# 1AC – Bonding

### 1AC – Advantage

#### Self-bonding agreements, where corporations avoid paying collateral to mine, enable companies to perpetuate environmental damage and exploit land by abandoning mines without being held responsible.

Roberts 16 Roberts, David [covering climate change, clean energy and the politics of both at Vox.com. His work has been featured in The Chicago Tribune, Reuters and The Atlantic and he has made appearances on CNN and the Canadian Broadcasting Corporation. Before moving to Vox in 2015, he wrote for Grist.org on the same subjects for 10 years.] “As coal companies sink into bankruptcy, who will pay to clean up their old mines?” Vox September 2, 2016 <https://www.vox.com/2016/9/2/12757074/coal-bankruptcy-mine-cleanup> cut by TJHSSTSR recut TJHSSTAD

In the context of US capitalism, corporate bankruptcy has become less an admission of failure or a final chapter than a kind of R&R, a chance to shed some flab and come back stronger. As anyone who has followed Donald Trump’s career knows, a big company declaring Chapter 11 bankruptcy is like Lindsay Lohan checking into rehab. They’ll be back. So it is with Peabody Energy, the world’s largest private coal company, which entered bankruptcy back in April. It is currently undergoing its bankruptcy spa treatment — shedding workers and retirees, their health and pension benefits — and preparing to get back to work (or so it hopes). In the case of Peabody and other coal companies, however, there’s another sort of flab, er, liability at issue, for which there is less precedent in bankruptcy court: namely, environmental remediation obligations. Put more simply: Who’s going to pay to clean up all those old mines? Gillette, Wyoming open strip mine. Should be a breeze to clean up. Wikipedia Coal companies promise to pay for mine cleanup, really and for true The Surface Mining Control and Reclamation Act of 1977 says that coal companies have to clean up old mines and reverse their environmental damage, costs which can run to the hundreds of millions. Before they receive a permit for a new mine, coal companies have to prove that they can afford to clean it up. They do so by posting a bond. These days, however, coal companies rarely have to meet this requirement. Instead, they are allowed to "self-bond," which amounts to promising the states they operate in that they can pay for mine cleanups. This cozy arrangement between coal companies and state regulators is longstanding, but it has come under increased scrutiny lately, as coal companies have tried to use bankruptcy to squirm out of those obligations. Wyoming just struck a deal with (bankrupt) Arch Coal to "accept up to $75 million in place of the company’s $486 million in bonding obligations." That means if Arch Coal liquidates, Wyoming is first in line to collect at least $75 million in assets. Who will cover the $411 million in remaining cleanup costs? Taxpayers. And it’s not an isolated case; there’s a lot of dough at stake. In addition to the $9 billion in mine cleanup costs already outstanding under the Abandoned Mine Land Program (covering mines abandoned before 1977), "officials estimate that roughly $3.6 billion in self-bond liabilities could fall to taxpayers." That would amount to a $3.6 billion subsidy to big coal, the latest (maybe the last?) in a century-long tradition of subsidies. Worries about self-bonding led WildEarth Guardians and other environmental groups to file a petition to the Office of Surface Mining Reclamation and Enforcement (OSMRE) in March, asking the agency to ensure that "companies with a history of financial insolvency are not allowed to self-bond coal mining operations." In August, OSMRE announced that it was beginning the rule-making process for strengthening self-bonding regulations. Separately, it issued a rare policy advisory, counseling states to crack down on the practice. In June, Sens. Maria Cantwell (D-WA) and Dick Durbin (D-IL) introduced the Coal Cleanup Taxpayer Protection Act, which would prohibit self-bonding. The bill won’t go anywhere, Congress being Congress, but it’s a clear sign that self-bonding has lost its social license. Which brings us back to Peabody. peabody stock price The sad story of Peabody’s stock price. (Yahoo Finance) Peabody is on the hook for lots of cleanup costs … Peabody has an estimated $1.4 billion in self-bonded cleanup obligations. In July, a federal bankruptcy judge ruled for the first time ever that environmental organizations were parties of interest in the bankruptcy proceeding and could argue that Peabody should fully meet its cleanup obligations. "Per the above decision," writes ClimateNexus, "several organizations filed formal complaints in Wyoming, Illinois and Indiana arguing that states should require Peabody to set aside full funds for reclamation as part of any restructuring plans." Full funding was not to be had, however. In August, Peabody won court approval for deals with Wyoming, New Mexico, and Indiana in which it put up cash covering 17.5 percent of its self-bonding obligations — $127, $32, and $17 million respectively. If Peabody goes under (again, completely) and bails on cleanup, who will cover the remaining 72.5 percent of costs? Taxpayers. … but it says, implausibly, that continued self-bonding will work just fine Peabody also submitted its five-year business plan to the Securities and Exchange Commission in August, and received approval from lenders. The plan is important, because for Peabody to argue that it should be able to continue self-bonding any of its environmental obligations, it needs to show that it has a viable plan to emerge from bankruptcy into financial health. Remember, the whole premise of self-bonding is that it’s a special arrangement for companies that have enough cash to cover the costs. According to a new brief from the Institute for Energy Economics and Financial Analysis (IEEFA), however, Peabody’s five-year plan is "not credible." First, the company’s production projections are optimistic to the point of delusion. It says that the US coal industry overall will increase production by 20 to 25 million tons annually between 2016 and 2021 (despite the fact that demand has been declining). Yet during the same period, it projects that annual production at its own Powder River Basin (PRB) mines will increase by 31 million tons, from 100 million to 131 million. Somehow, then, the rest of the industry is going to continue losing customers and scaling down while Peabody flourishes, responsible for all net new coal production in the next five years, and more. That is … dubious. coal production revenue by type Those numbers look awfully negative. (RHG) Second, the company acknowledges that its per-ton revenues from PRB coal will decline by 8 percent over the next five years, but says it will maintain its current profit margins through (wait for it) cost-cutting. Historically, though, costs have been rising. And the estimate Peabody uses for the price of oil (diesel oil is a big part of its costs) is far below more credible projections from EIA and World Bank. The cost-cutting numbers verge on magical thinking. Third, it overstates its assets, claiming 6.3 billion tons in "proved and probable" reserves, though extracting anything close to that is highly unlikely given its thin margins, declining per-ton revenue, and overly bullish cost-cutting projections. To its environmentalist critics, who question whether putting up cash to cover 17.5 percent of its cleanup obligations is sufficient given the company’s, ahem, "history of financial insolvency," Peabody responded, in effect, tough shit. The states in question offered the company sweetheart deals, and it’s not within OSMRE’s jurisdiction to overturn them. Given OSMRE’s recent rule-making, however, that seems at least an open question. Taxpayers may get screwed by Big Coal one last time as it exits stage left What if, as is entirely plausible, Peabody emerges from bankruptcy, crashes up against a terrible market, and goes bankrupt again? (Patriot Coal is currently emerging from its second bankruptcy.) What happens to its cleanup obligations in that case? I asked Tom Sanzillo, IEEFA’s Director of Finance and author of the brief. Legally speaking, he said, "it is a vagary." There isn’t much precedent to go on. Hmm. Okay then, putting aside the company’s own inflated projections, what would it take for Peabody to regain its financial health, such that it could be trusted to meet those obligations? "They would have to close several of their mines" and consolidate, effectively becoming a much smaller company, Sanzillo said. "Absent that, there’s no chance. Even if that occurs, it may not work." There are simply "too many companies," he said, "selling too much coal to too few customers." Peabody doesn’t want to sell its mines, though, and even if it did it would have trouble finding buyers. (Despite what it says in its rose-colored business plan, those mines aren’t worth much.) It doesn’t just want to close them down, either, since that means acknowledging grim market conditions, spooking investors, and triggering cleanup costs. So instead, the company is whistling past the graveyard, issuing starry-eyed business plans and paying its executives big bonuses. And given the latitude bankruptcy judges have shown coal companies so far, there’s a good chance the court won’t stop it. What remains to be seen is whether OSMRE can forcefully intervene, or states find the wherewithal to impose tighter rules. Otherwise, taxpayers will once again get stuck with the bill for coal companies’ social costs, propping them up because no one in US officialdom seems prepared to allow them to die a natural death.

#### The impact is massive environmental damage from abandoned mines – kills wildlife, leads to water pollution, disrupts communities, and is a threat to public safety – taxpayer money doesn’t cover.

Fields 03 Scott Fields Environmental Health Perspectives • VOLUME 111 | NUMBER 3 | March 2003 A 161 <https://ehp.niehs.nih.gov/doi/pdf/10.1289/ehp.111-a154> TJHSSTAD \*brackets in original

Defining the Terms In the United States, mines that have been deserted and are no longer being maintained, and in which further mining is not intended, are called “abandoned” mines. Abandoned mines for which no owner or responsible party can be found are called “orphaned” mines. Outside the United States, the meanings of these terms are often reversed. For the purposes of this article, all mines that are closed and for any reason no company is taking responsibility are called “abandoned.” Sometimes the term “inactive” is used for mines that aren’t currently being mined, but for which a known owner is still paying taxes. These mines may be reopened if the commodity can be produced at a profit; mines that have been abandoned or closed would not fall into this category. Abandoned mines may be on property that is now owned by a third party without the resources to clean up contamination found there. In the western United States, abandoned mines on public land become the responsibility of the federal or state government. But for those on privately owned land—the dominant scenario in the East—the present owner, whomever that might be, retains at least some responsibility under the Clean Water Act, though this has not generally been enforced, according to Arthur Rose, a professor emeritus of geochemistry at Pennsylvania State University. “Basically,” he says, “if it is abandoned, nobody has clear responsibility.” The inconsistency of terms is one of the many problems in estimating the number of abandoned and orphaned mines around the world. Another is the discrepancy between what different organizations include in their counts of mines. “There are a lot of what people call ‘dog holes’ that are small exploration [prospects] that are all over the place,” says Kathleen Smith, a USGS geochemist in Denver. These small prospects were created by individuals prior to the advent of drilling to explore for mineral deposits. Prospects were never mines; they were early one-man, short-term operations. Other so-called discovery pits, dug largely as a formality under regulations for staking a mining claim on federal land, are typically about six feet deep and commonly disclose little or no valuable minerals, says Rose. According to Stanley E. Church, a USGS research geologist and abandoned mine lands project chief, prospects may pose some of the same hazards as mines. He explains that “wet” prospects—those that intersect groundwater—may present a possible AMD problem, although the workings of any one prospect are often so small that individual sites do not contribute large amounts of contaminated water. “Dry” prospects pose mostly physical hazards. Discovery pits are largely innocuous, says Rose. Church says that many of the holes in the ground cited in various estimates are indeed just prospects and discovery pits. “The USGS Mineral Resources Data System would indicate that there are about 35,000 metal mines in the United States; that is, a hole in the ground from which there is a public record of metal production,” he says. This is in stark contrast to an estimate published in the 1993 report The Burden of Gilt by the Mineral Policy Center—a Washington, D.C., environmental organization—that there are as many as 557,650 abandoned mines in the United States alone. The National Park Service estimates that there are 4,000 abandoned mines on U.S. national parklands, and the Forest Service estimates 25,000 on land it manages. There is no way of knowing which of these are truly mines and which are prospects. The same is true of estimates from other countries. According to the April 2002 draft report Mining for the Future, compiled by the International Institute for Environment and Development, the number of abandoned mines in Canada is estimated at about 10,000, and South Africa has 134 abandoned asbestos mines and 400 asbestos mine dumps that supply a steady flow of asbestos dust to the region. In the 2000 United Nations Environment Programme report Mining and Sustainable Development II: Challenges and Perspectives, Sweden is listed as having more than 1,000 abandoned mines, and a national survey of Japan found 5,500 abandoned mines. A study presented at a March 2000 workshop organized by the World Bank and the Metal Mining Agency of Japan found that over 300 Chilean tailings storage facilities had been abandoned with no attempt to clean up the sites. In many other countries, no comprehensive survey of abandoned mines has been attempted. And even in areas that have been surveyed, many old mines are undocumented. All in all, worldwide, it is likely that there are millions of abandoned mines, according to the World Business Council for Sustainable Development. Still, says Rose, “Giving numbers of abandoned ‘mines’ is pretty meaningless—we need good evaluation of individual sites.” The important conclusion, says Church, is that at only a small number of these sites will there likely be companies with resources to clean them up. In practical terms, says U.S. Environmental Protection Agency (EPA) biologist and geologist Carol Russell, whether there are 100,000 or 500,000 abandoned mines may not matter much. “There are so many that we don’t need to go inventory them,” she says. “We don’t have enough money to deal with the ones we’ve found already.” AMD: The Chief Problem By far the most persistent and damaging environmental effect from abandoned mines—both hardrock and coal—is AMD. (This is in contrast to acidity that is produced as a result of weathering of mineralized A 156 VOLUME 111 | NUMBER 3 | March 2003 • Environmental Health Perspectives Carol Russell/EPA Focus | The Earth’s Open Wounds Acid burn. AMD seeps from St. Kevin Gulch near Leadville, Colorado, an area mined for gold, silver, lead, and zinc. Environmental Health Perspectives • VOLUME 111 | NUMBER 3 | March 2003 A 157 rock that has not been mined, called “acid rock drainage” by the mining industry.) In short, AMD is acidic water, in the worst cases so acidic as to dissolve metal tools. In fact, the most acidic water in the world is found in underground mine workings at the Iron Mountain mine in northern California, according to research published in the 30 March 1999 issue of Proceedings of the National Academy of Sciences by D. Kirk Nordstrom and Charles Alpers, both USGS research chemists. The water there has a pH of –3.6. For comparison, on the logarithmic pH scale, pure water is neutral at pH 7.0, lemon juice is pH 2.4, and a 30% sulfuric acid solution, such as battery acid, is pH –2.0. Acid drainage occurs when water, air, certain bacteria, and sulfide metals (such as pyrite, marcasite, and chalcopyrite) come into contact with each other. When it forms naturally, acid drainage can produce the telltale “red water” that was one of the first signposts that early miners used to find mineral deposits. Natural weathering usually doesn’t produce enough acidity to significantly impact the environment. That’s because not enough sulfides are at the surface, where they can be exposed to air and water. But there are exceptions, says Church. Some creeks in Colorado, for example, are naturally too acidic to support most forms of aquatic life. “A fairly substantial component of the acidity in some streams is related simply to natural weathering processes and has nothing to do with mining,” he explains. Furthermore, summer rainfall events can cause a pulse of acidity and metals into the streams that may cause death of aquatic life in watersheds whether or not they have been affected by historical mining. Mining, however, can bring large quantities of sulfides to the surface and break them into small pieces, thus exposing more surface area to react with air and water, producing AMD. Sulfides tend to appear in the same geologic conditions as many types of mined metals and coals. “When you bring this iron sulfide to the surface, what you’re doing is exposing these metal sulfides to oxygen and water,” Chapin says. The oxidation of the sulfides creates a lot of acidity. The resulting sulfuric acid serves as a medium in which specialized microbes flourish. These microbes in turn further oxidize the minerals. The result is a chain reaction that will continue until the sulfides are consumed. Depending on the mineral deposit, that process can take hundreds to thousands of years. The speed and duration of this acid-producing reaction is one of the differences between coal mines and hardrock mines, explains Paul Ziemkiewicz, director of the West Virginia Water Research Institute at West Virginia University. “The maximum acid production that you’re going to get out of a [coal] mine is going to be in the first ten years or so. After that you start expending your pyrite,” he says. In coal deposits, the surrounding rock typically contains 2–5% sulfides, most of which is pyrite. “The highest we ever get might be twelve percent pyrite, and that would be extremely high,” says Ziemkiewicz. Conversely, hardrock mine waste rock, tailings, displaced surface material (“overburden”), and other rock surrounding an abandoned hardrock mine can contain up to 50% sulfides, Ziemkiewicz says. Most AMD flows from the mines themselves. Not only do some hardrock mine wastes contain high amounts of pyrite, there is proportionally more mine waste at individual sites than in coal mines. A coal mine isn’t worth working unless most of what is pulled from the ground is coal. In coal mines, ore that comes out of ground is 83–85% product, Ziemkiewicz says. In the hardrock world, often less than 1% of the rock brought to the surface is actually used. For gold mines, the actual metal extracted can be just a fraction of a percent, with miners working deposits that contain as little as 0.015 ounces of gold per ton of rock. This means that, for some gold deposits, massive amounts of high-sulfide-content rock may be extracted, and the result would be an enormous supply of sulfide that is available for acid generation, which can continue to react, releasing acid indefinitely. Another mitigating factor for acid production from coal mines, Ziemkiewicz says, is the alkaline minerals often found among coal deposits. “A lot of the spoils around a coal mine can contain limestone,” he says. Such materials neutralize acid to at least some extent but are less commonly found in hardrock mines. (However, says Church, for the large gold deposits currently being mined in the Carlin trend in Nevada, many are hosted in carbonate rock, and the water from them is alkaline rather than acidic.) Finally, the types of sulfides most often found in coal mines may be more reactive than the types found in hardrock mines. After just six weeks above ground, a pile of coal mine waste can have pH 2.4 (very acidic) water draining from it, Ziemkiewicz says. At hardrock mine sites, it can take several years before significant quantities of acidic water start to flow. In geologic terms, where “fast” can mean thousands of years, coal mine AMD is a flash flood compared to hardrock’s creek that matures into a river. Why does that matter? In an average coal mine, Ziemkiewicz says, the sulfides are consumed at a rate of about 2% per year. “That means in thirty years you’d have half the acid drainage that you [started with].” But for many hardrock mines, there is no end in sight within our lifetimes because of the large volumes of pyrite present. These differences affect remediation strategies and could have implications for policy makers as well, he says. The acidity itself can suppress the life in waterways and if allowed to build up in standing water, such as pit lakes, can kill larger animals such as caribou, moose, and migrating waterfowl, according to Solutions to Acid Mine Drainage, a fact sheet published by Natural Resources Canada. But more significant are the metals that the acid releases. Traces of unwanted metals are almost always coexistent in deposits of the target metal, whatever that might be. A whole suite of potential toxicants—such as arsenic, lead, cadmium, mercury, zinc, iron, copper, aluminum, and manganese—can be found in hardrock mines. Coal mines tend to be more benign, with manganese, iron, and aluminum the primary metals found in the AMD from these sites, although other metals such as zinc can also be present. As the sulfides break down, these elements are released. The acid releases the elements, and the very acidity also keeps them in soluble form. Toxicants that are liberated and transported by AMD can contaminate entire watersheds, including drinking water supplies. In Lodge Pole, Montana, for example, the Zortman-Landusky gold mine— abandoned since 1998, when the Pegasus Panos Pictures Gold Corporation declared bankruptcy— Focus | The Earth’s Open Wounds Closed but no closure. The bulldozed Treharris coal mine in southern Wales remains an eyesore and potential hazard to the residents nearby. sends variable amounts of lead, arsenic, and cadmium into the streams and groundwater that supply drinking water for the region’s communities. Historically, the structure of many older mines accelerated the rates of development and delivery of AMD into affected watersheds, says Plumlee. “In many mines, especially back in the late 1800s and on through the first half of the 1900s, the minerals that they were interested in mining occurred below the water table,” he explains. “If the mine workings were on a hill, they would drive a horizontal tunnel [called an “adit”] at the base of the hill beneath the mine workings and let the tunnel drain all of the groundwater. Those tunnels are continuing to serve their original purpose in draining the mined area, and they are significant point sources of acid and metals in many districts.” At some mine sites, attempts to plug these tunnels just made the problem worse. The pooled water builds up and then forces its way out through many smaller openings, occasionally thousands of feet from the tunnel entrance. Following plugging, however, many mine tunnels can be reduced to a minor environmental problem, says Church. An especially damaging scenario, although fortunately quite a rare occurrence, says Plumlee, is when an open pit mine is built over what had been an underground mine. Russell says that’s what happened at the former gold mine in Summitville, Colorado, a Superfund site at which the government has already spent about $155 million. Summitville was developed from underground workings in the 1800s, and a drainage tunnel was installed in 1903. But from 1985 until 1992 it was operated as an open pit mine. The pit caught rain and snowmelt, and funneled it down into fractures and the underground workings, from which it drained through an adit. Plugging the adit in 1994 helped reduce loadings of acid and metals from the site, but a number of seeps of acid water developed after the plugging. Now the plug is being used as a flow regulator and the underground workings as a temporary storage, so that a manageable volume of acid waters can be treated during high-flow conditions following snowmelt. “Summitville . . . was a geologic and climatologic recipe for extreme acid mine drainage,” Plumlee says. The drainage from Summitville polluted the local watershed with significant quantities of acid water rich in such elements as arsenic, iron, copper, aluminum, and zinc. Although remediation efforts have substantially decreased the amounts of acid and metals leaving the site, says Plumlee, long-term water treatment will be needed. Inadequate engineering and planning for AMD during mine site planning and development often worsens the impact of abandoned mines on the environment, says Joan Kuyek, national coordinator of the environmental organization MiningWatch Canada. In northern Canada, shifts in climate are putting a twist on the problem of AMD. “A lot of our [northern] mines are built into permafrost and depend on permafrost to hold the tailings in place,” she says; unlike dry southern climates such as Nevada, where tailings eventually dry out, in the frozen north they are expected to stay frozen. Structures such as mine walls and tailings dams are stable as long A 158 VOLUME 111 | NUMBER 3 | March 2003 • Environmental Health Perspectives EPA Region 8 Focus | The Earth’s Open Wounds Scar tissue. A crisscross of roads and pits scars the surface of a former gold mine in Summitville, Colorado, while underground workings and tunnels allow acidic waste to drain into nearby watersheds. The Superfund site has cost more than $150 million in remediation efforts and remains incomplete. Environmental Health Perspectives • VOLUME 111 | NUMBER 3 | March 2003 A 159 as the permafrost doesn’t thaw. But if they and the dam containing them thaw, a slurry of ground rock, metals, and the chemicals used to process them can flood waterways. And water that is no longer immobile can now provide the once-missing component for AMD reactions in sulfide-rich deposits. Changes in climate—many studies suggest a 2–4°C warming of North Slope permafrost—are bringing problems with this scenario, Kuyek says. “We’re finding that some of these dams are collapsing. A lot of rivers and streams are in areas where First Nations peoples depend on them for a living, and they are discovering that mines upstream are contaminating the water.” Dirk van Zyl, a professor of mining engineering and director of the Mining LifeCycle Center at the University of Nevada’s Mackay School of Mines, estimates that about 5% of abandoned mines cause some kind of environmental damage. Mining pollution affects about 40% of watersheds in the western United States, according to the EPA’s 2002 Toxics Release Inventory. In the Appalachians, acid mine drainage has degraded more than 8,000 miles of streams, leaving some aquatic habitats virtually lifeless, according to the April 1998 USGS pamphlet Biology in Focus: Better Lives Through Better Science: New Hope for Acid Streams. Trout streams throughout Pennsylvania and Ohio have become too acidic for trout because of runoff from abandoned coal mines, says Ziemkiewicz. In California’s Sierra Nevada range, mercury from abandoned hydraulic gold mines active in the late 19th century has accumulated in fish, making them unsuitable for eating. In a Colorado stretch of the Rocky Mountains, rain passing through waste rock and ore tailings at closed metal mines may be poisoning a type of grouse called the white-tailed ptarmigan. In the 13 July 2000 issue of Nature, Cornell ecologist James Larison and colleagues report finding elevated liver and kidney cadmium concentrations in all the older ptarmigan they examined, and high mortality among adult cadmiumcontaminated females. They theorize that the females of the species are particularly affected because they overwinter at lower elevations than the males, in areas that tend to be downstream of abandoned mines. Cadmium, which is readily mobilized by mining, is swept downstream in waterways that feed the willow trees that are a large part of the ptarmigan diet. These willows bioaccumulate cadmium in their buds by two orders of magnitude, according to Larison. The high concentrations of cadmium weaken the birds’ bones and damage their kidneys. Other birds as well as regional mammals may also be at risk, the researchers say. Other Environmental Hazards Many of the same issues apply to both coal mining and hardrock mining. Most obvious of the hazards that abandoned mines pose are the physical ones. Adventurers and children can’t resist the lure of an open, partially collapsed, or carelessly sealed mine shaft. But mines can be unstable. They are littered with loose rock and rotten ladders and support timbers. Walls can give way. Water—some of it acidic enough to cause chemical burns— can pool in unexpected places. Mine shafts and tunnels can cause problems far from the mine opening as well. In coal mines especially, since they are worked closer to the surface than hardrock mines, mine workings can collapse, engulfing vehicles, buildings, and people. In coal country, such as Ohio, West Virginia, and Pennsylvania, it’s not unusual for sinkholes to develop under new construction projects and on occasion existing structures as well, says Ann Harris, a geology professor at Youngstown State University who maps forgotten 100-year-old coal mines in Ohio. Stored waste is another problem. Some abandoned Canadian mines are struggling to remedy the way arsenic trioxide—a by-product of the roasting method used to extract gold from rock—was disposed of. In this method, finely ground ore was heated to burn off organic matter and release sulfur dioxide from the sulfides. Then it was mixed with chloride of lime and sulfuric acid in revolving wooden barrels to dissolve the gold. This solution was then passed through charcoal beds, which resulted in the gold adhering to the charcoal’s surface. Finally, the charcoal was incinerated, leaving behind molten gold that was formed into ingots. “We’ve got 237,000 tons of arsenic trioxide stored in underground mine tunnels in Yellowknife [Northwest Territories], and nobody knows what to do about it,” Kuyek says (some government documents put this figure at 270,000 tons). “In the old days they used to get the gold out of arsenic-bearing ore by roasting it. Then they would blow the arsenic trioxide into the tunnels to store it.” Although leaching through fractures into Great Slave Lake is minimal at this time, without containment it could become worse, Kuyek says. When the Giant mine—the source of this arsenic—closed in 1999, it was the last goldroasting operation in Canada. During the first three years that it was in business, starting in 1948, as much as 7,000 kilograms of arsenic trioxide per day was emitted from its smokestacks and blown by the wind across the countryside. In 1951, the mine operators started capturing most of the arsenic trioxide and depositing it, although about 25 kilograms continued to escape each day. Other contaminants plague other sites. Libby, Montana, is the site of a closed vermiculite mine that is contaminated with asbestos. Researchers have found high concentrations of asbestos in household dust, yard soil, and elsewhere throughout the town. The human death rate there from asbestosis was 40–80 times higher than expected, and lung cancer mortality was 1.2–1.3 times higher than expected when compared to Montana and the United States overall, according to a 2002 report by the U.S. Agency for Toxic Substances and Disease Registry titled Mortality in Libby, Montana (1979–1998). Also associated with gold mining is mercury, a toxic remnant of the U.S. and Canadian gold rushes of the mid to late 19th century and the Amazon gold rush of the late 20th century. Amalgamation with mercury is one of the oldest chemical methods for separating particles of gold from other materials. (Modern large-scale operations use cyanide.) Gravel and mud, collected through dredging or blown free with water cannons, passed through sluices over a copper plate coated with mercury. The gold combined with the mercury, and the resulting amalgam was boiled to vaporize the mercury, which was captured in a retort. Although mercury, being quite expensive, was most often captured and reused, some invariably found its way into the environment. In California’s Sierra Nevada range, for example, hundreds to thousands of pounds of mercury may remain at each of the region’s hundreds of gold mines, says Alpers [see BLM “Tarnishing the Earth: Gold Mining’s Dirty Focus | The Earth’s Open Wounds Lying in wait. Old mines present structural hazards such as the danger of collapse or accidental falls. Secret,” EHP 109:A474–A481]. In the environment, mercury is transformed by bacteria into the more toxic methylmercury form, and then bioaccumulates up the food chain through invertebrates to amphibians, fish, and fish-eaters such as birds and humans. At high levels, methylmercury has been linked to tremors, paralysis, anemia, bone deformities, and death. Research published by Philippe Grandjean of Odense University and colleagues in the July 1999 issue of EHP demonstrated that mercury poisoning that can be traced to the Amazonian gold mining boom has decreased the performance of indigenous children on a battery of cognitive tests of visual spatial function and memory. But even mercury in its elemental form can prove hazardous, at least to amateur treasure hunters, who often pan for gold in abandoned sluice tunnels left over from the gold rush. Panning in tunnels is dangerous because it can stir up mercury vapors in a relatively enclosed area. But the greater risk—to individuals and to the public at large—is what happens to the gold–mercury amalgam “treasure” at home. People would either roast it, Alpers says, releasing dangerous fumes and allowing mercury to escape into the environment, or they would treat it with nitric acid. “That mercuric nitrate solution might get disposed of inappropriately,” Alpers says. “Someone may just flush that down the toilet or throw it out in the backyard, and then you’ve got mercury in a very bioavailable form, more so than it was to begin with. One flush from somebody’s gold panning operation could [put] more mercury [in the environment] than the whole city of Sacramento [releases in] a year.” In the summer of 2000, the EPA spent about $1.4 million to clean up a tunnel of the Polar Star mine in California where people had panned for gold nuggets, Alpers says. Cleaning up just that one tunnel cost U.S. taxpayers about $3,000 per linear foot, he says, “and there are dozens, if not hundreds, of other tunnels out there, many of them thousands of feet long.” The Cost of Cleanup AMD cleanup can be expensive and lengthy, and, if the AMD isn’t halted, must be maintained indefinitely. Preventing AMD in the first place is vastly preferable to cleaning it up after the fact, and progress is being made in prevention technologies

### 1AC – Advocacy

#### Plan – Resolved: The United States ought to eliminate self-bonding fossil fuel subsidies. CX checks on neg interps – there’s infinitely many bidirectional shells they could read, and I need a chance to comply. Grant me an I-meet on shells if they don’t check in CX. If you would like, I’ll defend that Congress amend SMCRA[[1]](#footnote-1) to eliminate self-bonds, as outlined below.

GAO 18 COAL MINE RECLAMATION Federal and State Agencies Face Challenges in Managing Billions in Financial Assurances Report to Congressional Requesters March 2018 GAO-18-305 United States Government Accountability Office United States Government Accountability Office Highlights of GAO-18-305, a report to congressional requesters March 2018 COAL MINE RECLAMATION Federal and State Agencies Face Challenges in Managing Billions in Financial Assurances <https://www.gao.gov/assets/700/690476.pdf> TJHSSTAD

Billions have been spent to reclaim mines abandoned prior to the financial assurance requirements SMCRA put in place, and billions more remain. Under SMCRA, self-bonding is allowed for coal mine operators with a history of financial solvency and continuous operation—the only type of energy production or mineral extraction activity we have reviewed for which this is allowed. Bankruptcies of coal mine operators in 2015 and 2016 have highlighted risks that OSMRE and state regulatory authorities face in managing self-bonding—a risk that may be greater today than when self-bonding was first authorized under SMCRA. If a self-bonded operator were to enter bankruptcy and does not provide a different type of financial assurance or complete the required reclamation, the regulatory authority and the taxpayer potentially assume the risk of paying for the reclamation. Although OSMRE said it would examine changes to its selfbonding regulations following recent bankruptcies, Interior recently said that it is reconsidering the need to do so. Because SMCRA explicitly allows states to decide whether to accept self-bonds, eliminating the risk 5430 C.F.R. § 800.20 (2017). Acceptable surety companies include those that are listed in the Department of the Treasury’s Listing of Certified Companies (Circular 570). 55GAO-05-658. Determining the Financial Stability of Surety Companies Has Been Challenging in Certain Instances Conclusions Page 27 GAO-18-305 Coal Mine Reclamation that self-bonding poses would require amending SMCRA. Until such a change is made, the government will remain potentially at financial risk for future reclamation costs resulting from coal mines with unsecured financial assurances. Congress should consider amending SMCRA to eliminate the use of self bonding as a type of financial assurance for coal mine reclamation.

#### Self-bonding is a subsidy.

Redman 17 Janet Redman is an associate fellow at the Institute for Policy Studies and the former director of the Climate Policy Program. “DIRTY ENERGY DOMINANCE: DEPENDENT ON DENIAL.” Oil Change International. October 2017. <http://priceofoil.org/content/uploads/2017/10/OCI_US-Fossil-Fuel-Subs-2015-16_Final_Oct2017.pdf> TJHSSTAD

FEDERAL SUBSIDY HIGHLIGHTS COAL COMPANY BAILOUTS As coal continues to decline due to competition from cheaper energy sources, and coal companies become insolvent, taxpayers are increasingly covering the costs of industry’s obligations to communities and workers.54 Examples of these subsidies include: Y Inadequate industry fees recouped to cover the Abandoned Mine Land Grant Fund ($400 million): tax dollars transferred from the U.S. Treasury to cover the administration of the fund and shortfalls in payments to states and mineworker pensions resulting from inadequate fees collected from active coal mine operators.55 This fund has an important role to play in remediating ecological and worker impacts of mining, but should be funded by the industry responsible, not taxpayers. Y Inadequate industry support to cover worker health impacts: ($330 million): contribution from the Treasury covering shortfalls and administration of the Black Lung Disability Trust Fund, which provides income support and medical care to workers who are too sick from black lung to perform their previous coal mine work.56 This support for workers is critical, and this program must remain, but industry should pay for it. SUBSIDIZING POLLUTION Allowing fossil fuel companies to use deductions and accounting tricks to lower their clean-up and liability costs, and exempting some activities from payment altogether, incentivizes risky and polluting behavior. Trump’s executive order to expand offshore oil and gas drilling to new parts of the outer continental shelf, which includes a call for reconsidering controls to prevent well blowouts, has watchdogs like the bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling worried that more pollution, coupled with more clean-up costs to the public, could be on their way.57 Subsidies that force taxpayers foot the bill for industry’s mess include: Y Deduction for oil spill penalty costs ($334 million): in cases of large legal settlements for pollution violations – like the $20.8 billion settlement BP reached with the U.S. government over its 2010 oil spill disaster – the government often fails to make such payments non- deductible. In this way, companies can claim a massive tax write-off as a reward for their wrongdoing.58 Y Tar sands exemption from payments into the Oil Spill Liability Trust Fund ($47 million): tar sands producers are currently exempt from paying the 8 cents per barrel tax into the fund, which is meant to provide financial resources for oil spill clean-up.59 Furthermore, coal companies are frequently not required to hold adequate bonding to cover mine reclamation costs, adding another layer of subsidy.

### 1AC – Solvency

#### The aff solves:

#### 1] Reclamation – collateral bonds ensure that companies pay cleanup costs even if they go bankrupt – forces reclamation which is effective and flexible.

Hayes 15 30th Dec 2015 By Jason Hayes, Associate Director, American Coal Council “Returning Mined Land to Productivity Through Reclamation.” First published in Cornerstone, Volume 3, Issue 4 [https://www.worldcoal.org/returning-mined-land-productivity-through-reclamation cw//az DOA 10/30/19](https://www.worldcoal.org/returning-mined-land-productivity-through-reclamation%20cw//az%20DOA%2010/30/19) TJHSSTAD \*brackets in original

Each coal mine has a limited life span due to the finite nature of the resource being extracted. Eventually the resource is exhausted, or the point is reached at which it is no longer profitable to extract for any number of reasons, such as increasing mine depth, increasing strip ratios, changing regulations, or market pressures. When extractive activities cease, restoration processes must be completed, although they normally begin far sooner. In fact, reclamation processes typically begin while active mining is still occurring in another area of a mine. Thus, mining and restoration can be completed continuously and progressively throughout the life of a mine. The costs associated with these restoration activities can be substantial: One estimate suggests US$1.5 million per mine, although varied mine sizes, regulatory regimes, or the presence of legacy reclamation costs could result in wide fluctuations in cost. Today, in many parts of the world, reclamation and restoration plans must be prepared prior to mining. An improved understanding of the potential impacts of industrial activities, societal attitudes toward mining, increasingly stringent regulatory regimes, and dynamic market conditions now typically require companies to state clearly how their operating area will be restored before mining can begin. There are various approaches to reclamation, and collaborative efforts between industry and government can help to improve mine management and reclamation processes. Thus, best practices and select case studies are worth exploring to highlight examples of successful mine closure and remediation. The process of reclamation Reclamation can be roughly defined as the replacement of soil materials—often to approximate original contour—and revegetation of mined areas or areas adjacent to mines that have been affected by mining activities. An alternative definition, offered by the International Energy Agency’s Clean Coal Centre, is “the process of repairing any negative effects of mining activities on the environment”. Reclamation activities sometimes can also employ passive means of ecosystem restoration—wherein a less intensive management approach is taken and, for example, flora and fauna are allowed to self-colonize after soil replacement and stabilization are completed. However, the vast majority of contemporary reclamation and restoration efforts are based on technical reclamation, which exceeds simply repairing the affected property. Technical reclamation activities often aim to proactively manage a mined area for specific natural or recreational value, or other human uses, which can include infrastructure needs such as airports, schools, or shopping centres. Reclamation activities can also target agricultural or silvicultural (i.e., forestry) objectives. Plans to return mined areas to a more natural state, focusing on soil, vegetative, wildlife, and/or water management values, can also play a large role in guiding reclamation activities. Both underground and opencast mines require reclamation, but the approaches are different. Reclamation activities for underground mines will typically require less above ground activity, but can necessitate extensive management to avoid drainage and flooding issues after mine closure. This management can involve techniques such as filling of excavated areas with mine spoil or fly ash and diverting or controlling the flow of groundwater to keep it from entering existing mine structures. Doing so avoid[ing]s the risk of rising water becoming contaminat[ion]ed by dissolved metals and other substances and potentially being discharged into rivers and streams. Notably, higher levels of calcite or carbonates in the rock, however, may neutralize acidic mine water, allowing metals to stay immobile. Reclamation of opencast mines typically involves replacement of overburden that was removed or repositioned to access buried coal layers. When excavated areas are built up, re-landscaping or recontouring is completed along with drainage control measures. Recontouring will be guided by mine plan objectives (i.e., the intended end use for the land). Where natural processes are sought, recontouring will typically attempt to return landforms to the mine site’s approximate original contour, or to mimic natural contours. Where other human uses are planned for, the land will often be leveled or shaped in a manner that improves access or aids in future infrastructure development. Ensuring best practices on reclamation The time frame extending from exploration to post-reclamation and closure requires decades. In many cases, reclamation processes—which can include the mine closure and decommissioning stage, as well as the post-closure stage—can require as long as, or even longer than, the combined previous stages of exploration, site construction, and mining. Even with mining plans in place, mining can substantially affect local or regional environments. Proper reclamation of mine sites, however, can avoid many risks, including unstable spoil piles, acid drainage and water quality issues, and potential cave-ins. Best practice reclamation activities are designed to limit or avoid these impacts to the greatest degree possible. Although fully listing the legislative, regulatory, or best practices standards governing global mine reclamation is outside the scope of this article, a few prominent examples are worth highlighting. For example, general requirements for the approval of mining permits could resemble the conservation practice standards published by the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA). NRCS describes a threefold purpose for land reclamation: Prevent negative impacts to soil, water, and air resources in and near mined areas Restore the quality of soils to their pre-mining level Maintain or improve landscape visual and functional quality Australia’s Department of Industry Tourism and Resources gives similar guidance for land reclamation, but also encourages consultation, reporting, and monitoring with stakeholders during mine plan development and mining activities. Companies are also urged to rehabilitate progressively through the full life cycle of the mine and, where possible, to manage and rehabilitate historical disturbances. Expanded regulatory oversight combined with a trend toward a lesser number of larger, mechanized mining operations that are governed by binding mining plans are decreasing concerns about unregulated or unmonitored activities. Righting the past Employing best practices during contemporary mine reclamation helps to avoid the challenges associated with mines that were not properly reclaimed in the past. The varied nature of reporting measures and regulatory regimes governing mine management worldwide are compounded by the fact that many private or unregulated mines have been created, especially in developing nations where regulatory oversight may not yet be as thorough. Thus, it is difficult—if not impossible—to get a full count of the number of abandoned coal mines worldwide. The legacy of abandoned mines, however, is being addressed in many areas. For example, since the passage of the 1977 Surface Mining Control and Reclamation Act (SMCRA) in the U.S., direct fees have been collected by government agencies from existing coal mining companies. Various states and Native American tribes have used over US$4.06 billion of those funds to reclaim almost “240,000 acres of hazardous high-priority coal-related problems”. As described by the UK Environment Agency (2008), six similar programs are being carried out across the UK and internationally. Reclamation collaboration Collaborative efforts between mining companies and conservation organizations can promote successful mine reclamation as these organizations can lend expertise in developing best practices for wildlife, water, plant, and/or soil management. Demonstrating a transparent working relationship with conservation groups and other stakeholders can also help regulatory agencies when reviewing permit applications. If these agencies observe widespread support for mine plans and objectives and are convinced the area will be properly reclaimed and managed in the post-mining stages, permit approvals can likely be obtained much more easily. One example of a collaborative effort is the U.S.-based Appalachian Wildlife Foundation’s Mine Land Stewardship Initiative (MLSI), which enables industry to pair with conservation organizations to move ahead in a challenging regulatory environment. The MLSI is working to design voluntary reclamation standards that “elevate the overall ecological performance of the coal industry” and help to enhance: Conservation and restoration of ecosystem services Conservation and restoration of wildlife habitat Protection of water quality Recreational opportunities for mining communities Scientific and technical knowledge needed to protect and restore wildlife and aquatic habitats on mine lands Efforts like the MLSI are a positive and proactive approach to reduce confusion and litigation, increase stakeholder involvement and buy-in, improve transparency, and ensure the highest standard of reclamation is carried out. Bonding and financial assurance Even with proactive management efforts like the MLSI, reclamation can be an expensive endeavour. As the mine will not continue producing saleable material, no additional income will be brought in after operations cease. Therefore, most regulatory agencies require some form of a financial safety net, or bonding, to ensure sufficient funds are available for reclamation even if a bankruptcy occurs. In this manner, company insolvency or an abandoned mine will [to] not impose mine closure and reclamation costs on taxpayers. While having adequate funds for reclamation is clearly important, public policy must recognize that environmental protection, reclamation in this case, must be balanced with financial realities to avoid stifling economic activity and to allow mining companies to operate profitably. The International Council on Mining and Metals (ICMM) has reported that expectations from an increasingly risk-averse public and government have been forcing assurance costs higher. The ICMM described how, in 1998, a mining company based in Australia had “identified more than 1,056 financial assurance instruments in place in four countries, which represents a contingent liability of greater than AUD$20 million. By 2004 the comparative amount had risen to AUD$60 million". ICMM expressed concern that setting aside growing levels of operating funds in bonds restricts investment and operational flexibility. In fact, increasingly conservative expectations of certainty relating to environmental protection could place such strict financial and administrative pressures on mining companies that mining projects could be cancelled as uneconomic. Case study Numerous mines around the world are demonstrating successful reclamation projects. One such project is Coal-Mac Mining’s Phoenix #2 surface mine in West Virginia, U.S. The Phoenix #2 mine was the recipient of the U.S. Office of Surface Mining’s 2010 Excellence in Reforestation Award for almost a decade’s worth of reclamation efforts and implementation of the Appalachian Regional Reforestation Initiative’s (ARRI) Forest Reclamation Approach (FRA). ARRI is a working group comprised of citizen representatives, industry, academia, and government, and was formed to encourage planting of productive trees on reclaimed coal mine lands and abandoned mine lands. FRA is a means by which mining companies and forest managers can improve forest productivity, wildlife habitat, floral diversity, and water management on reclaimed mine lands.

#### 2] Deterrence – Eliminating self-bonds deters companies from engaging in harmful environmental practices – incentivizes strong enforcement and regulation on their side that prevents environmental damage.

Boyd 01 Financial Responsibility for Environmental Obligations: Are Bonding and Assurance Rules Fulfilling Their Promise? James Boyd August 2001 • Discussion Paper 01–42 Resources for the Future 1616 P Street, NW Washington, D.C. 20036 Telephone: 202–328–5000 Fax: 202–939–3460 Internet: http://www.rff.org © 2001 Resources for the Future. All rights reserved. No portion of this paper may be reproduced without permission of the authors. Discussion papers are research materials circulated by their authors for purposes of information and discussion. They have not necessarily undergone formal peer review or editorial treatment. ii Financial Responsibility for Environmental Obligations: Are Bonding and Assurance Rules Fulfilling Their Promise? James Boyd TJHSSTAD

7. Conclusion Environmental obligations that are unfulfilled, whether due to abandonment or insolvency, are disturbingly common. Cost recovery, deterrence, and enforcement are improved directly by financial assurance requirements. Assurance is desirable in theory because it helps assign costs to the parties best able to plan for and reduce them—potential polluters themselves. Assurance is desirable in practice because it achieves its goals at relatively low cost and without significant commercial disruption, contrary to fearful rhetoric that typically accompanies the imposition of new assurance requirements. It is particularly desirable when viewed in relation to the alternatives: costs abandoned to the public or imposed after-the-fact on offending firms’ commercial partners. Compared with these alternatives, assurance leads potential polluters to a transparent, in-advance appreciation of future environmental obligations. The value of assurance as a deterrent is enhanced further when firms must purchase assurance from third parties, since coverage rates and availability will be determined by the customer’s environmental track record and expectations of future environmental performance.

#### **3] Loopholes – plan prevents companies from going bankrupt to avoid cleanup and eliminates other legal loopholes.**

Heard 18 Emory Bankruptcy Developments Journal Bankruptcy’s Role in the Growing Dilemma of Self-Bonding in the Coal Industry Jeanna Heard ∗ <http://law.emory.edu/ebdj/content/volume-34/issue-1/comments/bankruptcy-role-dilemma-self-bonding-coal-industry.html> Notes and Comments Editor, Emory Bankruptcy Developments Journal; J.D. Candidate, Emory University School of Law (2018); B.S.E.S., magna cum laude, University of Georgia (2014). I would like to express my gratitude for all the hard work and patience every staff member and editor of the Emory Bankruptcy Developments Journal dedicated to me and this comment—there are far too many to list. I would also like to thank my parents, Joey and Georgia Heard, for their unwavering love and support. Lastly, thank you to Cameron Murphy, my siblings, and my friends for all the comic relief life requires. TJHSSTAD

C. Case Studies: Recent Coal Bankruptcies Chapter 11 bankruptcy is appealing to coal companies because it allows them to stay in business while they sell off assets and reorganize. 85 But shutting down entire mining operations and communities could have major negative ramifications. A coal company may also seek additional benefits from a chapter 11 reorganization, including the sale of assets “free and clear of encumbrances” which then turn to proceeds. 86 Therefore, by going through a chapter 11 proceeding, a coal company can avoid posting reclamation bonds, continue to operate its business, and make money from any assets sold. These incentives to file for bankruptcy, rather than posting collateral reclamation bonds, are in conflict with the fundamental purpose of reorganization, which “is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.” 87 It is a “misuse of economic resources” in multiple senses for a company to avoid posting the legally required reclamation bond by first self-bonding through a subsidiary and then file for bankruptcy.” 88 The following are examples of major coal companies that have filed for chapter 11 bankruptcy in similar fashions. 1. Arch Coal Arch Coal self-bonded through a subsidiary, Arch Western Resources, and owed $458 million in self-bonded claims. 89 Arch Coal was allowed to continue operations while in bankruptcy, with a majority of its reclamation liabilities un-bonded. 90 While the reemerged Arch Coal was required to post substitute bonds, the Wyoming Department of Environmental Quality stated in a letter in March of 2016 that its subsidiary, Arch Western Resources, still qualified for self-bonding. 91 This means that there are no restrictions on using the subsidiary to self-bond in the future. The letter from the Wyoming Department of Environmental Quality suggests that they will continue to allow Arch’s subsidiaries to benefit from self-bonding, and potentially allow Arch to self-bond through them or on their own in the future. 92 Although Wyoming requires companies to provide reclamation bonds, they also have an incentive to allow the practice of self-bonding to continue because self-bonding means more money in a company’s pocket. 93 Consequently, states that allow self-bonding have an automatic advantage of attracting coal companies (and their tax money) over states that do not offer self-bonding. Even after a state permits a self-bond, it is incentivized to help the company flourish—coal mining continues to fund communities across the country, and halting operations due to a violation of a reclamation bond could bring hardship to thousands of Americans. 94 Minor cyclical downturns in the coal market are a trend of the past, and allowing a coal company to go bankrupt without sufficient reclamation bonds could mean that the government, and in turn taxpayers, are responsible for the cleanup costs. 95 Despite the incentives that both the state and the coal company have to continue to self-bond, Wyoming should not have left open the possibility for a prior bankruptcy debtor. Unfortunately, this trend continued with the bankruptcy of Alpha Natural Resources. 96 2. Alpha Natural Resources Alpha Natural Resources, with a total of $676 million in self-bonds throughout the country, of which $411 million is for bonds in Wyoming alone, filed for bankruptcy in multiple states in 2015. 97 The company self-bonded with a subsidiary’s financials, claiming the subsidiary could cover the cost of the bonds. 98 Yet, the subsidiary did not have enough assets to cover $676 million in bonds, leaving Alpha in violation of their mining permit. 99 The court was faced with two options: suspend mining licenses for violating bond requirements or look past the illegality of Alpha’s actions and allow operations to continue. Suspending a mining license would effectively stop all function of Alpha’s mines, causing income streams to stop and leave many citizens unemployed. Repealing a license would also push Alpha further into financial distress, causing it to be even less likely to pay to reclaim mined property. At the risk of exacerbating the issue, Wyoming allowed Alpha to continue to operate in exchange for a small percentage of their bond responsibility during the bankruptcy process. 100 Alpha’s problems, however, continued. Alpha purchased Massey Energy, the coal company that bought Lindytown, and later filed for bankruptcy in West Virginia. 101 The court acknowledged that if the state did not approve the coal company’s reorganization plan, Alpha “would be required to immediately post over $244 million in substitute bonds in order to continue mining in West Virginia.” 102 The court approved the settlement with West Virginia because “given the Debtors’ limited liquidity, this could be a substantial hurdle that could impair the Debtors’ reorganization efforts.” 103 Although in this instance, Alpha was allowed to “gradually transition away from the self-bonding problem” after successfully reorganizing, there was no agreement that Alpha would be unable to self-bond in the future. 104 In the end, Alpha was able to avoid paying full price for reclamation bonds by first using subsidiaries that could not foot the bill to self-bond, then turning to bankruptcy to escape paying collateral bonds, and finally restructuring through bankruptcy without becoming precluded from repeating the same pattern. So how does a company become so financially unstable that a bankruptcy court confirms a plan in order to avoid liability that could be incurred by the state? An impending bankruptcy should be foreseeable to a devaluing coal company, triggering the requirement to notify their permitting agency when it falls out of self-bond eligibility and post another approved bond method within ninety days. 105 In the case of Alpha’s bankruptcy, the company had notified the Wyoming Department of Environmental Quality that it was no longer eligible for its outstanding self-bonds, yet it filed for bankruptcy before the end of the ninety day requirement to post other bonds. 106 Alpha likely filed for bankruptcy at the last minute, right before having to pay millions in a required bond, because it was experiencing a “melting ice cube” 107 effect. Essentially, a company is considered a “melting ice cube” if its assets are rapidly declining in value. 108 Companies that are showing “ice cube” characteristics frequently rely on bankruptcy for a quick sale of their property. 109 Alpha turned to bankruptcy for relief because it experienced a decline in assets, so much so that neither self-bonding nor collateral bonding requirements could be met. Under SMCRA, a coal company is in violation of its permit if it does not have a reclamation bond of any sort, which can result in consequences such as a suspended permit. 110 Yet during the bankruptcy, Wyoming stayed enforcement action on the unmet reclamation bond requirements and allowed the companies to pledge a “supermajority claim” to the state based on the chance that the company did not exit chapter 11. 111 The claim, approved by the bankruptcy court, was for $61 million, and nowhere near the necessary $411 million pledged for reclamation costs. 112 Alpha was fortunate enough to regain financial strength and replace all its prior self-bonds. The final restructuring and approved plan designated for Alpha required them to transfer all $411 million to secured bonds, but did not specify that Alpha could not avail themselves to self-bonding further down the road. 113 Moreover, the actions taken by Wyoming do not stop other states from issuing self-bonds and exacerbating the problem of $3.86 billion in outstanding self-bonded obligations. 3. Peabody Coal Most recently, Peabody Coal, another one of the United States’ major coal companies, and the world’s largest publicly owned coal producer, filed for bankruptcy in April 2016. 114 Although federal requirements demand that a self-bonding applicant “has a ratio of liabilities to net worth of 2.5 or less and a ratio of current assets to liabilities of 1.2 or greater,” Peabody had a ratio of liabilities to net worth of 11.6 and a ratio of current assets to liabilities of 0.84. 115 Peabody filed with debt of $10.1 billion total, and $1.1 billion in self-bonding across four states, with $727 million in liabilities located within Wyoming alone. 116 Unlike the two previous major coal bankruptcies, Peabody did not file a plan for reorganization contemporaneously with its bankruptcy filing. 117 Therefore, it is still unknown if they will propose self-bonding or if Wyoming would object. 118 Peabody is also facing issues in Illinois. Peabody’s Illinois Basin self-bonding is done through a wholly-owned subsidiary of Peabody Energy, Peabody Investments Corporation. 119 Peabody has nationwide issues with self-bonding, and worldwide financial problems; as such, an issue arises if Peabody takes a substantial hit in bankruptcy. In order to protect American jobs and allow Peabody to have its “fresh start,” bankruptcy courts may be tempted to approve a plan that allows Peabody to continue to self-bond or return to it shortly after. The goal of bankruptcy to provide a debtor with a “fresh start” 120 is at odds with the public policy driving reclamation bonds. 121 Not all companies filing for bankruptcy deserve a fresh start, especially if they are attempting to avoid their reclamation liabilities. In the cases of Alpha and Arch, who both posted self-bonds through the financials of affiliate companies, filing for bankruptcy forced the court to choose between allowing reorganization or shutting down operations and ensuring non-compliance with reclamation liabilities. But a major problem arises when a company cannot survive reorganization, or when emerging companies from reorganizations, such as Alpha’s phoenix company Contura Energy, begin the same pattern of self-bonding in five years. 122 Or, in the case of Patriot Coal, file for bankruptcy twice. 123 In such situations, bankruptcy would effectively have had no deterring force at all in stopping the coal company from engaging in irresponsible self-bonding practices.

### 1AC – Framing

#### The standard is maximizing expected wellbeing. Prefer:

#### 1] Theory first –

#### A] Ground – both debaters have ground underneath util because every action has a consequence that can be weighed fairly using different metrics under the framing – other frameworks flow exclusively to one side.

#### B] Topic lit – most articles are written through a utilitarian lens because they are crafted for policymakers and the general public who believes consequences are important – key to fairness because topic lit is how we determine in-round engagement.

#### 2] Lexical Priority – In order to determine ethical value, you must be first be alive and free from suffering, means focus on life and avoiding pain is a necessity for any kind axiological valuation.

#### 3] Use epistemic modesty to evaluate competing frameworks: that means multiply the probability the framework is true by the magnitude of the impact under a framework. Prefer:

#### A] Maximizes the probability of achieving net most moral value—beating a framework acts as mitigation to their impacts which means its substantively true.

#### B] Clash – disincentives debaters from going all in for framework which means we get the ideal balance between topic ed and phil ed—it’s important to talk about contention-level offense.

#### 4] Actor specificity:

#### A] Aggregation – governments only have access to averages and aggregates which are the basis of justification for their policies

#### B] No intent-foresight distinction – If we foresee a consequence, then it becomes part of our deliberation which makes it intrinsic to our action since we intend it to happen

#### 5] Pleasure is an intrinsic good.

Nagel ’86 Thomas (University Professor of Philosophy and Law Emeritus at New York University). “The View From Nowhere.” 1986.

I shall defend the unsurprising claim that sensory pleasure is good and pain bad, no matter whose they are. The point of the exercise is to see how the pressures of objectification operate in a simple case. Physical pleasure and pain do not usually depend on activities or desires which themselves raise questions of justification and value. They are just sensory experiences in relation to which we are fairly passive, but toward which we feel involuntary desire or aversion. Almost everyone takes the avoidance of his own pain and the promotion of his own pleasure as subjective reasons for action in a fairly simple way; they are not backed up by any further reasons.

### 1AC – Theory Underview

#### 1] 1AR Theory Paradigm – the aff gets it to check infinite 1NC abuse. It’s drop the debater because the 1AR is too short to go for substance and theory and no RVIs to compensate for the infinite number of layers the 1NC can read. Aff theory first – it’s a much larger strategic loss because 1 min is ¼ of the 1AR vs 1/7 of the 1NC which means there’s more abuse if I’m devoting a larger fraction of time.

#### 2] The aff gets RVIs – a] reciprocity – gives them an out on the theory layer that I don’t have access to – reciprocity is key to fairness by definition b] norming – the 1N can afford to read throwaway shells but RVIs ensure that they only read shells that promote quality norms – outweighs because norm setting is the ultimate purpose of theory debate

#### 3] Reframe the affirmative under T and theory shells instead of dropping the debater – a] key to return to substance debate – outweighs because we only have two months to debate about the topic b] bidirectional spec shells make it impossible for me to know what norm to abide by – don’t punish me for something I couldn’t have known about.

#### 4] Reasonability on T using a brightline of disclosure and link and impact turn ground. The brightline resolves arbitrariness – it ensures that when debaters have the ability to engage they do. Prefer reasonability:

#### a] Reciprocity – the neg gets exclusive access to topicality so its irreciprocal to hold it to the same standard as other theory.

#### b] Bidirectionality – means they get topicality either way – choosing the best interpretation is a bad standard.

#### c] Engagement – reasonability encourages a refocus on substantive education – the brightline proves they had the ability to engage.

#### 5] Eliminate doesn’t mean complete – prefer legal interpretation over mis-applied dictionaries.

8th Circuit Court of Appeals 11 Court of Appeals, 8th Circuit, BUETOW v. ALS ENTERPRISES, INC., 2011

The district court took a simple approach in determining that all ads claiming that Defendants' garments "eliminate odor" or use "odor eliminating technology" were literally false. Citing two dictionary definitions of the word "eliminate," the court concluded that "[t]he word `eliminate' is subject to only one reasonable interpretation — complete elimination." The court rejected Defendants' reliance on dictionary definitions equating "eliminate" with "remove" because "use of the word `remove' would also be literally false if used in Defendants' advertisements." The court disregarded the fact that other hunting products used the word "eliminate" because "such advertisements may also be literally false." 713 F. Supp. 2d at 839, 840, & n.10. Because even Defendants' expert conceded that their garments were incapable of adsorbing every single molecule of odor, the court permanently enjoined all use of the term "eliminate" as literally false. We disagree with the district court's decision to base its determination of literal falsity on the most absolute of competing dictionary definitions of the word "eliminate." The Lanham Act doctrine of literal falsity is reserved for an ad that is unambiguously false and misleading — "the patently false statement that means what it says to any linguistically competent person." Schering-Plough, 586 F.3d at 513. We doubt there are many hunters so scientifically unsophisticated as to believe that any product can "eliminate" every molecule of human odor. As Judge Henry Friendly explained in reversing a district court's literal falsity finding and directing dismissal of the competitor's Lanham Act false advertising complaint, a district court errs when it ignores "the principle that text must yield to context" and "make[s] a fortress out of the dictionary." Avis Rent A Car Sys., Inc. v. Hertz Corp., 782 F.2d 381, 385 (2d Cir. 1986). Here, we conclude it was error to enjoin all uses of the term "odor eliminating" as literally false. It may be that some of Defendants' ads over the course of this twelve-year period so exaggerated the basic claim as to be literally false, rather than nonactionable "puffery," such as claims that the garments work on "100% of your scent 100% of the time," render the wearer "completely scent-free," or "create an impervious shield to odor." But it is unclear the extent to which these ads were ever published, whether they have long since been discontinued, and whether consumers were deceived.

#### 6] There’s a silencing DA to T – shutting down the debate around bonding by enforcing semantic norms is a tactic of corporations to get away with environmental damage and mask violence – topicality is complacent in that which is violent.

### 1AC – Method

#### My method doesn’t buy into sweeping narratives that conflate change with progress nor expand or validate legal institutions – rather, it’s a tactical intervention that reduces violence, while exposing that contradictions in the law.

Spade 13 [Dean Spade, associate professor of law @ Seattle University, “Intersectional Resistance and Law Reform” Signs Vol. 38, No. 4, Summer 2013] TJHSSTAD

Gang injuctions – restraining order that stops gang members from participating in specific activities

Repealing three strikes law that increases prison sentence for crimes arbitrarily

Challenging ICE and stopping them from collaborating with Oakland government

Instead, law reform, in this view, might be used as a tactic of transformation focused on interventions that materially reduce violence or maldistribution without inadvertently expanding harmful systems in the name of reform. One recent example is the campaign against gang injunctions in Oakland, California. A broad coalition—comprising organizations focused on police violence, economic justice, imprisonment, youth development, immigration, gentrification, and violence against queer and trans people—succeeded in recent years in bringing significant attention to the efforts of John Russo, Oakland’s city attorney, to introduce gang injunctions (Critical Resistance 2011). The organizations in this coalition are prioritizing anticriminalization work that might usually be cast as irrelevant or marginal to organizations focused on the single axis of women’s or LGBT equality. The campaign has a law reform target in that it seeks to prevent the enactment of certain law enforcement mechanisms that are harmful to vulnerable communities. However, it is not a legal-equality campaign. Rather than aiming to change a law or policy that explicitly excludes a category of people, it aims to expose the fact that a facially neutral policy is administered in a racially targeted manner (Davis 2011; Stop the Injunctions 2011).¶ Furthermore, the coalition frames its campaign within a larger set of demands not limited to what can be won within the current structure of American law but focused on population-level conditions of maldistribution. The demands of the coalition include stopping all gang injunctions and police violence; putting resources toward reentry support and services for people returning from prison, including fully funded and immediate access to identity documents, housing, job training, drug and alcohol treatment, and education; banning employers from asking about prior convictions on job applications; ending curfews for people on parole and probation; repealing California’s three-strikes law; reallocating funds from prison construction to education; ending all collaborations between Oakland’s government and Immigration and Customs Enforcement (ICE); providing affordable and low-income housing; making Oakland’s Planning Commission accountable regarding environmental impacts of development; ending gentrification; and increasing the accountability of Oakland’s city government while augmenting decision-making power for Oakland residents (Stop the Injunctions 2011). These demands evince an analysis of conditions facing vulnerable communities in Oakland (and beyond) that cannot be resolved solely through legal reform since they include the significant harm inflicted when administrative bodies like ICE and the Planning Commission implement violent programs under the guise of neutral rationales. These demands also demonstrate an intersectional analysis of harm and refuse logics of deservingness that have pushed many social movements to distance themselves from criminalized populations. Instead, people caught up in criminal and immigration systems are portrayed as those in need of resources and support, and the national fervor for law and order that has gripped the country for decades, emptying public coffers and expanding imprisonment, is criticized.¶ Another example of intersectional activism utilizing law reform without falling into the traps of legal equality is activism against the immigration enforcement program Secure Communities. Secure Communities is a federal program in which participating jurisdictions submit the fingerprints of arrestees to federal databases for an immigration check. As of October 2010, 686 jurisdictions in thirty-three states were participating.12 Diverse coalitions of activists and organizations around the United States launched organizing campaigns to push their jurisdictions to refuse to participate. Organizations focused on domestic violence, trans and queer issues, racial and economic justice, and police accountability, along with many others, have joined this effort and committed resources to stopping the devolution of criminal and immigration enforcement. Their advocacy has rejected deservingness narratives that push the conversation toward reform for “good, noncriminal” immigrants. These advocates have won significant victories, convincing certain jurisdictions to refuse to participate and increasing understanding of the intersecting violences of criminal punishment and immigration enforcement.13 This work also avoids the danger of expanding and legitimizing harmful systems that other legal reform work can present. It is focused on reducing, dismantling, and preventing the expansion of harmful systems.14¶ I offer these examples not because they are perfect—certainly a significant range of tactics and strategies are part of each of these campaigns, and, with detailed analysis, we might find instances of co-optation, deservingness divides, and other dangers of legal reform work occurring even as some are avoided and rejected. However, these examples are indicative of resistance to limitations of legal equality or rights strategies. These demands exceed what the law recognizes as viable claims. These campaigns suggest that those who argue that a politics based on intersectional analysis is too broad, idealistic, complex, or impossible—or that it eliminates effective immediate avenues for resistance—are mistaken. Critical political engagements are resisting the pitfalls of rights discourse and seeking to build broad-based resistance formations made up of constituencies that come from a variety of vulnerable subpopulations but find common cause in concerns about criminalization, immigration, poverty, colonialism, militarism, and other urgent conditions. Their targets are administrative systems and law enforcement mechanisms that are nodes of distribution for racialized-gendered harm and violence, and their tactics seek material change in the lives of vulnerable populations rather than recognition and formal inclusion.

#### Methodological pluralism is necessary to any sustainable critique – impact turns your notion of severance of exclusivity.

Bleiker ’14 [Roland, professor of international relations at the university of Queensland. “International Theory Between Reification and Self-Reflective Critique” International Studies Review, Volume 16, Issue 2. June 17, 2014]

This book is part of an increasing trend of scholarly works that have embraced poststructural critique but want to ground it in more positive political foundations, while retaining a reluctance to return to the positivist tendencies that implicitly underpin much of constructivist research. The path that Daniel Levine has carved out is innovative, sophisticated, and convincing. A superb scholarly achievement. For Levine, the key challenge in international relations (IR) scholarship is what he calls “unchecked reification”: the widespread and dangerous process of forgetting “the distinction between theoretical concepts and the real-world things they mean to describe or to which they refer” (p. 15). The dangers are real, Levine stresses, because IR deals with some of the most difficult issues, from genocides to war. Upholding one subjective position without critical scrutiny can thus have far-reaching consequences. Following Theodor Adorno—who is the key theoretical influence on this book—Levine takes a post-positive position and assumes that the world cannot be known outside of our human perceptions and the values that are inevitably intertwined with them. His ultimate goal is to overcome reification, or, to be more precise, to recognize it as an inevitable aspect of thought so that its dangerous consequences can be mitigated. Levine proceeds in three stages: First he reviews several decades of IR theories to resurrect critical moments when scholars displayed an acute awareness of the dangers of reification. He refreshingly breaks down distinctions between conventional and progressive scholarship, for he detects self-reflective and critical moments in scholars that are usually associated with straightforward positivist positions (such as E.H. Carr, Hans Morgenthau, or Graham Allison). But Levine also shows how these moments of self-reflexivity never lasted long and were driven out by the compulsion to offer systematic and scientific knowledge. The second stage of Levine's inquiry outlines why IR scholars regularly closed down critique. Here, he points to a range of factors and phenomena, from peer review processes to the speed at which academics are meant to publish. And here too, he eschews conventional wisdom, showing that work conducted in the wake of the third debate, while explicitly post-positivist and critiquing the reifying tendencies of existing IR scholarship, often lacked critical self-awareness. As a result, Levine believes that many of the respective authors failed to appreciate sufficiently that “reification is a consequence of all thinking—including itself” (p. 68). The third objective of Levine's book is also the most interesting one. Here, he outlines the path toward what he calls “sustainable critique”: a form of self-reflection that can counter the dangers of reification. Critique, for him, is not just something that is directed outwards, against particular theories or theorists. It is also inward-oriented, ongoing, and sensitive to the “limitations of thought itself” (p. 12). The challenges that such a sustainable critique faces are formidable. Two stand out: First, if the natural tendency to forget the origins and values of our concepts are as strong as Levine and other Adorno-inspired theorists believe they are, then how can we actually recognize our own reifying tendencies? Are we not all inevitably and subconsciously caught in a web of meanings from which we cannot escape? Second, if one constantly questions one's own perspective, does one not fall into a relativism that loses the ability to establish the kind of stable foundations that are necessary for political action? Adorno has, of course, been critiqued as relentlessly negative, even by his second-generation Frankfurt School successors (from Jürgen Habermas to his IR interpreters, such as Andrew Linklater and Ken Booth). The response that Levine has to these two sets of legitimate criticisms are, in my view, both convincing and useful at a practical level. He starts off with depicting reification not as a flaw that is meant to be expunged, but as an a priori condition for scholarship. The challenge then is not to let it go unchecked. Methodological pluralism lies at the heart of Levine's sustainable critique. He borrows from what Adorno calls a “constellation”: an attempt to juxtapose, rather than integrate, different perspectives. It is in this spirit that Levine advocates multiple methods to understand the same event or phenomena. He writes of the need to validate “multiple and mutually incompatible ways of seeing” (p. 63, see also pp. 101–102). In this model, a scholar oscillates back and forth between different methods and paradigms, trying to understand the event in question from multiple perspectives. No single method can ever adequately represent the event or should gain the upper hand. But each should, in a way, recognize and capture details or perspectives that the others cannot (p. 102). In practical terms, this means combining a range of methods even when—or, rather, precisely when—they are deemed incompatible.

# 1AR – Case

## 1AR – Case Proper

### 1AR – O/V

### A2 Extinction First Framing

### A2 Taxpayers solve

## 1AR – Method

### XT Spade

### XT Bleiker

### XT Taylor

## A2 Underview Indicts

### A2 Preemption Bad

# 1AR – Theory

**1AR – Shells**

Lol there’s at least like 30 shells in here

## 1AR – Reject Theory Dump

## 1AR – A2 Common Shells

### A2 Spikes on Top

# 1AR – T

## A2 T “Eliminate”

### 1AR – T “Eliminate”

### 2AR – PICs DA

### 2AR – Education First

### 2AR – Stable Advocacy

# 1AR – K

## 1AR – Materialism Framing

## A2 Cap

## A2 Set Col

### Busbridge

This card actually goated

**Framing set col through the totalizing lens of the K is problematic – perpetuates fatalism, is epistemically unreliable, and reifies native inferiority – that’s offense.**

Busbridge 18—Research Fellow at the Centre for Dialogue, La Trobe University (Rachel, “Israel-Palestine and the Settler Colonial ‘Turn’: From Interpretation to Decolonization,” Theory, Culture & Society Vol 35, Issue 1, 2018)

The prescription for decolonisation—that is, a normative project committed to the liberation of the colonised and the overturning of colonial relationships of power (Kohn & McBride, 2011: 3)—is indeed one of the most counterhegemonic implications of the settler colonial paradigm as applied to IsraelPalestine, potentially shifting it from a diagnostic frame to a prognostic one which offers a ‘proposed solution to the problem, or at least a plan of attack’ (Benford & Snow, 2000: 616). What, however, does the settler colonial paradigm offer by way of envisioning decolonisation? As Veracini (2007) notes, while settler colonial studies scholars have sought to address the lack of attention paid to the experiences of Indigenous peoples in conventional historiographical accounts of decolonisation (which have mostly focused on settler independence and the loosening of ties to the ‘motherland’), there is nevertheless a ‘narrative deficit’ when it comes to imagining settler decolonisation. While Veracini (2007) relates this deficit to a matter of conceptualisation, it is apparent that the structural perspective of the paradigm in many ways closes down possibilities of imagining the type of social and political transformation to which the notion of decolonisation aspires. In this regard, there is a worrying tendency (if not tautological discrepancy) in settler colonial studies, where the only solution to settler colonialism is decolonisation—which a faithful adherence to the paradigm renders largely unachievable, if not impossible. To understand why this is the case, it is necessary to return to Wolfe’s (2013a: 257) account of settler colonialism as guided by a ‘zero-sum logic whereby settler societies, for all their internal complexities, uniformly require the elimination of Native alternatives’. The structuralism of this account has immense power as a means of mapping forms of injustice and indignity as well as strategies of resistance and refusal, and Wolfe is careful to show how transmutations of the logic of elimination are complex, variable, discontinuous and uneven. Yet, in seeking to elucidate the logic of elimination as the overarching historical force guiding settler-native relations there is an operational weakness in the theory, whereby such a logic is simply there, omnipresent and manifest even when (and perhaps especially when) it appears not to be; the settler colonial studies scholar need only read it into a situation or context. It thus hurtles from the past to the present into the future, never to be fully extinguished until the native is, or until history itself ends. There is thus a powerful ontological (if not metaphysical) dimension to Wolfe’s account, where there is such thing as a ‘settler will’ that inherently desires the elimination of the native and the distinction between the settler and native can only ever be categorical, founded as it is on the ‘primal binarism of the frontier’ (2013a: 258). It is here that the differences between earlier settler colonial scholarship on Israel-Palestine and the recent settler colonial turn come into clearest view. While Jamal Hilal’s (1976) Marxist account of the conflict, for instance, engaged Palestinians and Jewish Israelis in terms of their relations to the means of production, Wolfe’s account brings its own ontology: the bourgeoisie/proletariat distinction becomes that of settler/native, and the class struggle the struggle between settler, who seeks to destroy and replace the native, and native, who can only ever push back. Indeed, if the settler colonial paradigm views history in similar teleological terms to the Marxist framework, it does not offer the same hopeful vision of a liberated future. After all, settler colonialism has only one story to tell—‘either total victory or total failure’ (Veracini, 2007). Veracini’s attempt to disaggregate different forms of settler decolonisation is revealing of the difficulties that come along with this zero-sum perspective. It is significant to note that beyond settler evacuation (which may decolonise territory, he cautions, but not necessarily relationships) the picture he paints is a relatively bleak one. For Veracini (2011: 5), claims for decolonisation from Indigenous peoples in settler societies can take two broad forms: an ‘anticolonial rhetoric expressing a demand for indigenous sovereign independence and self-determination… and an “ultra”-colonial one that seeks a reconstituted partnership with the [settler state] and advocates a return to a relatively more respectful middle ground and “treaty” conditions’. While both, he suggests, are tempting strategies in the struggle for change, though ‘ultimately ineffective against settler colonial structures of domination’ (2011: 5), it is the latter strategy that invites Veracini’s most scathing assessment. As he writes, under settler colonial conditions the independent polity is the settler polity and sanctioning the equal rights of indigenous peoples has historically been used as a powerful weapon in the denial of indigenous entitlement and in the enactment of various forms of coercive assimilation. This decolonisation actually enhances the subjection of indigenous peoples… it is at best irrelevant and at worst detrimental to indigenous peoples in settler societies (2011: 6-7). The ‘primal binarism of the frontier’ plays a particularly ambivalent role in Veracini’s (2011: 6) formulation, where the categorical distinction between settler and native obstructs the ‘possibility of a genuinely decolonised relationship’ (by virtue of its lopsidedness) yet is a necessary political strategy to guard against the absorption of Indigenous people into the settler fold, which would represent settler colonialism’s final victory. The battle here is between a ‘settler colonialism [that] is designed to produce a fundamental discontinuity as its “logic of elimination” runs its course until it actually extinguishes the settler colonial relation’ and an anti-colonial struggle that ‘must aim to keep the settler-indigenous relationship going’ (2011: 7). In other words, the categorical distinction produced by the frontier must be maintained in order to struggle against its effects. Given the lack of options presented to Indigenous peoples by Veracini (2014: 315), his conclusion that settler decolonisation demands a ‘radical, post-settler colonial passage’ is perhaps not surprising – although he has ‘no suggestion as to how this may be achieved and [is] pessimistic about its feasibility’. Scholars have long reckoned with the ambivalence of the settler colonial situation, which is simultaneously colonial and postcolonial, colonising and decolonising (Curthoys, 1999: 288). Given the generally dreadful Fourth World circumstances facing many Indigenous peoples in settler societies, it could be argued that there is good reason for such pessimism. The settler colonial paradigm, in this sense, offers an important caution against celebratory narratives of progress. Wolfe (1994), it must be recalled, wrote the original articulation of his thesis precisely against the idea of ‘historical rupture’ that dominated in Australia post-Mabo, and was thus as much a scholarly intervention as it was a political challenge to the idea of Australia having broken with its colonial past. Nonetheless, the fatalism of the settler colonial paradigm—whereby decolonisation is by and large put beyond the realms of possibility—has seen it come under considerable critique for reifying settler colonialism as a transhistorical meta-structure where colonial relations of domination are inevitable (Macoun & Strakosch, 2013: 435; Snelgrove et al., 2014: 9). Not only does Wolfe’s ontology erase contingency, heterogeneity and (crucially) agency (Merlan, 1997; Rowse, 2014), but its polarised framework effectively ‘puts politics to death’ (Svirsky, 2014: 327). In response to such critiques, Wolfe (2013a: 213) suggests that ‘the repudiation of binarism’ may just represent a ‘settler perspective’. However, as Elizabeth Povinelli (1997: 22) has astutely shown, it is in this regard that the totalising logic of Wolfe’s structure of invasion rests on a disciplinary gesture where ‘any discussion which does not insist on the polarity of the [settler] colonial project’ is assimilationist, worse still, genocidal in effect if not intent. Any attempt to ‘explore the dialogical or hybrid nature of colonial subjectivity’—which would entail working beyond the bounds of absolute polarity—is disciplined as complicit in the settler colonial project itself, leaving ‘the only nonassimilationist position one that adheres strictly and solely to a critique of [settler] state discourse’. This gesture not only disallows the possibility of counter-publics and strategic alliances (even limited ones), but also comes dangerously close to ‘resistance as acquiescence’ insofar as the settler colonial studies scholar may malign the structures set in play by settler colonialism, but only from a safe distance unsullied by the messiness of ambivalences and contradictions of settler and Native subjectivities and relations. Opposition is thus left as our only option, but, as we know from critical anti-colonial and postcolonial scholarship, opposition in itself is not decolonisation.

### XT Busbridge

## A2 Afropess

**Evans DA**

**Top-level**

**Ontology Debate**

**Alternative Debate**

## A2 Consult CPs

**1AR: Consult CPs Bad**

### Top Level

## A2 Semio-capitalism

## A2 Lacan

# 1AR – LARP

### \*A2 Courts CP

### A2 50 States CP

### \*A2 Federalism DA

### A2 Economy DA

### A2 Econ [Dedev]

### A2 Econ 2AR [Dedev]

### A2 Base DA

### \*A2 2020 [UQ]

### \*A2 2020 [DD]

### A2 NDAA DA [Space Force Bad]

### A2 USMCA DA

### A2 Impeachment DA [Trade War]

### A2 Impeachment DA [UQ]

1. Surface Mining Control and Reclamation Act of 1977  [↑](#footnote-ref-1)