the summer to prevent anyone stepping forward and challenging, to throw the charter amendment off the ballot. Now that it’s passed, we dismissed that lawsuit and are pursuing having other communities around the state pass similar ordinances that do not violate the preemption clause. Our hope is that there is a groundswell of communities passing these right-to-clean-water ordinances and finally will culminate in a statewide amendment that allows unequivocally communities to protect their waters, to establish rights-of-nature ordinances and charter amendments.

It is unclear whether the state will challenge the WEBOR, but for now it is on the books and will remain so unless it is overturned in court. Meanwhile, the Animal Legal Defense Fund is supporting a state-level bill that would remove the provision in the Clean Waterways Act that prohibits local governments from enacting rights of nature ordinances.

### 2NC – AT: Perm do Both – General

#### Establishing clear lines of division of federal and state authority is key – overlap causes blame shifting and encourages legislative irresponsibility

Stuntz 11 [William J. Stuntz was a criminal justice scholar and a professor at Harvard Law School. Stuntz was born in Washington, D.C. and grew up Annapolis, Maryland. He received his Bachelor's at The College of William & Mary and his degree in law at University of Virginia School of Law. The Collapse of American Criminal Justice. Harvard University Press, 2011. Download chapters here: https://www.jstor.org/stable/j.ctt2jbtht]

The doctrines that purport to protect state and local officials’ prerogatives—chiefly, the law of federal criminal jurisdiction, enforced through jurisdictional elements that attach to individual crimes—make the situation worse. Federalism-based doctrines in criminal law cut across crimes, not between them: instead of, say, assigning bribery to federal officials and arson to the locals, federal law covers some bribery and some arson, leaving local police and prosecutors the rest—with a fuzzy and constantly changing line between the two. A large fraction of federal criminal litigation is devoted to issues like whether robbery victims or torched buildings were sufficiently “commercial” to support federal charges.61 This generates lines of cases devoted to such questions as whether arsons of churches that order Sunday School materials from out of state are within the scope of federal authority.62 That kind of judicially mandated federalism obscures accountability and wastes the time of litigants and courts alike.

The pattern recurs throughout the federal criminal code. Voters cannot know whom to credit when the system functions well and whom to blame when it doesn’t. That encourages irresponsible legislation. Better to draw some plausible lines between crimes that should be exclusively federal and crimes that should be exclusively enforced by state and local officials. Courts are poorly positioned to draw those lines, and Congress has no incentive to do so itself. Some mechanism is needed to encourage Congress to make federal law where federal law will count and not elsewhere.

### 2NC – AT: Perm do Both – Coop FIsm

#### Cooperative federalism fails

Barton 2017 [Brooke Barton, researcher for the Harvard Business School's Social Enterprise Initiative, Why Pruitt’s ‘Cooperative Federalism’ Spells Trouble for Clean Water Protection, Ceres, March 8, 2017. https://www.ceres.org/news-center/blog/why-pruitts-cooperative-federalism-spells-trouble-clean-water-protection]

Cooperative federalism, at its most benign, is about allowing each state to tailor its own approach to enforcing environmental rules. At its worst, it's about the federal government turning a blind eye to states that shirk the nation's environmental laws or that simply don't have the coffers to pay for monitoring and enforcement."Process, rule of law and cooperative federalism, that is going to be the heart of how we do business at the EPA," said EPA Administrator [Scott Pruitt](https://www.ecowatch.com/tag/scott-pruitt), who has promised to follow the [Trump](https://www.ecowatch.com/trump-watch/) administration's will to slash EPA's budget and soften its rules.To see how cooperative federalism erodes environmental protection, look no further than the 2015 Waters of the United States rule. President Trump [issued an executive order](https://www.ecowatch.com/trump-clean-water-rule-2292421509.html) last week announcing plans to undo the rule, which clarifies the federal government's authority to limit pollution in bodies of water not explicitly covered by the Clean Water Act.Those smaller bodies of water—typically streams, wetlands and rivers, which account for more than half of the nation's freshwater resources—feed into larger water bodies that provide key [drinking water](https://www.ecowatch.com/tag/drinking-water) and recreational opportunities for the public, as well as water supplies for business. Keeping them clean is vital for the nation's health and economic prosperity.The executive order, coupled with the administration's penchant for cooperative federalism, sends a strong message that if states choose not to protect smaller streams and wetlands, they won't get pushback from the federal government.And as state environmental budgets shrink, many simply don't have the resources to ensure healthy streams and clean drinking water on their own, even if they wanted to. Forty state environmental agencies have reduced staff in recent years, with the biggest cuts being in North Carolina, Florida, Michigan, New York, Illinois and Arizona, according to a fall 2016 report by the Center for Public Integrity.

### AT: Strike Down

#### No strike down – the political costs are too high

Noah D. Hall (Contact Author), 3-13-2006, Professor @ Wayne State Law School. Noah Hall's expertise is in environmental and water law, and his research focuses on issues of environmental governance, federalism, and transboundary pollution and resource management. "Toward a New Horizontal Federalism: Interstate Water Management in the Great Lakes Region by Noah D. Hall :: SSRN," No Publication, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=888603, accessed 7-12-2021 (Kent Denver -- EA)

The cooperative horizontal federalism model is particularly valuable for addressing environmental problems when federal action is undesirable. In some cases, environmental protection advocates may not want a strong federal role. This is certainly the case in the Great Lakes, where concerns over diversions to other parts of the country fuel a preference for keeping management of the Great Lakes away from the federal government. While the federal government could always exercise its constitutional powers over management and allocation of interstate waters, the proposed compact creates at least a significant political hurdle to a federal water grab. Congress can repeal a compact just as it can any statute, but the political ramifications of repealing a compact that has already been ratified by numerous state legislatures may prove to be a significant deterrent. As discussed in Part II.G, the current federal authority for managing Great Lakes water diversions (1986 WRDA) has shaky future political prospects. From the perspective of the Great Lakes states, the risk of putting Congress in the lead role for managing a resource that could be coveted by other regions is obvious. While cooperative horizontal federalism does not preempt or prevent congressional action, it makes it politically less likely. Congress would need to overturn the express and collective legislative will of an entire region, something that has never occurred in the history of interstate water management compacts.

#### No Preemption — state efforts and federal motivation.

Hall 06 — Noah Hall, Professor of Environmental and Water Law at Wayne State University, former Professor at the University of Michigan School of Law, J.D. from the University of Michigan Law School, 2006 (“Toward a New Horizontal Federalism: Interstate Water Management in the Great Lakes Region,” *University of Colorado Law Review,* Volume 77, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=888603>, Accessed on 07-11-2021, Jackson Hightower)

Beyond the legal benefits, a cooperative horizontal federalism approach also eliminates many of the political obstacles to environmental protection. By allowing the states to take the initiative and craft their own solutions, states have a more genuine ownership stake in the resulting policy. Instead of having legal burdens forced upon them, they may embrace the goals of the program and better support its implementation. Having invested in the development and creation of a regional policy, the states are more likely to adequately fund the resulting programs and provide the resources needed for effective administration, since they are politically invested in the program’s success.

Programmatic review and enforcement may also be stronger under cooperative horizontal federalism approach. Federal agencies are often reluctant to challenge state programs for a variety of political reasons, including the cost of assuming the program if the state is out of compliance and the reality that congressional representatives are advocates for their states. These problems are minimized in the cooperative horizontal federalism model. A neighboring state will have fewer political disincentives for enforcing programmatic compliance on a delinquent state. It is possible that neighboring states will even be pressured by business interests within their borders to ensure that the competition is playing by the same rules.

# Federalism DA

### 1NC – DA

#### Environmental federalism is hanging in the balance now — the plan sets it in the federal governments favor.

Adler 20 — Johnathan Adler, Professor of Law at Case Western Reserve University, Director of the Coleman P. Burke Center for Environmental Law, senior fellow at the Property & Environment Research Center, J.D. from George Mason University, 2020 (“Uncooperative Federalism 2.0,” *Hastings Law Journal,* Available Online at <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=3058&context=faculty_publications>, Accessed on 07-13-2021, Jackson Hightower)

One area ripe for reconsideration is the federal-state balance in environmental law. Concerns about federalism in environmental law have persisted since the 1970s, when Congress began enacting broad environmental regulatory statutes.17 In the mid-1970s, state governments resisted the EPA’s efforts to force more aggressive air pollution regulation.18 In the 1980s, the Reagan Administration sought to lessen the burdens of federal environmental regulation, albeit with limited success.19 In the 1990s, private landowners and local governments sought relief from what they perceived as overweening and excessive federal environmental regulation.20 During the Obama Administration, state attorneys general and resource groups assailed ambitious environmental regulatory initiatives, such as the Clean Power Plan and a broadened definition of “waters of the United States” under the Clean Water Act. 21

Given the history of opposition to federal environmental regulation, particularly among Republican constituencies, it is unsurprising that candidate Trump campaigned on a platform of limiting federal regulation and, upon his election, sought to appoint critics of such regulation to key administration posts.22

A common conservative critique of federal environmental law is that it is overly centralized. Under this view, the federal government does too much, and crowds out the opportunity for state governments and local communities to pursue their own environmental priorities. Distinctly local priorities, such as the management of local resources or land use, get subsumed by federal regulatory edicts.

There is much truth to this critique, but it captures only part of the picture. Federal environmental statutes and implementing regulations centralize much environmental policy decision-making, including decision-making concerning distinctly local matters. As a consequence, many policy decisions that are more appropriately dealt with at the state or local level are made in Washington, D.C. At the same time, the federal government has failed to address those sorts of environmental problems for which federal involvement is most need and most appropriate. The result is a pervasive jurisdictional mismatch in federal environmental law, which undermines the more effective achievement of environmental policy goals.23

Federal environmental statutes and regulations govern many matters for which the costs and consequences of environmental policy decisions are localized. The argument for federal primacy in such matters is quite weak. Where the costs and benefits of environmental policy choices are known and confined to a given political jurisdiction, there is little reason to believe that transferring responsibility for making such choices to Washington, D.C. will produce systematically better results. Indeed, given the wide geographic, environmental, economic, and political variations across the country, there are many reasons to suspect that federal policy decisions concerning localized problems will actually be worse than those made by state and local officials. Localized knowledge is difficult to accumulate and deploy from a centralized administrative agency. Regional differences mean that federal policies will often fail to account for local particulars. As a consequence, uniform policies are likely to be over-protective in some areas, and under-protective in others. A policy that effectively reduces air pollution in one part of the country, such as New York City or Atlanta, may not work as well in parts of the country with different mixes of pollution sources, different topography, and a different climate. Further, the likelihood that “one size fits all” federal policies operate as “one size fits nobody” will only increase over time, as environmental measures experience diminishing marginal returns and regional variation becomes more important on the margin.

#### Effective federalism is key to mitigate climate change

Adler 20 (Jonathan, Johan Verheij Memorial Professor of Law and inaugural Director of the Coleman P. Burke Center for Environmental Law at the Case Western Reserve University School of Law. 2-21-20 “Uncooperative Environmental Federalism 2.0” Volume 71 Issue 5 Hastings Law Journal <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3904&context=hastings_law_journal> pp. 1107-1110 JO)

A common conservative critique of federal environmental law is that it is overly centralized. Under this view, the federal government does too much, and crowds out the opportunity for state governments and local communities to pursue their own environmental priorities. Distinctly local priorities, such as the management of local resources or land use, get subsumed by federal regulatory edicts. There is much truth to this critique, but it captures only part of the picture. Federal environmental statutes and implementing regulations centralize much environmental policy decision-making, including decision-making concerning distinctly local matters. As a consequence, many policy decisions that are more appropriately dealt with at the state or local level are made in Washington, D.C. At the same time, the federal government has failed to address those sorts of environmental problems for which federal involvement is most need and most appropriate. The result is a pervasive jurisdictional mismatch in federal environmental law, which undermines the more effective achievement of environmental policy goals.23Federal environmental statutes and regulations govern many matters for which the costs and consequences of environmental policy decisions are localized. The argument for federal primacy in such matters is quite weak. Where the costs and benefits of environmental policy choices are known and confined to a given political jurisdiction, there is little reason to believe that transferring responsibility for making such choices to Washington, D.C. will produce systematically better results. Indeed, given the wide geographic, environmental, economic, and political variations across the country, there are many reasons to suspect that federal policy decisions concerning localized problems will actually be worse than those made by state and local officials. Localized knowledge is difficult to accumulate and deploy from a centralized administrative agency. Regional differences mean that federal policies will often fail to account for local particulars. As a consequence, uniform policies are likely to be over-protective in some areas, and under-protective in others. A policy that effectively reduces air pollution in one part of the country, such as New York City or Atlanta, may not work as well in parts of the country with different mixes of pollution sources, different topography, and a different climate. Further, the likelihood that “one size fits all” federal policies operate as “one size fits nobody” will only increase over time, as environmental measures experience diminishing marginal returns and regional variation becomes more important on the margin. Prioritization is necessary. Federal regulatory resources are necessarily limited. As a consequence, regulatory agencies can maximize the benefits of their regulatory efforts in so far as they concentrate or target their efforts where federal intervention is likely to do the most good, and the least harm. Accordingly, federal regulatory resources are best utilized if they are targeted at those areas where there is an identifiable federal interest or where the federal government is in a particularly good position to advance environmental protection, particularly given available alternatives. Federal regulatory agencies will often have greater scientific and technical expertise than their state and local counterparts, but this does not necessarily translate into superior policymaking. The technical expertise necessary for identifying various trade-offs at the margin does not translate into a superior ability to determine which trade-offs should be made, particularly insofar as such choices implicate subjective value preferences about how to prioritize competing goods when resources are scarce. Should marginal resources be devoted to controlling emissions of ozone precursors, limiting nutrient runoff into local streams, ensuring proper remediation of an abandoned waste site, or expanding access to health care or nutritional programs? Such choices necessarily implicate normative concerns that are beyond any scientific or technical analysis. Superior expertise certainly supports an argument that federal agencies should assist state and local policymakers and help ensure that environmental policy decisions are more informed, but not that state and local policy choices should be made in Washington, D.C. One prominent justification for federal environmental regulation of localized pollution concerns is that the lack of a federal “floor” could lead to a destructive “race-to-the-bottom,” in which states adopt sub optimally lax environmental protections in a futile effort to attract off-setting levels of economic investment.24As President Richard Nixon warned in 1970, without stringent federal environmental standards, “states and communities that require such controls find themselves at a...disadvantage in attracting industry, against more permissive rivals.” The race-to-the-bottom theory presumes that interjurisdictional competition creates a prisoner’s dilemma for states. Each state wants to attract industry for the economic benefits that it provides. Each state also wishes to maintain an optimal level of environmental protection. However, in order to attract industry, the theory holds, states will lower environmental safeguards so as to reduce the regulatory burden they impose upon firms. This competition exerts downward pressure on environmental safeguards as firms seek to locate in states where regulatory burdens are the lowest, and states seek to attract industry by lessening the economic burden of environmental safeguards. Because the potential benefits of lax regulation are concentrated among relatively few firms, these firms can effectively oppose the general public’s preference for environmental protection regulation. This will lead to social welfare losses even if environmental harm does not spill over from one state to another. The result, according to the theory, is the systematic under-regulation of environmental harms, and a need for federal intervention. The race-to-the-bottom theory may have had some basis in the 1960s and 1970s, but there is little reason to believe that this dynamic inhibits state regulatory efforts today, particularly given how aggressive many states are in environmental policy. Empirical evidence that states race to relax their environmental regulations in pursuit of outside investment is decidedly lacking. If the prospect of interstate competition discourages state-level environmental regulation, it is hard to explain why state environmental regulation often preceded federal intervention and why many states adopt more stringent measures than federal regulations require. Numerous studies have been conducted attempting to determine whether a race-to-the-bottom can be observed in the context of environmental regulation, and they have generally failed to find any evidence that environmental quality worsens when states are given more flexibility to set their own priorities.27Indeed, some studies have found precisely the opposite: that when states have more flexibility to set their own environmental priorities they increase their efforts.2

#### Warming causes extinction

Dunlop 17 [Ian Dunlop chaired the Australian Coal Association in 1987-88, chaired the Australian Greenhouse Office Experts Group on Emissions Trading from 1998-2000 and was CEO of the Australian Institute of Company Directors from 1997-2001. He has a particular interest in the interaction of corporate governance, corporate responsibility and sustainability. An engineer by qualification, he holds an MA (Mechanical Sciences) degree from the University of Cambridge, he is a Fellow of the Australian Institute of Company Directors, the Australasian Institute of Mining and Metallurgy, and the Energy Institute (UK), and a Member of the Society of Petroleum Engineers of AIME (USA). He also chairs the Australian National Wildlife Collection Foundation. David Spratt is a Research Director for Breakthrough and co-author of Climate Code Red: The case for emergency action (Scribe 2008). His recent reports include Recount: It’s time to “Do the math” again; Climate Reality Check and Antarctic Tipping Points for a Multi-metre Sea-level Rise. A Failure of Imagination on Climate Risks. July 26, 2017. www.resilience.org/stories/2017-07-26/a-failure-of-imagination-on-climate-risks/]

Climate change is an existential risk that could abruptly end human civilisation because of a catastrophic “failure of imagination” by global leaders to understand and act on the science and evidence before them.

At the London School of Economics in 2008, Queen Elizabeth questioned: “Why did no one foresee the timing, extent and severity of the Global Financial Crisis?” The British Academy answered a year later: “A psychology of denial gripped the financial and corporate world… [it was] the failure of the collective imagination of many bright people… to understand the risks to the system as a whole”.

A “failure of imagination” has also been identified as one of the reasons for the breakdown in US intelligence around the 9/11 attacks in 2001.

A similar failure is occurring with climate change today.

The problem is widespread at the senior levels of government and global corporations. A 2016 report, Thinking the unthinkable, based on interviews with top leaders around the world, found that:

“A proliferation of ‘unthinkable’ events… has revealed a new fragility at the highest levels of corporate and public service leaderships. Their ability to spot, identify and handle unexpected, non-normative events is… perilously inadequate at critical moments… Remarkably, there remains a deep reluctance, or what might be called ‘executive myopia’, to see and contemplate even the possibility that ‘unthinkables’ might happen, let alone how to handle them.

Such failures are manifested in two ways in climate policy. At the political, bureaucratic and business level in underplaying the high-end risks and in failing to recognise that the existential risk of climate change is totally different from other risk categories. And at the research level in underestimating the rate of climate change impact and costs, along with an under-emphasis on, and poor communication of, those high-end risks.

Existential risk

An existential risk is an adverse outcome that would either annihilate intelligent life or permanently and drastically curtail its potential. For example, a big meteor impact, large-scale nuclear war, or sea levels 70 metres higher than today.

Existential risks are not amenable to the reactive (learn from failure) approach of conventional risk management, and we cannot necessarily rely on the institutions, moral norms, or social attitudes developed from our experience with managing other sorts of risks. Because the consequences are so severe — perhaps the end of human global civilisation as we know it — researchers say that “even for an honest, truth-seeking, and well-intentioned investigator it is difficult to think and act rationally in regard to… existential risks”.

Yet the evidence is clear that climate change already poses an existential risk to global economic and societal stability and to human civilisation that requires an emergency response. Temperature rises that are now in prospect could reduce the global human population by 80% or 90%. But this conversation is taboo, and the few who speak out are admonished as being overly alarmist.

Prof. Kevin Anderson considers that “a 4°C future [relative to pre-industrial levels] is incompatible with an organized global community, is likely to be beyond ‘adaptation’, is devastating to the majority of ecosystems, and has a high probability of not being stable”. He says: “If you have got a population of nine billion by 2050 and you hit 4°C, 5°C or 6°C, you might have half a billion people surviving”. Asked at a 2011 conference in Melbourne about the difference between a 2°C world and a 4°C world, Prof. Hans Joachim Schellnhuber replied in two words: “Human civilisation”.

## Link

### Link – Generic

#### Any federal implementation necessarily erodes a basic tenet of constitutional federalism, reversing existing Supreme Court deference

Malloy 12 [Bonnie graduated magna cum laude from Florida State University College of Law in 2010 with a certificate in Environmental and Land Use Law. TESTING COOPERATIVE FEDERALISM: WATER QUALITY STANDARDS UNDER THE CLEAN WATER ACT. March 21, 2012. https://www.law.uh.edu/eelpj/publications/6-1/Malloy.pdf]

The Supreme Court has bolstered states’ rights in several decisions that could be understood as limiting the federal government’s authority within the WQS context. At a minimum, the Court’s willingness to emphasize the states’ primacy and uphold state actions that limit or change federally-set standards may send a message to federal agencies to tread lightly when initiating actions within this area. Although these cases are supportive of state autonomy in land use, they neither expand states’ rights past any right already granted or preserved in the CWA nor abridge federal authority. Some infringement of states’ traditional land use authority will necessarily result any time a federal agency follows the CWA’s mandatory duties to set WQS for states that fail to do so or do so incorrectly.

1. States retained jurisdiction over land-use and water allocation.

The Supreme Court’s decision in Rapanos87 provides a useful discussion of the underlying federalism concerns that arise in challenges under the CWA. In Rapanos, Justice Scalia’s plurality opinion found that isolated wetlands adjacent—but with no “continuous surface connection”—to ditches that occasionally drain into tributaries of navigable waters were not within the Corps’ jurisdiction.88 Scalia found that the Corps stretched the terms “the waters of the United States” too far when requiring permits for certain wetlands that had no clear, continuous surface connection to ditches that only periodically drained into navigable waters.89 Interestingly, Scalia’s interpretation was partially founded on the CWA’s policy of preserving the rights of states.90 In reaching this result, Scalia rejects Justice Kennedy’s rationale in a concurring opinion that relied on the CWA’s main purpose—cleaning up waters—when interpreting the scope of the Corps’ jurisdiction.91

Specifically, Scalia found that the Corps’ interpretation would significantly infringe the states’ traditional autonomy over land use and water allocation by subjecting almost all development planning to federal control.92 According to Scalia, unprecedented intrusions into traditional state authority and any act that presses the limit of the Congress’ constitutional validity, under the Commerce Clause, must have “clear and manifest” congressional approval.93 Here, the mere terms “the waters of the United States” was not enough to allow the federal government to encroach upon a state’s land use decisions.

The autonomy of states over land use decisions is a basic tenet of constitutional law, and like Scalia pointed out, the CWA expressly preserved all traditional rights of the states.94 Moreover, it is easy to see that as the Corps’ jurisdiction expands to more and more wetlands; it increasingly interrupts a state’s ability to decide land use issues. While most instances of federal actions under the CWA do not exhibit such extreme infringements on states’ rights, this is a constant concern to courts. It is important to keep in mind that any action taken by EPA or the Corps while executing their duties will interfere at some level with these reserved rights.95

#### States have definite power over water law and allocation

Babie et al 20 (Paul T., Adelaide Law School Professor of the Theory and Law of Property, The University of Adelaide. Paul Leadbeter, Senior Lecturer, Adelaide Law School, The University of Adelaide. Kyriaco Nikias, Research Associate and Associate Teacher, Adelaide Law School, The University of Adelaide. “Federalism Fails Water: A Tale of Two Nations, Two States, and Two Rivers” 4-8-2020 U. of Adelaide Law Research Paper, J. ENVTL. LAW AND LITIGATION, Vol. 35, 1 pp. 19-20 JO)

When the federal government legislates within its sphere of competence, the Supremacy Clause ensures that such law is the “supreme law of the land.”85This power, operating in concert with the preemption doctrine developed by the Supreme Court of the United States, results in relevant federal legislation preempting state law, even in the case of state and federal laws that conflict with one another.86As a general matter, in the absence of any federal law, however, a state law will operate, but only until such time as the federal government might legislate. Alternatively, where conflict might otherwise occur, the two spheres of government can cooperate with respect to a given matter.87The question then arises as to which powers the states exclusively enjoy in relation to water. An initial distinction must be drawn between interstate waters (flowing through more than one state) and those entirely within one state. In the case of the former, “on the whole, the federal government’s powers have been used to guide and control the development of major streams in the country.”88In the case of the latter, as the owner of all resources “occurring wholly within [its] borders,”89and because the Tenth Amendment ensures that undelegated powers are reserved to the states, a state has “greater responsibility for the distribution and use of waters locally.”90The powers reserved to the states with respect to water fall into three broad categories. First, the “police power” allows for the regulation of “various water activities for the general welfare, such as the production of water for domestic purposes or the control of sewage disposal,” and “for the protection of health, safety, and welfare, including [public] trust resources, such as fish and wildlife.”92Second, states enjoy “the power to determine the allocation and distribution of both surface and underground waters within the state. The states are permitted to adopt whatever system of water law they choose, including the law for those lands which have passed from the federal government to the states, provided it does not conflict with the federal government’s powers over navigation.”93This allows for the entirety of state water resources law, which governs the allocation and use of water not otherwise subject to federal jurisdiction.94And third, states may exercise “powers to engage in interstate action with respect to water use and development.”95Of greatest significance here are those instances of cooperative or flexible federalism resulting in interstate compacts, as we will see in Part III in relation to the Colorado River Compact of 1922.

### Link – Water Allocation

#### Water allocation is the most important area of water federalism.

Craig 13 — Robin Craig, Professor of Water, Energy, and Climate Change at the University of Southern California School of Law, PhD in Science from the University of California, Santa Barbara, J.D. from the Lewis & Clark School of Law, 2013 (“Adapting Water Federalism to Climate Change Impacts: Energy Policy, Food Security, and the Allocation of Water Resources,” *Environment & Energy Law & Policy Journal*, Volume 5, June 8th, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555944&download=yes>, Accessed on 07-12-2021, Jackson Hightower)

At the other end of the spectrum is states’ rights or decentralized federalism—a recognition of states’ primacy in certain areas of law and regulation, with occasional back bending attempts on the federal government’s part to recognize, protect, and insulate those state roles from federal interference.15 With respect to water, states’ rights federalism is most prominent in the area of water rights allocation, where the federal government often goes out of its way to preserve—and, indeed, often submits itself to—state law schemes for assignment rights to use water.16

#### It's a quintessential part of decentralized federalism.

Craig 13 — Robin Craig, Professor of Water, Energy, and Climate Change at the University of Southern California School of Law, PhD in Science from the University of California, Santa Barbara, J.D. from the Lewis & Clark School of Law, 2013 (“Adapting Water Federalism to Climate Change Impacts: Energy Policy, Food Security, and the Allocation of Water Resources,” *Environment & Energy Law & Policy Journal*, Volume 5, June 8th, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555944&download=yes>, Accessed on 07-12-2021, Jackson Hightower)

In sharp contrast to navigation, authority over water allocation—the law governing who has the right to remove fresh water from its natural watercourse and to use that water for some consumptive purpose, such as irrigation, drinking water, or industrial manufacturing—is deemed, sometimes obsessively, to belong to the states.39 Thus, this aspect of water management provides a quintessential example of states’ rights or decentralized federalism.

There is little question that water allocation is decentralized, with the exact principles and requirements governing the withdrawal and consumptive use of water varying considerably from location to location.40 When it comes to ground water regulation, for example, and even generalizing, the states have followed at least five different regulatory systems.41 With regard to surface water, the eastern states inherited from England the doctrine of riparianism, which ties the right to use water to ownership of the land adjoining the water source—i.e., the riparian landowners.42 Even so, many eastern states have since realized that the legal connection of consumptive use rights to riparian land ownership limits non-riparian development43 and have transitioned to “regulated riparianism” and administrative permitting.44 In contrast, the perpetually water-limited and drought-threatened western states generally rejected riparianism in favor of the prior appropriation doctrine.45 Prior appropriation operates on a principle of “first in time, first in right”—the first user to apply water to a beneficial use, without waste or abandonment, acquires a continued right to a water supply superior to that of later users drawing water from the same source.46 Nevertheless, Hawaii follows its own rules regarding the allocation of surface water in order to recognize Native Hawaiian traditions and rights with respect to water,47 while California, Nebraska, and Oklahoma combine riparian and prior appropriation rules in systems known as the California Doctrine.48

Of course, water allocation is not a pure example of decentralized federalism, as Reed Benson has discussed at length.49 Nevertheless, the federal government does go to significant effort to preserve states’ rights with respect to water allocation. For example, the Desert Land Act of 187750 applies to lands in California, Oregon, Nevada, Colorado, Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, North Dakota, and South Dakota that were public (federal) at the time of enactment.51 As interpreted by the Supreme Court, in that statute Congress both severed non-navigable waters from the public lands, ending common-law riparian rights,52 and gave control over water rights in those waters to the states,53 effectively shifting the legal ability to water rights on those lands from the federal government to the states.

Similarly, in section 8 of the Reclamation Act of 1902, Congress declared that:

Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws . . . .54

Thus, Congress not only sought to respect the states’ laws on water allocation but also to subject the Secretary of the Interior and its subsidiary, the Bureau of Reclamation, to them.55 As the Supreme Court explained in 1978, “[a] principal motivating factor behind Congress’ decision to defer to state law was thus the legal confusion that would arise if federal water law and state water law reigned side by side in the same locality.”56 However, “[b]oth sponsors and opponents of the Reclamation Act also expressed constitutional doubts as to Congress’ power to override the States’ regulation of waters within their borders.”57 Notably, this predilection for preferring state law in the context of water allocation is so strong that Congress and the Secretary have followed the Reclamation Act’s model even when a particular project could have been justified on navigation grounds, potentially overriding the state’s rules.58

Another example of federal preservation of state primacy in water allocation comes in the Clean Water Act. This statute explicitly states that:

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall cooperate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.59

While this provision makes it clear that the EPA and the Army Corps are not in the business of establishing water rights, the courts have done little to explicate its full meaning. In general, the federal courts have adopted a policy of accommodation, emphasizing that while this provision “preserve[s] the authority of each State to allocate water quantity as between users, [it does] not limit the scope of water pollution controls that may be imposed on users who have obtained, pursuant to state law, a water allocation.”60 However, more recent cases from the Supreme Court have stressed that “the Clean Water Act provides for a system that respects the States’ concerns”61 and have read federal regulatory authority narrowly “to avoid significant constitutional and federalism questions . . . .”62 Perhaps not coincidentally, the U.S. Court of Appeals for the Ninth Circuit recently expressed more definitive protection for state authority over water allocation, concluding that “[i]n the absence of state law to the contrary, water withdrawals are not subject to the requirements of the Clean Water Act.”63

Congress’s repeated determination to preserve state authority over water allocation raises, from the opposite perspective from federal supremacy in navigation, the question of why? Why has the federal government generally been deferential to the states in the context of water allocation? Again, Benjamin Sovacool’s typology suggests answers. Sovacool argues that:

[t]he case for devolution of environmental policy often rests on a set of four interconnected assumptions: (i) that decentralization induces experimentation and innovation; (ii) devolution provides more flexibility in responding to environmental problems; (iii) decentralization improves accountability and equity; and (iv) states will engage in welfare-enhancing competition to craft better environmental policies.64

### Link – Congress

#### Expansion of Congressional environmental policy disregards constitutional limitations

**Adler 2005** (Jonathan H, inaugural Johan Verheij Memorial Professor of Law and Director of the Coleman P. Burke Center for Environmental Law at the Case Western Reserve University School of Law, where he teaches courses in environmental, administrative and constitutional law, “Judicial Federalism and the Future of Federal Environmental Regulation”, Faculty Publications, https://scholarlycommons.law.case.edu/faculty\_publications/175 // JK ☺)

Despite the ambitious sweep of federal environmental legislation, there was little, if any, thought given to the constitutional justification for such enactments.54 Congress adopted environmental statutes governing a wide range of activities and phenomena never-before subject to federal regulation without questioning whether any such legislation might exceed the scope of Congress's enumerated powers.55 Nearly all the major environmental statutes give a passing nod to the historic state role in addressing pollution concerns, yet then proceed to expand the federal government's reach into such terrain. 56 Because federal environmental programs are so expansive, environmental regulation may be particularly vulnerable to federalism constraints on federal power. Insofar as courts restrict the scope of federal regulatory authority due to federalism concerns, this may have a particular effect on environmental regulation. II. THE SUPREME COURT's FEDERALISM Central to the Supreme Court's revived federalism jurisprudence is the idea that the structure of the Constitution creates a system of "dual sovereignty" in which both the federal government and the states are sovereigns.57 Although often characterized as a "States rights" philosophy, "dual sovereignty" is supposed to operate for the benefit of citizens, not states.58 Much as the horizontal separation of powers prevents any single branch of government from accumulating too much power, the division of authority between the federal and state governments protects liberty from government encroachment.59 "The different governments will control each other, at the same time that each will be controlled by itself," explained James Madison in Federalist No. 51. 60 If the limits of federal power are respected, and the appropriate balance between the federal and state governments is maintained, inteijurisdictional competition restrains state governments from imposing unnecessary burdens upon their citizens. 61 The beneficiaries of this arrangement are not the state governments, as such, as they are forced to compete with one another for the loyalty of their citizens, but the people. Maintaining this balance is the purpose of federalism. The Supreme Court's recent federalism jmisprudence has two distinct strains. The first focuses on the federal government's enumerated powers. These cases ask whether a given federal statute represents a proper exercise of one of Congress's enumerated powers. In these cases, the Court has held that the enumeration of distinct federal powers places affirmative limits on Congress's power. Some matters-those not within the bounds of the enumerated powers-are simply beyond the reach of federal hands. The second centers on protecting state sovereignty. The focus in these cases is the extent to which residual state sovereignty immunizes states from federal efforts to direct or otherwise influence state resources and policy decisions. Together, these two 3 From its inception the federal government has been a government of enumerated powers. As the Court declared in Marbury v. Madison, "The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written."62 Those powers not delegated to the federal government are, in the words of the Tenth Amendment, "reserved to the States, respectively, or to the people."63 The bulk of Congress's powers are enumerated in Article I, section 8 of the Constitution, though others are scattered through the document, including the enforcement power contained in section 5 of the Fourteenth Arnendment. 64 To the Court's current majority, it is a matter of "first principles" that congressional authority is limited to these powers. 55 United States v. Lopez66 and City of Boerne v. Florel7 make clear that even Congress's broadest powers-to regulate commerce and protect civil liberties under the Fourteenth Amendment-have distinct and defined limits beyond which Congress's reach may not extend. Several of the Supreme Court's recent federalism cases have sought to define d1e outer limits of federal l . th 68 enumeratec powers m ese two areas

## UQ

### UQ – General

#### Biden is restoring power to the states but hurdles remain

Craig Holt Segall, 3-12-21, Assistant Chief Counsel, California Air Resources Board, “Networked Federalism: Subnational Governments in the Biden Era” https://www.ecologylawquarterly.org/currents/networkedfederalism/

Subnational governments, working with non-governmental advocates, drove climate action during the Trump administration while rebuffing federal rollbacks. Under the Biden administration, focus may initially shift towards the federal government, but the subnational network is critical to continued progress on climate change. I use the term “networked federalism” to describe how a horizontal, interconnected, and polycentric collection of states, local governments, Tribes, and advocates provides the resilient frame needed to buttress national action. Indeed, this structure mirrors the successful structure of the Paris Agreement[1]—in which international action depends on subsidiary national contributions. A networked, federalist system of subnational climate action will be critical to continuing success, and should be nurtured and expanded. In this article, I discuss barriers to federal climate action under the Biden administration, trace the important role of subnationals in the climate movement, and lay out a policy agenda for strengthening subnational networks over the next four years. I. Barriers to Federal Action Under the Biden Administration Despite its climate focus, the Biden administration inherits a depleted civil service,[2] multiple crises from COVID-19 to economic depression,[3] and a hostile Supreme Court and federal judiciary.[4] In this context, subnationals on the side of climate action can be force multipliers—advancing policies, making markets, and occupying legal and civil space even if the federal courts intervene and the legislative process falters. Such setbacks are likely: congressional direction may be slow in coming due to the undemocratic design of the U.S. Senate,[5] in which Jim Crow relics like the filibuster aggregate power in a Republican Senate minority that represents forty-one million fewer Americans than the thin Democratic majority.[6] Congress is unlikely to produce sweeping new legislature—though there will be opportunities for focused action[7]—and the judiciary is unlikely to countenance comprehensive regulatory efforts in its absence. Though some regulations will certainly survive, Trump appointments mean that the judiciary is unfriendly to broad executive action by the Biden administration. Barriers include attempts to revive “non-delegation” doctrines limiting agency scope absent very specific Congressional direction,[8] attacks on the deference due to agency technical judgments,[9] and amplification of the ill-defined “major question” doctrine, which asserts that agencies may not solve substantial problems absent explicit mandates.[10] Though these attempts have largely been supported only by minorities of the Court, they are of increasing currency, and are cropping up in lower court dissents.[11] The upshot is that regulatory action may be impeded by judicial doctrines that disfavor executive action—in theory, in deference to the legislature—even as the legislature struggles to act.[12] Even if these barriers can be overcome, the midterm elections loom, and the historical odds favor gains for the Republican party.[13] In short, federal action, after a heartening start,[14] risks almost immediate reversals in court, or simply sputtering out legislatively if Congress cannot act commensurate with the challenge. In this context, the subnational network formed over the last four years is tactically critical. The new President can rely not just on the federal government, but on the entire network. II. The Subnational Infrastructure: More Than A Counterweight The Trump administration’s least likely legacy is genuinely robust and pervasive subnational climate action. Faced with wholesale federal hostility, subnationals banded together to challenge nearly every Trump-era climate and clean air action,[15] and racked up an impressive win record,[16] including vacatur of Trump’s marquee power sector rollbacks.[17] As the litigation stalled the remaining rollbacks,[18] states also increased policy collaborations. The result was a major acceleration in state-level climate policy: multiple states prepped to follow California’s more rigorous vehicle emissions standards as soon as federal impediments were removed, accelerating decarbonization of the vehicle fleet;[19] states in the Northeast created a massive new transportation decarbonization initiative;[20] many states adopted statutes cutting high-global warming potential gases like hydrofluorocarbons;[21] and low carbon fuel standards began to spread.[22] Subnational regulators also began to close down obsolete fossil fuel infrastructure, with record numbers of coal-fired power plants retiring,[23] to be replaced with renewable energy and storage facilities.[24] States accelerated markets for clean technology,[25] implemented major environmental justice efforts in, for instance, California[26], North Carolina,[27] and New Jersey[28], and pivoted towards a just transition.[29] Additionally, a bipartisan coalition of governors formed the United States Climate Alliance, which included states representing 55 percent of the population.[30] The United States Climate Alliance documented and shared climate efforts among the states, and provided a critical collaborative venue.[31] Beyond the value of policy progress in its own right, this decentralization of policy ultimately makes climate action more durable and effective on multiple axes: States were the first and primary environmental regulators and the law continues to carve out ample space for state action.[32] Federal authority cedes to subnationals in critical areas, including land use,[33] the intrastate power sector,[34] building codes, and emissions from existing stationary[35] and mobile sources.[36] The federal Clean Air Act is typical in specifying that federal regulations are floors above which subnational governments are free to act.[37] Thus, most emissions are firmly under subnational jurisdiction. State and local legal authorities are particularly resistant to judicial reversals. Few statutes preempt subnational authorities, and the Supreme Court has long emphasized the importance of state sovereignty in our federal system.[38] Moreover, states receive “special solicitude” regarding their ability to be in court in lawsuits against the federal government.[39] States also have the resources and ability to file such suits—and indeed greatly accelerated their efforts to do so during the Trump administration.[40] In addition to offensive litigation, States have succeeded in defending many programs from challenges asserting a range of federal preemption and federal constitutional claims. For example, California and Oregon successfully preserved their Low Carbon Fuel Standards.[41] Although the Trump administration attempted to limit state authority by, for instance, attacking California’s long-standing vehicle regulatory program,[42] these attacks were on shaky legal ground,[43] and may prove to be evanescent under the new administration. Indeed, even while its vehicle regulatory program was under attack, California was still able to conclude successful agreements under which leading automakers contractually bound themselves to vehicle decarbonization despite federal rollbacks.[44] Subnational advantages extend more deeply into the structure of our politics as subnational action offers a more varied and robust set of frameworks to sustain action, even in the face of federal reversals. Programs rooted in a single totalizing vision tend to be unstable.[45] There are simply too many distinct policy and political interests to make national consensus easy to attain.[46] Even after national consensus is attained, national programs can be subject to swift reversals in the courts—as the Supreme Court stay of the Obama-era Clean Power Plan underlined.[47] More fundamentally, as Harvard political scientist Theda Skocpol has observed,[48] any one climate policy is subject to retrenchment in the absence of sustained political organizing across multiple levels. The subnational network offers this sort of thick and resistant legal/political infrastructure. Subnational policies are not immune to reversal—as Professor Leah Stokes has demonstrated, state-level retrenchment has occurred as incumbent fossil interests resist zero-carbon challengers[49]—but they still have real advantages. Initially, there are simply more actors, meaning that progress can be sustained even if retrenchment occurs in some jurisdictions. But states are also often better able to secure lasting policy settlements: it is less expensive to organize in state politics, meaning that lasting political coalitions are somewhat easier to sustain, and may reach more deeply into the community.[50] The comparative flexibility and speed of state legislation and regulatory processes in some jurisdictions may make it easier to put programs in place and adapt them in the face of attack.[51] And the nimbleness of state and local governments often makes it easier to pair technological policies with social ones—for instance, combining decarbonization rules for an industrial sector with support for transitioning workers.[52] The structure of climate progress ultimately is as multi-leveled and complex as the origins of the climate crisis itself. Elinor Ostrom, Nobel Laureate in Economics, described climate change as a “polycentric” problem, in that the decisions that created the crisis emerge at every level of government and society.[53] Solutions to that crisis will be more robust if they mirror this essentially fractal structure. This was ultimately the insight that motivated the Paris Agreement, with its focus on nationally-determined actions within a larger organizing frame, rather than one central climate regime.[54] The same insight should motivate the design of government programs in the United States, with climate action deepening at every level. III. An Agenda for the Next Four Years Federal action should focus on meaningfully strengthening and engaging with the subnational climate network. Doing so now, while the new administration is at the height of its influence, will help ensure that the network persists, and provide assurance of continued action even if the midterm elections go poorly or federal courts slow executive action. The agenda I lay out here is just a sketch of the many opportunities available: A. Cease Undue Interference with Subnationals Any serious effort to strengthen subnational action needs to begin with ceasing attacks. This will require at least withdrawing the Trump administration’s preemptive limits on state vehicle regulatory authority,[55] its challenge to the California/Quebec Cap-and-Trade Program,[56] and unwanted federal fossil fuel projects inconsistent with local priorities.[57] The Biden administration has begun to set all of these failings right through early executive orders directing agency reviews of such actions,[58] though the effect of these directives will come later as final administrative action is taken. B. Direct Affirmative Cooperation with States, Communities, and Tribes The Biden administration can direct all federal agencies to affirmatively collaborate with subnational governments to advance climate action by revisiting executive orders—generally of Clinton-era vintage and long out of date—concerning consultation with states,[59] Tribes,[60] and environmental justice communities.[61] It has made a start of this in its early Executive Orders,[62] but much remains to be done. Each of these Clinton-era orders, in their current forms, largely direct consultation, rather than positive efforts to enhance subnational authorities.[63] The result has been federal actions that harm subnational governments (such as the attack on the California vehicle program), undertaken with no ability for subnationals to resist outside of court. In the tribal[64] and environmental justice[65] contexts, the picture is similar, with major problems being proposed or forced through without affirmative community consent (as, for instance, in the case of the Dakota Access Pipeline on the Standing Rock Sioux Nation). The Biden Executive Orders and other early actions do address these issues, but in a limited fashion, focused initially on process rather than substantive expansion of authorities—and they do so only for environmental justice communities and Tribal Nations. For instance, the climate Executive Orders direct some degree of reconsideration as to environmental justice communities, providing for new metrics to be developed and used, albeit without formally revising the prior order or providing communities an affirmative right of refusal.[66] This means that the Order does not create new rights, just improved analysis. Similarly, a Presidential Memorandum on Tribal Consultation[67] does not ultimately enhance Tribal authorities, instead focusing on improved consultation plans. It would be better to collaboratively and more thoroughly revise these orders, with the communities they are intended to serve, to (a) direct federal agencies to actively collaborate with subnational entities to further climate and public health goals, and (b) to require very strong justifications for actions contrary to the recommendations of the entities consulted, if not an actual right of refusal. Further, the absence of any clear order on federalism and state and local governments itself is worrying—though states are mentioned at a high level in the early action orders, there is no order focused on federalism, nor any firm directive to act to rapidly advance state climate action in partnership. This is a missed opportunity, and one that should be corrected—swiftly. This is no time to allow the network for action to degrade. Such orders, and further strengthening actions, would lastingly empower the network of polycentric climate actors who have driven much of the progress to date. C. Embed Climate and Public Health Metrics in Federal Grant Programs and Guidelines The federal government, though its spending powers and information resources, can help steer subnational action, raise the federal floor, and encourage laggard jurisdictions to act. For instance, in the Trump years, the Department of Transportation withdrew greenhouse gas metrics for federal transportation spending. [68] The rule could readily be reinstated—helping redirect spending to lower vehicle emissions and favor transit. Similar opportunities exist throughout government to provide clear information on climate and public health impacts, to condition grants on appropriate action, and to target funds to subnationals making progress. One particularly useful strategy may be to fund communities themselves to further advocate for climate and public health progress. For instance, California has been providing such grants to disadvantaged communities working to improve their own air quality, offering community groups resources to develop data and arguments to further inform and influence regulatory decisions involving them.[69] Similar models would help build the interconnected networks of advocates and regulators needed to make climate action sticky. D. Affirmatively Support Subnationals in the Paris Agreement Context Although the Paris Agreement does not bind subnationals, subnational action has produced significant emission reductions that will aid the United States in meeting its overall goals—a pattern that has repeated worldwide.[70] There is every reason to recognize this progress in the Nationally Determined Contribution that the United States must present in Glasgow this year—for instance, by identifying state progress, past and continuing, as part of the Contribution—and commit to further supporting subnational action in the context of the U.S.’s international obligations, a commitment which could take the form of an executive order or memorandum directing the federal government to forward this action, of the form I have described above. Creating a State Department Office dedicated to supporting subnational climate action, within transnational networks,[71] perhaps along with positions with the Domestic Policy Council to do the same inside the country, would also deepen this commitment and help operationalize it within the federal structure. This sort of formal commitment would confirm there is no legal or policy question as to whether subnationals should act, and further mobilize national support for networked federalism across national borders.[72] Supporting subnationals in the Paris Agreement context will help further connect subnationals globally, providing a solid platform for collaboration and increased climate ambition. \* \* \* These actions—and doubtless many others—would help support the thickly interconnected, polycentric, and resilient networks needed to accelerate climate action, make it resilient, and (by bringing in many actors and voices) amplify solutions that equitably serve many. The climate problem is too big for any one government to take it on—including the federal government. The Biden administration, as it confronts this challenge, should embrace the irony that the Trump administration has left it a gift: an engaged, effective, and growing network of subnational actors. The Biden administration should nurture that network, setting us on a course for sustained progress with little time to lose.

#### Trends are pointing upwards.

Benton 20 — J. Edwin Benton, Professor of Political Science and Public Administration at the University of South Florida, former Professor at the University of Northern Iowa, PhD in Political Science and Government from Florida State University, M.A. in Political Science and Government from the University of South Carolina-Columbia, 2020 (“Challenges to Federalism and Intergovernmental Relations and Takeaways Amid the COVID-19 Experience,” *The American Review of Public Administration,* July 15th, Available Online at <https://journals.sagepub.com/doi/full/10.1177/0275074020941698>, Accessed on 07-14-2021, Jackson Hightower)

As this article goes to press, several IGR trends have become obvious. First, there has been a conspicuous increase in joint productive and encouraging endeavors among states and among local governments (interstate and interlocal relations) as these governments work together for positive results in dealing with common challenges caused by COVID-19. Although the formation of formal and informal alliances between states and between local governments is not something new (we saw this during the Great Recession), such an activity has surged to higher levels lately. Another emerging pattern has been in the area of state–local relations. Here, it can be seen that a larger number of states have been willing to grant greater flexibility to their local governments in implementing emergency orders and policies in recognition of the argument that “one size doesn’t fit all.” A third trend has been the deteriorating relations between the national government and the states that has been punctuated with high levels of tension and discord, thus leaving states in many instances to have to “go it alone” due to the lack of direction, attention, and leadership from Washington. Although the pattern became increasingly evident in the 1990s, it has become much more pronounced during the Trump presidency. Although not discussed above, federal–local relations continue to occur in basically the same fashion as they have over the years with administrators at these levels of government engaging in the usual give-and-take over the implementation of federal programs. However, to some degree, the interactions between these IGR actors are mediated through state officials.

In summation, a mixed picture emerges from an early assessment of the adequacy of the American federalism amid the challenges posed by COVID-19. On one hand, there are some positive trends in some arenas of IGR (interstate and interlocal relations) that bode well for the health of American federalism and its ability to prove itself sufficient during crises such as the present. On the other hand, relations in other arenas of IGR (federal–state relations) continue to be marred by divisiveness and fractionalized actions and would seem to be the antithesis of what is needed to achieve the kind of coordination and efficiency to meet the challenges of the day and successfully accomplish things for the “collective good.” In addition, there are some encouraging signs in state–local relations that help insure the health of federalism. In the final analysis, it is hoped that these takeaways will be beneficial to scholars who focus on theory-building and practitioners who daily must strive to harness the potential in the American federal approach to work for the “general welfare.”

### UQ – Water

#### Water federalism strong now

Plumer 5/27 (Brad, climate reporter specializing in policy and technology efforts to cut carbon dioxide emissions. 5-27-2021, "E.P.A. to Modify Trump-Era Limits on States’ Ability to Oppose Energy Projects", No Publication, https://www.nytimes.com/2021/05/27/climate/epa-clean-water-act.html, accessed: 7-12-2021 JO)

The Biden administration on Thursday said it planned to revise a Trump-era rule that limited the ability of states and tribes to veto pipelines and other energy projects that could pollute their local waterways. The Trump administration finalized the rule last June, saying that curbs on state authority were necessary because too many states had been using clean water laws to block pipelines, coal terminals and other fossil-fuel projects from going forward. Since then, 20 states and several tribes have challenged the rule in court, contending that the constraints could hamper their ability to safeguard their rivers and drinking water. But under the Biden administration, the Environmental Protection Agency is now saying that it will move to bolster state authority. “We have serious water challenges to address as a nation and, as E.P.A. administrator, I will not hesitate to correct decisions that weakened the authority of states and tribes to protect their waters,” Michael S. Regan, who took over as head of the agency in March, said on Thursday. Oil and gas industry groups, which had praised the earlier Trump-era rule, said they were wary of major changes. “We hope that the revised rule will be written in a way that balances protecting clean water with the timely construction of essential infrastructure projects while not allowing the law to be manipulated for purposes unrelated to its original intent,” said Karen Harbert, the president and chief executive of the American Gas Association, which represents natural gas distribution and transmission companies. Climate Fwd A new administration, an ongoing climate emergency — and a ton of news. Our newsletter will help you stay on top of it. The rule in question involves Section 401 of the federal Clean Water Act, which for half a century has given states and tribes the right to review and certify federal permits for industrial facilities and other projects that could discharge pollution into major local waterways. Without that certification, the federal government cannot grant the permit. Over the past four years, several states have used that clean-water provision to block or delay fossil fuel projects from moving forward. In 2017, Gov. Jay Inslee of Washington refused to certify a federal water permit for a coal export facility on the Columbia River, citing the risk of significant spills as well as impacts on air quality. Last year, Gov. Andrew Cuomo of New York denied a permit for a pipeline that would have shipped natural gas into his state from Pennsylvania, based on the project’s “inability to demonstrate” that it could comply with water quality standards. The state also noted that increased burning of gas would exacerbate global warming, undermining New York’s plans for curbing greenhouse gas emissions. The Trump administration sharply criticized those moves, arguing that Democratic states were essentially conducting climate change policy under the guise of a law intended for a different purpose. In response, the Trump administration promulgated a new rule: States and tribes would have a one-year deadline to certify or reject projects under the Clean Water Act, and they could take only water quality into consideration when judging permits, not issues like climate change impacts. Andrew Wheeler, President Donald J. Trump’s second E.P.A. administrator, said that the new limits would “curb abuses of the Clean Water Act that have held our nation’s energy infrastructure projects hostage, and to put in place clear guidelines that finally give these projects a path forward.” States, he said, would no longer be allowed to use the law to object to projects “under the auspices of climate change.” The rule was part of a broader move by the Trump administration to speed up permitting and promote new fossil-fuel development. But Democratic lawmakers and environmental groups said the rule infringed on states’ rights. Section 401, they said, had been a critical tool for states to protect their drinking water quality. They also argued that the time restrictions would burden states with limited resources to evaluate complicated projects. Companies would have an incentive to run out the clock by delaying requests to submit data, they said. Environmental law experts also noted that the Supreme Court in 1994 had explicitly affirmed states’ authority to impose conditions on projects based on state law. “The Supreme Court was very clear, states have broad authority to evaluate impacts not just on water resources, but also other environmental issues,” said Julia Anastasio, executive director of the Association of Clean Water Administrators, which represents state water permit administrators in all 50 states. The Biden administration did not specify exactly what changes it planned to make to the Trump-era rule. In a statement, the E.P.A. said that it intended to “strengthen the authority of states and Tribes to protect their vital water resources” while also “retaining elements that support efficient and effective implementation of Section 401.” “The Biden administration is going to have a tough balancing act on this rule,” Ms. Anastasio said. “With their infrastructure push, they are going to want to get more projects built, which will require state certifications for many of them.” Any changes that the E.P.A. makes to the rule will have to go through a public comment period before being finalized.

#### Biden is restoring authority over water protection to states now—EPA rule changes prove

Dino Grandoni, 5-27-21, reporter on the national desk of The Washington Post, focused on covering the Environmental Protection Agency, climate change and other environmental issues. “Biden administration wants to give more power back to states to block pipelines” https://www.washingtonpost.com/climate-environment/2021/05/27/biden-administration-looks-boost-states-ability-block-pipelines/

Plans to build massive ports for shipping coal abroad, seaside terminals for supercooling gas and thousands upon thousands of miles of pipelines cutting through rivers and streams across the United States will all soon be getting extra scrutiny as the Biden administration prepares to give states and tribes more authority to block energy projects. The Environmental Protection Agency announced Thursday it will rewrite a rule finalized last year under President Donald Trump that upended the way the Clean Water Act had worked for half a century. The Trump administration tried to clear away regulatory hurdles for fossil fuel development after New York and other left-leaning states halted gas pipelines and other projects they feared may contaminate rivers, lakes and other waterways within their borders. Now, in an about-face, the agency is preparing to rework those regulations, potentially allowing state officials to take a broader array of environmental concerns — including climate change, an increasing concern among officials in blue states — into account when deciding whether to approve major construction that could defile bodies of water. “We have serious water challenges to address as a nation and as EPA Administrator, I will not hesitate to correct decisions that weakened the authority of states and Tribes to protect their waters,” Michael Regan, President Biden’s EPA chief, said in a statement. While the Biden administration did not offer specifics on how it will amend the rule, the decision comes as the construction of new oil and gas pipelines has emerged as a major point of tension in Biden’s infrastructure push. For years, environmentalists have pressed federal and state officials to stop developers from laying additional oil and gas pipes, arguing that they endanger wetlands with potential spills and threaten to make global temperatures rise even more quickly as the fuel they deliver to market is burned. Heeding protesters’ calls, Biden revoked a permit for the controversial Keystone XL pipeline on his first day in office. At the same time, the president is also trying to square environmentalists’ demands with the desire for more well-paying construction jobs among labor unions, another important Biden constituency, which are urging the White House not to block other pipelines. But the administration’s announcement may end up emboldening blue states to block even more energy projects, taking some the heat off the White House. “It’s going to be a tricky balance for the administration as they begin to relook at this rule, which certainly is what our organization wants,” said Julia Anastasio, executive director and general counsel of the Association of Clean Water Administrators, which represents state water administrators in all 50 states. Under the Clean Water Act, the federal government cannot issue permits for any construction that potentially pollutes waterways without first getting permission from states and tribes. But the Trump administration limited the amount of time local officials had to review projects and restricted them to only consider impacts on water quality. Trump officials, along with Republicans in Congress, were particularly irked by a decision in New York to block a pair of gas pipelines, with state officials arguing last year that the “long-term use of fossil fuels is inconsistent” with combating climate change. And the state of Washington canceled a terminal that would have shipped Wyoming coal to power plants in Asia, arguing that there would be “irreparable and unavoidable harm” to the Columbia River and the fishing rights of Native Americans if approved. The EPA’s move was denounced by Sen. John Barrasso of Wyoming, top Republican on the Senate Energy and Natural Resources Committee, who said miners in his state would suffer if they could not ship their coal to markets abroad. “Once again, the Biden administration is choosing to cave to the extreme left at the expense of America’s energy workers," he said in a statement. “Washington State and east coast states have hijacked the Clean Water Act to slow down important American energy projects.” But Oregon Gov. Kate Brown (D), whose administration blocked the building of a pipeline and export terminal for liquefied natural gas before the Trump rule took effect, praised Biden’s EPA for reconsidering the rule. “The prior administration’s rule was not only harmful to the environment, it was corrosive to state, federal and tribal partnerships,” she said. Robin Rorick of the American Petroleum Institute, a major oil and gas lobbying group, defended the Trump rule for providing “a well-defined timeline and review process for water quality certifications," adding that it hopes to work with the Biden administration in crafting a new version. Among the projects awaiting state water certification is the Mountain Valley Pipeline. The proposed conduit, meant to bring gas from the Marcellus and Utica shales through West Virginia and Virginia, prompted protesters to perch on platforms high in the trees to halt construction. Regulators in both states are still weighing whether to allow the pipeline to cut through creeks with endangered fish, such as the brightly colored candy darter. North Carolina’s Department of Environmental Quality, which was once run by Regan, has twice denied a water permit for a part of the pipeline. “They want to cross some of the most sensitive aquatic habitats, not only in Virginia, but really in the Eastern U.S.” said David Sligh, conservation director of Wild Virginia, a local environmental group. Tracking Biden’s environmental actions Since taking power in January, the Biden administration has adopted nearly two dozen new environmental protections. Just this week, the EPA nixed a Trump-era rule restricting the research that regulators can consider when crafting public health measures. The Trump-era limits on states’ authority over pipeline projects may have been on shaky legal ground to start. More than a dozen states sued over the restrictions. Mark Ryan, a Clean Water Act expert who worked as a lawyer at the agency for 24 years, said the Trump administration ignored long-standing Supreme Court precedent giving states a wide berth in exercising their right to limit energy projects. “They pushed this one out clearly trying to help the pipeline industry,” Ryan said. “As they often did in that administration, they didn’t think things through carefully.”

#### Current statutes uphold deference

Lee ‘20 (Clifford T., Deputy Attorney General of the State of California,“Federalism and Water: The California Experience” 7-2020Golden Gate University Environmental Law Journal, Vol. 12, Iss. 1 https://digitalcommons.law.ggu.edu/gguelj/vol12/iss1/3///AF)

Congressional legislation adopted subsequent to California regarding the CVP has included savings clause language that further affirms the section 8 deference principle. In 1992, Congress adopted the CVPIA. Section 3406(b) of the CVPIA provides that: [t]he Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under State and Federal law, including but not limited to the Federal Endangered Species Act, 16 U.S.C. 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project. 81 In 2016, Congress passed the Water Infrastructure Improvements for the Nation Act (“WIIN Act”), a statute that requires certain operational changes to the CVP.82 Section 4012 of the WIIN Act affirmed the deference to state law principle by providing that: This subtitle shall not be interpreted or implemented in a manner that—preempts or modifies any obligation of the United States to act in conformance with applicable state law, including applicable State water law . . .83 The savings clauses in both the CVPIA and the WIIN Act thus uphold the deference principle. Tellingly, the clauses do not limit the deference principle to California Water Code provisions related to water rights. The CVPIA requires Bureau compliance with “state law. . .including but not limited to” State Water Board water right decisions.84 The WIIN Act 80 speaks of “applicable state law,” including state water law.85 These acts thus suggest, consistent with the Ninth Circuit decisions in Houston and Haugrud, that the deference principle extends beyond state statutes directly related to water rights and may include other state natural resources laws. The resurrection of section 8 of the Reclamation Act of 1902 under California and its judicial and legislative progeny is an important part of the deference principle’s historical narrative.

#### State primacy is the status quo in CWA enforcement

Fowler & Birdsall ’20 (Luke, Associate Professor in Public Policy and Administration and Director of the MPA program at Boise State University, Chris, Assistant Professor of Public Administration in the School of Public Service at Boise State University “Does the Primacy System Work? State versus Federal Implementation of the Clean Water Act” Winter 2020 Publius: The Journal of Federalism, Volume 51, Issue 1, https://academic.oup.com/publius/article-abstract/51/1/131/5830831?redirectedFrom=fulltext//AF)

Programs in the United States that protect traditional navigable waters, interstate waters, and adjacent wetlands along with a few other special categories of waterways are collectively regulated under the CWA. A key part of the CWA is the National Pollution Discharge Elimination System (NPDES), which requires permits for all point source (e.g., discernible, confined conveyances such as a ditch or tunnel) pollutant discharges into specified waterways. In general, the goals is to limit water-based pollutants that enter surface waters through permit-based regulatory controls that assume that waterways will meet standards if discharges are at or below the maximum amount of pollutant discharges set for each body of water, known as the Total Maximum Daily Loads (TMDLs). Notably, whether states have primacy or not, they participate in the development of TMDLs (Houck 2002; Copeland 2003, 2005, 2016). To gain primacy, states must make a formal request to EPA and prove they have the necessary institutional, organizational, and workforce capacities to manage the program. Once granted primacy, states issue permits for pollutant discharges, monitor and enforcement compliance, and experiment with regulatory tools (Copeland 2003, 2006; Woods 2006b). Primacy provides states with the opportunity to match programs to specific water quality challenges by developing regulations for prominent or emerging contaminants in their jurisdictions. Although state-led programs may include all the same administrative components as EPA-led programs (e.g., permitting, compliance enforcement), state agencies may establish more or less stringent permit limits in cases where federal laws allow for regulatory discretion in establishing permit requirements, or they may be more or less strict in compliance enforcement than EPA. Additionally, relationships between state agencies and facilities may differ from those between facilities and EPA-regional offices that are geographically or politically distanced from the realities of daily operations (i.e., more or less collaborative, compliance culture) (Fowler 2014; Copeland 2016). For instance, a research report from an environmental non-profit in Louisiana found that in 2012 ExxonMobil’s Baton Rouge refinery reported no accidents to EPA, but dozens to the Louisiana Department of Environmental Quality (LDEQ), which Clean Water Act suggests the refinery is more likely to cooperate with LDEQ than EPA (Dubose 2013). This provides state agencies with an important advantage over EPA in that they have localized knowledge of and buy-in from facilities that can be leveraged to tailor programs to meet specific challenges that emerge. Although, it may also lead to bureaucratic capture. Regardless of how state agencies balance these interests, weak regulatory tools (e.g., permits are the only direct vehicle for enforcement) create a difficult implementation process. While compliance is compulsory and environmental organizations provide some monitoring, government inspections are rare and most violations are voluntarily reported (Adler, Landman, and Cameron 1993; EPA 2000; Houck 2002; Copeland 2005). Despite these issues, state primacy is widespread. By 1987 when the Water Quality Act (WQA) created the last major expansion of NPDES, thirty-seven states had obtained primacy, with eight more states following suit in the ensuing years (EPA 2018a) (figure 1).1 Notably, there were no major CWA amendments or NPDES reforms post-1987, so the period after the WQA marks the contemporary era in CWA programs.

#### Current water protection policy upholds federalism

Fiorino & Weted ’21 (Daniel, Director at the Center for Environmental Policy at American University, Carley, doctoral student in the Department of Public Administration and Policy at American University, Environmental Federalism in a Polarized Era 1-8-2021 State and Local Government Review Vol 52 Issue 2 https://journals.sagepub.com/doi/abs/10.1177/0160323X20986225//AF)

Divisions of authority vary; federal preemption occurs on a continuum, from extensive to limited. Most centralized is product regulation, given the value of national standards. For example, federal preemption is extensive in motor vehicle standards, as well as in two other product laws: the Toxic Substances Control Act (TSCA) and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). At the other end of the continuum, primacy remains largely with the states, and federal involvement is limited and indirect. In these cases, specific federal laws may bear on aspects of an issue, but there is no statute governing it specifically. Examples are groundwater and hydraulic fracking. State groundwater programs are affected by federal hazardous waste laws (the Resource Conservation and Recovery Act, Safe Drinking Water Act, and Clean Water Act); these affect but do not govern groundwater. While fracking became controversial with advances in technology that led to its expansion, Congress left fracking to states in the 2005 Energy Policy Act (Warner and Shapiro 2013). Lying between the extremes of centralized and decentralized is conjoint federalism, where states “are given the latitude to design and implement their own laws” within federal minimum standards and objectives (Lester 1995, 40). The Clean Air Act and Clean Water Act are prominent examples, as are the Safe Drinking Water and Resource Conservation and Recovery Acts. These variations are depicted in Table 2. On the left are more centralized programs where the federal government has primacy. On the right are programs where states have primacy. In the middle are programs fitting the conjoint model; these exhibit a more complex pattern of shared authority. These variations are further illustrated in four cases: the new TSCA (the Frank Lautenberg Chemical Safety Act for the twenty-first century), a centralized program; the Obama Clean Power Plan, a model for future relationships, despite its withdrawal by the Trump EPA; non-point source water, a mix of federal goals and state implementation; and natural gas fracking, now left largely to states.

## Internal

### 2NC – Spillover

#### Water federalism disagreements trigger retaliation by federal agencies that interrupt broad enforcement regimes – spills over

Goelzhauser & Konisky 20 (Greg, Associate Professor of Political Science at Utah State University.​ David, Associate Professor in the School of Public and Environmental Affairs and the coeditor of Failed Promises: Evaluating the Federal Government's Response to Environmental Justice (MIT Press). Publius: The Journal of Federalism, Volume 50, Issue 3, Summer 2020 <https://academic.oup.com/publius/article/50/3/311/5870265?login=true> pp. 311-343 JO)

In recent years, policy differences have generated a more visceral and vindictive type of response, where the federal government, and at times President Trump himself, retaliates against states for decisions and policies that conflict with the administration’s preferences. This retaliation involves the federal government using its formal powers to punish states. We refer to this retaliatory behavior as “punitive federalism.” Punitive federalism has perhaps been most evident in environmental policy. This past year, the clearest example pertains to a dispute between the Environmental Protection Agency (EPA) and California. The clash began with a policy difference between the EPA and California over an August 2018 agency proposal to weaken an Obama-era rule strengthening fuel economy and greenhouse gas emission standards for cars and light-duty trucks. (These rules are jointly issued by the EPA and the National Highway Traffic Safety Administration (NHTSA).) California and several automakers thought the weakening went too far, but after negotiations over the proposed standards broke down, California reached an agreement with four automakers1—Ford, Volkswagen, Honda, and BMW—in which the companies voluntarily committed to meet a higher standard (Davenport and Tabuchi 2019). This voluntary agreement was a clear rebuke to the Trump administration that undermined its policy goal of weakening standards. A few months later, the EPA responded with several measures seemingly motivated by retribution. First, the EPA issued a final rule in September 2019 that withdrew a waiver it granted California in 2013 allowing the state to pursue its own program for reducing vehicle emissions. California used this type of waiver from preemption clauses of the 1970 Clean Air Act (CAA) for nearly fifty years to regulate vehicle emissions at levels that exceeded federal standards. For many years, at least a dozen other states also adopted these higher standards.2The Trump administration justified waiver withdrawal by emphasizing its desire to create a nationwide standard to simplify compliance for automakers based on its lower standard, rather than a higher standard backed by California. In announcing the decision, EPA Administrator Andrew Wheeler said, “We embrace federalism and the role of states. But federalism does not mean that one state can dictate standards for the entire country” (Joselow 2019).

Although the waiver withdrawal does not invalidate the voluntary agreement California reached with automakers, it challenges other policies California has in place to address pollution emissions from cars and trucks. The Trump administration’s response was, however, just the beginning. Later the same month, the Department of Justice (DOJ) opened an antitrust investigation into the automakers agreeing with California, asserting that their actions might limit consumer choice. This investigation was closed without further action in February 2020 (Davenport 2020). The Trump administration also initiated a series of retaliatory measures against California, which extended into several additional areas of the state’s environmental policy. First, the EPA threatened to cut off federal highway funding, accusing the state of failing to fully implement CAA provisions. In his letter to Mary Nichols, the Chair of the California Air Resources Board, Wheeler alleged that “California has the worst air quality in the United States,” pointing to a large backlog of CAA State Implementation Plans as a key reason (Wheeler 2019a). In a response letter, Nichols indicated that the state had been working for years with the agency to clear this backlog, arguing that the slow progress was due to EPA delays, not the state(Nichols 2019).As a second example, just two days later, Wheeler sent another letter to California, this time questioning the state’s efforts to effectively implement the Clean Water Act (CWA) and Safe Drinking Water Act. This September 2019 letter specifically emphasized the impacts of homelessness in Los Angeles and San Francisco, indicating that the state and cities were not doing enough to mitigate risks to human health and the environment (Wheeler 2019b).3The EPA then sanctioned San Francisco with notices of violation for its three wastewater treatment plants, alleging that they were out of compliance with various CWA requirements (Wittenberg 2019b), even though three weeks prior agency officials expressed support for a new permit for one of the facilities. The EPA’s actions toward California drew a response from the Environmental Council of the States(ECOS)—an organization that represents state environmental agencies. In a letter to Wheeler it stated: “ECOS is seriously concerned about a number of unilateral actions by U.S. EPA that run counter to the spirit of cooperative federalism and to the appropriate relationship between the federal government and the states who are delegated the authority to implement federal environmental statutes” (ECOS 2019).As a final example, the DOJ filed a lawsuit against California’s greenhouse gas cap and trade emissions program, asserting that it was unlawful because it included Quebec. Specifically, the DOJ argued that only the federal government is constitutionally permitted to enter into treaties or agreements with foreign governments. California Governor Gavin Newsom (D) characterized the DOJ case as a “political vendetta,” suggesting that “[t]his latest attack shows that the White House has its head in the sand when it comes to climate change and serves no purpose other than continued political retribution” (cited in Friedman and Benner2019).

These actions represent a pattern of response, and their timing suggests that federal officials intend to seek retribution against states that adopt policies or take actions contradicting its preferences. Outside of environmental policy, the Trump administration’s withholding of grant funds to “sanctuary” jurisdictions also exemplifies punitive federalism. New federal grant conditions require state and local governments to (i) implement a policy guaranteeing compliance with federal requests for advance notice of releasing any undocumented person; (ii) implement a policy guaranteeing federal access to undocumented people who are incarcerated; and (iii) certify compliance with a federal immigration law designed to coordinate vertical information sharing (see, e.g., City of Providence v. Barr, 19-1802). There is a federal circuit court split on whether federal law delegates power to the attorney general to impose these conditions. Absent a policy change, the Supreme Court will likely resolve this split. The Trump administration’s notice of violation to California for mandating private health insurers to cover abortion procedures may be another example of punitive federalism. This notice alleged that California was in violation of the Weldon Amendment, which prohibits interference with health care providers for refusing abortion coverage. Although several states have similar coverage requirements, the administration only targeted California. Strategically announced hours before Trump spoke at a March for Life rally, Governor Newsom responded, “Despite a federal opinion four years ago confirming California’s compliance with the Weldon Amendment, the Trump administration would rather rile up its base to score cheap political points and risk access to care for millions than do what’s right” (C.Dwyer 2020). The state formally responded that its law is consistent with the Weldon Amendment and the attorney general declared in part, “California has a sovereign right to protect women’s reproductive rights” (Press Release 2020).Concerns about punitive federalism also swirled with suggestions that the Trump administration made pandemic response decisions based in part on political allegiance. Responding to criticism from some Democratic governors, Trump said he told Vice President Pence, “[D]on’t call the governor of Washington. You’re wasting your time with him. Don’t call the woman in Michigan” (Wilkie and Breuninger 2020). When Trump also said states “have to treat us well” more generally, it raised concerns “that loyalty and praise could be helpful for states seeking federal help” (Costa and Rucker 2020). Michigan Governor Gretchen Wilmer (D) claimed the federal response was “patchwork, based on whomever the governor is” (Kransz 2020). And when Florida received everything it requested from the federal stockpile while Democratic-led states like Michigan received “only a fraction” of their requests, officials pointed to the close relationship between [Governor Ron] DeSantis and Trump’ as well as Florida’s ‘electoral importance’ (Olorunnipa et al. 2020).

Punitive federalism may have also motivated other disaster relief positions. After wildfires ravaged California, Trump disparaged the state and its governor for seeking federal aid and threatened to withhold further assistance, prompting Representative Ted Lieu (D-CA) to respond that Trump was “the president for all Americans” and that “nature does not discriminate based on ideology” (Bacon2019). Trump also withheld billions of dollars in congressionally allocated relief for Puerto Rico following a series of devastating earthquakes. Trump’s associates reportedly relayed the president’s view that “Puerto Ricans had complained too much,” while the president expressed frustration that Puerto Rico received more disaster relief money than certain Republican-led states even though, in his view, the Puerto Rican “government can’t do anything right [and] the place is a mess”(Karni and Mazzei 2019). Representative Nydia Velazquez (D-NY), a Puerto Rican native and the first Puerto Rican woman to serve in Congress, alleged that the withholding simply indicated “the administration’s disdain for the people of Puerto Rico” (Booker 2020).

These examples provide anecdotal evidence consistent with punitive federalism. We are not asserting that this phenomenon is unique to the Trump administration, though it does seem particularly prevalent. Beyond these domestic examples, the administration has pursued retaliatory actions in foreign affairs (e.g.,tariff threats and troop withdrawals) and personnel management (e.g., verbal attacks on or dismissals of officials involved in the Russian election interference investigation and impeachment proceedings). In this sense, the brand of punitive federalism that has emerged during the Trump administration may reflect the president’s personality and idiosyncratic political approach, which involves rewarding friends and punishing adversaries. However, the roots of punitive federalism might lie deeper, and this type of retaliatory behavior may have been prevalent in past presidential administrations and may be common in other countries. These questions are ripe for further inquiry.

#### Federal water policy triggers broader inquiries into state commerce power – implicates ALL state authority

Huffaker et al 11 (Ray, Member of Department of Agricultural Economics, Washington State University. Ari Michelsen, Expert at Agricultural Research and Extension Center, Texas A&M University. Joel Hamilton, Member of Department of Agricultural Economics and Rural Sociology, University of Idaho. Marshall Frasier, Member of Department of Agricultural and Resource Economics, Colorado State University. 5-31-11 “THE UNEASY HIERARCHY OF FEDERAL AND STATE WATER LAWS AND POLICIES” <https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1168&context=jcwre> pp. 5-6 JO)

The federal government also has intervened in state water policy when a state law encroaches on powers delegated to the Congress by the U.S. Constitution, or when the resolution of interstate water disputes requires constitutionally mandated federal consent.

The Commerce Clause11 of the U.S. Constitution provides that “[t]he Congress shall have the Power . . .[t]o regulate Commerce . . . among the several States.” The U.S. Supreme Court (Supreme Court) has held that this express grant of congressional power also implicitly restricts state power to impose undue burden on interstate commerce. This implicit restriction is referred to as the “dormant commerce clause.” The Supreme Court is the final arbiter regarding the consistency of state laws with the dormant commerce clause.

State laws restricting the export of instate water resources have aroused Supreme Court scrutiny under the dormant commerce clause. In City of Albus v. Carr,12 the Supreme Court resolved that groundwater is an article of commerce subject to scrutiny under the Commerce Clause, and struck down a Texas law forbidding the interstate exportation of groundwater without legislative approval as an impermissible burden on interstate commerce. In Sporhasev. Nebraska,13 the Supreme Court formulated its two-pronged procedure for determining the constitutionality of interstate water export statutes. A statute found to be “facially” discriminatory (i.e., one explicitly banning interstate commerce) is subjected to the Supreme Court’s strictest scrutiny requiring that the state prove that the statute serves a legitimate state purpose, that it is narrowly tailored to that purpose, and that no adequate less-discriminating alternatives exist. Nebraska’s “reciprocity” statute (requiring that the importing state’s law would need to grant reciprocal rights to export its groundwater for use in Nebraska) failed to pass this test, and thus was found to be an unconstitutional burden on interstate commerce. Alternatively, a state statute not found to be facially discriminatory is subjected to lesser scrutiny requiring that the Supreme Court find that it strikes a permissible balance of federal and legitimate state interests. Nebraska’s “finding” statute (requiring that the withdrawal of the groundwater to be exported be reasonable, not contrary to conservation, and not detrimental to the public welfare)passed constitutional muster on this basis.

The above line of decisions has elicited strategic behavior on the part of states attempting to improve their chances of successfully defending restrictions on interstate water exports against constitutional challenge. One such behavior is to restrict intrastate water transfers to a similar extent as interstate transfers. The underlying legal reasoning seems to be that a state cannot be found to unconstitutionally discriminate against out-of-state water transfers if it imposes similar restrictions on in-state transfers. The opportunity cost of this behavior is that the state foregoes the gains from trade resulting from beneficial intrastate water transfers. The Sporhase decision does not offer great hope that such behavior will salvage an otherwise impermissible restriction on interstate trade. Since blatant protectionism is not a legitimate state interest for a water export statute, a state generally will specify water conservation as the desired objective. The Supreme Court will require that the restriction operate even handedly by dividing the burden of conservation equally between in-state and out-of-state users. However, as demonstrated in Sporhase, the key to this determination is whether the state similarly restricts in-state water use (e.g., groundwater pumping) – not whether the water once extracted can be traded in-state.

## Impact

### Impact – Warming

#### Federalism is key to solve warming – solves global spillover by leveling the playing field

Ibbitson 2017 (John, M.A. in journalism, senior fellow at the Centre for International Governance Innovation, 6.2.17, The Globe and Mail, “Federalism might be our best hope in fighting climate change,” <https://www.theglobeandmail.com/news/politics/federalism-might-be-our-best-hope-in-fighting-climate-change/article35197342/>, Accessed: 7.12.21)

Federal systems of government are splendid things: robust, flexible, able to accommodate conflicting local values. When it comes to the fight against global warming, federalism is the ace up Canada’s sleeve, while south of the border it’s America’s last, best hope. Conservative prime minister Stephen Harper was right to withdraw Canada from the Kyoto Protocol on climate change in 2011. The Chrétien government had made promises at Kyoto that no Canadian government could keep without wrecking the economy. The expanding oil sands in Alberta had become a major driver of growth. The U.S. Congress was blocking president Barack Obama’s efforts to fight global warming. Any Canadian tax on carbon without an equivalent American action would simply kill Canadian jobs, without lowering the planet’s temperature even a smidgeon, Mr. Harper argued, and that argument made sense. But, although Ottawa wasn’t ready to fight climate change, some provincial governments thought differently. Quebec had a natural advantage, because most of its electricity is generated by hydro. The Liberal government in Ontario wanted to replace lost manufacturing jobs in traditional industries by developing green-energy technology. British Columbia premier Gordon Campbell believed that a carbon tax was the most business-friendly way to lower emissions. When Rachel Notley’s NDP came to power in Alberta, committed to bringing that province in line with others in the fight against climate change, Mr. Harper shrugged. Ottawa’s job, he believed, was to get a pipeline to tidewater somehow, somewhere. If the provinces wanted to go all green, they were welcome to knock themselves out. But then Mr. Harper was replaced by Justin Trudeau, and Mr. Obama by Donald Trump. The White House is now even more of a climate-change-denier than the House of Representatives or Senate, while the Liberal government is as enthusiastic about fighting climate change as any province. In Canada’s case, federalism worked to provide in advance what Ottawa now seeks: a national (if piecemeal) strategy to reduce carbon emissions through provincial cap-and-trade or carbon tax schemes, with only Saskatchewan’s Brad Wall seriously offside. In America’s case, federalism and the entrepreneurial energy of the private sector have combined to limit the damage inflicted by Washington. About 30 states have green-energy strategies in place. Elon Musk resigned Thursday from two of Mr. Trump’s advisory councils in protest over the President’s decision to withdraw the United States from the Paris accord on climate change. Of course he resigned: His Tesla Model 3 electric car will soon hit the streets in an increasingly competitive electric vehicle market, going head-to-head with, among other competitors, the Chevy Bolt and the Volkswagen eGolf. The battle in North America against global warming will be most successfully fought in dealer show rooms. Mr. Trump, with his Luddite refusal to recognize the transformation under way in his own country’s economy, is making that battle harder to win, which is why dozens of mayors and CEOs vowed to continue efforts to reduce carbon dioxide emissions in the wake of the President’s announcement.

#### Climate change causes extinction and turns all scenarios for nuclear war

Scheffran et al 16 Prof. Dr. Jurgen Scheffran (Professor at the Institute for Geography at the University of Hamburg and head of the Research Group Climate Change and Security in the CliSAP Cluster of Excellence and the Center for Earth System Research and Sustainability (CEN). He holds a Ph.D. in physics from Marburg University and has worked at Technical University of Darmstadt, the Potsdam Institute of Climate Impact Research and the University of Illinois), Dr. John Burroughs (Executive Director of the New York-based Lawyers Committee on Nuclear Policy (LCNP), the UN Office of International Association of Lawyers Against Nuclear Arms (IALANA). He represents LCNP and IALANA in Nuclear Non-Proliferation Treaty review proceedings, the United Nations, and other international forums), Anna Leidreiter (Senior Programme Manager Climate and Energy at the World Future Council. She carries out policy research and develops advocacy campaigns with the climate energy team), Rob van Riet (Coordinator of the Peace and Disarmament Programme at the World Future Council), and Alyn Ware (peace educator and nuclear disarmament consultant. He is the Global Coordinator of Parliamentarians for Nuclear Non-proliferation and Disarmament, Director of the Basel Peace Office, a Consultant for the International Association of Lawyers Against Nuclear Arms, a member of the World Future Council and co-chair of its Peace and Disarmament Programme). “The Climate-Nuclear Nexus: Exploring the linkages between climate change and nuclear threats.” World Future Council. Second Edition, April 2016. <http://www.worldfuturecouncil.org/file/2016/01/WFC_2015_The_Climate-Nuclear_Nexus.pdf>

Climate change and nuclear weapons represent two key threats of our time. Climate change endangers ecosystems and social systems all over the world. The degradation of natural resources, the decline of water and food supplies, forced migration, and more frequent and intense disasters will greatly affect population clusters, big and small. Climate-related shocks will add stress to the world’s existing conflicts and act as a “threat multiplier” in already fragile regions. This could contribute to a decline of international stability and trigger hostility between people and nations. Meanwhile, the 15,500 nuclear weapons that remain in the arsenals of only a few states possess the destructive force to destroy life on Earth as we know multiple times over. With nuclear deterrence strategies still in place, and hundreds of weapons on ‘hair trigger alert’, the risks of nuclear war caused by accident, miscalculation or intent remain plentiful and imminent. Despite growing recognition that climate change and nuclear weapons pose critical security risks, the linkages between both threats are largely ignored. However, nuclear and climate risks interfere with each other in a mutually enforcing way. Conflicts induced by climate change could contribute to global insecurity, which, in turn, could enhance the chance of a nuclear weapon being used, could create more fertile breeding grounds for terrorism, including nuclear terrorism, and could feed the ambitions among some states to acquire nuclear arms.

### Impact – Solves Civil Conflict

#### Federalism prevents civil conflicts from escalating to global war

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Cross-national studies covering over 100 countries have shown that federalism minimizes violent conflicts whereas unitary structures are more apt to exacerbate ethnic conflicts. Frank S. Cohen (1997) analyzed ethnic conflicts and inter-governmental organizations over nine 5-year –periods (1945-1948 and 1985-1989) among 223 ethnic groups in 100 countries. He found that federalism generates increases in the incidence of protests (low-level ethnic conflicts) but stifles the development of rebellions (high-level conflicts). Increased access to institutional power provided by federalism leads to more low-level conflicts because local groups mobilize at the regional level to make demands on the regional governments. The perceptions that conflicts occur in federal structure is not entirely incorrect. But the conflicts are low-level and manageable ones. Often, these are desirable conflicts because they are expressions of disadvantaged groups and people for equality and justice, and part of a process that consolidates democracy. In addition, they also let off steam so that the protests do not turn into rebellions. As the demands at the regional levels are addressed, frustrations do not build up. It checks abrupt and severe outburst. That is why high levels of conflicts are found less in federal countries. On the other hand, Cohen found high levels of conflicts in unitary structures and centralized politics. According to Cohen (1997:624): Federalism moderates politics by expanding the opportunity for victory. The increase in opportunities for political gain comes from the fragmentation/dispersion of policy-making power… the compartmentalizing character of federalism also assures cultural distinctiveness by offering dissatisfied ethnic minorities proximity to public affairs. Such close contact provides a feeling of both control and security that an ethnic group gains regarding its own affairs. In general, such institutional proximity expands the opportunities for political participation, socialization, and consequently, democratic consolidation. Saidmeman, Lanoue, Campenini, and Stanton’s (2002: 118) findings also support Cohen’s analysis that federalism influences peace and violent dissent differently. They used Minority at Risk Phase III dataset and investigated 1264 ethnic groups. According to Saideman et al. (2002:118-120): Federalism reduces the level of ethnic violence. In a federal structure, groups at the local level can influence many of the issues that matter dearly to them- education, law enforcement, and the like. Moreover, federal arrangements reduce the chances that any group will realize its greatest nightmare: having its culture, political and educational institutions destroyed by a hostile national majority. These broad empirical studies support the earlier claims of Lijphart, Gurr, and Horowitz that power sharing and autonomy granting institutions can foster peaceful accommodation and prevent violent conflicts among different groups in culturally plural societies. Lijphart (1977:88), in his award winning book Democracy in Plural Societies, argues that "Clear boundaries between the segments of a plural society have the advantage of limiting mutual contacts and consequently of limiting the chances of ever-present potential antagonisms to erupt into actual hostility". This is not to argue for isolated or closed polities, which is almost impossible in a progressively globalizing world. The case is that when quite distinct and self-differentiating cultures come into contact, antagonism between them may increase. Compared to federal structure, unitary structure may bring distinct cultural groups into intense contact more rapidly because more group members may stay within their regions of traditional settlements under federal arrangements whereas unitary structure may foster population movement. Federalism reduces conflicts because it provides autonomy to groups. Disputants within federal structures or any mechanisms that provide autonomy are better able to work out agreements on more specific issues that surface repeatedly in the programs of communal movement (Gurr 1993:298-299). Autonomy agreements have helped dampen rebellions by Basques in Spain, the Moros in the Philippines, the Miskitos in Nicaragua, the people of Bangladesh’s Chittagong Hill Tracts and the affairs of Ethiopia, among others (Gurr 1993:3190) The Indian experiences are also illustrative. Ghosh (1998) argues that India state manged many its violent ethnic conflicts by creating new states (Such as Andhra Pradesh, Gujurat, Punjab, Harayana, Arunachal Pradesh, Goa, Himachal Pradesh, Meghalaya, Mizoram and Nagaland) and autonomous councils (Such as Darjeeling Gorkha Hill Council, Bodoland Autonomous Council, and Jharkhand Area autonomous Council, Leh Autonomous Hill Development Council). The basic idea, according to Ghosh (1998:61), was to devolve powers to make the ethnic/linguistic groups feel that their identity was being respected by the state. By providing autonomy, federalism also undermines militant appeals. Because effective autonomy provides resources and institutions through which groups can make significant progress toward their objectives, many ethnic activities and supporters of ethnic movements are engaged through such arrangements. Thus it builds long-term support for peaceful solutions and undermines appeals to militant action (Gurr 1993:303). Policies of regional devolution in France, Spain and Italy, on the other hand, demonstrate that establishing self-managing autonomous regions can be politically and economically less burdensome for central states than keeping resistant peoples in line by force: autonomy arrangements have transformed destructive conflicts in these societies into positive interregional competition".

### Impact – Solves Warming

#### Decentralized federalism’s critical to environmental protection and mitigating climate change – centralization fails

Balme, Professor at the Paris School of International Affairs, 14

(Richard, “Multi-Level Governance and the Environment: Intergovernmental Relations and Innovation in Environmental Policy”, Environmental Policy and Governance, Volume 24, Issue 3)

It is also worth noting that this evolution, initiated in the 1970s and accelerated thereafter, occurred in parallel with the introduction of environmental policy and politics, under the joint pressure of industrialization and urbanization. Developed and then developing countries created protection agencies or ministries, and initiated a whole body of legislation, jurisprudence and regulation specifically devoted to the environment. Decentralization is often seen as a condition for the political system's capacity for environmental policy, as it allows for the introduction of environmental institutions at the different levels of the state (Weidner and Jänicke, [2002](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0024)). While the early measures of the 1970s and 1980s were primarily framed under the concept of environment conservation, interactions with other policy sectors such as agriculture, industry, health and energy intensified quickly, and the initial set of policy values evolved towards sustainable development, and more recently towards management of the earth ecosystem with climate change policies. Undoubtedly, these cognitive changes have been progressive and remain unevenly distributed across countries and policy subsystems. Nevertheless, during each of these transformative phases, relations between levels of government intensified. National authorities usually negotiate international treaties such as the Kyoto Protocol or the United States/Canada acid rain treaty. They also set environmental standards and enforce them upon subnational governments. However, in the European case, the European Union (EU) institutions rather than member states play a fundamental role in negotiating these agreements and in defining environmental norms. The competencies of states in federal governments widely vary, for instance between the United States and the EU (Vogel et al., [2005](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0023)) or between the United States and Canada where provinces rather than the federal government define standards for air or water quality. Local governments such as counties and municipalities usually operate refuse collection and recycling, decide upon land-use zoning, transportation planning and construction, and often manage local natural resources such as wild forests, groundwater or coastal areas. Because of this variance in the distribution of legal competencies, these central–local relations are anything but simple. In the United States, policies addressing climate change adopted by the federal government remain comparatively limited. This does not preclude significant policy initiatives at the state level, but their coordination remains at best partial, and contributes to limit their effectiveness. In the EU, the role of European integration, and in particular of the Commission and the European Court of Justice, in promoting environmental policies in the member states has been widely reported (Kelemen, [2000](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0010); Krämer, [2005](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0011); Andonova and VanDeveer, [2012](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0001)). However, the environment is also one major policy area where the implementation deficit of EU legislation remains important. In China, observers of environmental policy regularly emphasize the implementation gap between legislation and agenda setting at the national level, and the realities of environment protection in provinces and localities. In all three cases central–local relations are identified as critical aspects of environmental policy design and implementation. Decentralization is also regularly advocated by evaluation studies of environmental policies (FAO, [2002](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0007); Organisation for Economic Cooperation and Development, [2009](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0017); Rodrigo et al., [2009](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0020)), and part of the policy packages associated with ‘good governance’ prescriptions (Batterbury and Fernando, [2006](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0002)). However, we do not have a clear understanding, if not a theory, of the structural constraints imposed by different types of central–local relations on environmental policy. Nor do we properly comprehend how changes in territorial arrangements impact on the capacity for adjustment and innovation in environmental policy. Finally, we also need to better explore how the dynamics of environmental policy, with its new political conflicts and policy instruments, creates new incentives and opportunities for revising the territorial arrangements of public policy. The Environmental Implications of Territorial Arrangements: Disentangling the Conundrum Territorial arrangements may impact the environment in several ways. Oates ([1972](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0015)), in his foundational study, argued that central governments are confronted with difficulties in providing optimal local variation in policy stringency. By contrast, decentralization allows jurisdictions to control for their own pollution levels. They may therefore be tempted to engage in a ‘race to the bottom’ in environmental regulation, to protect industrial interests and to attract ingoing investments, lowering general environmental quality. The level of transboundary pollutants in particular is expected to be higher under decentralization, as jurisdictions can easily free-ride on each other in that case. In the same vein of theoretical economics, Baumol and Oates ([1988](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0003): 284) explore the theoretical foundations for the decentralization of environmental policy. They point to the need for centralized decision-making as well as for decentralized participation in the setting of environmental standards. They argue that the competition for jobs between localities can be consistent with Pareto-optimal levels of environmental quality. Nevertheless, excessive environmental degradation can easily result from regions or localities engaging in rent-seeking measures to attract capital. In parallel with this normative literature, the empirical effects of decentralization on environmental outcomes are increasingly documented. Most studies are national and US-based (List and Gerking, [2000](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0012); Millimet, [2003](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0014); Cutter and DeShazo, [2007](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0004)). Sigman ([2007](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0022)), using a cross-country database and measuring levels of a local and regional pollutant, finds greater interjuristictional variation in pollution in federal than in non-federal countries. Her analysis supports the traditional view that decentralization allows for policies better suited for local conditions. However, she does not conclude upon a ‘race to the bottom’ in pollution levels. Most studies analysing processes of environmental policy rather than mere pollution outcomes reach more complex and ambivalent conclusions (Young et al., [2008](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0025); Paavola et al., [2009](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0019)). Indeed, the precise influence of territorial arrangements is hard to identify for three major reasons. First, variations in the institutional structures of the state and in the effective design of intergovernmental relations are both significant and complex. They include constitutional, fiscal, administrative and socio-political aspects, which are not always and not necessarily convergent, especially when intermediary cases are considered. Therefore, the idea of classifying the wide range of situations in the territorial organization of the state under a simple typology or along a single continuum is not as easy, nor as appropriate, as it may seem. Secondly, these territorial arrangements do not operate in a vacuum, but are embedded within other institutional structures such as the parliamentary, presidential or authoritarian type, or the regime, extent of welfare redistribution, class and cultural structure of the population, and configuration of the ecosystem formed by the urban network. Finally, environmental policy itself is a rather composite category, and a given territorial arrangement may not have a similar influence on the provision of different environmental goods, for instance on the conservation of local biodiversity and on the deployment of renewable energy. Territorial autonomy is in particular likely to favour NIMBY (‘Not in my backyard’) types of mobilization, whereby residents oppose local negative externalities associated with decision-making. Such mobilizations are often able to limit the implantation of polluting industries or constructions. But localities also regularly resist to the creation of natural reserves or energy policies when they impose constraints on local business and industries. Isolating empirically the ‘net’ impact of central–periphery relations on the different aspects of environmental policy will definitely require further and more detailed research and investigation. To advance in that direction we can start by considering these potential effects under a simple analytical dichotomy between conditions of ‘pure’ forms of centralization versus federalism. Under centralization, concentration of powers on the top level of government is extreme, and we assume that the central government has a monopoly over environmental legislation and agenda setting, that it collects taxes, controls public expenditures, and ensures homogeneity of regulation and provides for redistribution across local governments. Local governments are placed in a position of implementing the policy defined at the central level. Under federalism, by contrast, legislation, taxing and spending are shared competencies between the federal government and lower-tier levels alternatively called states, regions or provinces. All of these units benefit from their constitution and from the capacity to adopt their own legislation, at least in some policy areas. We consider federalism analytically as the most extreme case of decentralization, the one in which territorial governments have the largest degree of discretion and power vis-à-vis the central government. In such a case policy is co-determined and alternatively or jointly implemented by the two levels of government. A powerful constitutional court exerts judicial review to regulate the discrepancies and divergences in policy orientations likely to develop in such a system. For unitary decentralized systems, local and regional governments have some limited room for policy initiative and some discretionary power over public spending, within the limits set by national legislation. When the environment is considered, centralization ensures the unity of legislation and regulation across territories, and the consistency of environmental policy with international engagements. Normative consistency has some advantages, including clarity in policy design, a principle of equality in access to environmental goods, and the capacity for central government to implement policy without bargaining with sub-national units. At first sight it allows the government to escape the principal–agent relation coming with federalism or decentralization. In the theory of collective action (Olson, [1965](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0016)), a centralized distribution of authority provides a solution to the problems of cooperation and coordination in public goods provision among multiple actors. Centralization therefore seems more adequate than federalism to provide global environmental goods, such as greenhouse gas (GHG) emission reductions. Nevertheless, centralization also has some corresponding limitations: little reactivity to local circumstances, a limited capacity for innovation through local experimentation, and a strict dependence on state bureaucracies and top-down processes for implementation. In a pure centralized system, the principal–agent problem at the origin of the implementation gap is in a way translated from the relations between different levels of government to the relation between the government and public administration. The bureaucracy in charge of environmental protection may be more immune than local governments to the pressure of local interests. However, it may not be as powerful as needed within the state apparatus to impose environmental policy to ministries such as construction, transportation, energy or agriculture, usually benefiting from strong networks and connections at the local level. Therefore, in the case of conflicting priorities, implementation of environmental policy is not necessarily more effective with centralization. Environmental policy development under a strictly centralized policy-design may be limited by four kinds of factors: (1) the hostility or lack of political will on environmental issues by the central government; (2) the reluctance or absence of proper incentives for local or regional governments in implementing the policy; (3) a shortage in state capacities in the policy subsystem, e.g. regarding legislation, budgeting and staffing of environmental policy, and the lack of political clout of environmental bureaucracy with regard to other stakeholders such as firms, labour unions, local leaders and other ministries; and (4) a deficit of compliance mechanisms, including controlling, monitoring, reporting, information disclosure, evaluation, sanctioning and litigation. By contrast, in a federal system, elected territorial governments have the capacity to issue environmental legislations and regulations, and are directly in charge of their implementation. Territorial governments are in principle dependent on their local constituencies and are therefore more likely to be responsive to local environmental circumstances, such as relating to water quality, air quality or the preservation of natural areas. This, however, presupposes that citizens are indeed affected and sensitive to these issues. If they have ‘green preferences’, or if they are significantly exposed to environmental damages or risks, there is a case for decentralization as improving policy responsiveness. Obviously, place matters for the quality of environment. Local leaders are therefore probably in a better position than remote national legislators to marshal compromises among social interests vested in environmental policy-making. Similarly, local bureaucracies may be better skilled and motivated to develop policy innovations in cooperation with non-governmental organizations (NGOs) and civil society's organizations, and better able to contribute to the provision of local environmental goods. When costs are internalized within territorial jurisdictions, local institutions may therefore facilitate the bottom-up emergence of self-governing arrangements managing common resources (Ostrom, [1990](http://onlinelibrary.wiley.com.ezproxy.uky.edu/doi/10.1002/eet.1635/full#eet1635-bib-0018)).

#### State action is effectively combating climate change, but it’s vulnerable – federalism is key

Arroyo 19 Vicki Arroyo, Professor from Practice, Georgetown Law School; Executive Director, Georgetown Climate Center10-31-2019, "Someone Left the Cake Out in the Rain: The Dissolution of Cooperative Federalism in the Trump Era," JD Supra, https://www.jdsupra.com/legalnews/someone-left-the-cake-out-in-the-rain-39747/

Now we face an even greater planetary threat—climate change—and state action has been one of the few bright spots in an overall grim U.S. policy picture. Thirty years ago, when I represented Louisiana Governor Buddy Roemer on a bipartisan National Governors’ Association (NGA) task force on climate change, we recognized the importance of national and global action. We also saw major roles for states in areas like electric power and transportation, where they hold significant authority over planning, investment, and regulation. Where the federal government has largely dropped the ball on climate law and policy, states and cities from across the U.S. have stepped up to the plate. They sued EPA (successfully) to force regulation of carbon dioxide using Clean Air Act authority in Massachusetts v. EPA, and (unsuccessfully) to hold major polluters responsible for damage to their jurisdictions in Connecticut v. AEP. Meanwhile they moved forward in their own jurisdictions to promote clean energy, cut greenhouse gas emissions, and to respond to the impacts of climate change. State action has been impressive and bipartisan, exemplifying Supreme Court Justice Lewis Brandeis’s description of states as the “laboratories of democracy.” The Regional Greenhouse Initiative, embraced by nine states in the Northeast, many with Republican governors, has successfully cut emissions from power plants and strengthened the clean energy economy. In California, Republican Governor Arnold Schwarzenegger and the legislature created a cap-and-trade program to limit carbon emissions that has been extended and strengthened over time. Most U.S. states have mandated utilities to integrate clean renewable power into their resource mix, and many have taken on increasingly ambitious targets, through robust and enduring policies that have been widely supported. Meanwhile the federal government has utterly failed to do its part. Three decades ago when I first learned about global warming through that NGA task force, I never would have predicted that the lack of a strong national and international response would allow carbon dioxide levels to soar to 410 ppm from the preindustrial level of 280 ppm, bringing rapid and devastating consequences in a generation. Even harder to imagine would be an Administration like the current one taking a wrecking ball to crucial progress at the federal level—in particular, the Clean Power Plan and the national clean car standards. But now it gets even worse. The Trump Administration, not content to undermine U.S. leadership and the Paris Agreement, is hell bent on attacking any state that does not share its climate-denying, pro-fossil fuel agenda. The federal attacks on the California-led greenhouse-gas emissions standards for autos (embraced by 15 states representing nearly half the U.S. economy), and now on California’s cap- and-trade program are assaults on all of us, and make a mockery of the GOP’s espoused fealties to states’ rights and cooperative federalism. The Administration claims that California is unlawfully acting like a national government by working with Quebec on a linked trading system that crosses state and national boundaries. But the program is designed so that each jurisdiction operates independently yet recognizes the others’ allowances through the “Western Climate Initiative” as broader trading systems yield greater opportunities for cost savings. Subnational governments across the U.S. and beyond routinely collaborate and cooperate across areas of policy, trade, and commerce without harassment by our federal government: think of the ubiquitous trade missions by governors and their counterparts from around the world. Consider as well cross-border collaboration on important sectors like transportation – e.g., through joint efforts on electric vehicle charging networks and other infrastructure, including bridges and related tolling arrangements. I can only explain the Administration’s motivation to attack this arrangement that has been around since 2013 as a spiteful desire to quash any successful effort to address climate change in the “marble cake” of government. This Administration’s actions bring to mind the lyrics to the song, MacArthur Park: “I don’t think that I can take it, ‘cause it took so long to bake it, and I’ll never have that recipe again, oh no!” Oh no, indeed.

#### Local action on climate change is effective – states are meeting and exceeding targets

Bromley-Trujillo and Holman 19 Rebecca Bromley-Trujillo, Assistant Professor American politics, environmental policy, public policy and administration and state politics, M.A. and Ph.D. in political science from Michigan State University, Mirya R Holman, Associate Professor of Political Science at Tulane University, “Climate Change Policymaking in the States: A View at 2020”, Publius: The Journal of Federalism, https://doi.org/10.1093/publius/pjaa008

Climate change policymaking has stalled at the federal level in the United States, especially since Donald Trump’s election as president. Concurrently, extreme weather, rising sea levels, and other climatic effects have increased the salience of climate change in the mass public and among elected officials. In response, legislators in state governments increasingly introduce and adopt policies associated with climate change. In this article, we evaluate the state of climate change policymaking in state legislatures, with a focus on overall trends in climate mitigation and adaptation innovation and cases of policy retrenchment. We document an increased level of climate legislation introduced in U.S. states since President Trump’s election, particularly in states under Democratic Party control. We evaluate patterns of introduced legislation across the states between 2011 and 2019 and consider the factors associated with bill sponsorship. Our results demonstrate the increased partisan nature of climate change policymaking in U.S. states. Issue Section: Special Issue Manuscript Climate change policymaking has stalled at the federal level in the United States, particularly during the Trump administration. As a result, conflicts over policy have shifted to subnational governments, accelerating the race to the top and the bottom that already exists in state environmental regulation. While the Obama administration made some concerted efforts to address climate change through the president’s powers as chief executive (see Konisky and Woods 2016; Cook 2018), the Trump administration has largely dismantled these actions (Konisky and Woods 2018). Since President Trump’s inauguration, he shifted the course of national climate change policy in the United States. Among these changes are President Trump’s announced withdrawal from the Paris Climate Agreement, a rescinding and revamping of President Obama’s signature Clean Power Plan, and rolling back planned reductions in fuel economy standards. In addition, the Trump administration has indicated opposition to certain state efforts to address climate change; for example, the federal government is seeking to curtail California’s ability to set stricter automobile emissions standards. While the federal government has often evaded or struggled to adopt meaningful climate change legislation, state and local governments have been quite active in the climate policy sphere (Rabe 2011; Bromley-Trujillo et al. 2016). Since the early 1990s, state and local governments moved to fill some of the climate policy void left by the federal government’s inaction (Rabe 2011; Gilmore and St. Clair 2017; Boussalis, Coan, and Holman 2018, 2019). The 2010s are no exception: U.S. policy activity on climate change has largely taken place via state and local governments. This article provides an overview of state climate policy during the last decade. We begin with a discussion of recent policy trends on climate change in U.S. states. We document increased efforts by some state governments to engage in proactive climate adaptation and mitigation policies, while other state governments have engaged in policy retrenchment, particularly on energy policy. In doing so, we discuss both the overall state of climate policy in the 2010s and how these legislative efforts have changed since the 2016 election. We evaluate when the states craft policy to address increasingly pressing climate demands and the types of policies they are pursuing. What factors are associated with efforts to address climate change by state legislatures in the 2010s? To evaluate this question, we move to an analysis of the agenda-setting stage in state legislatures using bill introductions in the 2011–19 legislative sessions as an indicator of the climate-related issues under consideration. Poisson-count models suggest that political variables are increasingly associated with agenda setting on climate change in state legislatures since Trump’s election. At the same time, key factors like the level of concern about climate change in the population, professionalism, and chamber ideology are all positively associated with climate change activism in state legislatures across the entire time period. Subnational Climate Change Policy Efforts Climate policy activity in the 2010s includes a continuation of earlier policy efforts, new policy innovations, and policy retrenchment or reversals. Several states previously set themselves up as leaders in the climate policy space (Matisoff 2008; Rabe 2008; Bromley-Trujillo et al. 2016) and simply continue that trend in recent years. These continued policies often reflect maintained or increased Democratic majorities in those states as well as a high degree of climate issue salience. State legislatures are also sites for climate policy innovation in the 2010s, as indicated by bill introductions and adoptions. These state efforts include policies aimed at limiting carbon output and promoting carbon capture, the regulation of energy sources within the state and state-owned utilities, and dictates to bureaucratic agencies and local governments to engage in climate adaptation and mitigation efforts. Several states have considered bills that financially incentivize renewable energy development, including the use of public funds or utilities to invest in renewable energy sources. States have also considered ways to adapt to climate change effects, including coastal protection and fire prevention measures. Although there is a wide variety of policy options that states can pursue, a major focus of recent legislation revolves around greenhouse gas (GHG) reduction targets and monitoring, changes to renewable portfolio standards (RPS), net metering and climate adaptation. We consider each of these policy categories in turn. GHG Reduction Targets A central goal in climate mitigation policy is to reduce GHG emissions that contribute to global climate change. As such, states have set up GHG targets that call for reducing emissions to a specified percentage by a target date. These broad policies incentivize investment in renewable energy and energy efficiency and tend to include policy recommendations for achieving the goal. In the previous decade (2000–10), states adopted GHG reduction targets and emissions inventories, beginning with Maine in 2003. From 2011 to 2019, we see these early adopters increasing their reduction targets as well as new states signing on to emission standards. Most states already active in adopting climate policy by 2010 did not remain stagnant, but instead updated their standards to more aggressive targets. For example, Maryland first adopted a GHG target in 2009 aimed at reducing emissions to 25 percent below 2006 levels by 2020. In 2016, the state extended and increased its target to 40 percent below 2006 levels by 2030. California, long known for its aggressive efforts to mitigate climate change, passed SB100 in 2018 requiring the power grid to be carbon free by 2045. A number of other states created GHG emission targets for the first time during this period, particularly when the Democratic Party gained a majority or increased their majority in state legislatures. Prominent examples of new adopters in this area include Colorado and New York. Colorado enacted GHG emission targets and mandatory emissions reporting in 2019, when the state enacted the “Climate Action Plan to Reduce Pollution.” This legislation requires a statewide emissions reduction below 2005 levels of 90 percent by 2050, with gradual increases required in intermediate years. New York is one of the few states that passed legislation committing the state to achieve net-zero GHG emissions by 2050. To achieve this ambitious goal, the state requires the Department of Environmental Conservation to establish recommendations for achieving this target within two years. The state is also pursuing offshore wind turbines and is making efforts to provide the necessary infrastructure for vast rooftop solar programs.

#### No race to the bottom — state market incentives encourage pursuit of renewables.

Burtraw 17 — Dallas Burtraw, Darius Gaskins Senior Fellow with the nonpartisan think tank Resources for the Future, served on the National Academy of Sciences Board on Environmental Studies and Toxicology and on the U.S. Environmental Protection Agency’s Advisory Council on Clean Air Compliance Analysis, served on California’s Economic and Allocation Advisory Committee advising the governor’s office and the Air Resources Board on implementation of the state’s climate law, earned a PhD in economics from the University of Michigan, an MPP in public policy from the University of Michigan, and a BS in community economic development from University of California at Davis, 2017 (“States Could Take Lead On Environmental Regulation Under Trump,” NPR, January 18th, Available Online at <http://www.npr.org/2017/01/18/510472419/states-could-take-lead-on-environmental-regulation-under-trump>, Accessed 07-10-2017)

ROBERT SIEGEL, HOST: More now on federalism and the environment. States and cities have long taken the lead in pushing for clean energy and climate initiatives, and for a sense of what we might see from the states during a Trump administration, we're joined now by Dallas Burtraw. He's a senior fellow with the nonpartisan think tank Resources for the Future. Welcome to the program. DALLAS BURTRAW: Thank you, Robert. SIEGEL: And perhaps you can help us understand the landscape of state regulations and policies, where they're strongest and where they're weakest. BURTRAW: There are state policies that are strong throughout the nation, but especially in the northeast states, in California and a number of other states, we see leadership on climate and energy policies. There's 10 states nationally that have cap and trade programs in place. A number of other states have climate policy goals already articulated. And they take the shape mostly in the form of clean energy policies with over half the states in the country having funded energy efficiency standards. SIEGEL: But if the federal government were not to have an activist EPA, would you expect the states to continue behaving as they've been behaving? BURTRAW: I would expect to see these states really double down on their commitment to climate and energy policies partly because it's been so important for their economic development and job creation in those states. And even in the states that don't have in place these climate and energy policies that we refer to, we're seeing the breakout of market forces that are leading to the development of clean energy and industry that is very prominent even in so-called red states. SIEGEL: You're saying in many states, there is strong an economic interest in sustainable energy development as in traditional fossil fuels. BURTRAW: Well, that's right. We're seeing that across the solar and renewable industry, for example, there are more than twice as many jobs as there is in the coal electricity generation pathway. SIEGEL: And is it fair to say that those jobs would exist even if the federal government were not subsidizing them in any way? BURTRAW: Well, the federal subsidies have enabled those industries to develop and emerge now, but it's now the case that their costs have fallen that they're really competitive with coal and even natural gas. SIEGEL: Now, California has its own auto emissions standards that are more rigorous than federal standards. Could the federal government say to California, you longer have the authority to do that? BURTRAW: Well, the way it works is California has a unique situation in that it can develop auto standards that exceed the federal standards. And then other states are given a choice about whether to jump onboard with California or to adhere to the federal standards. And time after time over the last four decades, California has taken the lead and sought a waiver to enact its standards, and the federal standards are then ultimately caught up with California. And that's where we are just now with standards going through 2025. SIEGEL: But what about California's waiver? Is that secure until 2025? BURTRAW: Well, that's an uncertain question - whether Pruitt would go after to try to revoke the waiver for California. But every waiver request previously has always been accepted, and for him to go in and try to revoke a waiver that's already been granted - a lot of chicken feathers would hit the fan if that were to happen. SIEGEL: From the sound of it, from the way you see it, it sounds like no matter what federal policy is at EPA, it's unlikely to have much effect on the environment. Is that being too rosy? BURTRAW: That is being a little bit too rosy. What I would say - it's as though the federal government is taking its foot off the accelerator, and now we're going to be coasting. Many of the states that are providing leadership and developing policies will continue to do their part of the work, and I think the state-level policies will propagate to other states. But the problems cannot ultimately be solved without some sort of federal involvement. The states can go so far, but they cannot really leverage the kind of actions that's necessary, especially on climate, at the international level. That requires a role for the federal government to coordinate and compel international partners to do their part.

#### Localism is key to climate action

**Charles 2021** (Dan, NPR's food and agriculture correspondent. degree in economics and international affairs,” The White House Wants To Fight Climate Change And Help People. Cleveland Led The Way”, June 21 2021, https://www.npr.org/2021/06/21/1003227623/cleveland-wants-climate-justice-can-the-biden-administration-help // JK ☺)

The fight against climate change may be taking a striking new turn under the Biden administration. The White House is calling climate action a form of environmental justice, part of a campaign to address economic and racial inequity. It's bringing new attention and, potentially, a flood of cash to low-tech approaches to climate action that directly benefit low-income neighborhoods. They include aid for home renovations and upgrades to city transportation infrastructure, including buses. "The environmental justice community, and many of our Black and brown communities, have identified the connection between climate change and their own community infrastructure. They can't be disconnected," says Cecilia Martinez, senior director for environmental justice at the White House Council on Environmental Quality. Yet this shift in focus has its roots far from Washington, says Matt Gray, formerly chief of sustainability in Cleveland. "What we're seeing now at a national level has bubbled up from the cities for a good six, seven years," says Gray, now senior vice president of programs at the Student Conservation Association, which runs environmental volunteer programs. "A lot of cities have come to realize that climate action and climate justice are one and the same." Among those cities is Cleveland. A few years ago, it explicitly linked climate policy and social equity. The story of how it developed this new approach helps explain what "climate justice" means in practice. Gray says he thinks that it offers lessons to other cities — and to the Biden administration. For Cleveland, the White House's infrastructure proposals offer the biggest opportunity in years to advance its goals for both equity and climate change. "It's a sea change," says Mike Foley, director of sustainability for Cuyahoga County, which includes Cleveland. "There's actually resources now to do some of this stuff, which is a real game changer." Climate change in the "green city on a blue lake" Cleveland is tied with Detroit for the highest level of poverty among America's large cities. Its population has been declining for a half-century. Amid these challenges, it adopted a "climate action plan" with ambitious targets for cutting greenhouse gas emissions. The "green city on a blue lake," as the city's boosters like to describe it, recently set a goal of relying completely on renewable energy by 2050. Cleveland adopted its first climate plan in 2013, and Gray says it was similar to those of most other cities at the time. These "version 1" plans were a kind of accounting exercise, calculating each city's greenhouse emissions and laying out technical paths toward reducing them. But in 2018, city officials scrapped the old plan and launched an effort to come up with a new one, this time with a focus on social and racial equity. It was, in part, a response to critics such as Kimberly Foreman, executive director of Environmental Health Watch. Foreman says that the discussions of climate policy have long been disconnected from low-income neighborhoods and communities of color. "It was a little elitist, right?" she says. "Or heavily focused on technology. Which is not getting down to the grassroots, or getting down to the people who are most impacted." For climate-focused officials such as Gray, there was another, more practical reason for the plan's revision. "It was hard to get climate to the top of the agenda because of all these other major challenges, which do deserve a lot of attention," he says. City officials began their climate policy reboot with a series of community meetings. According to Bianca Butts, then with the nonprofit group Cleveland Neighborhood Progress, the meetings opened with questions seemingly unrelated to climate: "What are you concerned about in your neighborhood? Right here in West Park? Right here in Hough?" It was Butts' job to connect those neighborhood concerns to climate-relevant action. "Before we started these conversations, I was absolutely fearful that our message wasn't going to land," she recalls. Cindy Mumford, in the Hough neighborhood, liked it. "The way that they presented it, I thought, was brilliant," she says, "that we had a voice into climate control, bettering our community as a whole." Hough, like many neighborhoods in Cleveland, could use some help. A century ago, its streets were lined with four- or five-story brick apartment buildings and stately Victorians. Today, many of those buildings have disappeared, replaced by empty lots covered with grass. Many that remain are in disrepair. "It is a neighborhood that was devastated by what I can only call tenement housing," Mumford's neighbor Deborah Lewis says as the two women lead a walking tour of Hough in the rain. One destructive force was redlining, when lenders refused to finance home purchases in neighborhoods where Black people lived. A map of Cleveland that the federally backed Home Owners' Loan Corp. released in 1940, purporting to show mortgage lending risk, showed Hough in red, labeled a high-risk area. The accompanying description explains that Black people were moving into the area.In the following decades, property owners stopped investing in Hough. Some stopped maintaining their buildings. "Left the buildings abandoned," Mumford says, walking down 73rd Street past newer homes that have replaced some of those apartments. "For years! For years, we were plagued by these eyesores." The disinvestment and decay happened in many parts of Cleveland. The city's population has fallen by more than half over the past 70 years, from 900,000 to just under 400,000. Mumford attended the city's climate workshop looking for ways to revitalize her neighborhood, and she got excited about the potential of "community solar." Such projects allow people to buy a share in a larger solar project. Mumford and Lewis now are working with [several](https://www.clevelandowns.coop/) [organizations](https://www.growthopps.org/new-investment-creative-development-and-community-pride-fight-for-historic-hough-neighborhood/) in Cleveland, gathering support and financing to get it off the ground. Dozens of their neighbors have signed up to participate. They see the project delivering clean energy, jobs during the construction phase, and ownership of a valuable asset. "It increases the interest in the neighborhood. And it increases the interest of people being in the neighborhood," Lewis says. At other neighborhood climate meetings, people talked about widespread health problems such as asthma and the challenges of big utility bills, about the need for more trees, green spaces and a better bus system. SeMia Bray, co-facilitator of a recently founded group in Cleveland called Black Environmental Leaders, attended some meetings to make sure that it wasn't just experts talking to one another, with residents watching from the sidelines. "I was relieved," she says. "I was encouraged that people did not feel hopeless. They came to the table, unfiltered, and said what they believed to be the needs within their community." Three things rose to the top of Cleveland's climate action priorities: housing, transit and trees. Nationwide, homes are responsible for about a fifth of the country's greenhouse emissions, because of fossil fuels burned to power home heating, cooling and cooking. Energy bills are a greater burden in Cleveland's poorest neighborhoods, in part because many homes lack energy-saving insulation or modern, efficient appliances. Renovating those homes can solve many problems at once: removing lead and fixing other health hazards while cutting fossil fuel use. "I feel like that's our lowest hanging fruit and also the way to have the largest impact in disinvested communities, communities that are struggling," says Tony Reames, director of the Urban Energy Justice Lab at the University of Michigan. Better public transportation, including more frequent bus service, shared bikes and neighborhood planning that makes places more walkable, can level life's playing field for people who lack cars or can't drive. "Transit is the crux of opportunity," Reames says. It offers access to jobs, health care and recreation. A dense and well-maintained tree canopy, meanwhile, can help provide cooling shade as well as cleaner air. That's increasingly helpful in a warmer climate, with more frequent heat waves, and it offers lifesaving benefits in low-income neighborhoods where many homes lack air conditioning.

#### Water federalism is directly connected to environmental federalism.

Craig 13 — Robin Craig, Professor of Water, Energy, and Climate Change at the University of Southern California School of Law, PhD in Science from the University of California, Santa Barbara, J.D. from the Lewis & Clark School of Law, 2013 (“Adapting Water Federalism to Climate Change Impacts: Energy Policy, Food Security, and the Allocation of Water Resources,” *Environment & Energy Law & Policy Journal*, Volume 5, June 8th, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555944&download=yes>, Accessed on 07-12-2021, Jackson Hightower)

Climate change regulation has proven a fertile ground for debates on federalism. To date, however, these debates have concentrated on climate change mitigation and the “proper” roles of the states and the federal government in regulating to reduce greenhouse gas emissions.

This Article posits that climate change adaptation also has federalism implications for environmental regulation and natural resources management. In particular, the federal and state governments have always asserted overlapping—and sometimes conflicting—interests in water, and, as a result, water regulation and management have always been subject to an uneasy federalism balancing. For example, water allocation and water rights are generally considered issues of state law—but if the water crosses state lines, or state regulation affects navigation, the federal government asserts a superior and preemptive role. In between these endpoints, the federal Clean Water Act adopted an intricately structured cooperative federalism that imposes certain minimum federal requirements for water quality but allows states to choose water quality goals, while aquatic species protection remains a largely unstructured mishmash of overlapping state and federal interests and authorities.

In light of existing shortages of water and the imminent need to adapt to climate change impacts on water resources, reconsidering the proper federalism balance in water resources management is inevitable, as several congressional bills attest. Specifically, the traditional assumption of state superiority over matters of water allocation has come into question in light of the intimate connections between water availability and national energy policy, national food security, and interstate conflicts. This Article explores the potential for climate change and the increasing need to adapt to its impacts on water to alter traditional notions of water federalism, concluding that an increased federal role in water management is likely but could take many forms, some more attuned to the multiple interests in water than others.

INTRODUCTION

As a republic, the United States depends on the mutual workings of several layers of government—federal, state, local, and, in some circumstances, regional. “Federalism” describes the interactions of two of these layers: the federal government and the states.1 However, “federalism” does not describe a univalent relationship. Instead, the states can and do interact with the federal government in a variety of ways.2

Nowhere is this fact more clear than in the management and regulation of water resources. This Article refers to the various relationships between the federal government and the states as water federalism, and water federalism is multifaceted and complex. Even without the complication of climate change, the regulation and management of water implicates the full spectrum of inter-governmental interactions, from fairly comprehensive assertions of federal supremacy (navigation), to fairly strong preservations of states’ rights (water allocation), to complex but unstructured workings of overlapping jurisdiction and dynamic federalism (species preservation and regulation), to a no less complex but far more structured cooperative federalism (water quality).3

The interactions among these various regulatory foci are already the sources of numerous conflicts with respect to the overall management of water resources,4 but no one has (yet) seriously proposed a comprehensive shift of water management authority to one level of government or the other. Climate change, however, may well prompt a reconsideration of the “proper” federalism balancing surrounding the regulation and management of water, particularly with regard to freshwater allocation, management, and transportation.

Indeed, climate change has proven a fertile ground for debates on federalism and the proper roles of the state and federal governments.5 To date, however, these debates have concentrated on the problem of climate change mitigation—how to regulate, and who should regulate, relevant sources to reduce emissions and atmospheric concentrations of greenhouse gases.6

#### Water federalization deters climate initiatives.

Craig 13 — Robin Craig, Professor of Water, Energy, and Climate Change at the University of Southern California School of Law, PhD in Science from the University of California, Santa Barbara, J.D. from the Lewis & Clark School of Law, 2013 (“Adapting Water Federalism to Climate Change Impacts: Energy Policy, Food Security, and the Allocation of Water Resources,” *Environment & Energy Law & Policy Journal*, Volume 5, June 8th, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555944&download=yes>, Accessed on 07-12-2021, Jackson Hightower)

Scholars have devoted much time and energy to the task of describing a first-best model of federalism in the United States. However, the multiplicity of issues and perspectives involved in water management make clear that the “proper” model of federalism is itself fluid and context-specific, contributing to the polyphonic complexity that is the state of the law governing water.

In light of that complexity and the uncertainties that climate change is likely to bring to water management, this Article has sought not to prescribe the “proper” water federalism for the climate change adaptation era. Rather, it has engaged in an attempt to “read the tea leaves” regarding the direction water federalism appears to be trending and to suggest particular means through which the impetus for an increased federal role in water resource management and water allocation might manifest itself.

That said, however, the prospect of whole scale nationalization and federalization of water resources should give pause. Water serves local ecological and economic needs that could easily be sacrificed to national interests, particularly if Congress pursues a few specific national priorities—national energy security, national food security—with tunnel vision.304 Moreover, at the extreme, large-scale water transportation on a national scale will be incredibly expensive, creating a cost-benefit issue that suggests that more efficient means of addressing national water priorities, such as national investment in upgraded water infrastructure and water conservation, probably exist and should be looked for.

The overriding danger that climate change poses for water law and policy is that governments at all levels will avoid making the hard decisions that climate change demands until they are regulating in a panicked and reactive emergency mode, eliminating the opportunity to make those decisions in a proactive and reasoned disaster-avoidance planning mode. The former, panicked, mode is far more likely to result in last-minute nationalization and federalization of water to ensure the viability of a few priorities. The latter emergency planning mode, in contrast, would allow for longer-term identification and balancing of multiple priorities at multiple scales. Thus, where exactly the balance of authority in water management and allocation actually ends up in the climate change era will, I suspect, depend far more on how soon all levels of government choose to start planning for climate change’s impacts on water resources than any theoretical notions of “proper” governmental roles—and we are all more likely to end up with a more optimal balance of water federalism if they all start sooner rather than later.

### Impact – Warming Terminal

#### Extinction and outweighs everything

Torres 16 – affiliate scholar @ Institute for Ethics and Emerging Technologies (Phil, PhD candidate @ Rice University in tropical conservation biology, Op-ed: Climate Change Is the Most Urgent Existential Risk, <http://ieet.org/index.php/IEET/more/Torres20160807>)

Humanity faces a number of formidable challenges this century. Threats to our collective survival stem from asteroids and comets, supervolcanoes, global pandemics, climate change, biodiversity loss, nuclear weapons, biotechnology, synthetic biology, nanotechnology, and artificial superintelligence. With such threats in mind, an informal survey conducted by the Future of Humanity Institute placed the probability of human extinction this century at 19%. To put this in perspective, it means that the average American is more than a thousand times more likely to die in a human extinction event than a plane crash.\* So, given limited resources, which risks should we prioritize? Many intellectual leaders, including Elon Musk, Stephen Hawking, and Bill Gates, have suggested that artificial superintelligence constitutes one of the most significant risks to humanity. And this may be correct in the long-term. But I would argue that two other risks, namely climate change and biodiveristy loss, should take priority right now over every other known threat. Why? Because these ongoing catastrophes in slow-motion will frame our existential predicament on Earth not just for the rest of this century, but for literally thousands of years to come. As such, they have the capacity to raise or lower the probability of other risks scenarios unfolding. Multiplying Threats Ask yourself the following: are wars more or less likely in a world marked by extreme weather events, megadroughts, food supply disruptions, and sea-level rise? Are terrorist attacks more or less likely in a world beset by the collapse of global ecosystems, agricultural failures, economic uncertainty, and political instability? Both government officials and scientists agree that the answer is “more likely.” For example, the current Director of the CIA, John Brennan, recently identified “the impact of climate change” as one of the “deeper causes of this rising instability” in countries like Syria, Iraq, Yemen, Libya, and Ukraine. Similarly, the former Secretary of Defense, Chuck Hagel, has described climate change as a “threat multiplier” with “the potential to exacerbate many of the challenges we are dealing with today — from infectious disease to terrorism.” The Department of Defense has also affirmed a connection. In a 2015 report, it states, “Global climate change will aggravate problems such as poverty, social tensions, environmental degradation, ineffectual leadership and weak political institutions that threaten stability in a number of countries.” Scientific studies have further shown a connection between the environmental crisis and violent conflicts. For example, a 2015 paper in the Proceedings of the National Academy of Sciences argues that climate change was a causal factor behind the record-breaking 2007-2010 drought in Syria. This drought led to a mass migration of farmers into urban centers, which fueled the 2011 Syrian civil war. Some observers, including myself, have suggested that this struggle could be the beginning of World War III, given the complex tangle of international involvement and overlapping interests. The study’s conclusion is also significant because the Syrian civil war was the Petri dish in which the Islamic State consolidated its forces, later emerging as the largest and most powerful terrorist organization in human history. A Perfect Storm The point is that climate change and biodiversity loss could very easily push societies to the brink of collapse. This will exacerbate existing geopolitical tensions and introduce entirely new power struggles between state and nonstate actors. At the same time, advanced technologies will very likely become increasingly powerful and accessible. As I’ve written elsewhere, the malicious agents of the future will have bulldozers rather than shovels to dig mass graves for their enemies. The result is a perfect storm of more conflicts in the world along with unprecedentedly dangerous weapons. If the conversation were to end here, we’d have ample reason for placing climate change and biodiversity loss at the top of our priority lists. But there are other reasons they ought to be considered urgent threats. I would argue that they could make humanity more vulnerable to a catastrophe involving superintelligence and even asteroids. The basic reasoning is the same for both cases. Consider superintelligence first. Programming a superintelligence whose values align with ours is a formidable task even in stable circumstances. As Nick Bostrom argues in his 2014 book, we should recognize the “default outcome” of superintelligence to be “doom.” Now imagine trying to solve these problems amidst a rising tide of interstate wars, civil unrest, terrorist attacks, and other tragedies? The societal stress caused by climate change and biodiversity loss will almost certainly compromise important conditions for creating friendly AI, such as sufficient funding, academic programs to train new scientists, conferences on AI, peer-reviewed journal publications, and communication/collaboration between experts of different fields, such as computer science and ethics. It could even make an “AI arms race” more likely, thereby raising the probability of a malevolent superintelligence being created either on purpose or by mistake. Similarly, imagine that astronomers discover a behemoth asteroid barreling toward Earth. Will designing, building, and launching a spacecraft to divert the assassin past our planet be easier or more difficult in a world preoccupied with other survival issues? In a relatively peaceful world, one could imagine an asteroid actually bringing humanity together by directing our attention toward a common threat. But if the “conflict multipliers” of climate change and biodiversity loss have already catapulted civilization into chaos and turmoil, I strongly suspect that humanity will become more, rather than less, susceptible to dangers of this sort. Context Risks We can describe the dual threats of climate change and biodiversity loss as “context risks.” Neither is likely to directly cause the extinction of our species. But both will define the context in which civilization confronts all the other threats before us. In this way, they could indirectly contribute to the overall danger of annihilation — and this worrisome effect could be significant. For example, according to the Intergovernmental Panel on Climate Change, the effects of climate change will be “severe,” “pervasive,” and “irreversible.” Or, as a 2016 study published in Nature and authored by over twenty scientists puts it, the consequences of climate change “will extend longer than the entire history of human civilization thus far.” Furthermore, a recent article in Science Advances confirms that humanity has already escorted the biosphere into the sixth mass extinction event in life’s 3.8 billion year history on Earth. Yet another study suggests that we could be approaching a sudden, irreversible, catastrophic collapse of the global ecosystem. If this were to occur, it could result in “widespread social unrest, economic instability and loss of human life.” Given the potential for environmental degradation to elevate the likelihood of nuclear wars, nuclear terrorism, engineered pandemics, a superintelligence takeover, and perhaps even an impact winter, it ought to take precedence over all other risk concerns — at least in the near-term. Let’s make sure we get our priorities straight.

# Water Colonialism Kritik

### 1NC - K

#### Rights for nature are co-opted to marginalize indigenous water rights

Hemming 17, Professor @ Flinders University (Steve, et al, “A new direction for water management? Indigenous nation building as a strategy for river health,” *Ecology and Society*, 22.2)//BB

There is an ongoing assumption that Indigenous interests are limited to cultural values or heritage management (Jackson 2006) and a misplaced assumption that environmental water allocations will account for Indigenous values (Finn and Jackson 2011). Decisions about water are often thus made on ecological values alone. Significantly, this creates the risk of the denial of Indigenous agency and governance in managing water allocations with respect to Indigenous priorities (Weir et al. 2013:15). Weir and colleagues (2013:16) argue that “Indigenous people often identify Indigenous governance as a key distinction between environmental and cultural water. With cultural flows, it is the Indigenous peoples themselves who decide where and when water should be delivered, based on their priorities and goals.” Many Indigenous groups are keen to see water held by the CEWH used toward their own priorities, including roles for Indigenous governance, but not as a replacement of their a priori rights to water allocations (Jackson 2011, North Australian Indigenous Land and Sea Management Alliance (NAILSMA) 2012, Weir et al. 2013:27, Jackson et al. 2015). Jackson and Langton (2012) argue for a restorative justice initiative, in which governments should purchase water rights for Indigenous groups, in the same manner that they do for environmental use, through the CEWH. Indeed, the fact that “the environment” should be granted rights before Indigenous nations illustrates the lack of priority given to Indigenous water rights in the first place. In the absence of Indigenous-specific water allocations in South Australia, Indigenous groups assert their sovereign rights to speak as Country by seeking engagement in a range of other water management processes.

### 1NC - K

#### Federal water management economizes water as resource. That facilitates indigenous dispossession through physical, epistemic and ontological violence.

Wilson 19, PhD in Resource Management @ U BC, MS @ Cornell (Nicole, ““Seeing Water Like a State?”: Indigenous water governance through Yukon First Nation Self-Government Agreements,” *Geoforum*, 104)//BB

Engaging state-like forms of governance has several potential consequences for Indigenous water governance. James C. Scott (1998) addressed the intersections of state power and expertise, territory, and control and management of “natures.” Among other concerns, Scott stressed that states regularly pursue programs that advance the goal of ecological and cultural simplification and legibility. This simplification is achieved through the creation of ‘management units’ that considers “resources” outside of the broader ecological, socio-cultural and political realities they are a part of (Stevenson, 2006). State programs extend state power over Indigenous peoples, a process that often entails considerable physical, epistemic and ontological violence as they seek to dispossess Indigenous peoples of their lands and waters, political structures, ontologies and epistemologies (Coulthard, 2014, Harris, 2004, Hunt, 2014, Sundberg, 2014, Todd, 2016, Watts, 2013, Wolfe, 2006). In the book What is water?: the history of a modern abstraction, Jamie Linton (2010) describes the history of Modern Water – defined as understandings of water as a resource that can be known, owned and exploited (Groenfeldt, 2013, Linton, 2010, Strang, 2004) – as a history of abstraction, meaning that water has become increasingly separated from its social and political contexts (see also Linton and Budds, 2014). The development of the hydrologic sciences played an important role in the production of Modern Water. Overall, the conceptualization of water as a material substance, H2O, which circulates through the physical processes of the hydrologic cycle (e.g., precipitation, evapotranspiration, etc.) ignores socio-cultural and political relations to water and the ways that these are shaped through interactions among water users, including relations infused with power differences and the cultural politics that follow (Boelens, 2013). The abstraction of water is closely connected to state-formation as hydrologic science make water increasingly “legible” and amenable to control by state agencies (Linton, 2010). In the United States, for example, Robert E. Horton’s (1931) visualization of the “hydrologic cycle” was easily adapted to the needs of the state by rendering the nation’s water visible to central governing agencies and “by institutionalizing the quantification of stocks and flows of water on a national scale, the state took a major step in making water available for, and amenable to, management by state agencies” (Linton, 2010, p. 149). In the 20th century, in colonial states such as the United States, Canada and Australia, the “legibility” of water and the hydraulic construction this enabled (e.g., the development of hydro-power) has been closely related to the development of national identity and state expansion (Dunlap, 1999, Harris and Alatout, 2010, Swyngedouw, 2015, Worster, 1986). At the same time, these processes frequently contributed to the colonial dispossession of Indigenous peoples (e.g. Feit, 1979, Lawson, 1994, Martin et al., 2008).

### 1NC - K

#### Settler violence threatens the entire planet with endless racist violence

Mishra 18, MA @ Jawaharlal Nehru University in New Delhi (Pankaj, “The Religion of Whiteness Becomes a Suicide Cult,” *New York Times*, https://www.nytimes.com/2018/08/30/opinion/race-politics-whiteness.html)//BB

In the years that followed, politicians and pundits in Britain and its settler colonies of Australia, Canada and the United States would jointly forge an identity geopolitics of the “higher races.” Today it has reached its final and most desperate phase, with existential fears about endangered white power feverishly circulating once again between the core and periphery of the greatest modern empire. “The fundamental question of our time is whether the West has the will to survive,” President Trump said last year in a speech hailed by the British journalist Douglas Murray, the Canadian columnist Mark Steyn and the American editor Rich Lowry. More recently, Mr. Trump tweeted (falsely) about “large-scale killing” of white farmers in South Africa — a preoccupation, deepened by Rupert Murdoch’s media, of white supremacists around the world. To understand the rapid mainstreaming of white supremacism in English-speaking liberal democracies today, we must examine the experience of unprecedented global migration and racial mixing in the Anglosphere in the late 19th century: countries such as the United States and Australia where, as Roosevelt wrote admiringly in 1897, “democracy, with the clear instinct of race selfishness, saw the race foe, and kept out the dangerous alien.” It is in the motherlands of democracy rather than in fascist Europe that racial hierarchies first defined the modern world. It is also where a last-ditch and potentially calamitous battle to preserve them is being fought today. This “race selfishness” was sharpened in the late 19th century, as the elites of the “higher races” struggled to contain mass disaffection generated by the traumatic change of globalization: loss of jobs and livelihoods amid rapid economic growth and intensified movements of capital, goods and labor. For fearful ruling classes, political order depended on their ability to forge an alliance between, as Hannah Arendt wrote, “capital and mob,” between rich and powerful whites and those rendered superfluous by industrial capitalism. Exclusion or degradation of nonwhite peoples seemed one way of securing dignity for those marginalized by economic and technological shifts. The political climate was prepared by intellectuals with clear-cut racial theories, such as Brooks Adams, a Boston Brahmin friend of Roosevelt, and Charles B. Davenport, the leading American exponent of eugenics. In Australia, Pearson’s social Darwinism was amplified by media barons like Keith Murdoch (father of Rupert and a stalwart of the eugenics movement) and institutionalized in a “White Australia” policy that restricted “colored” migration for most of the 20th century. Anti-minority passions in the United States peaked with the 1924 immigration law (much admired by Hitler and, more recently, by Jeff Sessions), which impeded Jewish immigrants and barred Asians entirely. By the early 20th century, violence against indigenous peoples, immigrants and African-Americans reached a new ferocity, and nativist and racist demagogues entrenched a politics of dispossession, segregation and disenfranchisement. Seeking to maintain white power globally, Roosevelt helped transform the United States into a major imperialist power. Woodrow Wilson, too, worked to preserve, as he put it, “white civilization and its domination of the planet” even as he patented the emollient rhetoric of liberal internationalism that many in the American political and media establishment still parrot. At the post-World War I Paris Peace Conference, which Wilson supervised, the leaders of Britain, the United States, Australia, South Africa, New Zealand and Canada not only humiliated the many Asians and Africans demanding self-determination; they also jointly defeated an attempt by Japan, their wartime ally, to have a racial equality clause included in the Covenant of the League of Nations. The exposure of Nazi crimes, followed by decolonization and civil rights movements, generally discredited quasi-scientific racism and stigmatized overt expressions of white supremacism. In our own time, global capitalism has promised to build a colorblind world through economic integration. But as revolts erupt against globalization in its latest, more disruptive phase, politicians and pundits in the Anglosphere are again scrambling to rebuild political communities around what W. E.B. Du Bois in 1910 identified as “the new religion of whiteness.” The intellectual white web originally woven in late-19th-century Australia vibrates once more with what the historians Marilyn Lake and Henry Reynolds termed “racial knowledge and technologies that animated white men’s countries and their strategies of exclusion, deportation and segregation.” Mr. Trump, for instance, has chosen Australia’s brutal but popular immigration policies as a model: “That is a good idea. We should do that too,” he said in January 2017 to Malcolm Turnbull, Australia’s prime minister at the time, as he explained his tactic of locking up refugees on remote islands. “You are worse than I am,” Mr. Trump told Mr. Turnbull. If right-wing Australian politicians were among the first to mainstream a belligerent white nationalism, the periodicals and television channels of Rupert Murdoch have worked overtime to preserve the alliance between capital and mob in the Anglosphere. Indulged by Mr. Murdoch’s newspapers, writers like Bernard Lewis, Niall Ferguson, David Frum, Andrew Sullivan and Andrew Roberts repeatedly urged American neoconservatives after the Sept. 11 attacks to take up the aging white man’s burden and quell mutinous natives. A broad range of figures in the Anglosphere’s establishment, including some of Mr. Trump’s most ostentatious critics today, contributed manure to the soil in which Trumpism flourishes. Cheered on by the Murdoch press, Tony Blair tried to deepen Britain and America’s “special relationship” in Iraq. Leaders of Australia and Canada also eagerly helped with the torture, rendition and extermination of black and brown brutes. Not surprisingly, these chieftains of white settler colonies are fierce cultural warriors; they are all affiliated with private donors who build platforms where political correctness, Islam and feminism are excoriated, the facts of injustice and inequality denied, chests thumped about a superior but sadly imperiled Western civilization, and fraternal sympathy extended to Israel, the world’s last active settler-colonialist project. Emotional incontinence rather than style or wit marks such gilded networks of white power. For the Anglosphere originally forged and united by the slave trade and colonialism is in terminal crisis today. Whiteness denoted, as Du Bois wrote, “the ownership of the earth forever and ever.” But many descendants of the landlords of the earth find themselves besieged both at home and abroad, their authority as overlords, policemen and interpreters of the globe increasingly challenged. Mr. Trump appears to some of these powerful but insecure men as an able-bodied defender of the “higher races.” The Muslim-baiting British Conservative politician Boris Johnson says that he is “increasingly admiring of Donald Trump.” Mr. Murray, the British journalist, thinks Mr. Trump is “reminding the West of what is great about ourselves.” The Canadian YouTube personality Jordan Peterson claims that his loathing of “identity politics” would have driven him to vote for Mr. Trump. Other panicky white bros not only virulently denounce identity politics and political correctness — code for historically scorned peoples’ daring to propose norms about how they are treated; they also proclaim ever more rowdily that the (white) West was, and is, best. “It is time to make the case for colonialism again,” Bruce Gilley, a Canadian academic, recently asserted and promptly shot to martyrdom in the far-right constellation as a victim of politically correct criticism. Such busy recyclers of Western supremacism, many of whom uphold a disgraced racial pseudoscience, remind us that history often repeats itself as intellectual farce. The low comedy of charlatanry, however, should not distract us from the lethal dangers of a wounded and swaggering identity geopolitics. The war on terror reactivated the 19th century’s imperial archive of racial knowledge, according to which the swarthy enemy was subhuman, inviting extreme and lawless violence. The rapid contraction of suffrage rights witnessed in early-20th-century America is now mimicked by Republican attempts to disenfranchise nonwhite voters. The Australian lawmaker who recently urged a “final solution” for Muslim immigrants was only slightly out of tune with public debate about immigration in Australia. Hate crimes continue to rise across the United States, Britain and Canada. More ominously, demographic, economic and political decline, and the loss of intellectual hegemony, have plunged many long-term winners of history into a vengeful despair. A century ago, the mere suspicion of being thrust aside by black and yellow peoples sparked apocalyptic visions of “race suicide.” Today, the “preponderance of China” that Pearson predicted is becoming a reality, and the religion of whiteness increasingly resembles a suicide cult. Mr. Trump’s trade wars, sanctions, border walls, deportations, denaturalizations and other 11th-hour battles seem to push us all closer to the “terrible probability” James Baldwin once outlined: that the rulers of the “higher races,” “struggling to hold on to what they have stolen from their captives, and unable to look into their mirror, will precipitate a chaos throughout the world which, if it does not bring life on this planet to an end, will bring about a racial war such as the world has never seen.”

### 1NC - K

#### The alternative is to decolonize water. That solves.

Wilson 19, PhD in Resource Management @ U BC, MS @ Cornell (Nicole Wilson, et al, “Re-Theorizing Politics in Water Governance,” *Water*, 11)//BB

The diverse understandings, constituencies and interests that surround water can be neglected, further erased, or oversimplified when water governance actors assume what normative and shared understandings of water are [2]. Feminist scholarship, Indigenous theorists, and political ecologists have contributed valuable frameworks and analytics to extend analysis of politics and governance. Applied to water, we can engage these approaches to understand water not as a hydrological or biophysical system but as a “hydro-social” system, inseparable from politics, culture, and economy [9]. Offering another important example, Indigenous scholars and allies have foregrounded Indigenous water ontologies and epistemologies, rooted in responsibilities to water as a living entity and suggesting that colonial understandings of water, as a material resource, should be challenged and decolonized to address past injustices and move towards more just and sustainable interactions with, and uses of, water (e.g., [11,13,16,17]). Ethnographers, including feminist scholars, have re-scaled and re-contextualized water’s access, uses, and governance through a focus on citizenship and racialization, the emotional and affective embodiments of water, and the politics, negotiations and relations of “the everyday” (e.g., [18–23]). Examples of wider conversations opened-up include how bodies are enrolled in uneven geographies of water access, the multi-species and multi-actor entanglements that (re)constitute “hydro-social” and infrastructural assemblages, and analytical re-orientations of governance to include intangible meanings and values of water (e.g., [18–23]). From such scholarship, a broader understanding of what governance might entail is brought into view, often contrasting with a narrow managerial perspective on how to “better” govern water [1]. These provocative entry points invite attention not only to the uneven distribution and access to water for humans and non-humans, but also highlight the wider governing ethics, arrangements, histories, and political-economic systems that give rise to, sustain, and reinforce such patterns (e.g., [20,24–28]).

## LINK

### L---Water As Resource

#### Federal water management is fundamentally at odds with indigenous epistemology. Propagating it buttresses settler colonialism.

Wilson and Inkster 18, \*PhD in Resource Management @ U BC, MS @ Cornell, \*\*Professor @ U Alberta/Yukon College (Nicole and Jody, “Respecting water: Indigenous water governance, ontologies, and the politics of kinship on the ground,” *Environment and Planning*, 1.4)//BB

Yukon First Nations play a substantive role in water governance in Yukon as the result of modern land claims agreements. However, even a cursory analysis of water governance in Yukon Territory shows an approach to governance that reflects a fundamentally different view of water than that carried through the Elders’ articulation of ‘‘respecting water.’’ Water is widely referred to as a ‘‘resource’’ (e.g. Yukon Water Strategy and Action Plan (Environment Yukon, Water Resources Branch), 2014). Also, according to the Yukon Waters Act (Yukon Legislative Counsel, 2003: 3) ‘‘Water belongs to Government.’’ While the idea that the Yukon Government ‘‘owns’’ the water is problematic from the perspective of Indigenous rights and jurisdiction, it also reveals the pervasiveness of settler colonialism and its buttressing ontologies – as ‘‘land [synonymous with water] is remade into property and human relationships to [water],’’ restricting all views ‘‘to the relationship of the owner to his property. Epistemological, ontological, and cosmological relationships to land are [thus] interred, indeed made pre-modern and backward. Made savage’’ (Tuck and Yang, 2012: 5). In the same vein, the ‘‘water rights of Yukon First Nations,’’ referred to in the UFA frames the relationship to water in relation to property rights, absenting all reference to water as an ethic of respect. It thus also undermines any charge to First Nations to recognize and enact their ethic of responsibility, to take care of water – a living entity to which they have kinship ties (Anderson et al., 2013; McGregor, 2014). Water is thus rendered a resource. Or, as Anishinaabe scholar Deborah McGregor states: Water, in the dominant Western Euro-Canadian context, is conceptualized as a resource, a commodity to be bought and sold. Federal and provincial governments therefore make decisions about water based on a worldview, philosophy and set of values which stands in direct contrast to the views of First Nations people. (2014: 496) Although not necessarily intentional, following Kim Tallbear (2011), engaging settler understandings of water in water governance ‘‘engenders a lot of violence’’ due to the constant impulse to separate humans from non-humans.

#### The colonial project *hinges* on turning water into resource

O’Shea 18, Professor of World Arts at UCLA (Janet, “Decolonizing the Curriculum? Unsettling possibilities for performance training,” *Revista Brasileira de Estudos da Presença*, 8.4)//BB

Tuck and Yang attend to settler colonialism in particular, the breed of colonialism exercised in the Americas (as well as Australia and New Zealand), pointing out that colonialism in this context involved the theft of land from its original denizens, the forced relocation of the original inhabitants, and the ongoing impoverishment of their descendants. Settler colonialism resulted in the long-term loss of both land and sovereignty whereas metropolitan colonialism resulted in long-term international imbalances of wealth but also saw rule and land at least partially returned to the colonized. Metropolitan colonialism saw the extraction of wealth but land could more easily be claimed back in the wake of independence when colonization occurred primarily on an absentee basis. Both settler and expansionist colonialism, however, as Tuck and Yang point out (2012, p. 5), involved the reconceptualization of people, land, water, animals, and minerals as “resources”’ that could be reframed as economic entities (objects, chattel, workers) in the first place. Tuck and Yang attend exclusively to the United States context and their definition of decolonization refers particularly to the “unsettling” possibilities it poses, specifically regarding land ownership. Their critique is an important one, given the tendency to overlook the American history of settler colonialism in a rush to highlight the (formerly) colonized status of many immigrants to America, “equivocating” the vexed status of many American immigrants as both formerly colonized subjects and as colonizers/settlers (Tuck; Yang, 2012, p. 17). The implications of Tuck and Yang’s argument are that colonialism is not only material - relying upon extracting raw materials, processing them, and selling them back at a profit - but also that its worldview turns an interconnected network of beings into materials. I want to take seriously their arguments that colonization hinges on turning living beings and the physical world into economic resources, a phenomenon seen clearly in Trump’s enabling of a corporate “land grab”2. However, I also want to consider whether recognizing the epistemology that renders the living world economic things can undergird a critique of the physical, material, and economic functions of colonialism, while not relegating those affected by settler colonialism to the “asterisk” category that Tuck and Yang warn against (2012, p. 22-23). I want to consider whether treating the neoliberal system, in which profit is pursued at all cost, as an extension of colonialism is helpful to resisting both ongoing colonialisms, neocolonialism, and neoliberal wealth inequality.

### L---Water Governance

#### Federal water management treats water as knowable and governable---that reifies settler domination

Wilson 19, PhD in Resource Management @ U BC, MS @ Cornell (Nicole Wilson, et al, “Re-Theorizing Politics in Water Governance,” *Water*, 11)//BB

Defined above, governance differs from government in that the latter is focused on formal government institutions, rules, regulations, and managerial practices while the former involves wider considerations over how, and for whom, water is managed and made available [1]. This broader governance framework includes focus on the interplay between actors, preferences, and political-economic imperatives [1], as well as historical, socio-cultural, and legal considerations, and privileging of certain values, preferences, and worldviews. A focus on government and management invites attention to politics as the formal regulation of water, inter-jurisdictional negotiations, or outcomes of policies. Such an orientation also often implies that better information and sharing of scientific data will help mitigate or solve problem x or y. Relatedly, such pursuits might also assume that (a) water is knowable and can be managed, and (b) norms and desires are universal and can be put into practice [7–9]. The reality is often remarkably different: Water access and rights are often linked to contentious politics of struggle, water access and quality is deeply differentiated, water uses are fundamentally contested, and what water “is” and how water is known, constructed, and lived is variegated and difficult to conceptualize, let alone implement [8,10–14]. Allied with this, Perreault [15] suggests such calls for “good [water] governance”, often ambiguous and vague, can: help conceal the political and economic interests that lie behind the institutional arrangements, social relations, material practices and scalar configurations involved in so-called ‘good governance’. If we are to employ this concept, then it is imperative we do so critically, carefully elucidating the political nature inherent in the institutional arrangements and socio-environmental relationships to which it refers. [15]

### L---Indigenous Water Governance

#### The plan forces indigenous tribes into water protection schemes that expand colonial water and undermine genuine sovereignty

Wilson 19, PhD in Resource Management @ U BC, MS @ Cornell (Nicole, ““Seeing Water Like a State?”: Indigenous water governance through Yukon First Nation Self-Government Agreements,” *Geoforum*, 104)//BB

SGYFNs have gained substantial authority through LCSGAs, as compared to their previous status as bands under the Indian Act (1985).6 Yet there is no doubt that to benefit from the powers of LCSGAs, northern Indigenous peoples have had to radically alter their way of life and engage forms of governance that bear little resemblance to traditional forms of governance (Nadasdy, 2017, Nadasdy, 2003, Natcher and Davis, 2007). Such critiques remind us to heed the potential consequences of engaging these forms of governance. In the context of water governance, they are useful in prompting us to consider the ways ‘state-like’ forms of governance might, consciously or unconsciously, shape how Indigenous peoples “see” water. It is widely noted that Modern Water has been hegemonic (e.g., Chiblow, 2019, Wilson and Inkster, 2018, Yates et al., 2017). “Seeing” water in this way permeates all settler colonial water legislation and has been essential to both state formation and the extension of state power through the control of water. These critiques raise critical questions about how the development of Indigenous water legislation and the specific types of technical and administrative expertise needed to accomplish this might contribute to subtle changes in how First Nations “see” water. Indeed, legislation seeking to codify Indigenous legal traditions would necessarily involve simplification of complex and dynamic traditions, practices, and relationships to water. Boelens (2009) argues that the codification of customary or local water rights in Latin America is used to facilitate state control and to further the neoliberal goal of incorporating local water users rights and organizations into the market system. Indeed, Indigenous-State agreements are negotiated and implemented within the broader context of neoliberalism (Li, 2007). In Yukon, it has been argued that the changes brought about by Modern LCSGAs not only obscure and reinforce existing power relationships, but by tying First Nations up in bureaucratic processes they can thwart meaningful change and extend the power of settler states through naturalizing settler governance concepts and structures (Nadasdy, 2017). In this sense, settler colonialism is a form of governmentality or a “relatively diffuse set of governing relations that operate through circumscribed modes of recognition that structurally ensures continued access to Indigenous peoples’ lands and resources by producing neoliberal subjectivities that coopt Indigenous peoples into becoming instruments of their own dispossession” (Coulthard, 2014, p. 156 cites Alfred (2009) and L. Simpson (2011)). From this perspective, there is a potential for the water governmentalities produced through LCSGA agreements might impinge on the sovereignty of Indigenous peoples and create political arrangements that make these spaces “legible” and therefore exploitable and controllable (Cf., Bebbington and Bury, 2013, de Francisco and Boelens, 2015).

#### Indigenous representation *within* colonial governance undermines genuine self-determination

Neville and Couthard 19, \*Assistant Professor at the University of Toronto, where she is cross-appointed to the Department of Political Science and the School of the Environment, \*\* Canadian scholar of Indigenous studies who serves as an associate professor in the political science department at the University of British Columbia (Kate and Glen, “Transformative Water Relations: Indigenous Interventions in Global Political Economies,” *Global Environmental Politics*, 19.3)//BB

Alongside the invitation to GEP scholars to consider ontological and methodological challenges, the Special Issue articles present a series of analyses that reveal how the lines between participation in and resistance to colonial systems can be blurred. Indigenous governments and communities can strategically wield the tools of the state to acknowledge and defend their lands, practices, and values. The use of colonial systems to defend Indigenous rights offers one path toward greater autonomy and can alter the practices of the state itself, reshaping governance in multiple ways. Still, these processes have limits, and there are dangers to such integration (Coulthard 2007, 2014).

Even as they assess the possibilities for altering state practices through engagement, our authors draw on the deep and expanding literature on the politics of recognition, much of which cautions against Indigenous participation in colonial state systems. Although participation can offer Indigenous peoples some additional power within the state, it can undermine broader and longer-term transformation of governing relationships by acknowledging the authority of the colonial state, thus limiting possibilities for reclaiming autonomy and self-determination (Coulthard 2014; Daigle 2016). By engaging with specific cases—for example, water quality standards across the United States, water rights and legal precedent in Arizona, water contamination from upstream agriculture in coastal Washington—the authors of this Special Issue provide in-depth empirical evidence for the tensions they identify in these “colonial entanglements,” a concept from Dennison (2012) used by both Curley and Diver et al. to examine the dynamics of Indigenous peoples’ participation within the structures of settler states.

The interventions in this issue explore the possibilities for—but also limits of—the incorporation of Indigenous knowledge, authority, and values into settler state governance practices. Diver et al. examine the adoption of state-like powers by tribal governments in the United States, where provisions under the Clean Water Act allow their “treatment as a state” in terms of conferring on them the authority to set local water quality standards. Conducting an analysis across the tribes in the United States that have engaged with TAS provisions, with a focus on environmental contaminants, they document the inclusion of cultural and ceremonial concerns in tribes’ water quality standards. Still, these entanglements lead to a form of water management that, although it expands the limits otherwise imposed by the state, still adheres to colonial perspectives on water resources, especially given structural constraints to tribal authority posed by US property rights regimes.

#### Attempts to provide indigenous control over water backfires

Wilson 19, PhD in Resource Management @ U BC, MS @ Cornell (Nicole, ““Seeing Water Like a State?”: Indigenous water governance through Yukon First Nation Self-Government Agreements,” *Geoforum*, 104)//BB

In relation to the Pueblo of Isleta WQS, Dussias (1998) emphasized the importance of the EPA’s approach to approval based on the tribe’s Indigenous Knowledge and interests in developing the WQS represents a radical departure from previous federal efforts to eliminate or ignore tribal relationships to the environment and spirituality. In contrast, Ranco (2009) argues that the case could also be understood as a failure of tribal self-determination because of the extent of the EPAs authority over the process. For example, the Tribe obtained permission to adopt water quality standards (WQS) under a US federal law and system that they did not devise and could not change, the Tribes’ WQS were subject to review by the EPA – a U.S. agency and only the agency who reviewed them had the authority to enforce the WQS. In summary, “to gain any authority over its water quality standards, the tribe was required to go through a tedious procedure to gain the approval and recognition of the federal government” (Ranco, 2009, p. 48). In other words, however much the EPA has the power to support Tribal Sovereignty, the same powers can be used to the opposite effect. While TAS had been said to show a strong commitment to tribal sovereignty, this praise has also been accompanied by critiques of both the decision process and forms of governance Tribes must engage in to take advantage of TAS status (Saunders, 2009). To be treated like a state, with the authority to set their own WQS, Tribes must meet an onerous set of requirements. For instance, Tribes must prove that they have a functioning tribal government with the authority and capacity to regulate. The U.S. EPA evaluates the Tribes readiness for TAS against a set of “requirements for Indian Tribes to Administer a Water Quality Standard Program” (Section 40 Code of Federal Regulations 131.8), which stipulate that Tribes must be federally recognized and exercise authority over a Federal Indian Reservation, have a “governing body carrying out substantial governmental duties and powers,” and, among other requirements, be “reasonably” capable on the “Administrator’s judgement, of carrying out the functions” (Section 40 Code of Federal Regulations 131.8). Among other requirements, Tribes must also provide a map of the geographic area over which they assert authority and a narrative statement describing their current approach to environmental governance including previous management experience, existing tribal laws and policies, and a description of the technical ability of tribal staff. Only 54 of 562 federal recognized Tribes have been approved for TAS to administer water quality standards; 44 of these have approved WQS (U.S. EPA, 2014). Many Tribes are automatically excluded by the requirements associated with taking on TAS (e.g., the failure to demonstrate adequate governance capacity). Two hundred and twenty-nine (229) Alaska Native Tribes – who do not exercise authority over lands or the waters within them – a unique land ownership arrangements stemming from the Alaska Native Land Claims Settlement Act (1971) – are also excluded from TAS for this reason. Tribes may be further deterred because they may view TAS as having more risks than rewards for the assertion of tribal sovereignty. As noted by Saunders (2009, p. 452) “as often happens when Tribes dare to regulate, disputes over jurisdiction with non-Indians, particularly with state governments, inevitably occur.” According to Fort (1995), TAS provision increases the number of “states” up to ten-fold and therefore dramatically expands the potential for jurisdictional conflict. Tribes may be deterred by this “risks outweigh the benefits” view of TAS. For example, Tribes may be deterred by the potential for enacting their own WQS because of the potential they might face expensive and time-consuming litigation (Porter, 2006, Saunders, 2009). In addition to threats from litigation, Porter (2006) suggests that Tribes may be reluctant to participate in TAS due to the perception that TAS threatens their sovereignty; lack of funding and infrastructure to develop and implement water-quality programs; and differences in cultural concepts about water. It has also been shown that the tribal WQ programs that most closely resemble state or federal programs are more likely to survive litigation than tribal programs that reflect their cultural values, epistemologies, ontologies, and governance systems (Ranco, 2009, p. 46). This is likely because water legislation resembling settler state water legislation is more likely to be understood, considered transparent and defensible in a court of law.

#### The plan just morphs the type of constraints placed on indigenous governance. They will be equally violent.

Wilson 19, PhD in Resource Management @ U BC, MS @ Cornell (Nicole, ““Seeing Water Like a State?”: Indigenous water governance through Yukon First Nation Self-Government Agreements,” *Geoforum*, 104)//BB

In other words, to function in a state-centric settler colonial political system, engaging with other “state-like” political entities (e.g., Canadian Federal government), First Nations have had to “assume the trappings of the state” (p. 7).2 In this view, the First Nations governments that resulted from Modern land claim agreements are “state-like” in that they have citizens and their governments exercise real, though limited, jurisdiction over distinct territories and peoples. From such a perspective, engaging the powers of self-government might be seen as promoting new governance arrangements that continue to constrain Indigenous forms of governance in indirect and less forceful, but equally violent ways – as distinct from anything we might call decolonizing Indigenous-State relationships (Tuck and Yang, 2012, Walia, 2013).

#### The plan will be challenged by non-federal stakeholders---the resulting legal disputes are incommensurable with land tenure

Stevenson 18, PhD, Trent University, Ontario (Shaun, “Decolonizing Hydrosocial Relations: The River as a Site of Ethical Encounter in Alan Michelson's TwoRow II,” *Decolonization: Indigeneity, Education & Society*, 6.2)//BB

My interest in this approach to Indigenous rights stems from the presupposition that what are often referred to as land claim processes between Indigenous nations and the Canadian state—what are also commonly referred to as modern treaties1—are fixed within abstracting conceptions of land use and ownership, private property regimes, and uneven power dynamics, and are thus premised on unethical relationships within their current formulation. I mobilize ethics here as means of highlighting the disjunct between Indigenous relations to their lands and waters and the universalizing logics of settler-Canadian national politics. Where foregrounding ethics has potential to be attentive to the ongoing relationships that structure social relations to shared waterways in particular, emphasizing the material, the specificity of place, and the power dynamics that shape interactions with shared environments, the national politics that structure Indigenous rights in settler contexts are largely abstracted from place, grounded in Western perspectives that refuse a politics of difference, and perpetuate the maintenance of settler jurisdictional power. In many instances, such rights disputes, their corresponding policies, and proceedings within the courtroom or at the negotiation tables, are incommensurable with Indigenous conceptions of land tenure and self-determination (Coulthard, 2014; Dorries 2012; Kulchyski, 2013; Turner, 2006, 2013; Million, 2013).

#### Supposedly indigenous control replicates colonialism because Tribal Council’s are colonially entrapped

Ellis and Perry 20, \*educator, advocate, and researcher specializing in justice‐oriented watershed management and conservation in the Southwest, \*\*PhD, Assistant Professor in the School of Earth and Sustainability at Northern Arizona University (Rachelle and Denielle, “A Confluence of Anticolonial Pathways for Indigenous Sacred Site Protection,” *Journal of Contemporary Water Research & Education*, 169.1)//BB

Beyond the court rulings, to some Hopi interviewees the continued illegitimacy of the Hopi Tribal Council is still of concern. They described how the present‐day Council does not respect or include religious elders, does not represent a majority of villages (only 5 of the 12), and is distorted in its decision‐making by a government budget generated from mining royalties. In contemporary efforts to be ostensibly fair and equitable, the U.S. created a policy of government to government relations with tribes which has had the effect of restructuring Indigenous societies into miniature colonial governments. The imposition of colonial forms of government has replaced traditional governance structures (e.g., Deloria 1969; Nadasdy 2003; Coulthard 2014), and in the case of the Hopi Tribal Council, certain interviewees consider it a “failed experiment.”

#### Piecemeal approaches without eliminating foundations of settler colonialism makes indigenous liberation impossible

Norris 18, M.A. Candidate, University of British Columbia (Matthew, “How Bear Lost his Tail,” <https://open.library.ubc.ca/cIRcle/collections/ubctheses/24/items/1.0371608)//BB>

Because of this, the deep societal, racial and economic divide continues to fester and grow. Such policies have permitted non-Indigenous society to feel liberated, to release their guilt of the historical wrongs of their ancestors, thus making the initial and continuing denial of the humanity of Indigenous peoples invisible and uncontested. By not addressing these fundamental building blocks of settler colonialism in Canada, efforts to “level-the-playing-field” across the political, economic and social spheres, have failed. This divide becomes apparent when issues of ‘national’ interest become pitted against the Rights of Indigenous Peoples, most notably in relation to extractive resource projects including the Kinder Morgan Trans Mountain Expansion pipeline project (KM TMX) and the BC Hydro Site C Dam project.

## IMPACT

### !---Framing/Prioritization

#### Prefer the critique’s impact. There’s a cognitive bias to downplay settler violence.

King 20, PhD, professor in the Liberal Studies department at Grand Valley State University (Sarah, “What We’re Talking about When We’re Talking about Water: Race, Imperial Politics, and Ruination in Flint, Michigan,” in *The Wonder of Water*, UMich Libraries)//BB

For many North Americans, reflecting on and analysing their role as settlers in colonial nations2 – and about their relationship to place in this context – is a fundamental challenge. The liberal discourse of equality often denies that racism is a systemic or everyday problem, promoting instead a “‘national story’ of benevolence and generosity” (Srivastava 2005, 35). Srivastava suggests that Canadians operate within “contemporary national discourses of tolerance, multiculturalism and nonracism” that mask ongoing racialized conflicts (35). Addressing the racialized structure of society is profoundly challenging because Canadian and American moral identity is so tied up in a vision of equality, a vision that, like all national visions, “requires not only sameness and communion but also forgetting difference and oppression” (Benedict Anderson, in Srivastava 2005, 39). This vision of sameness and nonracism is fundamental to the vision that the Canadian government sought to uphold in Esgenoôpetitj, and that the Michigan government used to frame its emergency manager laws. Confronting the racism inherent in North American relationships with Indigenous peoples requires confronting fundamental questions about the history and legitimacy of the colonial states of Canada and the US. Taiaiake Alfred, an Indigenist academic, argues that most Settlers are in denial. They know that the foundations of their countries are corrupt, and they know that their countries are “colonial” in historical terms, but they still refuse to see and accept the fact that there can be no rhetorical transcendence and retelling of the past to make it right without making fundamental changes to their government, society, and the way they live ... To deny the truth is an essential cultural and psychological process in Settler society. (2005, 107) Many settlers know Canada/the US as their only home, and wonder, as some of the people I interviewed in Burnt Church did, why they must pay for the sins of their forefathers. But the problems inherent in settler relationships with Indigenous peoples are not only historical; they exist in individual, social, and political lives in the present. The fundamental discomfort of reflection on race and racism makes it difficult for many to reflect upon their shared position in the colonial present.

### !---Root Cause---Water

#### Treating water as resource is the root cause of *all* global water crises. Indigenous perspectives avoid this.

Wilson and Inkster 18, \*PhD in Resource Management @ U BC, MS @ Cornell, \*\*Professor @ U Alberta/Yukon College (Nicole and Jody, “Respecting water: Indigenous water governance, ontologies, and the politics of kinship on the ground,” *Environment and Planning*, 1.4)//BB

‘‘Respecting water’’ raises important ontological challenges. To engage with this, we take as our point of departure the broader question – what is water? – a question that has been raised by scholars in a variety of fields (e.g. Boelens, 2014; Chen et al., 2013; Linton, 2010; Strang, 2004; Wagner, 2013). As Linton (2010) notes, the answer to this seemingly simple question is taken for granted, due to the pervasiveness of the concept of Modern Water or settler-colonial understandings of water as a material resource. Water or H2O in this modern interpretation is abstracted from social context or ‘‘rendered technical’’ (Li, 2007), making it possible to understand water as a resource available for human consumption and use that can be known and managed or manipulated by humans (Groenfeldt, 2013; Linton, 2010; Strang, 2004). Modern Water, it is argued, dominates current approaches to water governance, whereas the separation of water from its social context is thus considered at the root of contemporary water crises (Schmidt and Shrubsole, 2013). Therefore, critics argue that challenging this requires ‘‘attention to water’s social context and dynamics, and to reposition water as inherently political’’ (Linton and Budds, 2014: 175). Yet, to date, few academics have explicitly addressed the ontological politics of water (cf. Boelens, 2014; Linton, 2010; Norman, 2012; Wilson, 2014; Yates et al., 2017). This paper thus examines water as a ‘‘more-than-human’’ entity through the lens of post-humanism and critical Indigenous studies. It explores conflicts in water governance and how dominant ontologies of water, based on the idea of Modern Water, inform present approaches to water governance, and how instead a project of decolonizing might unsettle conventional water governance. Working towards meaningful water governance alternatives will necessarily involve prioritizing Indigenous ontologies, epistemologies, and forms of governance.

### !---Root Cause---Biodiversity

#### Biodiversity protection terminally fails without protection of indigenous life

Swiderska 20, principal researcher in IIED's Natural Resources research group (Krystyna, “Protecting indigenous cultures is crucial for saving the world’s biodiversity,” *IIED*, <https://www.iied.org/protecting-indigenous-cultures-crucial-for-saving-worlds-biodiversity)//BB>

2020 is being hailed as a ‘super year’ for nature, with a series of major international events looking at how we can stop the decline of wildlife and natural ecosystems. IIED’s Krystyna Swiderska argues that saving biodiversity can’t succeed without working to save indigenous cultures. Species are being lost at about a thousand times the natural rate of extinction. This is faster than at any other period in human history. Ecosystems – the vital systems on which all life depends – are being degraded across the globe. This crisis of biodiversity loss is finally getting some attention. But its connection to another loss – that of indigenous cultures – is rarely mentioned. From animals to insects and plants, biodiversity loss cannot be effectively addressed without tackling the rapid disappearance of indigenous cultures. The two are inextricably linked. Indigenous peoples have conserved biodiversity for millennia. They have created much of the world’s agricultural biodiversity, including thousands of crop varieties, livestock breeds and unique landscapes. These practices continue today in many of their territories, creating new varieties of crops and livestock that are often more resilient than modern equivalents. So it is unsurprising that the rich diversity of nature is declining less rapidly on indigenous peoples’ lands than in other areas. This clearly shows that the world’s 370 million to 500 million indigenous people play a critical role in conserving biodiversity. This is backed up by extensive research. According to several studies (PDF), traditional ecological knowledge is effective in conserving biodiversity and regulating sustainable resource use, including hunting, wild harvesting, fishing, farming and pastoralism, a form of animal husbandry. Living in harmony with nature is a fundamental part of indigenous peoples’ core values and beliefs. Similar ecological values and worldviews can be seen across indigenous cultures, from southern China to the Americas. Among Andean peoples, for example, the world is divided into three parts: the human and domesticated; the wild (species, ecosystems, water); and the sacred and ancestral. Rather than focusing on economic development, their goal is holistic wellbeing, which is achieved through balance between these three worlds. A stronger voice Yet across the world, indigenous cultures and practices are being eroded by modernisation, commercial development pressures, lack of secure rights to land and resources, migration and lack of cultural education. As a result, many are struggling to save their unique cultures, knowledge systems and identities from extinction. This is despite growing recognition that they hold the key to solving many of today’s environmental problems. Up to 80% of biodiversity is located on indigenous peoples’ lands (PDF), while at least a quarter of all land is traditionally owned or managed by indigenous peoples (PDF). Evidently, these cultures need to be protected. This should be part and parcel of broader tactics to conserve biodiversity. New biodiversity targets, for example, must protect indigenous cultures.

### !---Root Cause---Drinking Water

#### Settler domination is the root cause of unsafe drinking water

King 20, PhD, professor in the Liberal Studies department at Grand Valley State University (Sarah, “What We’re Talking about When We’re Talking about Water: Race, Imperial Politics, and Ruination in Flint, Michigan,” in *The Wonder of Water*, UMich Libraries)//BB

It’s tempting to characterize the ruination of the drinking water system in Flint as a case of “accidental pollution” by people who “made mistakes.” After many months of activism on the part of local residents, the first official acknowledgements of problems in the water system framed them in these terms. As the crisis wore on, it began to be seen as a failure of legislation and oversight, and was positioned as such by politicians and bureaucrats. The question became where to hang that failure – on the governor? The state water protection bureaucrats? The EPA? Eventually, the state attorney general also laid criminal charges against former municipal, state, and EPA employees who neglected their responsibilities, falsified reports, and covered up the toxicity of the water, increasing the harm to residents. Victoria Morckel, a geographer at University of Michigan–Flint, portrays the situation as an urban planning failure (2017). Butler, Scammell, and Benson (2016) suggest that we understand it as an example of regulatory failure and environmental injustice. Explanations such as these continue to see the situation in Flint as a failure of law, to some degree – as a situation in which the law did not do what it was intended to do, and in which people charged with upholding the law did not carry out their responsibilities. Placing the racialized ruination of the Flint drinking water system in the context of the city’s own history, and of North American imperialism, demonstrates how the pollution of the drinking water system occurred within the context of a larger system of imperial control designed to maintain the ruination of an already marginal racialized city to protect the well-being of privileged others elsewhere. It is tempting to talk about events such as those in Flint as though they are disconnected from other environmental crises in North America. But failing to see patterns, treating each of these crises as unique failures, continues to place all of the responsibility for these situations on local players, and allows the larger structures of power that rely on and perpetuate the persistent recurrence of such situations to remain invisible. To illuminate some of the hidden social and political patterns at play, the Flint case is explored in the context of another seemingly dissimilar water conflict that I have discussed extensively in its own terms elsewhere: the fishing dispute at Esgenoôpetitj/Burnt Church, New Brunswick. In 1999, a prolonged and violent fishing dispute erupted at Esgenoôpetitj/ Burnt Church among an Indigenous community, the Mi’kmaq, their settler neighbours, and the Canadian government after the Supreme Court of Canada’s Marshall decision upheld the treaty right of the Mi’kmaq to fish and earn a moderate living from their catch (King 2014). This dispute got plenty of media attention over many years, and the government and many commentators continued to insist that the dispute was about fish. For local residents, both Indigenous and settler, the conflict was actually grounded in place, and in their contested (post)colonial relationships to their own lands and waters. Place is a way of understanding the web of interrelationships between humans and the other-than-human world that shapes both humans and the other-than-human through time. Humans are affected by the plants, animals, rocks, mountains, lakes, rivers, or seas where they live, and the presence of humans affects the plants, animals, rocks, mountains, lakes, rivers, and seas. Consider, for example, that human bodies are made mostly of water. We drink and excrete water, eat creatures from water, and use water in all manner of ways in our daily lives. How we go about doing that has a huge effect not only on us, but on water, too – on individual bodies of water, on watersheds, and on the entire water cycle. The value of taking a holistic, place-based approach is to see the ways in which water is connected not only to other elements of the ecosystem, but also to other elements of the social and political systems of humans. This chapter is an attempt to sketch out some of those connections and to raise some of the complex political and justice-oriented questions that arise once we take the dialogic challenge of place seriously. My book Fishing in Contested Waters: Place and Community in the Dispute at Burnt Church/Esgenoôpetitj explores the depth and complexity of the local Indigenous and settler experiences of place and the dispute; I am drawing on that work here to show how race, ruination, and imperial politics are important at Esgenoôpetitj/Burnt Church and in the larger (post)colonial North American context, such as in the ruination of the drinking water system in Flint. I draw this comparison not because the communities of Esgenoôpetitj and Flint are necessarily alike – while the remote Mi’kmaw community and the post-industrial city are both highly impoverished, unemployed, racialized, and segregated, little in the public framing of the crises in these two places is similar. Esgenoôpetitj had a “fishing dispute,” a conflict over local employment, Indigenous rights, and sovereignty, and a prolonged period of direct conflict between Indigenous activists and the Canadian government. Flint had a “public health crisis,” a loss of safe drinking water, and a public failure of law and regulation. Drawing connections between the two allows us to consider the similarities in their experiences of racialization, in their experiences within structures of imperial power, and as racialized sites of ecological ruination for those powers. As Tuck and Yang (2012) remind us, “settler colonialism is built on an entangled triad structure of settler-native-slave” (1); within their commitment to decolonization, Tuck and Yang emphasize the importance of the uncommonality of Indigenous experience. This chapter is not an attempt to recreate commonality between specific community experiences, for example by suggesting that life in Flint and Esgenoôpetitj is somehow the same (it is not), but rather to illuminate the often hidden values and structures of (post)colonial North American politics and the ways in which politics forged in the crucible of the settler-native-slave triad foment and create ruination in racialized communities for the economic benefit of so-called others. Pollution of racialized and Indigenous places in the present is not simply accidental or happenstance, but the clear result of social and political processes designed to create differential harm to such places.

## ALTERNATIVE/FRAMEWORK

### FW---Top-Shelf

#### Prioritize unsettling academia in debates about water

Hendershot and Mutimer 18, \*Office of the Dean @ York U,\*\*Professor and Chair of Department Political Science @ York U (Chris and David, Critical Security Studies, in *The Oxford Handbook of International Security*, Kindle Edition)//BB

Despite avowed commitments to critique concepts and practices that sustain militarized, carbon dependent, or zero-sum security relations, critical security scholars must also imagine the possibility that criticality can still affect domination and exploitation. That is to say, CSS needs to more thoughtfully consider its ongoing complicity with the settler-colonial and imperial ordering of global relations. As two scholars who live and work on the traditional territory of the Haudenosaunee, the Métis, and most recently, the territory of the Mississauga of the Credit River (CAUT 2016) and are thus sustained through the occupation of this territory, we must immediately confront our complicity in settler-colonialism. Or to paraphrase Sundberg (2014: 35), as citizens of a settler-colonial state, we “have a profound obligation and responsibility to confront the widespread implications of colonialism in [our] scholarship and to ask what [security] thought has to become to face the political, philosophical, and ethical challenges of decolonizing.” Without a vigorous un-settling, CSS will be incapable of working for and with “Indigenous sovereignty in its material, psychological, epistemological, and spiritual forms” (Sium et al. 2012: v). What must be more readily confronted is that criticality does not obviate complicity with colonialism, imperialism, and racialized domination. Expansive referents, nonpositivistic metatheories, and openness to difference can certainly create the intellectual space to read and cite the work of Patrick Wolfe (2006) or Glen Coulthard (2014) or Sarah Hunt (2014). Or to consider how the Asubpeeschoseewagong First Nation, the Standing Rock Sioux Tribe, and/or Native Hawaiians are affected by and affect security politics. Critical scholars who focus on the security politics of the Arctic are already including Indigenous concerns and knowledge in their analysis. Using securitization theory, Greaves (2016) engages with Inuit and Sámi discourses “in order to explain variation in different understandings of (in)security” among Indigenous Peoples as well as recognizing how colonial agendas constrain the capacities of Indigenous Peoples “to advance a conception of (in)security that is distinct from those of settler governments” (2016: 462-3). Harrington and Lecavalier (2014) work through an emancipatory approach in order to understand how Inuit discourse, particularly that which is articulated by and through the Inuit Circumpolar Council, and traditional knowledge “offers an important emancipatory alternative to traditional practices of environmental security” (2014: 114). Yet, inclusion and recognition of Indigenous Peoples and knowledge does not necessarily un-settle the academy (Ahenakew 2016). Greater inclusion need not contest the fact that the academic study of security, whether it be traditional or critical, is not possible without (settler) colonialism/imperialism. Ontologically, the world of nation states, citizens, consumers, the environment, water, and food cannot exist as referents of security because they do not exist as such without colonial rearrangements of economics, geographies, and politics (see Byrd 2011; Samson and Gigoux 2017). Epistemologically, notions of threat and danger are entwined with colonial determinations of the civilized, productive, and/or human (see Tuck and Gaztambide-Fernández 2013). Methodologically, the Anglo-European “modernization” of academic knowledge production does not occur without the discovery, classification, and collection of “native” people, flora, and fauna (Tuhiwai Smith 2012). Politically, the educational authority of Anglo-European universities rests, in many instances literally, on the coercive disposition of land, suppression of language, and spiritual and creative practice, as well as the ignorance of traditional knowledge (see Todd 2016). Only through honestly confronting this (ongoing) complicity with colonialism can critical security scholarship sincerely consider, support, and enact decolonial possibilities.

### FW---Critique Key

#### Critique is a pre-requisite to policy-making. It opens new pathways that drastically alter our relationships to water.

Ellis and Perry 20, \*educator, advocate, and researcher specializing in justice‐oriented watershed management and conservation in the Southwest, \*\*PhD, Assistant Professor in the School of Earth and Sustainability at Northern Arizona University (Rachelle and Denielle, “A Confluence of Anticolonial Pathways for Indigenous Sacred Site Protection,” *Journal of Contemporary Water Research & Education*, 169.1)//BB

Anticolonial analyses are relevant in the examination of federal policy, water governance, and Indigenous community organizing. Any attempts to protect Sipapuni, the Confluence, and the LCR must examine if and how such efforts either continue or challenge the colonial legacy of severing Indigenous people from their homelands and culture in the name of conservation or compliance. While it is perhaps incongruous to assess anticolonial dimensions of federal policy tools, the critique is still needed as a component of systemic anticolonial strategies. A comprehensive anticolonial protection pathway arguably starts with deconstructing “colonial mentalities.” This can be done by incorporating IK as knowledge‐action‐value‐spiritual constructs equal to Western science and then building genuine, collaborative, and inclusive decision‐making processes that prioritize Indigenous sovereignty and self‐determination. The next step requires recognizing that Indigenous rights to land and water are inherent, while understanding advocacy strategies must simultaneously adapt colonial policies to achieve anticolonial ends. The final step entails progressing toward repatriation of Indigenous lands (i.e., physical decolonization). Anticolonial pathways further support re‐Indigenizing water management through a heavy emphasis on the role that relationships, responsibility, respect, reciprocity, and accountability play in interactions with the human, physical, and spiritual world.

### FW---AT Fairness

#### Reject appeals to fairness in the context of indigenous violence

Singleton 9, PhD, Associate Professor, Department of Political Science, Western Washington (Sara, “Native People and Planning for Marine Protected Areas: How “Stakeholder” Processes Fail to Address Conflicts in Complex, Real-World Environments,” *Coastal Management*, 37.5)//BB

How do we explain this? Among a host of factors including bureaucratic turf battles, resistance to change, uncertainty regarding leadership, and capacity issues among aboriginal governments, I will focus on one that is seldom acknowledged or discussed. The particular status of native people—societies within larger societies—presents significant challenges for models of political processes that equate equality with treating everyone the same. Among many academics and policymakers there is a pervasive, and almost unthinking, sense that an appropriate process is one in which all “stakeholders” enter on a more-or-less equal footing. Consequently, policy practitioners maintain, as best they can, a process that weighs the concerns of different groups equally and without prejudice. Collaborative processes are seen as a way of broadening and deepening democratic practice, which, in practice, is invariably framed along the lines of a “one-person, one-vote” form of political equality (Fung & Wright, 2001). Phrases such as a “level playing field” embody that aspiration. Yet the question of what it means to treat people equally is deeply contested, as ongoing conflicts over affirmative action and reparative justice will attest to. At the very least, the myth of the “level playing field” requires a considerable degree of naivete´ concerning the effects of the past on the present. Nonetheless, it is a powerful image, and one for which the particular status of tribes and First Nations presents an inconvenient exception. It is this, I would argue, that partially accounts for the fact that they are often overlooked, despite the fact that their special status has been recognized by the courts in both countries and carries real force on the ground.

### Alt Solvency / Brink

#### The alternative solves. Colonialism is at a breaking point and alternative epistemologies can shatter it.

O’Shea 18, Professor of World Arts at UCLA (Janet, “Decolonizing the Curriculum? Unsettling possibilities for performance training,” *Revista Brasileira de Estudos da Presença*, 8.4)//BB

As Trump’s executive order with which I opened this discussion suggests, we are witnessing a reckless extension of corporate largesse and of extractionist and expansionist industries at the very moment our planet and people can least afford it (Klein, 2014). More resources, proportionally, lie in hands of the very few than in any time since the Gilded Age of the early twentieth century (Neate, 2017). And, yet, the instability we now confront also signals that this time is one of crisis for neocolonialism and neoliberalism. The benevolent mask of colonialism, with its fraudulent promises of equality, has been torn away to reveal the exploitative agenda that runs it.

This moment of instability, this time of political and economic crisis, offers an opportunity for re-envisioning ways of being, working, and connecting. A decolonizing approach might seize upon this instability to further unsettle it and seriously consider alternatives. Jane Desmond (2016) argues that scholarship in the humanities allows us to question whether how we live now is how we want to live. Desmond suggests, accordingly, that arts and humanities scholarship allows us to envision other worlds and other ways of being. As with our theorization, so, too, can our teaching enable us to envision other ways of existing and interacting. In rethinking our curricula, we can rethink, and recraft, our labor so as to supplant colonial models of exploitation and ownership. Decolonizing moves in dance and performance studies can seize on instability, not only seriously considering alternatives but also bringing them into being.

## ANSWERS TO

### AT PDB---Resource Link

#### Each rhetorical utterance of water as “resource” prevents the emergence of alternative hydrosocial realities

Linton 10, MA, Department of Geography and Environmental Studies @ Carleton (Jamie, “What Is Water?: The History of a Modern Abstraction,” p. 13)//BB

We can see how particular kinds of water can be held fast in recursive webs of social and natural processes. Because such fixations — like the identity of water as a resource for producing hydroelectricity — are the product of mixing water with social processes, they perform a kind of political work in the sense that they strengthen some social relations while making it difficult for others to establish or sustain themselves. To treat water as an economic resource allows some people to use it as a means to whatever ends they may have the economic and technological capacity to effect. Thus, alternative, potential meanings and relations with water may be ignored or shunted aside, along with the people for whom such mean- ings and relations are constitutive of life and livelihood. The business of fixing water, in other words, is hardly just an intellectual performance; in each instance, it allows for certain hydrosocial realities while making it difficult or impossible for others to spring to life. The meanings of water that get fixed in any particular time and place can therefore be seen as a function of the relative power of different social actors.

#### Naming water as a resource is incompatible with indigenous understandings of water

Stevenson 18, PhD, Trent University, Ontario (Shaun, “Decolonizing Hydrosocial Relations: The River as a Site of Ethical Encounter in Alan Michelson's TwoRow II,” *Decolonization: Indigeneity, Education & Society*, 6.2)//BB

The second related dominant discourse that works to contain water within limiting social relations of production and the confines of Western property regimes is that of commodification. Water, not unlike land, is often treated as a resource commodity under state interpretations of Indigenous rights. Water’s value is made legible most predominately through monetary terms as set by the market. Under these terms, social relations to water are largely understood in relation to its potential short-term capital gains, often as a capital generating utility, with little attention given to either its place-specific value, or its sustainability as one of the most fundamental resources necessary for the maintenance of life.7 Bruce Braun (2015) has highlighted this discursive process as “the refiguring of nature in terms of “services” and “natural capital” (2). Further, this refiguring of nature within the discursive constraints of commodity presupposes that humans, as the owners of the commodity, are capable of controlling that which has been deemed their property (Burdon et al., 2015). Water is treated as if it were as constant and stable as the market permits, with humans understood as the sole actors within relationships that seem only to concern transactions between people and the market. The limits of these discourses emphasize the necessity to focus on the hydrosocial relations of disparate communities as a means of understanding how communities are differently positioned in history and the law, in our relations to the state, property, capitalism, and the lands and waters we inhabit. Official land claims policy highlights a stringent attempt to delineate hydrosocial relations. Such policies centre almost exclusively on economic flows with “the movement of money and resources … generally separated from ideas about social or ecological flows” (Strang, 2013, p. 193). In the confines of Western property regimes, culture is bifurcated from nature, with culture defined in terms of human ability to direct and control natural processes on a scale that is exceptionally large and abstract. When social relations are grounded exclusively in the relations of production, nature is displaced and water is abstracted from its source and specificity of environs, with policies mobilizing instead the abstract language of economics, which attempts to make itself coextensive with ecology through reference to, for example, the large scale flows and fluidity of capital, the liquidity of one’s assets, floods or overflow of particular populations, and market saturation. These are vastly different and abstract relations to the hydrosocial than those articulated by Indigenous thinkers and grassroots movements, which engage the hydrosocial outside of the traditions of liberal political economy, and which seek to ground relationships to water within the specificity of the hydrosocial environment.8

#### Decolonizing water requires an abandonment of frameworks of possession

Craft 18, Associate Professor at the Faculty of Common law, University of Ottawa and an Adjunct Professor in Law at the University of Manitoba, Indigenous Lawyer (Aimee, “Decolonizing Water: A Conversation with Aimée Craft,” *CIGI Online*, <https://www.cigionline.org/articles/decolonizing-water-conversation-aimee-craft)//BB>

CG: My next question is around the Decolonizing Water Project, how would you propose that we live collectively and live a good life in relation to water? AC: The first and easiest answer to that is that we have to understand that we are in relationship with water, that water has a spirit and that it has life. It is life-giving. But it also has its own life-giving and spirit. It has its own agency and therefore we need to recognize that in taking up this responsibility, it’s not one of control or ownership, or jurisdiction over water, but rather a relationship to and with water. That is a truly decolonizing understanding of the relationship that we have with water; that it has its own agency and decision making. A prime example of that is in thinking about the duality of water; it is a source of life but also able to take life. In thinking of decolonizing water, we have had such a perverted relationship with water in modern times, we’re looking at water as something we can control, own and consume — that is what we need to set aside if we are truly going to have decolonizing relationships relating to water. One other piece is abandoning the ideas and frameworks around possession — we must rethink how we make our decisions as humans that effect water. Jurisdictions that we create as humans are also not responsive to the jurisdictions that water has created itself. For example, in a watershed, the water has told us indirectly in how it wants to be in relationship with us.

### AT PDB---Governance Link

#### The permutation uses governance to mediate relationships to water. That’s fundamentally incompatible with indigenous respect for water.

Wilson and Inkster 18, \*PhD in Resource Management @ U BC, MS @ Cornell, \*\*Professor @ U Alberta/Yukon College (Nicole and Jody, “Respecting water: Indigenous water governance, ontologies, and the politics of kinship on the ground,” *Environment and Planning*, 1.4)//BB

Several Elders from Yukon First Nations with land claims also expressed concerns that their relationships to water were not represented or protected through the governance approaches taken on their ‘‘behalf’’ (including by their own First Nation government). They disagreed with the style of governance developed through land claims and with some of the decisions regarding resource development made by their governments (Elders 7, 4, 5, 8). One Elder stated that ‘‘respect for water’’ cannot be achieved through government because they consider the institutions and processes of government to be inappropriate means for acknowledging and protecting relationships to water. According to this perspective, ‘‘respecting water’’ is better achieved through ceremony and other land/water-based practices that remind people of their responsibilities to water through direct engagements that are not mediated by external institutions (Elder 4). At the same time, many people from signatory First Nation governments (11 Yukon First Nations including CTFN, KFN, and THFN) see substantial power in the rights and authorities acknowledged in their agreements and express hope in the potential for implementing these agreements to protect water in a manner consistent with their relationships and the imperative to respect water. Our intention is not to disparage the hard work that was put into land claim negotiations and the ongoing implementation of these agreements nor to understate the dramatic and in many cases, beneficial changes that land claims and selfgovernment brought about. Instead, we raise these critiques because they reflect debates occurring among and between Yukon First Nations and to highlight the importance of debates about the appropriateness of governance institutions and processes for improving water governance in Yukon.

### AT Ecological Indian Counter-K

#### Their counter-critique is based on colonial definitions of environmentalism/conservation---question *THAT*, not the authenticity of indigenous knowledge!

Nadasdy 5, associate professor of anthropology and American Indian, PhD, Now @ Cornell (Paul, “Transcending the Debate over the Ecologically Noble Indian: Indigenous Peoples and Environmentalism,” *Ethnohistory*, 52.2)//BB

There are two main problems with this standard refutation of indigenous ecological nobility. First, it is framed negatively; it focuses on what indigenous people do not do (that is, they fail to live up to an impossible ecological ideal), rather than on what they do. While this may help us understand why Euro-American environmentalists react the way they do when indigenous people do not act as expected, it tells us nothing about the latter’s motives. Second, those critics of ecological nobility who make this type of argument retain an imperialist perspective insofar as they continue to evaluate indigenous people’s actions according to a Euro-American ideal (they merely allow for indigenous people not to live up to it). Part of the reason the debate over ecological nobility has been unable to transcend its imperialist roots, I suggest, is that scholars have focused on only half of the problem. While they have painstakingly examined the cultural assumptions underlying Euro-American notions of ‘‘indigenousness,’’ they have paid relatively scant attention to the equally problematic assumptions about ‘‘environmentalism’’ that underlie the image of ecological nobility. Yet terms like environmentalism and conservation are notoriously ill defined. Some scholars embroiled in the debate over ecological nobility (see, e.g., Alvard1994; Brightman1987; Hames1987,1991) have responded to this conceptual fuzziness by coming up with more rigorous definitions. Their approach has been adopted by researchers interested in developing techniques for scientifically managing land and wildlife that will be compatible with local indigenous peoples’ beliefs and practices (e.g., Zavaleta 1999). Such an approach, however, does little to advance our understanding of the relationship between indigenous people and environmentalists, because it ignores the fact that the concepts of conservation and environmentalism are of Euro-American origin to begin with, thus rendering any attempt to use these concepts to classify indigenous ideas and practices—regardless of how subtly or precisely they have been defined— extremely problematic. While many scholars (e.g., Berkes 1987, 1999: 151– 53; Harries-Jones1993: 49; Krech1999: 212–13; White1985) have acknowledged the culturally contingent nature of concepts like conservation, most nevertheless continue to use them as yardsticks against which to judge indigenous peoples’ beliefs and practices in the ongoing debate over ecological nobility (i.e., either Indian people are acting as conservationists or they are not). One notable exception is Steve Langdon (2002), who argues that the standard model of wildlife conservation is based on outmoded assumptions about ecological equilibrium that fly in the face of current scientific understandings of chaos and complexity—even among ecologists. Nevertheless, this standard ‘‘puritanical’’ model of conservation retains its power at least in part because its roots lie in Judeo-Christian—particularly Protestant—assumptions that link ‘‘the good’’ with sacrifice and selfdenial, while evil is seen as the product of excess and self-indulgence. Thus, Langdon argues, contemporary wildlife conservation is a constellation of beliefs and practices rooted in a particular set of cultural values rather than in some ‘‘objective’’ understanding of animal population dynamics. As a result, any attempt to use ‘‘conservation’’ as an objective measure of behavior necessarily privileges one particular set of cultural values while simultaneously obscuring the power relations that make that very privileging possible. Significantly, he then goes on to demonstrate in detail how this dynamic plays out in the case of waterfowl management in western Alaska, where the discourse and practice of conservation have undermined Yup’ik goose hunters’ claims to decision-making power over local goose hunting. Langdon’s analysis challenges the usefulness—indeed, the very meaning—of one of the fundamental questions underlying the debate over ecological nobility: ‘‘Are indigenous people conservationists?’’ What is more, it indicates that simply by posing the question (i.e., attempting to evaluate indigenous people—as well as their beliefs and/or practices—by the yardstick of ‘‘conservation’’), scholars necessarily commit themselves to judging indigenous peoples’ actions in accordance with Euro-American cultural assumptions—not only about indigenous people, but also about conser-vation itself. And, as Langdon has demonstrated, this can have very real adverse consequences for indigenous people.

#### Strategic essentialism is power. It tricks settlers into genuine land tenure.

Nadasdy 5, associate professor of anthropology and American Indian, PhD, Now @ Cornell (Paul, “Transcending the Debate over the Ecologically Noble Indian: Indigenous Peoples and Environmentalism,” *Ethnohistory*, 52.2)//BB

As I indicated above, many scholars have criticized the image of ecological nobility. In so doing, they have highlighted many of the political consequences that arise from judging indigenous peoples according to the standards of Euro-American ‘‘environmentalism.’’ As I also indicated, however, these same scholars have tended to overlook the fact that the terms of the debate over ecological nobility themselves serve to reinforce a number of unexamined and unwarranted assumptions about First Nation people and their relationships to the environment. Because of this, the standard critique of ecological nobility requires some modification if we are to take into account the culturally constructed nature of environmentalism itself (e.g., the spectrum of environmentalism). One of the most glaring weaknesses of the standard critique of ecological nobility is exposed by the following question: Why do indigenous people themselves make such extensive use of the ecologically noble savage stereotype if it is simply a European construction that serves Euro-American ends? Most critics of ecological nobility are fully aware that indigenous people themselves make frequent use of the image. Generally, these critics have explained this in two ways: as a result of false consciousness or as an opportunistic political strategy. In an example of the first approach, Krech (1999: 27) argues that the image of the ecological Indian, like earlier incarnations of the noble savage, has become hegemonic: ‘‘At first a projection of Europeans and European-Americans, it eventually became a self-image. American Indians have taken on the Noble Indian/Ecological Indian stereotype, embedding it in their self-fashioning.’’ In this view, Indian people, by subscribing to and using the image of ecological nobility, participate in their own exploitation and ‘‘dehumanization’’ (Krech 1999: 26; see also White and Cronon 1986: 20). To view the ecologically noble Indian stereotype as an unmitigated evil for Indian people, however, is to ignore the very real clout that its use gives them in certain political contexts. The image of the ecologically noble Indian is an extremely compelling one, appealing to sympathetic audiences around the world. By invoking the image, environmentalists and indigenous people alike tap into the image’s rhetorical power, enabling them in some instances to galvanize broad—even worldwide—support for particular local struggles (see, e.g., Brosius 1997; Conklin and Graham 1995; Ramos 1998). As a result, some critics of ecological nobility have argued that Indian people invoke the stereotype not out of false consciousness but as an opportunistic political strategy. Beth Conklin and Laura Graham (1995), for example, argue that Amazonian Indian people are more concerned with issues of land rights and self-government than with the environment per se, but some have adopted the stereotype of ecological nobility for political reasons (see also Ramos 1998). By representing themselves as ecologically noble, the Kayapo Indians of Brazil, for instance, suddenly gained access to a vast amount of symbolic capital. They were then able to use this symbolic capital to reach an international audience and forge an alliance with numerous international environmental organizations. The pressure brought to bear on the Brazilian government by this international environmentalist-indigenous alliance led to unprecedented gains—not only environmentally, but in terms of political power at home. The Kayapo were able to parlay their new political capital—gained in the environmental arena—to advance their own political goals. Along similar lines, some have argued that when indigenous people use the image of ecological nobility, they are often not really making claims about themselves all. Rather, in time-honored fashion, they are using it as a foil for criticizing Euro–North American society (e.g., Beuge 1996: 77; Krech 1999: 214). Conklin and Graham (1995), along with many other critics of ecological nobility (e.g., Indigenous Peoples and Environmentalism 313 Beuge 1996: 86–87; Cruikshank 1998; Krech 1999: 26, 214–16), however, ultimately conclude that while the image of ecological nobility may be useful to Indian people in the short term, in the long run any use of the stereotype—even by Indians themselves—does them more harm than good. At first glance, this view is compelling. According to its proponents, temporary alliances between environmentalists and indigenous people may sometimes develop, but these are necessarily based on a combination of colonialist stereotyping and false-consciousness that are ultimately detrimental to indigenous people. And, worse yet, if Indian people are not in fact ‘‘ecologically noble,’’ as so many scholars have pointed out, there will inevitably be those who argue that indigenous people who use the image of ecological nobility (an image they know to be false) are guilty of cynical and opportunistic misrepresentation. As it turns out, this is precisely the argument used by opponents of the Makah whale hunt, and one hears it espoused by environmentalists everywhere who find themselves opposed by indigenous peoples. Thus, environmentalist-indigenous alliances are doomed, for as soon as the ‘‘true’’ nature of indigenous people’s relationship to the environment comes to light, relations between the parties will dissolve—often in bitterness and amid charges of betrayal and denunciations of inauthenticity. My own experience in the southern Yukon, however, suggests that this picture—though not exactly wrong—is somewhat oversimplified. Relations between environmentalists and Indian people in the Yukon—as elsewhere—are indeed often based on stereotypes, misunderstanding, and political maneuvering. But this is not the whole story. To get a handle on the complexities of these relations we must examine why and how indigenous people themselves make use of the image of ecological nobility. First Nation people in the Yukon, like Indian people in Amazonia and elsewhere, make regular and strategic use of the image of ecological nobility. By identifying themselves with the image of the ecologically noble Indian, Yukon First Nation people do indeed gain a certain amount of legitimacy in the eyes of many Euro-Canadians, a legitimacy that, when wielded effectively, translates into very real power in certain political arenas, including those of wildlife management and environmental politics, as well as land claim and self-government negotiations. And Yukon First Nation people do sometimes use the image of ecological nobility as a foil, more to criticize Euro-Canadian society than to make specific claims about themselves. But does this mean that their use of the stereotype should be dismissed as (merely) political opportunism? On the contrary, most Yukon First Nation people with whom I have spoken invoke the image of ecological nobility at least in part because they really do feel that some 314 Paul Nadasdy of their beliefs and practices are more appropriate and environmentally benign than those of Euro–North Americans. In such cases, it would be inaccurate to claim that they are either acting opportunistically or being duped by a false consciousness. In my experience, it makes little sense to divorce First Nation people’s political goals from concerns about the environment per se, as Conklin and Graham suggest. Like the Indians of the Amazon with whom Conklin and Graham worked, Yukon First Nation people are extremely concerned with issues of land and sovereignty. Their claims to land and self-government, however, are—and have always been—deeply entwined with broader concerns about what constitutes ‘‘proper’’ and ‘‘improper’’ use of the land (Yukon Native Brotherhood 1973). First Nation land claims and selfgovernment in the Yukon simply cannot be understood except in relation to First Nation peoples’ understandings of and concerns about the environment.

### AT Indigenous People Want Aff

#### The assumption that indigenous people “want” to treat water as a resource is a result of violent suppression of native identity

Wilson and Inkster 18, \*PhD in Resource Management @ U BC, MS @ Cornell, \*\*Professor @ U Alberta/Yukon College (Nicole and Jody, “Respecting water: Indigenous water governance, ontologies, and the politics of kinship on the ground,” *Environment and Planning*, 1.4)//BB

Indigenous peoples are increasingly at the forefront of water conflicts as the waters within their territories are under pressure from stressors including the intensification of resource extraction and the effects of global environmental change (Babidge, 2016; Boelens, 2015; Harris et al., 2017; Perreault, 2013; Wilson et al., 2015). While these stressors have undeniable biophysical effects (Bates et al., 2008; Salvarredy-Aranguren et al., 2008), we suggest here that water conflicts are rooted in ontological differences. While Indigenous nations in the area see water as a living being, ideas about water as a ‘‘resource’’ that can be owned and exploited prevail in all meanings with which they must contend. This is because Indigenous ontologies and epistemologies2 were violently suppressed and marginalized through settler colonialism (Wolfe, 2006),3 and within contemporary practices of water governance (Anderson et al., 2013; McGregor 2014; Sam and Armstrong 2013).4 Acknowledging this pattern and the challenges it raises, Yates et al. (2017: 2) ask what it would mean to ‘‘take seriously the possibility and politics of a multiplicity of water-related worlds, highlighting multiple water realities and ways of being-with-water, not just different perceptions of our knowledge systems tied to water’s (singular) material existence.’’ We articulate this possibility here as a need to study the ‘‘political ontology’’ of water governance and ‘‘the conflicts that ensue as different worlds or ontologies strive to sustain their own existence as they interact and mingle with each other’’ (Blaser, 2009a: 877).

#### Attempts to appease indigenous people without challenging the fundamental status of colonialism fails

Norris 18, M.A. Candidate, University of British Columbia (Matthew, “How Bear Lost his Tail,” <https://open.library.ubc.ca/cIRcle/collections/ubctheses/24/items/1.0371608)//BB>

Herein, we can find Fanon’s argument at play once again. To quell the uprising and revolt of Indigenous groups who challenge the foundations of Canadian society and the existence of these projects, the Canadian government introduces appeasement policies which act as a façade to address the concerns of Indigenous opposition without fully addressing the fundamental concerns raised by Indigenous groups which fundamentally challenge the status quo of colonialism in Canada. It is not to say that these initiatives are without merit or without the support of Indigenous Peoples, but rather that these initiatives, by not addressing the foundations of colonialism, have not only failed to address and rectify the social and economic divide in Canada, but assuage settler guilt and further remove Canadian society from the need to address the foundations of colonialism, and thus risk losing the legitimacy required to stymy social unrest and outrage. This effectively makes these foundations invisible, bolstering settler arguments that “First Nations… have milked this issue to their decided advantage.”135 Examples of such initiatives are not limited to but include: the enfranchisement of Indigenous Peoples in 1960, the funding of Indigenous Representative Organizations in 1964, 136 the development and implementation of Indigenous-focused federal departments in 1966, the enshrinement and protection of the Indigenous peoples rights in Section 35 of the Canadian Constitution in 1982, an acknowledgment and commitment from Canada to renew its relationship with Indigenous peoples in 2015, and the on-going legislative review of Laws, Legislation and Policy pertaining to Indigenous peoples, by the Attorney General of Canada and Minister of Justice, Jody Wilson-Raybould from 2017 onward. Herein I suggest that these appeasement policies, as implemented from the top-down, and by not addressing the foundations of colonialism in Canada, cannot heal the societal divide which currently exists in this country, and further, has the potential to reinforce it.

### AT Pessimism Bad

#### Our critique is not pessimism. New water futures are based in optimism for indigenous people.

Byrd 20, citizen of the Chickasaw Nation of Oklahoma and associate professor of English and Gender and Women's Studies at the University of Illinois at Urbana Champaign (Jodi, “Indigenous Futures beyond the Sovereignty Debate,” *The Cambridge History of Native American Literature,* Kindle Edition)//BB

In her essay on Indigenous futurisms, Danika Medak-Saltzman suggests that such futurist work derived from and inspired by Indigenous experiences and epistemologies allows for ways to theorize beyond settler conscriptions and fantasies of native elimination and toward decolonization. It is a process of imagining otherwise, of thinking beyond the accepted norms of how things are presumed to be, to allow rivers, for instance and as Leanne Simpson envisions, to heal from the dams capitalism and colonialism have built and in the process speak new words of relationship and welcome to the salmon who should have been there all along. “By creating blueprints of the possible and providing a place where we can explore the potential pitfalls of certain paths, Indigenous futurist imaginings make it possible to transcend the confines of time and accepted ‘truths’ – so often hegemonically configured and reinforced – that effectively limit what we can see and experience as possible in the present, let alone imagine into the future” (Medak-Saltzman 2017, 143–44). Sovereignty has been one way that Indigenous communities have tried to imagine Indigenous survival otherwise and against the ongoing colonial and imperial regimes built on top of Indigenous land; how we imagine futures beyond the inherent debates about Indigenous sovereignty’s role in the logics of dispossession, antiblackness, capitalism, and gendered violence will play a role in determining the outcomes of our resurgence against the structures that continually attempt to coerce us back into the systems of our continued subjection.

# Case Negative

## AT: Sustainability

#### No limits to growth---solar energy and the knowledge economy enable clean growth and solve climate change better than degrowth

Michael Liebreich 18, Visiting Professor at Imperial College’s Energy Future Lab, “The Secret of Eternal Growth,” 10/29/18, http://ifreetrade.org/article/the\_secret\_of\_eternal\_growth\_the\_physics\_behind\_pro\_growth\_environmentalism

The earth, however, is not an isolated system. It may be nearly closed, exchanging limited matter across the planetary boundary, but it is far from isolated, as it receives a huge daily flux of energy from the sun and radiates almost as much away to space. In his book, Georgescu-Roegen even acknowledged the existence of huge solar energy fluxes, but that didn’t stop him from basing his seminal work on a scientific error. Later in his career, after ruefully acknowledging his mistake, he invented a Fourth Law of Thermodynamics, claiming that “material entropy” would forever prevent materials from being perfectly recycled. Pure fake science.

Around the same time as Georgescu-Roegen was making up thermodynamic laws, a group of concerned environmentalists calling themselves the Club of Rome invited one of the doyens of the new field of computer modelling, Jay Forrester, to create a simulation of the world economy and its interaction with the environment. In 1972 his marvellous black box produced another best-seller, Limits to Growth (iv), which purported to prove that almost every combination of economic parameters ended up not just with growth slowing, but with an overshoot and collapse. This finding, so congenial to the model’s commissioners, stemmed entirely from errors in its structure, as pointed out by a then fresh-faced young economics professor at Yale, William Nordhaus.

A third foundational work in the degrowth canon is Steady State Economics (v) by Herman Daly, later Senior Economist in the Environment Department of the World Bank. In it he explains that “the economy is an open subsystem of a finite and nongrowing ecosystem. Any subsystem of a finite nongrowing system must itself at some point also become nongrowing.” It’s a repeat of Georgescu-Roegen’s error. Daly must have known it too, since he noted that six days’ worth of radiation from the sun contained more useful energy (or exergy, to give it its correct name) than that embodied in all the fossil fuel reserves known at the time.

The point here is not that solar power is the key to endless growth, though it could well be - nuclear fission and fusion are other strong contenders. The point is that when you scratch the surface of any of the seminal tracts of the degrowth movement, you find they are based on the same fake science, right through to the present day.

Jeremy Rifkin’s 1980 Entropy: a New World View (vi) states that “here on earth material entropy is continually increasing and must ultimately reach a maximum”. In 2009, Professor Tim Jackson, the favourite anti-capitalist of the TED generation, published Prosperity Without Growth (vii). In it he pays homage to Daly’s “pioneering case for a ‘steady state economy’” and cheerfully recommends it to students hungering for alternative wisdom – either not understanding or not caring that it is based on a fallacy.

This matters because, for all that the neo-liberal world economy has delivered extraordinary improvements in living standards – in life span, levels of education, infant survival, maternal health, poverty reduction, leisure, and so on (viii) – it is currently failing to address severe, systemic environmental challenges, first and foremost among them climate change. Unless the free-trade, pro-growth, pro-trade right offers a coherent plan, it is ceding the argument to the degrowth, anti-capitalist, anti-trade left.

Climate change is real, serious, and urgent. That recent IPCC 1.5°C report is based on rigorous research. Of course climate change is being co-opted by the “Academic Grievance Studies” brigade (ix), but that doesn’t make the underlying physical science less real. As the world continues to burn through its remaining carbon budget, as temperatures continue to rise, as the ‘signal’ of climate damage becomes clearer against the background ‘noise’ of weather, the demand for dramatic action will only increase.

Limiting the impact of climate change will require the application of technology, both new and yet-to-be-developed, on a heroic scale. Destroying the ability of the world economy to deliver these solutions is the very opposite of what we should be doing. And that is where Nordhaus and Romer come in.

Romer’s great contribution was to identify the contribution of knowledge to economic growth. Before his Endogenous Growth Theory, no one could explain differences in growth rates of as much as 10 percent between countries at a similar stage of development. Romer’s work is the perfect riposte to those who think that economic growth is the same thing as ever-increasing physical material use and pollution; it is also the perfect riposte to those who believe that extractive industries can ever deliver long-term wealth and those who believe the same of agricultural subsidies and import tariffs.

Nordhaus, for his part, was the creator of the first Integrated Assessment Models, bringing together the physics of climate change, its economic impact, and the functioning of the economy. He was also the first person to suggest that attaching a cost to emissions – low at first but rising – would squeeze greenhouse gases out of the economy. Nordhaus is no climate fundamentalist, famously diverging from the view propounded in the Stern Review, that the world needs super-high carbon taxes immediately. Nordhaus accepted that environmental challenges and climate change will act as a drag on the economy but, unlike others before him, he quantified the drag and showed that it is highly unlikely to reverse economic growth.

Nordhaus and Romer are not the only Nobel Prize-winners whose work suggests that an open, liberal, trade-friendly economy – though one pricing in externalities – will do a better job of addressing climate change and other environmental problems than stalling or reversing economic growth.

Simon Kuznets, who won the 1971 Nobel Prize for Economics (x), described how a variable can get worse in the early phases of a country’s development, and then improve as growth continues. He focused mainly on inequality, but the Environmental Kuznets Curves has been shown to govern most forms of local pollution.

Ilya Prigogine won the 1977 Nobel Prize in Chemistry for his research into non-equilibrium “dissipative” structures – how a flow of energy across closed system can drive the creation of “order out of chaos” (xi). This is a real scientific expert on entropy proving that the economy can grow for as long as there is still a sun in the sky (which would give us about another five billion years).

#### Growth sustainable---technology removes dependence on nature and solves resource scarcity

John Asafu-Adjaye 15, associate professor of economics at the University of Queensland, et al., April 2015, “An Ecomodernist Manifesto,” http://www.ecomodernism.org/s/An-Ecomodernist-Manifesto.pdf

At the same time, human flourishing has taken a serious toll on natural, nonhuman environments and wildlife. Humans use about half of the planet’s ice-free land, mostly for pasture, crops, and production forestry. Of the land once covered by forests, 20 percent has been converted to human use. Populations of many mammals, amphibians, and birds have declined by more than 50 percent in the past 40 years alone. More than 100 species from those groups went extinct in the 20th century, and about 785 since 1500. As we write, only four northern white rhinos are confirmed to exist.¶ Given that humans are completely dependent on the living biosphere, how is it possible that people are doing so much damage to natural systems without doing more harm to themselves?¶ The role that technology plays in reducing humanity’s dependence on nature explains this paradox. Human technologies, from those that first enabled agriculture to replace hunting and gathering, to those that drive today’s globalized economy, have made humans less reliant upon the many ecosystems that once provided their only sustenance, even as those same ecosystems have often been left deeply damaged.¶ Despite frequent assertions starting in the 1970s of fundamental “limits to growth,” there is still remarkably little evidence that human population and economic expansion will outstrip the capacity to grow food or procure critical material resources in the foreseeable future.¶ To the degree to which there are fixed physical boundaries to human consumption, they are so theoretical as to be functionally irrelevant. The amount of solar radiation that hits the Earth, for instance, is ultimately finite but represents no meaningful constraint upon human endeavors. Human civilization can flourish for centuries and millennia on energy delivered from a closed uranium or thorium fuel cycle, or from hydrogen-deuterium fusion. With proper management, humans are at no risk of lacking sufficient agricultural land for food. Given plentiful land and unlimited energy, substitutes for other material inputs to human well-being can easily be found if those inputs become scarce or expensive.¶ There remain, however, serious long-term environmental threats to human well-being, such as anthropogenic climate change, stratospheric ozone depletion, and ocean acidification. While these risks are difficult to quantify, the evidence is clear today that they could cause significant risk of catastrophic impacts on societies and ecosystems. Even gradual, non-catastrophic outcomes associated with these threats are likely to result in significant human and economic costs as well as rising ecological losses.¶ Much of the world’s population still suffers from more-immediate local environmental health risks. Indoor and outdoor air pollution continue to bring premature death and illness to millions annually. Water pollution and water-borne illness due to pollution and degradation of watersheds cause similar suffering.¶ 2¶ Even as human environmental impacts continue to grow in the aggregate, a range of long-term trends are today driving significant decoupling of human well-being from environmental impacts.¶ Decoupling occurs in both relative and absolute terms. Relative decoupling means that human environmental impacts rise at a slower rate than overall economic growth. Thus, for each unit of economic output, less environmental impact (e.g., deforestation, defaunation, pollution) results. Overall impacts may still increase, just at a slower rate than would otherwise be the case. Absolute decoupling occurs when total environmental impacts — impacts in the aggregate — peak and begin to decline, even as the economy continues to grow.¶ Decoupling can be driven by both technological and demographic trends and usually results from a combination of the two.¶ The growth rate of the human population has already peaked. Today’s population growth rate is one percent per year, down from its high point of 2.1 percent in the 1970s. Fertility rates in countries containing more than half of the global population are now below replacement level. Population growth today is primarily driven by longer life spans and lower infant mortality, not by rising fertility rates. Given current trends, it is very possible that the size of the human population will peak this century and then start to decline.¶ Trends in population are inextricably linked to other demographic and economic dynamics. For the first time in human history, over half the global population lives in cities. By 2050, 70 percent are expected to dwell in cities, a number that could rise to 80 percent or more by the century’s end. Cities are characterized by both dense populations and low fertility rates.¶ Cities occupy just one to three percent of the Earth’s surface and yet are home to nearly four billion people. As such, cities both drive and symbolize the decoupling of humanity from nature, performing far better than rural economies in providing efficiently for material needs while reducing environmental impacts.¶ The growth of cities along with the economic and ecological benefits that come with them are inseparable from improvements in agricultural productivity. As agriculture has become more land and labor efficient, rural populations have left the countryside for the cities. Roughly half the US population worked the land in 1880. Today, less than 2 percent does.¶ As human lives have been liberated from hard agricultural labor, enormous human resources have been freed up for other endeavors. Cities, as people know them today, could not exist without radical changes in farming. In contrast, modernization is not possible in a subsistence agrarian economy.¶ These improvements have resulted not only in lower labor requirements per unit of agricultural output but also in lower land requirements. This is not a new trend: rising harvest yields have for millennia reduced the amount of land required to feed the average person. The average per-capita use of land today is vastly lower than it was 5,000 years ago, despite the fact that modern people enjoy a far richer diet. Thanks to technological improvements in agriculture, during the half-century starting in the mid-1960s, the amount of land required for growing crops and animal feed for the average person declined by one-half.¶ Agricultural intensification, along with the move away from the use of wood as fuel, has allowed many parts of the world to experience net reforestation. About 80 percent of New England is today forested, compared with about 50 percent at the end of the 19th century. Over the past 20 years, the amount of land dedicated to production forest worldwide declined by 50 million hectares, an area the size of France. the “forest transition” from net deforestation to net reforestation seems to be as resilient a feature of development as the demographic transition that reduces human birth rates as poverty declines.¶ Human use of many other resources is similarly peaking. The amount of water needed for the average diet has declined by nearly 25 percent over the past half-century. Nitrogen pollution continues to cause eutrophication and large dead zones in places like the Gulf of Mexico. While the total amount of nitrogen pollution is rising, the amount used per unit of production has declined significantly in developed nations.¶ Indeed, in contradiction to the often-expressed fear of infinite growth colliding with a finite planet, demand for many material goods may be saturating as societies grow wealthier. Meat consumption, for instance, has peaked in many wealthy nations and has shifted away from beef toward protein sources that are less land intensive.¶ As demand for material goods is met, developed economies see higher levels of spending directed to materially less-intensive service and knowledge sectors, which account for an increasing share of economic activity. This dynamic might be even more pronounced in today’s developing economies, which may benefit from being late adopters of resource-efficient technologies.¶ Taken together, these trends mean that the total human impact on the environment, including land-use change, overexploitation, and pollution, can peak and decline this century. By understanding and promoting these emergent processes, humans have the opportunity to re-wild and re-green the Earth — even as developing countries achieve modern living standards, and material poverty ends.

#### Increasing innovation solves resource scarcity---history proves

Marian L. Tupy 18, senior policy analyst at the Cato Institute and editor of HumanProgress.org, 12/7/18, “The Counter-Intuitive Truth About the World's Resources”, https://humanprogress.org/article.php?p=1612

Are we running out of resources? That’s been a hotly debated question since the publication of Paul Ehrlich’s The Population Bomb in 1968. The Stanford University biologist warned that population growth would result in the exhaustion of resources and a global catastrophe. According to Ehrlich, “The battle to feed all of humanity is over. In the 1970s hundreds of millions of people will starve to death in spite of any crash programs embarked upon now. At this late date nothing can prevent a substantial increase in the world death rate”.

The University of Maryland economist Julian Simon rejected Ehrlich’s thesis. In his 1981 book The Ultimate Resource, he argued that humans were intelligent beings, capable of innovating their way out of shortages through greater efficiency, increased supply, or development of substitutes. He wrote: “There is no physical or economic reason why human resourcefulness and enterprise cannot forever continue to respond to impending shortages and existing problems with new expedients that, after an adjustment period, leave us better off than before the problem arose.”

A just-released paper, which I co-authored with Brigham Young University economics professor Gale Pooley, revisits the Ehrlich-Simon debate. In The Simon Abundance Index: A New Way to Measure Availability of Resources, we look at prices of 50 foundational commodities covering energy, food, materials and metals. Our findings confirm Simon’s thesis. Between 1980 and 2017, the world’s population increased from 4.46 to 7.55 billion or 69 per cent. Yet resources have become substantially more abundant.

To arrive at our conclusion, we introduce four new ways of measuring abundance of resources. Ehrlich and Simon looked at inflation adjusted prices of commodities. By our count, those fell by 36 per cent. Taking that analysis a step further, we have come up with a “time-price” of commodities, which allows us to cost resources in terms of human labour. We find that relative to the average global hourly income, commodity prices fell by 64.7 per cent between 1980 and 2017.

Second, the price elasticity of population (PEP) allows us to measure sensitivity of resource availability to population growth. We find that the time-price of commodities declined by 0.934 per cent for every 1 per cent increase in the world’s population. Put differently, over the last 37 years, every additional human being born on our planet appears to have made resources proportionately more plentiful for the rest of us.

Third, we develop the Simon Abundance Framework, which uses the PEP values to distinguish between different degrees of resource abundance, from decreasing abundance at the one end to super abundance at the other end. Considering that the time-price of commodities decreased at a faster proportional rate than population increased, we find that humanity is experiencing super abundance.

Finally, we create the Simon Abundance Index (SAI), which uses the time-price of commodities and change in global population to estimate overall resource abundance. The SAI represents the ratio of the change in population over the change in the time-price, times 100. It has a base year of 1980 and a base value of 100. Between 1980 and 2017, resource availability increased at a compounded annual growth rate of 4.32 percent. That means that the Earth was 379.6 percent more plentiful in 2017 than it was in 1980.

Based on our analysis of the relationship between resource availability and population growth, we forecast that the time-price of commodities could fall by a further 29 per cent over the next 37 years. Of course, much will depend on policies and institutions that nations pursue. For time-price of commodities to decline and resource abundance to increase, it is necessary for market incentives and price mechanism to endure. For it is when prices of commodities temporarily increase that people have an incentive to use resources more efficiently, increase their supply and develop cheaper substitutes.

## Impact Defense

### 1NC---Bio-D Defense

#### Biodiversity loss won’t cause extinction

Peter Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al., September 2018, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, Vol. 102, p. 39-50

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia.

While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al., 2013, Vellend et al., 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.

### 2NC---Bio-D Defense

#### No tipping points---damage stays localized

Barry Brook 13, Professor at the University of Adelaide, leading environmental scientist, holding the Sir Hubert Wilkins Chair of Climate Change at the School of Earth and Environmental Sciences, and is also Director of Climate Science at the University of Adelaide’s Environment Institute, author of 3 books and over 250 scholarly articles, Corey Bradshaw is an Associate Professor at the University of Adelaide and a joint appointee at the South Australian Research and Development Institute, Brave New Climate, March 4, 2013, "Worrying about global tipping points distracts from real planetary threats", http://bravenewclimate.com/2013/03/04/ecological-tipping-points/

We argue that at the global-scale, ecological “tipping points” and threshold-like “planetary boundaries” are improbable. Instead, shifts in the Earth’s biosphere follow a gradual, smooth pattern. This means that it might be impossible to define scientifically specific, critical levels of biodiversity loss or land-use change. This has important consequences for both science and policy.

Humans are causing changes in ecosystems across Earth to such a degree that there is now broad agreement that we live in an epoch of our own making: the Anthropocene. But the question of just how these changes will play out — and especially whether we might be approaching a planetary tipping point with abrupt, global-scale consequences — has remained unsettled.

A tipping point occurs when an ecosystem attribute, such as species abundance or carbon sequestration, responds abruptly and possibly irreversibly to a human pressure, such as land-use or climate change. Many local- and regional-level ecosystems, such as lakes,forests and grasslands, behave this way. Recently however, there have been several efforts to define ecological tipping points at the global scale.

At a local scale, there are definitely warning signs that an ecosystem is about to “tip”. For the terrestrial biosphere, tipping points might be expected if ecosystems across Earth respond in similar ways to human pressures and these pressures are uniform, or if there are strong connections between continents that allow for rapid diffusion of impacts across the planet.

These criteria are, however, unlikely to be met in the real world.

First, ecosystems on different continents are not strongly connected. Organisms are limited in their movement by oceans and mountain ranges, as well as by climatic factors, and while ecosystem change in one region can affect the global circulation of, for example, greenhouse gases, this signal is likely to be weak in comparison with inputs from fossil fuel combustion and deforestation.

Second, the responses of ecosystems to human pressures like climate change or land-use change depend on local circumstances and will therefore differ between locations. From a planetary perspective, this diversity in ecosystem responses creates an essentially gradual pattern of change, without any identifiable tipping points.

This puts into question attempts to define critical levels of land-use change or biodiversity loss scientifically.

Why does this matter? Well, one concern we have is that an undue focus on planetary tipping points may distract from the vast ecological transformations that have already occurred.

After all, as much as four-fifths of the biosphere is today characterised by ecosystems that locally, over the span of centuries and millennia, have undergone human-driven regime shifts of one or more kinds.

Recognising this reality and seeking appropriate conservation efforts at local and regional levels might be a more fruitful way forward for ecology and global change science.

Corey Bradshaw

Let’s not get too distracted by the title of the this article – Does the terrestrial biosphere have planetary tipping points? – or the potential for a false controversy. It’s important to be clear that the planet is indeed ill, and it’s largely due to us. Species are going extinct faster than they would have otherwise. The planet’s climate system is being severely disrupted; so is the carbon cycle. Ecosystem services are on the decline.

But – and it’s a big “but” – we have to be wary of claiming the end of the world as we know it, or people will shut down and continue blindly with their growth and consumption obsession. We as scientists also have to be extremely careful not to pull concepts and numbers out of thin air without empirical support.

Specifically, I’m referring to the latest “craze” in environmental science writing – the idea of “planetary tipping points” and the related “planetary boundaries”.

It’s really the stuff of Hollywood disaster blockbusters – the world suddenly shifts into a new “state” where some major aspect of how the world functions does an immediate about-face.

Don’t get me wrong: there are plenty of localised examples of such tipping points, often characterised by something we call “hysteresis”. Brook defines hysterisis as:

a situation where the current state of an ecosystem is dependent not only on its environment but also on its history, with the return path to the original state being very different from the original development that led to the altered state. Also, at some range of the driver, there can exist two or more alternative states

and “tipping point” as:

the critical point at which strong nonlinearities appear in the relationship between ecosystem attributes and drivers; once a tipping point threshold is crossed, the change to a new state is typically rapid and might be irreversible or exhibit hysteresis.

Some of these examples include state shifts that have happened (or mostly likely will) to the cryosphere, ocean thermohaline circulation, atmospheric circulation, and marine ecosystems, and there are many other fine-scale examples of ecological systems shifting to new (apparently) stable states.

However, claiming that we are approaching a major planetary boundary for our ecosystems (including human society), where we witness such transitions simultaneously across the globe, is simply not upheld by evidence.

Regional tipping points are unlikely to translate into planet-wide state shifts. The main reason is that our ecosystems aren’t that connected at global scales.

The paper provides a framework against which one can test the existence or probability of a planetary tipping point for any particular ecosystem function or state. To date, the application of the idea has floundered because of a lack of specified criteria that would allow the terrestrial biosphere to “tip”. From a more sociological viewpoint, the claim of imminent shift to some worse state also risks alienating people from addressing the real problems (foxes), or as Brook and colleagues summarise:

framing global change in the dichotomous terms implied by the notion of a global tipping point could lead to complacency on the “safe” side of the point and fatalism about catastrophic or irrevocable effects on the other.

In other words, let’s be empirical about these sorts of politically charged statements instead of crying “Wolf!” while the hordes of foxes steal most of the flock.

#### Species are resilient

Peter Kareiva 12, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al., 2012, “Conservation in the Anthropocene,” http://thebreakthrough.org/index.php/journal/past-issues/issue-2/conservation-in-the-anthropocene/

2. As conservation became a global enterprise in the 1970s and 1980s, the movement's justification for saving nature shifted from spiritual and aesthetic values to focus on biodiversity. Nature was described as primeval, fragile, and at risk of collapse from too much human use and abuse. And indeed, there are consequences when humans convert landscapes for mining, logging, intensive agriculture, and urban development and when key species or ecosystems are lost.

But ecologists and conservationists have grossly overstated the fragility of nature, frequently arguing that once an ecosystem is altered, it is gone forever. Some ecologists suggest that if a single species is lost, a whole ecosystem will be in danger of collapse, and that if too much biodiversity is lost, spaceship Earth will start to come apart. Everything, from the expansion of agriculture to rainforest destruction to changing waterways, has been painted as a threat to the delicate inner-workings of our planetary ecosystem.

The fragility trope dates back, at least, to Rachel Carson, who wrote plaintively in Silent Spring of the delicate web of life and warned that perturbing the intricate balance of nature could have disastrous consequences.22 Al Gore made a similar argument in his 1992 book, Earth in the Balance.23 And the 2005 Millennium Ecosystem Assessment warned darkly that, while the expansion of agriculture and other forms of development have been overwhelmingly positive for the world's poor, ecosystem degradation was simultaneously putting systems in jeopardy of collapse.24

The trouble for conservation is that the data simply do not support the idea of a fragile nature at risk of collapse. Ecologists now know that the disappearance of one species does not necessarily lead to the extinction of any others, much less all others in the same ecosystem. In many circumstances, the demise of formerly abundant species can be inconsequential to ecosystem function. The American chestnut, once a dominant tree in eastern North America, has been extinguished by a foreign disease, yet the forest ecosystem is surprisingly unaffected. The passenger pigeon, once so abundant that its flocks darkened the sky, went extinct, along with countless other species from the Steller's sea cow to the dodo, with no catastrophic or even measurable effects.

These stories of resilience are not isolated examples -- a thorough review of the scientific literature identified 240 studies of ecosystems following major disturbances such as deforestation, mining, oil spills, and other types of pollution. The abundance of plant and animal species as well as other measures of ecosystem function recovered, at least partially, in 173 (72 percent) of these studies.25

While global forest cover is continuing to decline, it is rising in the Northern Hemisphere, where "nature" is returning to former agricultural lands.26 Something similar is likely to occur in the Southern Hemisphere, after poor countries achieve a similar level of economic development. A 2010 report concluded that rainforests that have grown back over abandoned agricultural land had 40 to 70 percent of the species of the original forests.27 Even Indonesian orangutans, which were widely thought to be able to survive only in pristine forests, have been found in surprising numbers in oil palm plantations and degraded lands.28

Nature is so resilient that it can recover rapidly from even the most powerful human disturbances. Around the Chernobyl nuclear facility, which melted down in 1986, wildlife is thriving, despite the high levels of radiation.29 In the Bikini Atoll, the site of multiple nuclear bomb tests, including the 1954 hydrogen bomb test that boiled the water in the area, the number of coral species has actually increased relative to before the explosions.30 More recently, the massive 2010 oil spill in the Gulf of Mexico was degraded and consumed by bacteria at a remarkably fast rate.31

Today, coyotes roam downtown Chicago, and peregrine falcons astonish San Franciscans as they sweep down skyscraper canyons to pick off pigeons for their next meal. As we destroy habitats, we create new ones: in the southwestern United States a rare and federally listed salamander species seems specialized to live in cattle tanks -- to date, it has been found in no other habitat.32 Books have been written about the collapse of cod in the Georges Bank, yet recent trawl data show the biomass of cod has recovered to precollapse levels.33 It's doubtful that books will be written about this cod recovery since it does not play well to an audience somehow addicted to stories of collapse and environmental apocalypse.

Even that classic symbol of fragility -- the polar bear, seemingly stranded on a melting ice block -- may have a good chance of surviving global warming if the changing environment continues to increase the populations and northern ranges of harbor seals and harp seals. Polar bears evolved from brown bears 200,000 years ago during a cooling period in Earth's history, developing a highly specialized carnivorous diet focused on seals. Thus, the fate of polar bears depends on two opposing trends -- the decline of sea ice and the potential increase of energy-rich prey. The history of life on Earth is of species evolving to take advantage of new environments only to be at risk when the environment changes again.

The wilderness ideal presupposes that there are parts of the world untouched by humankind, but today it is impossible to find a place on Earth that is unmarked by human activity. The truth is humans have been impacting their natural environment for centuries. The wilderness so beloved by conservationists -- places "untrammeled by man"34 -- never existed, at least not in the last thousand years, and arguably even longer.

### --AT: Sixth Mass Extinction

#### No mass extinction---statistically wrong

Stewart Brand 15, environmentalist and founder of the Long Now Foundation and the Revive and Restore project, “Rethinking extinction,” 4/21/15, <https://aeon.co/essays/we-are-not-edging-up-to-a-mass-extinction>

[Italics in original]

Medicine is about health. So is conservation. And as with medicine, the trends for conservation in this century are looking bright. We are re-enriching some ecosystems we once depleted and slowing the depletion of others. Before I explain how we are doing that, let me spell out how exaggerated the focus on extinction has become and how it distorts the public perception of conservation.

Many now assume that we are in the midst of a human-caused ‘Sixth Mass Extinction’ to rival the one that killed off the dinosaurs 66 million years ago. But we’re not. The five historic mass extinctions eliminated 70 per cent or more of all species in a relatively short time. That is not going on now. ‘If all currently threatened species were to go extinct in a few centuries and that rate continued,’ began a recent Nature magazine introduction to a survey of wildlife losses, ‘the sixth mass extinction could come in a couple of centuries or a few millennia.’

The range of dates in that statement reflects profound uncertainty about the current rate of extinction. Estimates vary a hundred-fold – from 0.01 per cent to 1 per cent of species being lost per decade. The phrase ‘all currently threatened species’ comes from the indispensable IUCN (International Union for Conservation of Nature), which maintains the Red List of endangered species. Its most recent report shows that of the 1.5 million identified species, and 76,199 studied by IUCN scientists, some 23,214 are deemed threatened with extinction. So, if *all* of those went extinct in the next few centuries, *and* the rate of extinction that killed them kept right on for hundreds or thousands of years more, *then* we might be at the beginning of a human-caused Sixth Mass Extinction.

An all-too-standard case of extinction mislabeling occurred this January on the front page of The New York Times Magazine. ‘Ocean Life Faces Mass Extinction, Broad Study Shows,’ read the headline. But the article by Carl Zimmer described no such thing. Instead it was a relatively good-news piece pointing out that while much of sea life is in trouble, it is far less so than continental wildlife, and there is time to avoid the mistakes made on land. The article noted that, in the centuries since 1500, some 514 species have gone extinct on land but only 15 in the oceans, and none at all in the past 50 years. The Science paper on which Zimmer was reporting was titled ‘Marine Defaunation: Animal Loss in the Global Ocean’ by Douglas McCauley, an ecologist at the University of California, Santa Barbara, and colleagues. It stated: ‘Though humans have caused few global marine extinctions, we have profoundly affected marine wildlife, altering the functioning and provisioning of services in every ocean,’ and it went on to chronicle the causes of ‘the proliferation of ‘empty reefs’, ‘empty estuaries’, and ‘empty bays’, with an overall decline of marine fishes by 38 per cent.

Extinction is not a helpful way to think about threats to ocean animals because few go extinct there. The animals are highly mobile in a totally connected vast environment where there is almost always somewhere to hide, even from industrial-scale hunting. Atlantic cod used to be one of the world’s great fisheries before it collapsed in 1992 from decades of overfishing. According to Jesse Ausubel, one of the organisers of the recent international Census of Marine Life: ‘The total estimated kilos of cod off Cape Cod today probably weigh only about 3 per cent of all the cod in 1815.’ (Across the Atlantic in the North Sea, however, cod fishery is recovering, thanks to effective regulation.) No one really expects cod to go extinct, and yet the Red List describes them as threatened with extinction.

### 1NC---Resource Wars Defense

#### No resource wars impact---data proves

Agha Bayramov 18, PhD candidate and lecturer at the department of International Relations and International Organization of the University of Groningen, “Review: Dubious nexus between natural resources and conflict.” Journal of Eurasian Studies 9(1): 72-81.

The arguments of scarcity adherents have been challenged by a number of scholars in terms of qualitative and quantitative findings. According to Stern (2016) the assumptions underpinning the scarcity notion are illogical due to the exaggeration of threats arising from oil ownership from misperceptions of market information. Furthermore, Koubi et al. (2013) explain that despite their strong empirical explanations, scarcity scholars have weak quantitative research results ones that fail to prove the link between resource scarcity and intrastate or interstate conflict. The reason for this is that some large-N findings contradict early results, which illustrate that the scarcity-conflict nexus is more complicated than scarcity scholars would have us believe. Dinar (2011), meanwhile, argues that natural resource scarcity may in fact be an important force for cooperation between states. However, scholars of natural resource scarcity have hitherto ignored the ways in which scarcity can spur cooperation (Deudney, 1999).

Considering these findings, three conclusions can be drawn from this section. First, scarcity is a complex term and it should not be equated with only natural resources. As it is explained by Kester (2016) some countries may suffer from scarcity of technical, knowledge and human capacity rather than natural resources. In light of this, without a proper capacity it is also possible to have scarcity within abundancy of resources. While supporting the scarcity argument, Andrews-Speed (2015) offer an alternative explanation that natural resources are not physically scarce but there are indeed economic, political, environmental and equity barriers that can lead to a scarcity of natural resources. Due to the strong rule of law, decent neighbourly relations and existence of strong norms for compromise and of multilateral institutions, the North Atlantic countries are highly unlikely to utilize force against or declare war to each other. However, these dimensions and buffers are currently lacking in the Middle East, Africa and Asia. As such, the U.S and Europe should work closely with these regions to prevent any resource disputes erupting (Andrews-Speed 15). Similarly, Gleditsch (1998) explains that some highly developed countries have population density, clean water, and land degradation problems but they still do not suffer from environmental violence. Thus the main issue might be that poor economic development, rather than environmental scarcity, leads to conflict. Kester (2016) names this situation as “second-order-scarcity” which refers to a lack of technology, economic capacity, and knowledge to stop resource scarcity. In this regard, it may be scarcity, itself, rather than natural resources that leads to conflict.

Second, conflict can be defined differently based on different dimensions. However, the common consensus is that conflict consists of multiple dimensions (political, economic, environmental, historical, cultural, and geographical etc.) rather than single factor. In this regard, scarcity of natural resources is not strong enough, by itself, to induce either interstate or intrastate conflict. It needs in fact to interact with other variables. Finally, related to the previous reasons, scarcity of natural resources might be a contributing or marginal reason for rather than the root cause of a given conflict. In other words, it needs to interact with non-resource factors in order to cause violence.

### 1NC---Water Wars Defense

#### No chance of water wars

Giorgos Kallis 14, environmental scientist working on ecological economics and political ecology, and Professor, Department of Geography and Institute of Environmental Science & Technology, Autonomous University of Barcelona, “Hydro-climatic change, conflict and security,” *Climatic Change*, Volume 123, 2014, pp. 69-82

This field examines relations between hydro-climatic factors, conflict and adaptation at the national scale (Table 1). Findings suggest that cooperation trumps violent conflict by far, and that acute disputes involving violence are very limited with the only evidence for a genuinely water war pointing to an event 4,500 year ago (Wolf 2007). Countries sharing rivers engage more in disputes (Gleditsch et al. 2006) but when separating the effects of shared border and shared water the significance of the latter is reduced (Toset et al. 2000). Drought has no influence on disputes but the size of the basin does, suggesting that water abundance and related economic opportunities (e.g. hydropower) may be causing conflict (Gleditsch et al. 2006).

What accounts for this relative lack of hydro-scarcity conflict? Institutional arrangements seem to mitigate the risk of conflict (Tir and Stinnett 2012) depending on the design and efficacy of international water treaties. Countries with larger shared basins and larger GDP and population differences are more likely to enter a treaty agreement (Song and Whittington 2004). Compensations and side-payments are a common treaty mechanism in water quality agreements, but not in water quantity ones (Dombrowsky 2007). In a climate change context, resilient treaties adopt portfolio approaches that spread uncertainty risks by including diverse management arrangements simultaneously in open-ended strategies rather than rigid, codified rules (Drieschova et al. 2011). Also, transboundary water management institutions that are unable to absorb and effectively manage change—which points to the importance of time given to absorb change – as well as large or rapid changes in a basin’s physical (e.g. dam construction) or political (e.g. breakup of a nation) setting can be two key conflict-likelihood increasing factors (Wolf 2009).

However, a more critical perspective on institutions and cooperation questions binary distinctions between cooperation and conflict and problematizes institutional ‘solutions’. The term hydro-hegemony refers to the covert use of power by a State to perpetuate water-sharing arrangements that while on the surface appear cooperative are in practice inequitable and unreasonable, yet tolerated and stable as they are not readily challenged (Woodhouse and Zeitoun 2008). Selby (2003) holds that Israelis and their neighbours do not fight over water; rather the Israeli Administration uses control of scarce water as a tool for subjugating Palestinians.

If water wars are unlikely, then why the media and policy hype? First, water may not be a cause of war yet but may become in the future due to climate change (De Stefano et al. 2012). Second, wars may not be fought over water, but caused by consequences of its scarcity, e.g. rising food prices or scarce arable land (Serageldin 2009). Possible wars related to land-grabs are a case in point. Finally, although unfounded, statements about water wars may persist because some key actors—policymakers, academics, journalists, and NGO activists—have incentives to exaggerate their probability (Katz 2011).

3.2 Climate, water and armed conflict

This field uses large-N datasets of countries or regions to examine correlations between hydroclimatic variability and civil conflict, controlling for socio-economic and political factors. Although under certain social conditions they might aggravate the risk of conflict, scarcity and climate change are overall not found to have an important association with armed conflict, especially if compared to poverty and dysfunctional institutions (Gleditsch 2012).

Lower rainfall levels and negative rainfall shocks are more associated to increased conflict risk in sub-Saharan Africa (Miguel et al. 2004), though the specification of rainfall intervals of the study has been criticised, and the result is not robust to different specifications (Ciccone 2011). In a similar study, Burke et al. 2009 find that global warming, could increase probabilities of armed conflict incidence in Africa by 54 % until 2030, but due to temperature increases, not rainfall changes. These results too are sensitive to the time period and severity threshold used and are not reproducible with alternative specifications (Buhaug 2010). Other studies conclude that climate variability is a poor predictor of armed conflict (Hendrix and Glaser 2007). Political exclusion of ethnic groups rather than a drought-conflict nexus drives conflict, and this is not influenced by drought occurrence, suggesting that water may not even be a threat multiplier (Theisen et al. 2011).

### 2NC---Water Wars Defense

#### No water wars---Kallis cites large-N datasets on water and conflict that shows a long history of water cooperation and treaty formation---the last water war happened 4,500 years ago, and when you control for the effects of unrelated border conflicts and political exclusion, the correlation between water and conflict disappears

#### Another meta-analysis of statistical studies on water wars shows a tiny risk of conflict and a much higher risk of cooperation

P. Michael Link 16, Research Group on Climate Change and Security, Institute of Geography, and Research Unit on Sustainability and Global Change, Center for Earth System Analysis and Sustainability, University of Hamburg, “Conflict and cooperation in the water-security nexus: a global comparative analysis of river basins under climate change,” *Wiley Interdisciplinary Reviews: Water*, Volume 3, Issue 4, July/August 2016, pp. 495-515

In this paper, we give the reader a comprehensive overview of the current state of research and provide an up-to-date review of statistical studies on conflict and cooperation around transboundary river basins. Extending previous work, we conduct a systematic assessment and open the debate for the subsequent presentation of an integrative conceptual framework of the water-security-conflict nexus, which is exemplarily applied to the cases of the Nile River Basin and the Syr Darya and Amu Darya river systems.

Cross-case studies exploring historical trends in transboundary water conflicts find that conflictive interactions are rare.4,27,28 Since 1948, supposedly 37 violent conflicts occurred, in which water played a major role. Thirty of these conflicts alone were fought between Israel and its neighbors. On the other hand, there were 1831 ‘water-related incidents’ in the past 50 years in TFDD, of which more than two thirds were of a cooperative nature.19 The IRCC database even lists 4797 events in the same time period but also concludes that most of the recorded events are cooperative.23 De Stefano and others27 find that between 1948 and 1999 and from 2000 until 2008, there have been moves toward less cooperative interactions between some countries. However, most negative events were rather moderate expressions of discord and hostility with little evidence of violent conflict.

Table 1 summarizes the large-N literature on water and transboundary conflict. Similar to the assessment of Johnson and others,26 we found strong dissent in this literature. Few studies investigate the links between reduced precipitation or hydropower development and violent intrastate conflict, and the results are quite ambiguous. By contrast, there is agreement among the four studies conducted that low water availability increases the risk for interstate disputes, especially between neighboring states. However, when exploring the relationship between adjacent countries with shared rivers, only five studies claim that a shared river increases the risk for violent conflicts between states, while 12 studies find no support for such a link. Furthermore, robust treaties and institutions can mitigate water-related conflict and facilitate cooperation even under hydrological stress.45,48,49

Despite evidence that water-related interactions are more often cooperative than conflictive, there has been a strong bias in water research on conflictive events. However, there are studies that find that signing of a water treaty positively influences future cooperation between the treaty partners e.g.,50 that water scarcity has a significant and positive relationship with the existence of river treaties,51 and that water scarcity enhances the incentives for riparians to cooperate.42 When considering nonlinear relationships, certain studies found a curvilinear relationship between the likelihood of cooperation and water scarcity.52–54 This suggests that transboundary water cooperation is most likely if water is neither extraordinarily scarce nor abundant. The projected amplification of hydro-climates55 thus has the potential to reduce international water cooperation.

In sum, research largely indicates that there is little evidence that shared rivers per se increase the risk of violent conflict between riparians. Water scarcity, by contrast, seems to make violent interactions between states, including those sharing river basins, more likely. However, this effect can be mitigated via well-designed institutions.56More importantly, water scarcity is empirically more likely to produce treaties and other forms of cooperation, while water-related interactions in general are more often cooperative than conflictive. There is no convergence on the conditions and pathways leading to either conflict or cooperation.

#### Water conflicts are either battles in pre-existing wars or tiny village disputes

Patricia Wouters 13, University of Dundee Center for Water Law, Policy, and Science, “Reframing the Water Security Dialogue,” 11/25/13, https://papers.ssrn.com/sol3/papers2.cfm?abstract\_id=2359854

Water stress is real. The question is how serious is the future risk of large-scale water-driven violence? To date, the lessons of history are that the risk is not great, but this is not a definitive answer. There are documented instances of violence connected to water disputes, but most of this, especially related to water shortage,30 is localised and short-lived,31 as demonstrated in the Water Conflict Chronology maintained by the Pacific Institute.32 The latest version of this work starts with the Sumerian account of a flood to punish the sinful abuse of the earth and ends with a Hezbollah attack on an Israeli wastewater treatment plant. However, most of the modern serious incidents involve either the targeting of water facilities during a war,33 or occur in small village disputes in Asia, Africa and Latin America. While it might be tempting to analogise water to the two natural resources which have sparked violent conflicts and regional tensions, (and certainly sensationalises the issue), we argue that the current concept of water stress as a source of armed conflict and regional unrest is too broad to draw serious policy conclusions, and, might prove an unhelpful distraction that diverts from focussing instead on exploring more fully the range of options available to countries to address water stress.34 The concept of military security is, in its essence, a zero sum game; water resources management (including water law), by comparison, offers a range of opportunities for balancing interests to meet security needs related to such core issues as availability, access and addressing conflicts-of-use.35

`Blue gold' or the next oil analogy is problematic conceptually, with several key shortcomings. First, unlike oil (or gold), water is universally, albeit unequally, distributed throughout the world. Secondly, in contrast to oil, it is not always economically efficient to move water long distances. The demand for small quantities may not justify the infrastructure. Thirdly, water has economic value, but it does not trade in world markets. Raw water, running free or stored or diverted, is most likely not a `good' under the GATT.36 The question of who is entitled to secure access to water, and what the flow should be, within or beyond national boundaries raises issues well beyond the blue gold/next oil context. In fact, despite serious water stress in some regions, disputes have been avoided in large part, with a burgeoning number of international agreements setting forth plans for joint management regimes.37 Is this not a more relevant line of enquiry ± exploring the relevance and role of water law in addressing water security issues and inviting innovative thinking within and beyond the discipline?

#### There have been 1,800 interactions on transboundary basins, and only seven have led to violence---and climate change will cause even more cooperation

Magdalena Mis 15, writer for Reuters, citing Therese Sjomander Magnusson of the Stockholm International Water Institute, “'Water wars are a myth': expert says many governments eager to cooperate,” 8/24/15, http://www.reuters.com/article/us-global-water-war-idUSKCN0QT0R120150824

STOCKHOLM (Thomson Reuters Foundation) - The doom and gloom predictions of increasing battles around the world over water are a myth, with only a handful of disagreements over shared waters leading to armed conflict, an expert said.

Competition over water has often been cited as having a potential for turning into conflicts between countries fighting to secure the limited resource.

While water is fundamental to development and national security and can contribute to hostile situations, "very few" disagreements have led to conflict, said Therese Sjomander Magnusson of the Stockholm International Water Institute (SIWI).

"It is a myth that water leads to war," Sjomander Magnusson, SIWI's director of transboundary water management, told the Thomson Reuters Foundation late on Sunday on the sidelines of a global water conference in Stockholm.

She said that over the last 50 years, there have been more than 1,800 interactions on transboundary basins - including both conflict and cooperation.

"Only seven disputes have involved violence," she said. "During the same time, more than 200 agreements and treaties on transboundary waters have been signed."

According to a United Nations report published in March, the world faces a 40 percent shortfall in water supplies in 15 years due to urbanization, population growth and increasing demand for water for food production, energy and industry. [ID: nL5N0WC2ZD]

Even though population growth and climate change have led to disagreements over water, conflicts were more common on national levels – such as between pastoralists and farmers - than between countries, Sjomander Magnusson said.

In fact, she said, many governments are looking into dialogue and cooperation when it comes to water, rather than sending armies against each other.

"In an insecure world that we are facing right now, with many unstable situations, what we've seen over and over again is how governments are eager to position themselves as a stable countries open to cooperation," Sjomander Magnusson said.

One unlikely example in which water issues have led to cooperation is discussions between Israel, Jordan and the Palestinian Territories over the Jordan River, which runs along their borders, she said.

"This is the only platform where these countries have met for the past couple of years."

### 1NC----I-Law Defense

**I-law is redundant and irrelevant**

David **Glazier 9**, Professor of Law at the Loyola Law School Los Angeles, December 2009, "PLAYING BY THE RULES: COMBATING AL QAEDA WITHIN THE LAW OF WAR" William and Mary Law Review, Lexis

But even the most cursory study of the law of war quickly reveals the fallacy of this view. Virtually every society that has left a written record has documented legal constraints on the conduct of hostilities. n133 The law of war constitutes a major portion of eighteenth- and nineteenth-century international law treatises. n134 The explosive growth of international law in the twentieth century, including the proliferation of multinational organizations and international courts, as well as the development of such new fields as international environmental and human rights law, relegated the law of war to relative obscurity. Today, it typically occupies just a single chapter in an international law text. n135 This is ironic given the equally expansive development of the law of war during this same era n136 but may explain why expertise on this subject seems so limited among policymakers.

### 2NC---I-Law Defense

**Violations are inevitable in the U.S. and globally, but there’s no impact because i-law’s toothless**

Luke **Hiken 12**, JD, Attorney Who Has Engaged in the Practice of Criminal, Military, Immigration, and Appellate Law, and Marti Hiken, Former Associate Director of the Institute for Public Accuracy and Former Chair of the National Lawyers Guild Military Law Task Force, “The Impotence of International Law”, Foreign Policy in Focus, 7/17/2012, https://fpif.org/the\_impotence\_of\_international\_law/

Whenever a lawyer or historian describes how a particular action “violates international law” many people stop listening or reading further. It is a bit alienating to hear the words “this action constitutes a violation of international law” time and time again – and especially at the end of a debate when a speaker has no other arguments available. The statement is inevitably followed by: “…and it is a war crime and it denies people their human rights.” A plethora of international law violations are perpetrated by every major power in the world each day, and thus, the empty invocation of international law does nothing but reinforce our own sense of impotence and helplessness in the face of international lawlessness.

The United States, alone, and on a daily basis violates every principle of international law ever envisioned: unprovoked wars of aggression; unmanned drone attacks; tortures and renditions; assassinations of our alleged “enemies”; sales of nuclear weapons; destabilization of unfriendly governments; creating the largest prison population in the world – the list is virtually endless.

Obviously one would wish that there existed a body of international law that could put an end to these abuses, but such laws exist in theory, not in practice. Each time a legal scholar points out the particular treaties being ignored by the superpowers (and everyone else) the only appropriate response is “so what!” or “they always say that.” If there is no enforcement mechanism to prevent the violations, and no military force with the power to intervene on behalf of those victimized by the violations, what possible good does it do to invoke principles of “truth and justice” that border on fantasy?

The assumption is that by invoking human rights principles, legal scholars hope to reinforce the importance of and need for such a body of law. Yet, in reality, the invocation means nothing at the present time, and goes nowhere. In the real world, it would be nice to focus on suggestions that are enforceable, and have some potential to prevent the atrocities taking place around the globe. Scholars who invoke international law principles would do well to add to their analysis, some form of action or conduct at the present time that might prevent such violations from happening. Alternatively, praying for rain sounds as effective and rational as citing international legal principles to a lawless president, and his ruthless military.

### 2NC---LOAC Fails

**LOAC can’t solve and there’s no impact – enforcing regulations on tech is impossible, but there’s not a breakout prolif threat**

Kenneth **Anderson 12**, and Matthew Waxman 11-26-2012 Kenneth Anderson is professor of law at Washington College of Law, American University Matthew Waxman is a law professor at Columbia Law School, “Human Rights Watch Report on Killer Robots, and Our Critique” http://www.lawfareblog.com/2012/11/human-rights-watch-report-on-killer-robots-and-our-critique/

At a more fundamental level than any of these specific differences, though, our view is that autonomy in weapons systems will develop very incrementally. Instead of some determinate, ascertainable break-point between the human-controlled system and the machine-controlled one, it is far more likely that the evolution of weapons technology will be gradual, slowly and indistinctly eroding the role of the human in the firing loop. As to a preemptive prohibition on developing such systems (distinct from deploying them), even if it were desirable, the technologies at the heart of such weapons are fundamentally the same as at the heart of a wide variety of civilian or non-weapons military systems, and weapons systems will frequently be so interwoven into the machine system as a whole that disentangling what’s prohibited and what’s not, and at what point in the path of weapons development, will not be feasible.

## Solvency/IL

### 1NC---RoN Solvency

No Solvency:

#### Recreates every problem of modern environmental law

Jan DARPÖ 21, emeritus professor in environmental law at Faculty of Law, Uppsala Universitet, March 2021, “CAN NATURE GET IT RIGHT?,” https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL\_STU(2021)689328\_EN.pdf

By now, the reader of this study is aware that I concur with those legal scholars who do not share the view that RoN entails a shift of paradigm in law that has the capacity to save the environment from the challenges we face today. Many of the deficits that this movement criticises modern environmental law for having are general problems that have been discussed for years and which will not be remedied by introducing new labels in a system that still must be handled by humans. The dichotomy between RoN and modern European environmental law is therefore partly artificial, a symbolic construct. Environmental law remains an instrument handled by individuals and – as the history of RoN shows – any alternative discourse of thoughts faces the same challenges as the old schools, most importantly; lofty legislation not adapted to the nature and development of the environment, deferral to economic growth in decision-making, weak enforcement, and lack of funding for environmental interests. When deconstructing the RoN concept, no radical new instruments come to light compared with what we have today.

Even so, the RoN school of thought contains fresh insights in its critique of Western society and presents ideas that can be developed within our conventional legal notions. At the heart of the concept lies the notion that law must adapt to ecological and scientific reality in order to addressthe main challenges of today, such as climate change and large-scale losses of biodiversity. The limiting factor for achieving this is not, however,that nature does not have rights, or other basic flaws in our legal system, but the lack of public support for a radical change, and the necessary political will. I cannot think of any reform that lies beyond the present institutional or legal scope of the EU. Environmental and social reforms require decisions through political process, and until the necessary shifts in public attitudes or values occur, the fundamental direction of society will not change.

#### “Substantial Injury” requirements

Emilie Blake 17, research assistant to the Center for Water Law and Policy, J.D. Candidate, Texas Tech University School of Law, September 2017, “NOTE: Are Water Body Personhood Rights the Future of Water Management in the United States?,” Texas Environmental Law Journal, 47 Tex. Envtl. L.J. 197

The main purpose of granting personhood rights to a river or lake is to protect against injury. 103 From a conservation perspective, if injury means any non-natural depletion, this legal theory is a brilliant idea for water conservation. 104 However, if courts interpret injury to require a substantial injury, then personhood rights might not be very helpful. 105 Regardless of the injury standard, the guardian of a personhood right will ensure continued observation of a water body and planning for its sustainable future. 106 This guardianship sets personhood rights miles ahead of not only the riparian and prior appropriation doctrines, but also ahead of the public trust doctrine in terms of water conservation because of the much stricter standard of guardianship and the eradication of any property rights. 107 Guardians can rigorously oversee how water bodies are used and can sue for potential injury whenever they deem it appropriate. 108

### 2NC---S---Enforcement

#### RoN is not a paradigm shift---it just recreates the problems of modern environmental law but with new labels---RoN will be underenforced and underfunded AND society will stay committed to growth AND lofty legislation will not be crafted with the nuance necessary to address environmental harm---that’s Darpo

#### Ecuador and Bolivia prove

Erin L. O’Donnell 18, Senior Fellow at Melbourne Law School; and Julia Talbot-Jones, Visiting Fellow at the Australian National University, 2018, “Creating legal rights for rivers: lessons from Australia, New Zealand, and India,” Ecology and Society, Vol. 23, No. 1

Further, legal rights are only worth having if they can be enforced. To enforce legal rights for a river, several practical factors must be accounted for. First, an individual or organization must be appointed to act on a river’s behalf, to uphold the rights of, and speak for nature (Croley 1998, Stone 2010). Second, capacity in the forms of time, money, and expertise may need to be made available so that the rights of the river can be upheld in court. And third, river representatives and funding sources are likely to need some form of independence from state and national governments, as well as sufficient real-world power to take action, particularly if such action is politically controversial (O’Donnell 2012).

Historically, these factors have been absent in cases where legal rights have been granted to nature and, as a result, legal rights for nature have been difficult to enforce (Whittemore 2011). For instance, in the examples of Ecuador and Bolivia, few cases have been successfully upheld and even when the rights have been recognized in court, local actors responsible for enforcement have lacked capacity to translate the legal decision into effective outcomes on the ground (Daly 2012).

#### It’s indifferentiable from status quo environmental law

Julien Bétaille 19, Associate Professor of Public Law, University of Toulouse Capitole, 3/27/2019, “Rights of Nature: Why it Might Not Save the Entire World,” Journal for European Environmental & Planning Law, Vol. 16, No. 1, <https://brill.com/view/journals/jeep/16/1/article-p35_35.xml#affiliation0>

\*RoN = Rights of Nature

The main thesis of this paper is that RoN will not do away with the main shortcoming of modern environmental law, being the lack of proper enforcement. It is opined that merely acknowledging nature’s rights into legislation will in itself not lead to a better protection of the eu’s endangered nature if not complemented with a clear commitment for more strict enforcement. The added value of RoN needs to be measured against the three main assumptions upon which it is based. In this respect, it is important to underline that a revision of modern environmental law could, in itself, come forward to many of the prevailing criticism upon which RoN are based. In this article, it is substantiated that modern environmental law is able to recognize the intrinsic value of Nature (1), second, that acknowledging RoN is not necessarily to be equated to a “legal revolution” (2) and, third, that RoN might not live to its promise regarding saving the world (3).

Environmental Law Revisited: Reinforcing the Intrinsic Value of Nature?

The first assumption underlying the RoN’s theory is that environmental law is too anthropocentric to take into account the intrinsic value of nature, whereas RoN would be more suitable to carry out the task of reasserting this intrinsic value. In other words, RoN is founded upon the assumption that even modern environmental law is not equipped to fully protect the intrinsic value of nature. This is a poignant point of departure. Often, RoN advocates submit that modern environmental law is the result of Cartesian philosophy, reproducing the renowned Nature/Culture dualism. Accordingly, environmental law would explicitly acknowledge that mankind is to be framed as the “master” of nature. For instance, pursuant to current property law nature is to be treated an object. In contrast, however, RoN is often linked to ecocentric philosophy and therefore is more inclined to approach nature as a subject of rights. However, this dichotomy, while attractive from a philosophical point of view, renders an objective legal critique of RoN challenging at best.

In my view, RoN supporters attach too much weight the above-depicted distinction. Indeed, it is possible to argue that modern environmental law is less anthropocentric than it used to be (2.1), that property rights can be limited in light of environmental interests (2.2) and that modern environmental law protects the intrinsic value of Nature (2.3), which recently has led to the recognition of “pure” ecological harm in several legal instruments (2.4). Moreover, on the procedural ground, access to justice has been broadened in environmental cases (2.5) and the burden of proof is no longer an insurmountable hurdle in legal cases (2.6).

#### Empirics---conflicting laws and underenforcement make RoN ineffective

Julien Bétaille 19, Associate Professor of Public Law, University of Toulouse Capitole, 3/27/2019, “Rights of Nature: Why it Might Not Save the Entire World,” Journal for European Environmental & Planning Law, Vol. 16, No. 1, https://brill.com/view/journals/jeep/16/1/article-p35\_35.xml#affiliation0

4.2 Effectiveness, or a Lack Thereof, after All?

Whereas it remains relatively easy to posit that modern environmental law is failing to reach its objective, the track-record of RoN is not much better. The first empirical studies regarding the effectiveness of RoN in countries, such as Ecuador and Bolivia, clearly reveal the myriad of limitations to be faced in this respect. For example, some authors have concluded that “Ecuador’s (RoN) amendments are more likely to have an impact if Ecuador implements structural and procedural changes”.76 This should come as no surprise. Simply granting legal personhood to nature will not make a big difference when it is not supplemented with structural changes. For one, even when everybody can act as a guardian when nature’s rights are encroached upon, nature will still disappear if no-one is effectively willing to take manifest violations before court. Even when nature’s rights are explicitly protected in a constitution, other provisions in the same constitution might still prioritize economic development and lead to ongoing environmental destruction. In fact, most of it is linked to what Herbert Hart named “secondary norms”.77

Whereas primary norms prescribe human beings to perform or abstain from certain behaviors, secondary norms ensure that new primary rules are enforced whenever cases of non-compliance arise. In other words, simply endowing substantive rights upon nature might matter little if not accompanied by strict enforcement commitments. Of course, one might admit that whenever RoN are included in the primary norms, this might ultimately also influence the legislator when enacting secondary norms. In other words, implementing RoN in primary norms might ultimately also trickle down in the body of secondary norms, which might be more centered on ensuring a better enforcement of the existing rights.

Be that as it may, we always end up with the “effectiveness challenge” when contemplating new environmental norms. Even if all countries would immediately decide to implement RoN into their legislation, there exists no guarantee that the environmental decline would be cured. One might submit that ensuring effectiveness has little to do with the legal nature of the obligation towards nature. To put it bluntly: opting for a RoN approach might inflict additional harm the environment if not properly enforced, especially when measured up against modern environmental statutes which are properly applied in the field. It is well-known that both legal and extra-legal factors are to be addressed in order to ensure proper compliance with environmental norms. And thus, if RoN advocates are really serious about “saving the world”, they ought to invest all their time and efforts in finding solutions for the multitude of challenges when it comes to compliance. In this regard, the focus should be on the following items: coherent legislation, strict sanctions, tackling corruption, impartiality of public authorities and judges, administrative inertia, regulators’ capture, access to justice, judges’ interpretation, execution of judicial decisions, etc.78

### 2NC---S---“Substantial Injury”

#### Court interpretation to require “substantial inury” dilutes the legal power of river rights---that’s Blake. Trump stacked courts with conservative justices who have clear interests in limiting the scope of the plan.

#### Fiat doesn’t solve---courts develop balancing tests

Emilie Blake 17, research assistant to the Center for Water Law and Policy, J.D. Candidate, Texas Tech University School of Law, September 2017, “NOTE: Are Water Body Personhood Rights the Future of Water Management in the United States?,” Texas Environmental Law Journal, 47 Tex. Envtl. L.J. 197

Since giving personhood rights to natural resources is unprecedented, the repercussions of this unique legal theory are difficult to predict. 117 The main issue is how to define injury for a body of water. 118 From humans to river deltas, nearly everything needs water to survive so the policy choices guiding what amounts to an injury would present interesting questions, especially for drought-stricken states. 119 Would injury be based on a quantity of extracted water or reduced flow volume? 120 Would injury depend on the current size of the river? 121 If legislatures do not particularly and quantitatively define injury, the courts would likely need to formulate a balancing test to identify when a body of water is injured. 122 Although balancing tests for injury exist in today's water law, a new test could pose a difficult challenge for courts.

#### That makes the plan the squo with added court costs

Emilie Blake 17, research assistant to the Center for Water Law and Policy, J.D. Candidate, Texas Tech University School of Law, September 2017, “NOTE: Are Water Body Personhood Rights the Future of Water Management in the United States?,” Texas Environmental Law Journal, 47 Tex. Envtl. L.J. 197

The riparian water rights doctrine allocates water among landowners who possess land abutting, or touching, a natural watercourse and bases itself in absolute ownership. 30 In a riparian system, a landowner generally is allowed to withdraw as much water as he wants, as long as it's not malicious or wasteful, for use on his riparian property. 31 Further, under the modified reasonable use theory, the withdrawal of water cannot injure a riparian's other riparian neighbors. 32 Most states in the eastern half of the United States adhere to the riparian school of thought. 33

The riparian doctrine works really well in states without water shortage issues because it calls for unrestricted, correlative, or reasonable water use rather than a quantified amount. 34 It generally requires much less state administration and government [\*201] involvement than the prior appropriation doctrine, and also encourages user freedom while enhancing private property rights associated with the riparian parcel. 35 In turn, this reduces overall administrative costs. 36 On the other hand, the riparian doctrine causes confusion and conflict during times of drought or water shortage because the court must undergo a balancing test to determine reasonable use or injury to other users. 37 As water becomes scarcer over time, the riparian doctrine shrivels up when paralleled to other effective legal theories. 38

Compared to rights of personhood, the riparian doctrine does not effectively conserve water because there is no quantified limit on use of water under the riparian doctrine. 39 Rights to personhood, on the other hand, may give a guardian more control over consumption and use of a water supply based on injury to a water body. 40 However, until a state's legislature clearly defines the term "injury," to include a quantitative amount, courts will still need to undergo a balancing analysis, especially in times of drought. 41 For now, the term is left open to interpretation, so like riparian rights, this might not be as helpful of an allocation theory as originally anticipated. 42 Courts could quite possibly treat the right to personhood similar to riparian rights by requiring only that the water use simply be reasonable to avoid liability for injury and would, therefore, undergo a judicial balancing test. 43 This, in turn, could result in increased litigation costs, time, and effort and have the same result as the riparian doctrine: uncertainty and water management inefficiency in drought-ridden environments.

#### Or, it causes tragedy of the anticommons which exacerbates shortages

Emilie Blake 17, research assistant to the Center for Water Law and Policy, J.D. Candidate, Texas Tech University School of Law, September 2017, “NOTE: Are Water Body Personhood Rights the Future of Water Management in the United States?,” Texas Environmental Law Journal, 47 Tex. Envtl. L.J. 197

The tragedy of the anticommons is exactly what it sounds like - the exact opposite of the tragedy of the commons. 126 In essence, it means that a resource goes underutilized to the point of inefficiency and waste. 127 When there are too many owners of a finite resource, each having a claim of right, a failure to cooperate means "nobody can use the resource" and "everybody loses in a hidden tragedy of the anticommons." 128 Accordingly, "while private ownership usually increases wealth, too much ownership has the opposite effect: it wrecks markets, stops innovation, and costs lives." 129 The California Supreme Court has said that, as a matter of practical reality, sometimes water use must be allowed even where it results in harm. 130 If courts construe injury to mean any unnatural water depletion, then societies would soon face the tragedy of the anticommons because no one could access the water resource. 131 This would cause populations to face water shortages much faster than anticipated, and communities to fade away. 132 Therefore, [\*211] states should avoid polarizing water rights between unrestricted access and no access at all. 133 Because this is a possible evolution of personhood rights in water bodies, such a system could render water property rights too binary for effective water management and conservation. 134

### 2NC---S---Guardianship

#### Human guardianship fails

Julien Bétaille 19, Associate Professor of Public Law, University of Toulouse Capitole, 3/27/2019, “Rights of Nature: Why it Might Not Save the Entire World,” Journal for European Environmental & Planning Law, Vol. 16, No. 1, https://brill.com/view/journals/jeep/16/1/article-p35\_35.xml#affiliation0

Against this backdrop, one should be more cautious before speaking about a legal “revolution” when discussing RoN. As Dinah Shelton held:

“Environmentalists may be concerned that inevitably the legal personhood of nature will have to be defended by humans. If these humans are appointed by the government, environmental concerns may not always be paramount. Any guardians will have responsibility for developing a management plan and deciding on what particular activities should be permitted. In theory, environmental agencies already undertake these responsibilities in respect to public lands and protected areas”.61

However, the critique goes deeper. One might even submit that the substantive norms put forward by RoN do not differ substantially from the protection schemes set out by modern environmental law.

### 2NC---S---Courts

#### Their solvency argument is a shame--- Courts do not have the expertise, legitimacy, or willpower to resolve complex environmental issues

Richard J. Lazarus 15, Howard J. & Katherine W. Aibel Professor of Law, Harvard Law School. Fall 2015. ESSAY: JUDICIAL MISSTEPS, LEGISLATIVE DYSFUNCTION, AND THE PUBLIC TRUST DOCTRINE: CAN TWO WRONGS MAKE IT RIGHT? Environmental Law Journal.

Courts can, as in Massachusetts v. U.S. Environmental Protection Agency,[80] properly cajole and push executive branch agency recalcitrance in the face of statutory commands. But the courts possess neither the competency nor the legitimacy necessary to play a far greater role and should avoid substituting their policy judgment regarding the proper level of environmental protection for that of the legislature or executive branch agencies acting pursuant to legislative charges of such lawmaking responsibility. For this reason, I think it is a strategic mistake to delude oneself—let alone the law students we teach—by suggesting otherwise. Far better to accept the true difficulty of the lawmaking challenge we face, and to undertake the necessary hard work at the national—and no less important at the retail—level, than to pretend that the courts can provide quick fixes to rescue us from ourselves.

Fortunately, many determined attorneys worried about the nation’s environmental future are doing just that necessary hard work, trying to influence actors ranging from federal lawmakers to local public utility commissions. There are attorneys in the national environmental groups who are increasingly mastering the complexity of energy technology and regulation. There are attorneys in local and regional organizations who are doing the same, encouraging state regulators to lift existing regulatory obstacles to cleaner energy technologies. The same is true throughout both federal and state environmental and energy regulatory agencies. These are the attorneys who are doing the creative and heavy lifting most needed right now. In the world of environmental law, they are performing the most important and the most challenging work.

The good news is that massive reductions in greenhouse gas emissions should be achievable based on existing and future technological innovation if we can adjust the necessary statutes and regulations. But it will not come easily, as should already be obvious. It will not be easy to reform the nation’s electricity grid. It will not be easy to transition from fossil fuels to renewable sources of energy. There are powerful economic and political forces that will naturally resist any such shift, including both the enactment of the necessary law reforms in the first instance and then their strict implementation over time.[81] More than federal legislation and rulemakings will be needed. Success will require law reform state by state, local government by local government, often in tandem with business leaders.

To overcome those obstacles will require the best of lawyering.[82] Advocates must push for reforms that address the specifics in a manner that converges energy and environmental law. The Clean Water Act[83] can proudly announce a goal to eliminate all discharges of pollutants into navigable waters,[84] but then administrators must apply their expertise to come up with a regulatory system that reflects all the very real complexities presented both by the workings of our natural environment and our social and economic activities. That complexity cannot be ignored, which makes working out all those precise details fundamentally and unavoidably hard. There is a reason for environmental law’s complexity—one rooted in the complexity of both the ecosystem itself and those human activities that affect it.[85]

To overcome those obstacles will also require the best of lawyering to address the huge challenges presented by such a profound social and economic transformation in the way electricity is produced, distributed, and used. The necessary transition will be hard, and the very real needs of those who will be adversely affected must be considered and fairly addressed. That too requires great precision and nuance in how our laws are fashioned and administered. And that, too, is the stuff of creative lawyering.

President Obama’s final Clean Power Plan is a wonderful example of what can be achieved by applying such expertise with careful attention to the need for transition and cost-effectiveness, as well as to our own nation’s institutional design for lawmaking.[86] Spanning over 300 printed pages, the Plan is extraordinarily complex and ambitious.[87] It establishes carbon dioxide emission performance rates representing the best system of emission reduction for existing fossil fuel-fired electric generating units; state-specific goals reflecting carbon dioxide emission performance rates; and guidelines for developing, submitting, and implementing state plans capable of meeting carbon dioxide emission performance rates.[88] The Environmental Protection Agency (EPA) simultaneously published a proposed Federal Plan to implement greenhouse gas emission guidelines for the existing fossil fuel-fired power plants, which offers two alternatives for states and other jurisdictions that do not submit an approvable plan to EPA.[89] The proposed Federal Plan, which includes a “Model Trading Rule” for states that would like to adopt a cap–and–trade program, is more than 750 pages in length.[90]

The entire Clean Power Plan represents a massive regulatory undertaking, rich in both its technical detail and its innovation. It is simultaneously attentive to the need to account for the real, short-term economic costs of transitioning to a new energy mix, to maximize cost effectiveness, and to respect the expertise of state and local governments.[91] The Plan is also creatively responsive to those in the business community who appreciate the seriousness of climate change and the need to reform fundamentally the way electricity is produced and consumed in the United States.[92] The Plan necessarily covers hundreds of pages of detail, supported by an abundance of lengthy technical documents and data analysis.[93] But that is the kind of lawyering and technical detail that is required to have a meaningful chance to move the law as needed. Environmental lawyers will have to follow up by delving into the functional equivalent of the trenches: working in individual states and before public utility regulators. That is what will be ultimately needed to break down the legal obstacles that currently impede the shift to an energy mix responsive to climate change and to replace those obstacles with incentives that more fairly reflect their true social value. There are no legal shortcuts.

To be sure, I understand the natural appeal of the notion that a handful of lawyers will replicate through the courts the environmental equivalent of the accomplishments of Charles Hamilton Houston and his young protégée, Thurgood Marshall, who together crafted a brilliant litigation strategy culminating in Brown v. Board of Education.[94] And I similarly appreciate the obvious parallels between civil rights law and environmental law, especially in the context of climate change.[95] Not unlike racial minorities who served as the plaintiffs in pathbreaking civil rights litigation in the 1940s, 1950s, and 1960s,[96] future generations are hard pressed to find effective champions of their environmental interests in legislatures. The origins of each group’s lack of legislative influence are quite different—slavery and raw racial animus excluded racial minorities from the political process, while future generations’ interests are overlooked because of the outsized influence of industry and the natural tendency of current generations to emphasize their own wellbeing. The much-celebrated Judge Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit, however, understood in the 1970s the clear relationship between civil rights law and environmental law, and was one of the rare jurists who served as a judicial champion of both while serving on the federal bench.[97]

But there remain profound differences between environmental law and civil rights law. At the threshold, unlike the equal protection requirements for which Houston and Marshall sought judicial support in their historic litigation, environmental protection requirements are not constitutional in character.[98] They are exclusively the product of the common law and statutory law.[99] There is no constitutional analogue and therefore far less force to the premise that courts can legitimately supplant the lawmaking prerogatives of the legislative and executive branches.

The courts’ inability to fashion appropriate remedies on their own to address climate change also throws a lot of cold water on the venture. Not that remedial relief in Brown itself proved easy. The courts have struggled for more than sixty years to implement Brown’s holding with “all deliberate speed.”[100]

But imagine what would be required for climate change in light of its extraordinary temporal and spatial scope of cause and effect, and the corresponding complexity of the technological, economic, and social judgments that must be made in determining how to address the climate issue. The courts would be asked to embrace a judicial role that assigns them the primary responsibility of deciding the appropriate levels of greenhouse gas emissions in the United States. They would be asked to set legal rules governing how those emissions should then be allocated and when different levels would need to be achieved. The courts would have to develop the equivalent of the President’s proposed Clean Power Plan.

As evidenced by the plan itself, consider the sweep of activities that would be affected over both time and space. Consider, too, the fundamental social and economic policy judgments that courts would have to make. The courts do not remotely possess the necessary competence or lawmaking legitimacy to answer those kinds of questions. And they will decline to do so, especially in the absence of any kind of clear constitutional command. Conservative judges would not favor it. And one would be hard pressed to find many liberal judges who would, no matter how much they agreed climate change was an enormous problem.[101] And, even if one finds an isolated judge or two so exceedingly frustrated by the lack of governmental action to address climate change, the half-life of their ruling will likely be limited upon further view. The bottom line is that this is just not how we make laws of this nature under our constitutional framework.

That is why, although I greatly admire the motives and overarching goals of those who are trying to address climate change through lawsuits based on the legal theory that there is an “atmospheric trust” that courts can enforce against government and industry,[102] I believe those lawsuits are best understood as part of an overall political strategy rather than as a viable, standalone litigation strategy. The filing of such lawsuits can serve a useful political purpose: they provide an opportunity for potentially effective political organizing and publicity with the ultimate goal of prompting legislatures to enact the laws we need. Those lawsuits are not destined to yield significant judicial remedies based on the atmospheric trust doctrine itself. Fortunately, many of those who are championing the atmospheric trust litigation are very much focused on the positive political potential of their efforts in terms of influencing law- and policy-makers in both the legislative and administrative arenas, and wisely do not focus exclusively on litigation.[103]

### 1NC---No Degrowth

#### No degrowth

Mark Hawkins 21, MSc in Environment, Politics and Development from the University of London, January 2021, “Imagining a Post-Development Future: What can the Degrowth and Rights of Nature Debates Offer Each Other,” https://www.researchgate.net/publication/348785651\_Imagining\_a\_Post-Development\_Future\_What\_can\_the\_Degrowth\_and\_Rights\_of\_Nature\_Debates\_Offer\_Each\_Other

One of the RoN s envisaged goals, that of reducing the negative effects of extraction, is severely hampered in the cases of both Bolivia and Ecuador from the outset. This is because in both constitutions the role of the RoN is curtailed vis a vis the need for national development through economic growth. In Ecuador the RoN are imagined as a key pathway to Sumak Kawsay, yet this Indigenous philosophy is subtly, yet potently, reinterpreted. In its original form it fundamentally counters development, and is envisaged in opposition to “modernization, development and economic growth” (Chují Gualinga 2009 p.150, my own translation). Yet in the constitution of Ecuador (see title VI) Sumak Kawsay is incorporated into traditional ideas of development, wherein for its exercise, growth-through-extraction is argued to be necessary. Similarly, in Bolivia the 2012 law supplementing the constitutional provisions for RoN is titled “framework law of the mother earth and development integral for the buen vivir” , with natural resource extraction and industrialisation representing priorities of the state, with the benefits to be redistributed (Lalander 2014). We can therefore see that in both countries the hegemony of growth is not superseded, and that Buen Vivir and the RoN are reinterpreted to function as something of a progressive mask on continued extractive systems, which largely preserve their extractive character (Sánchez Parga 2011). The Janus-faced nature of these constitutions is reflected in some national court decisions. Take the Condor-Mirador case in Ecuador as an example. In this case the mining group in question found in their own EIA that they would violate the RoN, yet the judge held the Indigenous group that had bought the case before the tribunal were defending private rights as opposed to the mining group and government that were instead defending a public interest (Ogden 2014, Garn(b) [online]). That a mining groups actions, and not those of the local Indigenous people, can be considered of public interest requires growth thinking, under which growth through extraction is a public interest and a requirement to achieve a better society, instead of a tool for continued accumulation of capital and expansion of production elsewhere.

### 2NC---No Degrowth

#### No degrowth---RoN is a progressive mask on continued societal commitment to growth and extraction---Bolivia and Ecuador reinterpreted the indigenous philosophy of RoN to allow traditional development---thinking that the US, the heart of global capitalism, will behave differently is naïve---that’s Hawkins

#### No mindset shift

Freya Matthews 17, Adjunct Professor of Environmental Philosophy at La Trobe University, 5/26/17, “Nature as the Law Within Us,” https://www.humansandnature.org/nature-as-the-law-within-us

So it seems we are, as environmentalists, inevitably driven towards a definition of “nature” as the rest of life on Earth—the realm of other-than-human components of the biosphere. It is other-than-human species, beings, communities—trees and grasses, fungi, animals, wetlands, forests, and so on—that we are seeking to protect.

But to understand nature in this sense and then to declare that we are morally required to acknowledge its entitlement to its own existence—generally on the grounds that we are not superior to it, inasmuch as it actually shares the mental properties that dualists attribute exclusively to humans—may be asking too much. For it suggests that as humans we should assume a minimalist, hands-off position with respect to trees, grasses, ecosystems, etc., leaving them as far as possible to their own devices. Were we genuinely to embrace such an ethic, we would surely be obliged to cut back our human population by orders of magnitude and minimize our cultural and technological agency, restricting ourselves to something like the lifestyle of our primitive hominid ancestors. Whatever the moral merits of such a minimalist conclusion, it has no hope whatsoever of being accepted by contemporary modern societies.

#### Degrowth solvency is aspirational, not causal

Mark Hawkins 21, MSc in Environment, Politics and Development from the University of London, January 2021, “Imagining a Post-Development Future: What can the Degrowth and Rights of Nature Debates Offer Each Other,” https://www.researchgate.net/publication/348785651\_Imagining\_a\_Post-Development\_Future\_What\_can\_the\_Degrowth\_and\_Rights\_of\_Nature\_Debates\_Offer\_Each\_Other

A justified question can be now raised: why is there a need for degrowth here? It is certainly true that there are already strong post-development ideologies that are closely linked to the RoN in, especially, Latin America. In Bolivia and Ecuador, the RoN are envisaged as a key way of achieving the aims of Sumak Kawsay (in Kichwa, used in Ecuador's constitution (Preamble)), Suma Qamaña (in Aymara, used in Bolivia’s constitution (II.7)), both sometimes translated as Buen Vivir (the good life, or good living in Spanish). In many ways these are similar to degrowth in their aim of moving away from a planet destroying eco-social system based on constant growth to one based on sufficiency. However, Sumak Kawsay, Suma Qamaña and Buen Vivir do not constitute a frontal assault on growth and can (and have been) appropriated as justifications for other political projects reliant on extraction, destructive of the environment and local communities and aiming at growth. In the same vein the RoN are not themselves sufficient in the long run as a limiter to environmental woes, the appropriation of land, the dispossession of the vulnerable and so on. A strong challenge to growth itself thus compliments the RoN in its aims and is arguably necessary for a truly secure transition from forms of economic and social organization that are ultimately destructive. This becomes evident when we look at some early challenges faced by the RoN in Bolivia and Ecuador.

### 1NC---AT: International Leadership

#### The U.S. isn’t key internationally

Caroline McDonough 19, J.D. Candidate, Villanova Charles Widger School of Law, 2019, “COMMENT: WILL THE RIVER EVER GET A CHANCE TO SPEAK? STANDING UP FOR THE LEGAL RIGHTS OF NATURE,” Villanova Environmental Law Journal, 31 Vill. Envtl. L.J. 143

Support for this legal "rights of nature" movement gained an impressive foothold in foreign countries and continues to make small strides in the United States as well. 6The movement seeks to confer legal rights, or "legal personhood," onto nature in order to bring a claim against governments or individuals who harm the environment. 7Around the world, ecosystem organizations most commonly [\*144] attempt to secure legal rights for rivers and other bodies of water. 8

The highest-profile domestic attempt to secure legal rights for the environment was filed on behalf of the Colorado River in 2017. 9Although this litigation was stopped in its tracks, the case is emblematic of more successful litigation and regulations that secured legal rights for nature around the country, albeit on a smaller scale. 10State and town governments in Ohio, Pennsylvania, and New Hampshire have previously contemplated, or are currently contemplating, enacting laws that would grant legal rights to local ecosystems. 11

While the movement in the United States has progressed slowly, it has enjoyed markedly more success internationally. 12Almost fifteen years ago, Ecuador drafted a new national constitution explicitly providing legal rights for nature, or "Pachamama." 13Permitting "all persons, communities, peoples and nations [to] call upon public authorities to enforce the rights of nature," Ecuador's constitutional provision has been incorporated into the country's criminal and environmental codes to protect the right of nature. 14

In another noteworthy case, the New Zealand government granted legal rights to the Whanganui River in order to resolve a long-standing property dispute with the Maori Tribe. 15New Zealand's recognition of the river as a living entity explicitly articulated the rights it possessed. 16Despite the progress in both Ecuador and [\*145] New Zealand functioning as a model for countries around the world who seek to accomplish the same goals, headway in the United States has failed to rise above the grassroots level and remains an open-ended question in the courts.

### 2NC---AT: International Leadership

#### Other countries generate momentum and US substantive actions short of legal transformation solve

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

All of this said, one may fairly conclude from this that the United States, nevertheless, is farther along toward legal rights in nature that it knows. Without mentioning the name, it already recognizes and enforces the entitlement of all living things to exist and has pioneered significant instruments toward this end including impact assessment, citizen suits, and judicial review. In the meantime, it has also launched major restoration projects for mid-western prairies, southern pine forests, and ecosystems as large as the Everglades, Gulf Coast wetlands, and the Chesapeake Bay. 125These are all elements of the rights of nature and in a [\*23] bottom-up fashion, by deed if not in word, the United States is coming on board.

Other countries are following suit, indeed have led the way. As early as 1917 the Russian Federation began the creation of zapavedniki, nature preserves in which humans themselves are not allowed to enter save as scientific purposes, creating in effect the largest and most protective wilderness system in the world. 126For its part, Brazil, hosting one of the largest inventories of rare species on earth, has pledged that all of them will be under conservation management by 2020, and 20% on their way to recovery. 127Taking a different tack, Germany's constitution has made protection of "the foundations of nature and animals" a national priority, applicable to government agencies, the legislature and the judiciary alike. 128In so doing, it eschewed language focused on the foundations of "human" life in favor of "nature and animals," an explicit embrace of the ecocentric point of view. 129This provision has been cited in over 700 cases (including one protecting a rare plant from a major dredging project on the River Elbe), 130which of course does not include the more numerous acts of compliance that drew no litigation at all.

The European Union, spurred forward by its Wild Birds and Habitat Directives, 131has approached the same task yet more comprehensively with Natura 2000. 132Despite the differences of its twenty-eight member countries and the relative paucity of public lands, a network of more than [\*24] 200 protected areas spanning eighty-four "bio-regions" has emerged. 133They are not wilderness. For the most part they are dotted with towns, roads, and a range of compatible development but managed by member states with a single bottom line: the viability of species and the habitats on which they and humans alike depend. 134Decisions of the European Court of Justice on challenges to Natura 2000 have been broadly supportive, some obviously written to boost it forward. 135In a recently completed, two-year "fitness check" (prompted by development interests), the European Commission wound up endorsing the program as well, perhaps influenced by overwhelming support from the public at large (more than 550,000 comments in favor). 136The pulses of nature in Europe, too, find strong receptors in the human mind.

#### Global momentum is strong without US action

Emilie Blake 17, research assistant to the Center for Water Law and Policy, J.D. Candidate, Texas Tech University School of Law, September 2017, “NOTE: Are Water Body Personhood Rights the Future of Water Management in the United States?,” Texas Environmental Law Journal, 47 Tex. Envtl. L.J. 197

The United States is trailing other countries in recognizing environmental personhood rights. 135 Ecuador was the first nation to grant legal rights not only to rivers, but also to mountains and land. 136 The country rewrote its constitution to include the "rights of nature," which ultimately resulted in a judge deciding in favor of a river in a local dispute. 137 Interestingly, a Pennsylvania-based organization helped Ecuador to make the change. 138 The group also helped communities in the Eastern United States and Italy to find new ways to breathe life into existing environmental legal theories. 139 Additionally, Bolivia has begun to rework its constitution to integrate "the Law of Mother Earth," which "establishes a new relationship between man and nature." 140 This change is based, in part, on an indigenous spiritual resurgence, which places the environment and the earth deity "Pachamama" at the center of all life, while making all entities, including humans, equal. 141

Personhood rights are more popular globally than in the United States, and whether this legal doctrine will expand to the United States is an open question. 142 Currently, [\*212] the Grant Township of Indiana County, Pennsylvania, is the only recorded community in the United States that almost embraces personhood rights in the environment. 143 In 2014, the community adopted an ordinance with the purpose of protecting not only human residents' rights to local self-government, but also the rights of the natural communities and ecosystems within the Township, "including but not limited to, rivers, streams, and aquifers, and their rights to exist, flourish and evolve naturally." 144 The ordinance also prohibits any corporation or government from polluting without the proper permission and makes clear that the township will only adopt state legislature and agency rules to the extent that they do not violate the ordinance. 145 Further, section four of the bill allows any resident to bring enforcement causes of action, and actions shall also be brought in the name of the ecosystem or natural community. 146 Nevertheless, the ordinance itself does not explicitly recognize environmental personhood - just existence of environmental rights. 147 However, in October 2015, the Western District of Pennsylvania [\*213] invalidated the ordinance, holding the ordinance was beyond the scope of the Township's legislative authority. 148