### Primary Production

#### Energy production excludes ANY conversion or transformation process – limited to extraction

Energici (provides business intelligence and decision support services to companies and investors active in the wind, solar, hydro, geothermal and bioenergy industries. Specializes in providing robust research, analysis and intelligence coverage of trends and developments) February 2012 “PRIMARY ENERGY PRODUCTION (MONTHLY)” http://www.energici.com/energy-profiles/by-country/europe-m-z/sweden/49-countries/north-america/usa/usa-geothermal/449-primary-energy-production

Definition : Primary Energy Production is the amount of energy converted from a primary energy source in its natural state, such as coal, gas, wind etc. that has not been subjected to any conversion or transformation process. The U.S. Energy Information Administration includes the following in U.S. primary energy production: coal production, waste coal supplied, and coal refuse recovery; crude oil and lease condensate production; natural gas plant liquids production; dry natural gas—excluding supplemental gaseous fuels—production; nuclear electricity net generation\*, conventional hydroelectricity\* (not hydro pumped storage), geothermal electricity\*, solar thermal and photovoltaic electricity\*, wind electricity\*, wood and wood-derived fuels consumption; biomass waste consumption and biofuels feedstock.

#### Violation – the plan affects only the secondary forms of energy production

#### That’s a voter –

#### First, Limits – Secondary production is an catch-all category – explodes the literature base

Kim Woodard (Research Assistant at the Resource Systems Institute of the East-West Center, Chairman and CEO of Javelin Investments) 1980 “The International Energy Relations of China” p. 457

Secondary energy production can most easily be defined as the conversion of one energy fuel to another. As such, it is a catch-all category that can be used to provide a cluster of statistical energy production series that do not easily fall into either primary production or energy consumption categories. The number and variety of secondary energy production statistics could be multiplied indefinitely by an ever sharper differentiation of substages in the flow of energy commodities through society. I have chosen co include just a few forms of secondary energy production in this analysis—coke production, thermal electric power generation, total electric power generation, total refined petroleum production, the differentiated production of petroleum fuels, plant use of energy in energy production, and the use of hydrocarbons in the production of petrochemical and fertilizer feedstocks. These were statistics that were available for the Chinese case or could be generated by inference from primary energy data and a few oversimplified assumptions. All the secondary energy production statistics presented in this section were generated by the computer and then rounded to a reasonable level of approximation. All the statistics presented for various forms of secondary energy production are general estimates, and none have been tested directly against whatever data exist in the Chinese press. Validation of the statistics would require separate in-depth analysis of each secondary energy production industry—a task far beyond the means of this book. These statistics, therefore, should be taken as a point of reference, not the final word.

#### Second, Precision - Separating primary and secondary forms of energy is key to overall energy policy – precision outweighs

### Politics

#### Fiscal cliff will be top of the docket in the lame duck and will barely pass now

Bruce Krasting (writer or Business Insider) October 1, 2012 “The BEST Case Scenario For The Fiscal Cliff Is Still Ugly” http://www.businessinsider.com/war-headlines-after-the-november-election-will-prevent-cutbacks-in-military-spending-2012-10

Absent some earth shaking event between now and November, Obama is going to win, the House will remain in the hands of the Republicans and the Senate will continue to be equally divided. The war between Reds and Blues will be just as bad as it was a year ago. The day after the election, the fight over the fiscal cliff will commence. I expect it will be ugly. -I think there is zero probability that all of the issues now on the cliff will be pushed off to some future period. (Ultimate-can-kicking) Some of the cutbacks/tax increases that are now scheduled, will happen. -I put the odds on falling off the cliff without any compromises at 40%. This scenario comes about if the Reps and Dems can’t agree on anything. If that is the case, we fall very hard on January 2. (No-can-kicking) -Therefore, I see a 60% chance of a compromise that softens the consequences of the fiscal cliff, but does not eliminate it entirely. (Semi-can-kicking, but still kicking ourselves in the face) If there is to be a compromise, it will be interesting to see who gets what, and who gives up what. It might play out with the following results: I) The 2% reduction in FICA taxes is history. As of 1/1/13 every worker is getting hit with a 2% tax increase. This is a very regressive tax increase. II) The Bush tax cuts for those making more than $250k are gone. This is a very Progressive tax increase. III) The Bush tax cuts for those making less than $250k will be retained. This “centrist” compromises is the result of the “give” on #s I and II. Both sides will be able to claim that they did their best for “Middle Class Workers”. IV) The Alternative Minimum Tax will be adjusted for inflation and will be fully phased in over a period of three years. This tax will hit 40m taxpayers (up from only 4m today). This is most definitely a middle class tax increase. V) The capital gains tax rate is going to go up to at least 25%. The result of I – V is that everyone who works, or has investment income is going to be paying more. No one will escape higher taxes. Then there is the spending side of the ledger. The so-called, “sequestered” amounts. Here is where the real horse-trading will happen. Keep in mind that the timing of this critical argument debate will be in November and December. What else will be happening in those months that will influence the budget compromises? Talk of War.

#### Plan causes backlash

Petroleum Intelligence Weekly, 1/9/12, Obama Plays Safe on Energy Policy, Lexis

With less than a year to go until he faces re-election, US President Barack Obama is trying to avoid controversial energy policy decisions, postponing the finalization of restrictions on oil refinery and power plant emissions and delaying the approval of a major crude pipeline project. The president’s caution will prolong the status quo on issues where the industry both opposes and supports the administration’s plans, and also illustrates what's at stake for energy policy depending on whether or not Obama is given another four years in office. Most of Obama's original campaign pledges on promoting alternatives to fossil fuels and tackling climate change have not passed muster with Congress, most notably an ambitious plan for national carbon controls, a subsequent toned-down clean energy standard floated after the carbon legislation failed, and repeated efforts to repeal $30 billion-$40 billion worth of oil industry tax deductions over 10 years ( PIW May9'11 ). The one exception has been the passage of $90 billion in clean energy funding as part of an economic stimulus bill passed early in Obama's term, but the White House has been unable to repeat this success in other energy policy areas ( PIW Feb.23'09 ).

#### Obama’s political capital will give him leverage in the ‘fiscal cliff’ negotiations now – brokers a deal

Andrew Sprung (he is the CEO of Sprung PR and hold a PhD from the University of Rochestor) September 21, 2012 “Ezra Klein's unconvincing theory that Obama misunderstands (or misrepresents) "change," http://xpostfactoid.blogspot.com/2012/09/ezra-kleins-unconvincing-theory-that.html)

In my view, Klein is viewing this question too narrowly. Obama is well aware of the limitations of the bully pulpit, and he's got to know better than any person on the planet that presidential advocacy polarizes, entrenching the opposing party in implacable opposition to whatever the president proposes. Yet, in presenting a revamped theory of how the presidency works, he's not just feeding us a line of BS. And if Obama wins reelection, I believe that we will look back five or ten or twenty years from now and recognize that yes, Obama did change the way Washington works. Or at the very least, he kept the US on a sane policy course in a time of extreme polarization and thus gave (will have given...) the system space to self-correct, as it has in the past. Let's start with Klein's objection to Obama's characterization of how healthcare reform got done: The health-care process, which I reported on extensively, was a firmly “inside game” strategy. There were backroom deals with most every major interest group and every swing legislator.... By the time the law passed, many more Americans viewed it unfavorably than viewed it favorably — exactly the opposite of what you’d expect if health care had passed through an “outside game” strategy in which, as Obama put it, “the American people … put pressure on Congress to move these things forward.” And yet, health care passed. The inside game worked. All true, laddie. And yet, in claiming that the impetus for healthcare reform came from the outside, I don't think Obama is attempting to whitewash this long and messy process -- or is even referring to it. He is alluding to the marshaling or channeling of popular will that got him elected. The essence of Obama's primary election argument against Hillary Clinton was that he was better equipped to marshal the popular will for fundamental change -- with healthcare reform as the centerpiece -- than she was. I well remember the moment when that argument first impressed itself on me. It was in a debate in the immediate aftermath of the Iowa caucuses, on Jan. 5, 2008: Look, I think it's easier to be cynical and just say, "You know what, it can't be done because Washington's designed to resist change." But in fact there have been periods of time in our history where a president inspired the American people to do better, and I think we're in one of those moments right now. I think the American people are hungry for something different and can be mobilized around big changes -- not incremental changes, not small changes. I actually give Bill Clinton enormous credit for having balanced those budgets during those years. It did take political courage for him to do that. But we never built the majority and coalesced the American people around being able to get the other stuff done. And, you know, so the truth is actually words do inspire. Words do help people get involved. Words do help members of Congress get into power so that they can be part of a coalition to deliver health care reform, to deliver a bold energy policy. Don't discount that power, because when the American people are determined that something is going to happen, then it happens. And if they are disaffected and cynical and fearful and told that it can't be done, then it doesn't. I'm running for president because I want to tell them, yes, we can. And that's why I think they're responding in such large numbers.

Cue the political science eye-roll. The American people were not "determined" that healthcare reform per se had to occur. You can't read the results of the 2008 wave election as a "mandate" for a specific policy. In the aftermath, the electoral tide went back out with a vengeance. But it's also true that in two years of campaigning Obama's words did inspire people, that the American people were hungry for change after Bush, that Obama made a broad and conceptually coherent case for moving the center of American politics back to the left with a renewed commitment to shared prosperity and investment in the common good, and that healthcare reform was at the center of that case. True too that the results of that election gave him enough of a majority to persist, even when relentless Republican misinformation and bad-faith negotiation and delay eroded public support. Obama also used the bully pulpit at crucial points, if not to rally public opinion, at least to re-commit wavering Democrats -- and also to convince the public, as he enduringly has, that he was more of a good faith negotiator, more willing to compromise, than the Republicans. Those pressure points were the September 2009 speech he gave to a joint session of Congress, and the remarkable eight-hour symposium he staged with the leadership of both parties in late February 2010 to showcase the extent to which the ACA incorporated past Republican proposals and met goals allegedly shared by both parties, as well as his own bend-over-backwards willingness to incorporate any Republican ideas that could reasonably be cast as advancing those goals. In a series of posts about Ronald Reagan, Brendhan Nyhan has demonstrated that presidential rhetoric generally does not sway public opinion. Savvy politicians channel public opinion; transformative ones seize an opportunity when their basic narrative of where the country needs to go aligns with a shift in public opinion, usually in response to recent setbacks or turmoil. Obama, like Reagan, effected major change in his first two years because he caught such a wave -- he amassed the political capital, and he spent it, and we got what he paid for. The force from outside -- a wave election -- empowered Obama to work change from inside in a system that reached a new peak of dysfunctionality. Klein's also objects to Obama's pitch for how to effect change going forward. In 2011, he notes, Obama highlighted the substantial change won from the messy inside game of legislating, touting the long list of legislative accomplishments of the 111th Congress. In election season, he has reverted to a keynote of his 2008 campaign: change comes from you, the electorate; it happens when ”the American people … put pressure on Congress to move these things forward.” Klein regards this as election season hooey: But while this theory of change might play better, it’s the precise theory of change that the last few years have shattered. Whatever you want to say about the inside game, it worked. Legislation passed. But after the midterm elections, it stopped working. And so the White House moved towards an outside game strategy, where ”the American people … put pressure on Congress to move these things forward.” Perhaps the most public example was Obama’s July 2011 speech, in which he said: I’m asking you all to make your voice heard. If you want a balanced approach to reducing the deficit, let your member of Congress know. If you believe we can solve this problem through compromise, send that message. So many Americans responded that Congress’s Web site crashed. But Obama didn’t get his “balanced approach,” which meant a deal including taxes. Klein goes on to recount that throughout the past year of confrontation with the GOP, pushing a jobs package that had broad popular support, Obama won only one minor victory, extension of the payroll tax cut. He then reverts to two political science tenets: presidential advocacy entrenches the opposition, and it can't move popular opinion. But I think he misreads Obama's pitch, strategy and record on several counts. First, he understates Obama's (and the Democrats') successes in the year of confrontation that has followed the debt ceiling debacle. He writes off the payroll tax cut and unemployment benefit extension as small beer. But this was actually a near-total victory in two stages against entrenched opposition, and it won Obama some vital back-door stimulus for the second year running in the wake of the GOP House takeover. It was followed by a similar GOP cave-in on maintaining low student loan interest rates -- and then again, by the collapse of the House GOP effort to renege on the Budget Control Act and impose still more spending cuts. Presidential rhetoric may not change the public mind. But when it's in sync with voter's propensities, it can deploy public opinion to bring pressure to bear on the opposition. Second, it's true that under threat of GOP debt ceiling extortion, Obama successfully marshaled public opinion in favor of his "balanced" approach to deficit reduction but wasn't able to use that pressure to move the GOP off their no-new-taxes intransigence. But that battle ain't over yet, and popular support for Obama's position is political capital that's still in the bank. In the upcoming fiscal cliff negotiations, Obama, if he wins reelection, will have the whip hand, given the expiration of the Bush tax cuts and Republican teeth-gnashing over the defense cuts in the sequester. Speaking of which, Obama's refusal to intervene in the supercommittee negotiations as Republicans stonewalled once again over any tax hikes banked him further capital in this upcoming fight. Republicans are screaming much louder than Democrats about the sequester, disastrous though the cuts may be on the domestic side. Third, it's rational for Obama to recast his bid for change in election season, because of course he's seeking further "change" from the outside, i.e., more Democrats elected to Congress. He's not going to win a mandate as in 2008, or, most likely, majorities in both houses of Congress. But he has to make the pitch for being granted renewed tools to advance his agenda. Finally, a key part of Obama's "you are the change" pitch in his convention speech was a frank call to play defense -- to protect the changes wrought in his first term and fend off the further capture of the electoral process and the nation's resources by the oligarchy the GOP represents: If you turn away now – if you buy into the cynicism that the change we fought for isn’t possible … well, change will not happen. If you give up on the idea that your voice can make a difference, then other voices will fill the void: lobbyists and special interests; the people with the $10 million checks who are trying to buy this election and those who are making it harder for you to vote; Washington politicians who want to decide who you can marry, or control health-care choices that women should make for themselves.

#### Impact is global econ collapse

Harold Mandel (writer for the Examiner) September 27, 2012 “Fitch says fiscal cliff could set off global recession (Video)” http://www.examiner.com/article/fitch-says-fiscal-cliff-could-set-off-global-recession

The ratings agency stated, "The U.S. fiscal cliff represents the single biggest near-term threat to a global economic recovery." Fitch has gone on to warn, “A U.S. fiscal shock would be exported to the rest of the world via a sharply weaker U.S. dollar and asset prices, lower U.S. price and wage inflation and heightened risk of deflation, and the impact on commodity prices.” In the meantime leading U.S. executives have less confidence in the business outlook now than at any time in the past three years, with a primary reason being fear of gridlock in Washington over the fiscal deficit and tax policy. And so unless the fiscal cliff is confronted and avoided this could be bad news for everyone.

#### Economic collapse causes global nuclear war

Friedberg and Schoenfeld, 2008[Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America” <http://online.wsj.com/article/SB122455074012352571.html>]

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

### QER

#### Text: The United States Congress should establish a government-wide staged-process Quadrennial Energy Review process, led by the President in coordination with the Secretary of Energy as Executive Secretariat. The Executive Secretariat should immediately establish a policy determination to provide full support for making a recommendation to \_\_\_\_\_\_\_\_\_ a top priority of the first stage of the review. This review should occur through consultation with Congress and relevant agents within the energy industry. The Executive Secretariat should present the results of this review to the President in the form of a policy recommendation. The President should implement this recommendation.

#### Only doing the counterplan now establishes a comprehensive, streamlined energy policy process that provides certainty and is politically popular – individual policies cause rollback and turn innovation

**Moniz 12** – Cecil and Ida Green Professor of Physics and Engineering Systems and Director of the Energy Initiative at the Massachusetts Institute of Technology, serves on the President’s Council of Advisors on Science and Technology

(Ernest, “Stimulating Energy Technology Innovation”, Daedalus 141.2 (2012): 81–93, dml)

While there are many promising new approaches to filling the energy-technology innovation pipeline at the invention and translation stages, acceleration in the adoption and diffusion stages **continues to be more challenging**, especially with respect to the government role. The public-private model discussed above can be an important contributor, especially at the adoption stage, but the prospect of implementing an energy innovation surcharge in the near future is bleak. A recent congressional initiative to introduce a “line charge” on coal-generated electricity–the proceeds of which would have established carbon capture and sequestration to enable continued coal use–did not get very far, even though the measure had a fair degree of support in the industry.

The most obvious and conceptually simple approach to accelerate low-carbon deployment at scale is the imposition of a substantial economy-wide price on carbon dioxide emissions. Alternatively, a regulatory cap on emissions that tightens over time could be put in place. In either approach, **a** high degree **of confidence** that the policy will stay in place over **a** considerable period **of time**–rather than be subject to dramatic shifts in Congress and the administration–will be important for **generating private investments at scale in a timely fashion**. Similar mechanisms could address the externality of energy security and oil dependence. The prospects for carbon pricing continue to be inauspicious. At best, a continuation of **proxy policies** such as renewable portfolio standards and tax credits, often at the state level, can be anticipated. These policies tend to be inefficient for the overarching purpose of stringent carbon dioxide emissions reductions and, by observation, have too often been subject to starts and stops. Such policy realities highlight the importance of clean-energy technology cost reduction as **a** **more assured path to deployment** and, then, to appropriate policy by lowering implementation costs. Furthermore, it is not clear that pricing externalities would accelerate innovation at the needed pace without additional energy-technology policy steps.

It should come as no surprise that I do not have the answers for how the government should intersect the latter stages of the innovation process in a general sense. However, PCAST recommended a pragmatic approach to an integrated federal energy policy that would employ all the tools available to the government in a coherent way. Termed the Quadrennial Energy Review (QER), the process is necessarily complex, but history suggests that **anything short of a** full multiagency effort **is unlikely to provide a robust plan** that accounts for the many threads of an energy policy. Furthermore, a degree of analysis is required that **has not been present** in previous efforts.

Energy policy is derivative of many policies: environment, technology and competitiveness, diplomacy and security, natural resources, and land and food, among many others. Indeed, multiple agencies that are not labeled “energy” have major equities and long-held perspectives on key elements of energy policy. Often, the preferred policies for different agencies’ agendas **conflict**. Further, states and local governments play a strong role, for example with building codes, and their approaches can vary dramatically in different parts of the country; certainly, California’s energy policies have influenced the national market. The tools available to support innovation are also diverse, ranging from direct support of RD&Dto a variety of economic incentives, regulation, standards, and federal procurement, among other instruments. Congress is equally fragmented: in the House of Representatives and Senate, many committees beyond those tasked with energy policy have equities that mirror those of the different executive agencies. To **overcome this fragmentation** of responsibilities and perspectives, and especially if the goal is a plan that has staying power in advancing adoption and diffusion, PCAST recommended a QER process to provide a multiyear roadmap that:

• lays out **an integrated view of** short-, intermediate-, and long-term **objectives** for Federal energy policy in the context of economic, environmental, and security priorities;

• **outlines** legislative proposals to Congress;

• **puts forward** anticipated Executive actions (programmatic, regulatory, fiscal, and so on) coordinated across multiple agencies;

• **identifies** resource requirements for the RD&D programs and for innovation incentive programs; and, most important,

• **provides** a strong analytical base.14

This is a tall order intellectually and organizationally. Several process elements are essential to fostering a chance for success. First, the Executive Office of the President (EOP) must use its convening power **to ensure effective cooperation** among the myriad relevant agencies. However, the capacity to carry out such an exercise and to sustain it does not (and should not) reside in the EOP. The DOE **is the logical home** for a substantial Executive Secretariat supporting the EOP interagency process that would present decision recommendations to the president. However, the scope of the analytical capability needed does not currently reside at the DOE or any other agency. The DOE needs to build this capability, presumably supplemented by contractor support to gather data, develop and run models, and carry out analysis, such as independent energy-system engineering and economic analysis. Market trends and prices would be part of the analysis, including international markets and robust analyses of uncertainty. The Energy Information Administration can help with some data gathering and models, but its independence from the policy function needs to be preserved. The national laboratories also lack this range of functions, and tasking them with providing the analytical support to the policy process would be regarded as a conflict of interest; their focus is best directed at research, invention, and technology transfer. Building this analysis capacity is a large job that will take time.

For the QER to succeed, the government must seek substantial input from many quarters in a transparent way; certainly, **ongoing dialogue with Congress and the energy industry are** essential. The good news is that members of Congress **have** supported **the development** of the QER15 as a way to present a coherent starting point for congressional action across many committees. A hope is that Congress could then use the QER as a basis for a four- or five-year authorization that would provide the private sector with the **increased confidence** needed to make sound clean energy investment decisions.

Given the magnitude of the task, PCAST recommended in 2011 that the DOE carry out a Quadrennial Technology Review (QTR)–a first step centered in a single department and focused on technology. The QTR resulted in a rebalancing of the R&D portfolio toward the oil dependence challenge through advanced vehicle development, particularly transportation electrification. The key now will be to extend the processes developed for the QTR **to the multiagency QER,** involving the EOP in a leadership role. Taking the next steps in 2012 **will maintain momentum and establish the capabilities** needed for the QER by early 2015, the time frame recommended by PCAST.

While some may view 2015 as a frustratingly long time away, the alternative is to **rely on wishes rather than analysis** while failing to gain multiple perspectives in a fair and open manner. **Rushing the process will result in** a poorly done job that will not accomplish any of the key QER goals. Certainly, it will not bring together succeeding administrations and Congresses around a reasonably shared vision and set of objectives **that can accelerate innovation** in service of national competitiveness and environmental and security goals. **Continuing with** fragmented **and economically** inefficient **policies**, **technologies “du jour,” and frequent shifts will** complicate **private-sector decisions rather than facilitate innovation**. The government unavoidably plays a strong role in the innovation process, even when this is unacknowledged in policy and political debates. The issue now is to present both a set of principles and fact-based analyses supporting **coordinated government wide actions** that earn decent buy in from major stakeholders.

### Courts

#### The United States Supreme Court should rule that compliance orders from federal enforcement agencies regarding [insert aff restriction] unconstitutional.

#### The Court has this authority

Eric Waeckerlin (Attorney at Davis Graham & Stubbs LLP Past Attorney at Kelley Drye & Warren LLP Law Clerk at The Honorable Sam. E Haddon, U.S. District Court for the District of Montana Energy Policy Analyst at Western Governors' Association/Western Interstate Energy Board, J.D. University of Montana School of Law) March 21, 2012 “The Sackett Decision and Its Implications for Hydraulic Fracturing” http://www.frackinginsider.com/litigation/with-stunning-alacrity-the-united/

With stunning alacrity, the United States Supreme Court issued its opinion [PDF] today in Sackett v. EPA (roughly two months since oral argument), resolutely and unanimously striking down EPA’s position that the Clean Water Act (CWA) does not provide pre-enforcement judicial review of compliance orders. This blog has covered the Sackett case and explored the potential ramifications for EPA’s pursuit of regulatory authority over hydraulic fracturing. In this respect, the opinion is surprisingly broad and is not grounded in distinctions between a non-emergency administrative order (like the CWA order at issue in Sackett) and an emergency-type administrative order under other statutes (e.g., the Safe Drinking Water Act (SDWA) or CERCLA). Accordingly, following Sackett, EPA’s ability to regulate hydraulic fracturing under the guise of emergency SDWA authority appears less clear. Justice Scalia’s opinion avoids the merits of whether EPA actually had CWA jurisdiction over the Sackett’s property, and instead focuses on whether EPA violated the Sackett’s due process rights by issuing a compliance order without a hearing or judicial review. In essence, the Sackett’s had two options: (1) comply with the order, thus acceding that EPA had jurisdictional authority; or (2) wait to be sued by the Agency meanwhile accruing $75,000/day in penalties for non-compliance. On the issue of whether the compliance order was a “final agency action” subject to judicial review the Court was clear. Justice Scalia writes “[t]here is no doubt [the compliance order] is agency action” and further, “[i]t has all the hallmarks of APA finality that our opinions establish.” Many of the core hallmarks or factors relied on by the Court would also apply in the emergency SDWA order issued by EPA in the Range Resources case. These include the imposition of future obligations (the Range Resources order imposes extensive obligations, including testing and work plans), an obligation to allow Agency access to the site, the imposition of penalties for non-compliance, and Agency conclusions regarding whether the party is in compliance (both orders contain Findings of Fact and Conclusions of Law). The Court also held that nothing in the CWA expressly precludes judicial review. With the important caveat that the SDWA scheme differs from the CWA scheme, and that emergency power is different from general CWA jurisdictional authority, the Sackett opinion carries some potentially important implications for the Range Resources matter. First, Justice Scalia prominently noted and relied on the Administrative Procedure Act’s “presumption favoring judicial review of administrative action.” This presumption carries across all federal statutes, including the SDWA. Second, the Court eschewed EPA’s argument that because the CWA gives the Agency a choice between a judicial proceeding and an administrative action, choosing the latter precludes judicial review. The SDWA provides a similar choice. Finally, the Court did not agree with the Government’s policy argument that providing pre-enforcement judicial review of CWA compliance orders would make EPA less likely to use such orders. Acknowledging “that might be true,” Justice Scalia essentially signaled that the Court thinks there is a substantial question about the merits of EPA’s order in Sackett, stating “[c]ompliance orders will remain an effective means of securing prompt voluntary compliance in those many cases where there is no substantial basis to question their validity.” This same policy would arguably cut against EPA in favor of full substantive judicial review in the Range Resources matter. The strongest words were penned by Justice Alito. In the opening salvo of his concurring opinion, he asserted that the position taken by EPA “would have put the property rights of ordinary Americans entirely at the mercy of [EPA] and its employees.” Justice Alito went on to say “[i]n a nation that values due process, not to mention private property, such treatment is unthinkable.” In sum, the Court’s decision is a stunning rebuke of an EPA that many feel has overreached. The decision likely has much to do with the broader ongoing issues of EPA’s CWA jurisdiction and the meaning of “navigable waters.” In fact, Justice Alito’s concurrence expressly notes that the only true remedy to aggrieved property owners is Congressional clarification of the reach of EPA’s CWA jurisdiction. Nonetheless, the implications for the Range Resources case (and the broader issue of EPA’s mission to regulate hydraulic fracturing in the absence of clear statutory authority) are potentially significant.

#### This solves and competes – it doesn’t ‘reduce’ a legal restriction – it just makes it unenforceable

William Treanor (associate professor of law at Fordham University) and Gene Sperling (Deputy assistant to the president for economic policy University of Minnesota) 1993 “Prospective overruling and the revival of Unconstitutional statutes” JSTOR

Unlike the Supreme Court, several state courts have explicitly addressed the revival issue. The relevant state court cases have concerned the specific issue of whether a statute that has been held unconstitutional is revived when the invalidating decision is over- turned.42 With one exception, they have concluded that such statutes are immediately enforceable. The most noted instance in which the revival issue was resolved by a court involved the District of Columbia minimum wage statute pro- nounced unconstitutional in Adkins. After the Court reversed Adkins in West Coast Hotel, President Roosevelt asked Attorney General HomerCummings for an opinion on the status of the District of Columbia's statute. The Attorney General responded, The decisions are practically in accord in holding that the courts have no power to repeal or abolish a statute, and that notwithstanding a decision holding it unconstitutional a statute continues to remain on the statute books; and that if a stat- ute be declared unconstitutional and the decision so declaring it be subsequently overruled the statute will then be held valid from the date it became effective.43 Enforcement of the statute followed without congressional action.44 When this enforcement was challenged, the Municipal Court of Appeals for the District of Columbia inJawish v. Morlet 45 held that the decision in West Coast Hotel had had the effect of making the statute enforceable. The court observed that previous opinions addressing the revival issue proceed on the principle that a statute declared unconstitutional is void in the sense that it is inoperative or unenforceable, but not void in the sense that it is repealed or abolished; that so long as the decision stands the statute is dormant but not dead; and that if the decision is reversed the statute is valid from its first effective date.46 The court declared this precedent sound since the cases were "in ac- cord with the principle 'that a decision of a court of appellate jurisdic- tion overruling a former decision is retrospective in its operation, and the effect is not that the former decision is bad law but that it never was the law.' "47 Adkins was thus, and had always been, a nullity. The court acknowledged that, after Adkins, it had been thought that the District of Columbia's minimum wage statute was unconstitutional. As the court put it, "'[J]ust about everybody was fooled.' "48 Nonetheless, the court's view was that since the minimum wage law had always been valid, although for a period judicially unenforceable, there was no need to reenact it.49 Almost all other courts that have addressed the issue of whether a statute that has been found unconstitutional can be revived have reached the same result as theJawish court, using a similar formalisticanalysis.50 The sole decision in which a court adopted the nonrevival position is Jefferson v. Jeferson,51 a poorly reasoned decision of the Louisiana Supreme Court. The plaintiff in Jeferson sought child sup- port and maintenance from her husband. She prevailed at the trial level; he filed his notice of appeal one day after the end of the filing period established by the Louisiana Uniform Rules of the Court of Ap- peals. The Court of Appeals rejected his appeal as untimely, even though the Louisiana Supreme Court had previously found that the ap- plicable section of the Uniform Rules violated the state constitution. One of Ms. Jefferson's arguments before the state Supreme Court was that that court's previous ruling had been erroneous and that the rules should therefore be revived. In rejecting this claim and in finding for the husband, the Court stated: Since we have declared the uniform court rule partially unconstitutional, it appears to be somewhat dubious that we have the right to reconsider this ruling in the instant case as counsel for the respondent judges urges us to do. For a rule of court, like a statute, has the force and effect of law and, when a law is stricken as void, it no longer has existence as law; the law cannot be resurrected thereafter by a judicial de- cree changing the final judgment of unconstitutionality to con- stitutionality as this would constitute a reenactment of the law by the Court-an assumption of legislative power not dele- gated to it by the Constitution.52 The Louisiana Court thus took a mechanical approach to the revival question. According to its rationale, when a statute is found unconstitutional, it is judicially determined never to have existed. Revival there- fore entails judicial legislation and thereby violates constitutionally mandated separation of powers: because the initial legislative passage of the bill has no legitimacy, the bill's force is considered to be purely a creature of judicial decision-making. Jefferson has little analytic appeal. Its view of the separation of pow- ers doctrine is too simplistic. Contrary to the Jeferson rationale, a "re- vived" law is not the pure product of judicial decision-making. It is, instead, a law that once gained the support of a legislature and that has never been legislatively repealed. Its legitimacy rests on its initial legis- lative authorization. Moreover, the view that a statute that has been found unconstitutional should be treated as if it never existed may have had some support in the early case law, but it has been clearly rejected by the Supreme Court. Instead of treating all statutes that it has found unconstitutional as if they had never existed, the Court has recognized a range of circumstances in which people who rely on an overturned decision are protected. Indeed, as will be developed, the doctrine of prospective overruling evolved to shield from harm those who relied on subsequently overruled judicial decisions.53 In short, the one case in which there was a holding that a statute did not revive does not offer a convincing rationale for nonrevival.

### 1nc

**Energy production brings nature to serve, turning the world into a global gas station, eviscerating and erasing being. The ultimate result is nuclear annihilation and meaninglessness—comparatively outweighs**

Callister 2007 (Paul, Associate Professor of Law and Director of the Leon E. Bloch Law Library, University of Missouri‑Kansas City School of Law. Law and Heidegger’s Question Concerning Technology: Prolegomenon to Future Law Librarianship Law Library Journal [Vol. 99:2)

 1 Following World War II, the German philosopher Martin Heidegger offered one of the most potent criticisms of technology and modern life. His nightmare is a world whose essence has been reduced to the functional equivalent of “a giant gasoline station, an energy source for modern technology and industry. This relation of man to the world [is] in principle a technical one. . . . [It is] altogether alien to former ages and histories.”2 For Heidegger, the problem is not technology itself, but the technical mode of thinking that has accompanied it. Such a viewpoint of the world is a useful paradigm to consider humanity’s relationship to law in the current information environment, which is increasingly technical in Heidegger’s sense of the term. 2 Heidegger’s warning that a technical approach to thinking about the world obscures its true essence is directly applicable to the effects of the current (as well as former) information technologies that provide access to law. The thesis of this article is that Heidegger provides an escape, not only for libraries threatened by obsolescence by emerging technologies, but for the law itself, which is under the same risk of subjugation. This article explains the nature of Heidegger’s criticisms of technology and modern life, and explores the threat specifically identified by such criticism, including an illustration based upon systematic revision of law in Nazi Germany. It applies Heidegger’s criticisms to the current legal information environment and contrasts developing technologies and current attitudes and practices with earlier Anglo-American traditions. Finally, the article considers the implications for law librarianship in the current information environment. Heidegger’s Nightmare: Understanding the Beast Calculative Thinking and the Danger of Subjugation to a Single Will 3 The threat is not technology itself; it is rather a danger based in the essence of thinking, which Heidegger describes as “enframing”3 or “calculative thinking.”4 For Heidegger, the problem is that mankind misconstrues the nature of technology as simply “a means to an end.”5 4 Heidegger’s articulation of the common conception of technology as a “means” applies equally well to information technologies, including legal databases. True, it is hard to think of technology in any other way, but what Heidegger argues is that this failure to consider the essence of technology is a threat to humanity.6 5 He defines the threat in two ways. First, humans become incapable of seeing anything around them as but things to be brought into readiness to serve some end (a concept he refers to as “standing reserve”).7 They are thereby cut off from understanding the essence of things and, consequently, their surrounding world.8 Second, man is reduced to the role of “order-er” of things, specifically to some purpose or end, and, as a result, risks becoming something to be ordered as well.9 Heidegger illustrates these concerns as follows: The forester who, in the wood, measures the felled timber and to all appearances walks the same forest path in the same way as did his grandfather is today commanded by profitmaking in the lumber industry, whether he knows it or not. He is made subordinate to the orderability of cellulose, which for its part is challenged forth by the need for paper, which is then delivered to newspapers and illustrated magazines. The latter, in their turn, set public opinion to swallowing what is printed, so that a set configuration of opinion becomes available on demand.10 In other words, the trees, the wood, the paper, and even the forester (whose ancestors once understood the sanctity of the woods) are ultimately subordinated to the will to establish orderly public opinion. The forester, in proverbial fashion, “cannot see the forest for the trees.” Instead of appreciating the majesty and mystery of the living forest, he sees only fodder for the paper mill, which will pay for his next meal. 6 The same cynicism might be applied to legal publishing. Whole forests have given their lives to the publication of legal information in order to provide a stable basis for society—after all, the “law must be stable and yet it cannot stand still,”11 or as our comrades from Critical Legal Studies might put it, law is simply a tool “to perpetuate the existing socioeconomic status quo.”12 Cadres of West editors (commonly referred to in generic fashion as human resources, ironically making them all the less human)13 work feverishly to digest points of law and assign 55,000 cases into a taxonomy with more than 100,000 class distinctions,14 all for the sake of a predictable legal system and stable society. 7 For Heidegger, the threat is revealed in mankind’s perpetual quest to gain mastery over technology. “Everything depends on our manipulating technology in the proper manner as a means. We will, as we say, ‘get’ technology ‘spiritually in hand.’ We will master it. The will to mastery becomes all the more urgent the more technology threatens to slip from human control.”15 When Heidegger published these words (first in 1962, but based on lectures from 1949 and 1950),16 the implications of nuclear energy and atomic warfare occupied much academic discussion. Heidegger points out that the popular question of this period did not concern how to find sufficient energy resources, but “[i]n what way can we tame and direct the unimaginably vast amounts of atomic energies, and so secure mankind against the danger that these gigantic energies suddenly—even without military actions— break out somewhere, ‘run away’ and destroy everything?”17 The modern question is about our mastery over technology, not about sufficiency of resources. 8 Similar concerns are apparent with respect to information technologies, where the primary problem is not lack of access, but too much access: for example, illegal music file swapping,18 the anti-circumvention provisions of the Digital Millennium Copyright Act (DMCA),19 and trends to use licensing to control and preserve the economic value of information (and to prohibit otherwise lawfully competitive practices, such as reverse engineering).20 With respect to law and government, we see such examples as retraction of government documents,21 the Patriot Act,22 the furor over unpublished electronic precedent,23 and the recent frenzy of e-discovery.24 Some stakeholders seem to have liked things better when information resources were scarce.25 Universal access is destabilizing—hence, the considerable interest in getting a “handle” on technology through legal sanction and yet additional technological innovation (the so-called “access control” technologies). 26 9 Heidegger’s genius is in recognizing that all the fuss about mastering technologies, although close to the mark, concerns the wrong issue. The more insidious threat is not nuclear fallout or economic devaluation of intellectual property, but the worldview of “calculative” thinking that accompanies rapid technological change: “The world now appears as an object open to attacks of calculative thought, attacks that nothing is believed able any longer to resist.”27 For Heidegger, calculative thought is not limited to the manipulation of machine code or numbers. Rather, the concept is grounded in “Machiavellian scheming” and the pursuit of power. “Calculative thinking computes. It computes ever new, ever more promising and at the same time more economical possibilities. Calculative thinking races from one prospect to the next.”28 The threat Heidegger envisions to human thought is even more dangerous than nuclear warfare.29 10 Heidegger’s threat is based on the separation of man from his or her nature. By pursuing economic calculation, man is cut off from the transformative powers of his or her environment. In such a world, law does not have the capacity to educate or to provide the basis for social harmony;30 rather, like any resource, law must be employed to more economic ends. The implication is that calculative thinking mandates that everything (including law) be subjected to a single will. While Heidegger recognized the danger of subjecting everything to a single will, the issue of whether, and when, he equated the danger with Nazi totalitarianism, which he had originally supported, would require a line of historical inquiry far beyond the scope of this article.31 Regardless of Heidegger’s own political and moral journey, Nazism effectively illustrates Heidegger’s philosophical fear—that technological thinking risks the “ordering” of all the world, including humanity, as resources subject to a singular will.

*We do not endorse the gendered language in this card*

**Belief in our ability to technologically manage the world is part of the problem. Complete control is never possible, but more often creates cycles of paralyzing anxiety and reactive desire to take action that only recreates the crisis**

**Peat, 08 –** theoretical physicist, Ph.D., founder of the Pari Centre for New Learning (F. David, “Gentle Action: Surviving Chaos and Change”, http://www.gentleaction.org/library/paper2.php)

Many rapid changes that are taking place around us. These include globalization, developments in technology; fears of terrorism, the instability of the Third World; the rise of the Pacific Rim and a United Europe; the breakdown of inner cities; economics that appear to be out of control with the consequent challenges of inflation, recession and unemployment; spiraling health costs; revolutions in communication technology and information processing; the demands of consumers and special interest groups; threatened species and ecologies; the dangers of global warming and ozone depletion; increasing rates of teenage suicide and drugs use; the transformation of management and the breakdown of conventional institutions. Governments, institutions, organizations and individuals experience considerable anxiety in the face of such rapid change and **feel powerless to ameliorate the problems** that surround them. Indeed, it sometimes appears as if their plans and policies, as well as the traditional structures of their institutions, **are themselves part of the problem**. In so many cases policies, plans, interventions and other actions, all taken in good faith, **have not only failed to resolve an existing situation but in many cases have acted to magnify and render the problem even more intractable.** In other cases, the attempt to impose a solution in one location or context **has had the effect of creating an even larger problem elsewhere**. Organizations and individuals feel control slipping from their grasp and their natural reaction is to become even more intransigent in their attempt to clamp down on events and exert ever more control. **The result is a spiral of control that has literally gone out of control!** The realization that plans and policies are ineffective leads to a sense of depression and hopelessness. Faced with the insecurities and flux of the modern world many institutions fall into a state that, where it to be detected in an individual, would be diagnosed as manic-depression! How did this cycle of anxiety, hopelessness, panic and the desire for ever more control arise? I would argue that it is a paradigm of thought and behavior that originates in our particular view of reality, a view, moreover, that modern science had now demonstrated to be fundamentally erroneous. Thus, when our perception of the world around us is astigmatic, the actions we take become increasingly inappropriate and incongruous. It is only by entering into new modes of perception and acknowledging a new paradigm of reality that more appropriate forms of action can be taken. The Myth of Control One of the great themes of Western civilization, a theme of virtually mythic proportions, involves the way in which nature has been tamed and controlled over the course of the last few thousand years. Other cultures and civilizations have, for example, developed the techniques of farming but it appears that only the civilizations that expanded from their Neolithic birthplace in Northern Europe and the Fertile Crescent of the near East possessed the hubris necessary to impose themselves to such a marked extent upon the landscape. Thus, even in prehistoric times, European forests were cleared, marshes drained, vast tracts of land converted to farming, and tracks and walkways established as human beings sought to recreate the landscape according to their own needs. And, as ever more powerful technologies and social control became available, this path of domination continued. Within our own time, social critics have pointed out that this desire to exert control has led to our distancing ourselves from the natural world. The effect has been for us to place an **increasing faith in human reason, science, technology and the effectiveness of plans**, directives **and policies** while, at the same time, to decrease our sensitivity for the complex and subtle nature of the world around us. In short, **we tend to stand outside the world**, like observers, **indulging in constant analysis,** **making predictions and exerting corrective control** when situations do not move in the direction we desire. When human society and its associated technology were relatively simple and localized, and the resources that it called upon were unlimited, then this pattern of control was relatively successful. But as societies attempt to deal with ever more complicated issues, their boundaries became more open, their resources are found to be finite, the environment fragile, and technologies and world economics become increasingly complex then these conventional approaches simply fail. Ultimately, by virtue of its early success, the desire to dominate grew to the point where **it began to subvert itself and**, in the process, **endangered the whole planet**. And increasingly actions taken in one sphere **have unintended consequences in another**. Engaging complexity Over the last decades, however, there have been indications of a remarkable transformation within this traditional vision; a revolution in the perception of ourselves, our culture and the nature of reality that is truly Copernican in its implications. Just as in the 16th century astronomical observations were to dethrone the human race from a central place in the universe, so too in our own century relativity, quantum theory, chaos theory and systems theory, along with new insights in psychology, ecology and economics, have demonstrated the fundamental fallacy of our belief in definitive control. At the same time they are affirming our basic connectedness to the whole of creation. These scientific insights happen to have come at a time when the world has been experiencing rapid revolutionary change. States have risen and fallen. The notion of government is being transformed. Institutions are questioning their effectiveness. Businesses are desperately searching for new ways of operating. Technologies have developed so rapidly that people are unable to keep up with their implications. The overall effect has been to create **a profound sense of anxiety**, a fear that things are out of control, that the future is increasingly uncertain and that we have been left with nothing to hang on to. Yet what if this anxiety actually **points to an essential truth about the world**, that ultimately control and definitive prediction are strictly limited and that we must discover new ways of being and acting? Our current economic, social, ecological, environmental and institutional systems are now enormously complex to the extent that **we may never have complete knowledge** **about the inner dynamics of** such **systems**, nor the ability to predict exactly or exert total control. In this we can draw on metaphors from the new sciences of quantum theory, chaos theory, systems theory, and so on which also indicate essential limits to prediction, description and control. It is for such reason that so many of our plans and policies have been unable to meet the complexities of the modern world and why some supposed "solutions" have created even deeper problems and more intractable situations. The myth of eternal progress and control that has lain behind Western civilization can no longer sustain itself. The island of order and certainty on which we have been living has turned out to be not solid land but a rapidly melting iceberg, and we have no alternative but to **plunge into the boiling sea of flux, uncertainty and change that surrounds us**. The Dilemma of Action These are the dilemmas that many organizations find themselves in today, dilemmas that translate into the anxieties and uncertainties faced by many individuals. Programmed by their goals and mission statements, as well as by their very structures, many organizations inevitably seek ways of exerting control and believe that they must always take positive action in the face of uncertainty. Yet increasingly they discover that these actions are inappropriate. And so organizations, institutions, governments, groups and individuals retrench, break apart or in some other way get trapped into a spiral of ineffective decision making, paralysis and anxiety. These organizations, governments and institutions have been created according to our traditional image of reality; that is, of **a world that is external to us, predictable, relatively mechanical, and whose dynamics can be controlled** by the application of directed force. As a result, organizations are themselves relatively rigid in their nature, operating from fixed plans, policies and mission statements. Their internal structures are often hierarchical in nature, their lines of communication are limited rather than being flexible and dynamic, and their response to challenge and change is often predictable. In other words, most organizations are far less subtle and complex than the very systems they are attempting to address. **The basic problem** facing our modern world **is:** **How can society respond to the flux and challenge of the modern world** when all its institutions are inflexible and over-simplistic? When situations move more rapidly than an organization is capable of responding, policies and programs are outdated even before they are put into operation. Rather than acting to render organizations and policies more flexible, the apparatus of modern technology tends to **rigidify and entrench the problems** and rigidities that already exist within an organization. Organizations are composed of individuals and here too the conditioning of our society tends to inhibit natural creativity and abilities. Just as organizations have areas of rigidity, limitations also apply to the psychology of the individual. The issue becomes, therefore, one of freeing and fostering the natural intelligence and creativity of individuals and allowing them to operate fully within society, governments and institutions. In other words, how can organizations and individuals transform themselves so that they can become as subtle, sensitive, intelligent and fast-responding as the world around them? How can institutions heal their separation from society; society from the individual; and the individual from the natural world? Creative Suspension Paradoxically it is the very effort to change that establishes an internal resistance and rigidity that sustains the blocks that are to be removed. The first step towards transformation lies in an act of "creative suspension" and "alert watchfulness". This is an action that has the effect of relevating and making manifest the internal dynamics, rigidities, fixed positions, unexamined paradigms, interconnections and lines and levels of communication within the organization and the individual. A form of "creative suspension" is taught to paramedics and rescue workers who have to deal with serious accidents. While a layperson may wish to rush in an "help", a professional will suspend immediate response in order to make a careful assessment of the whole situation and determine how to use resources most effectively. Likewise doctors and paramedics made a visual examination of the wounded before carefully touching and then determining what medical action should be taken. The nature of this creative suspension is related to other approaches and techniques whereby unexamined assumptions and rigidities are brought into conscious awareness. For example, Sigmund Freud's notion of "non-judgmental listening" as well as various meditative practices. Artists, composers, scientists and other creative people often describe how their work unfolds from a form of creative "listening". These acts of listening and watchfulness have the effect of dissolving rigidities and rendering a system more flexible. Of course the lights will begin to flash and the alarm bells ring. Like Pavlov's dog an organization is conditioned to react and respond. But what if it does nothing--but it a very watchful way, and this applies not only to organizations but to individuals as well? The first stage will be one of panic and chaos, a flow of commands and information. All of this is not being generated by any external threat but through the internal structure of the organization itself. By remaining sensitive to what it going on it may be possible to become aware of the whole nature of the organization, of its values, the way its information flows, its internal relationships, dynamics and, in particular, its fixed and inflexible responses-- the organizational neuroses and psychoses if you like. Arthur Koestler suggested that a scientific revolution is born out of the chaos as a paradigm breaks down. It is possible that something new and more flexible could be born out of the break-down of fixed patterns in an organization, policy group or individual. Through a very active watchfulness it may be possible to detect its unexamined presuppositions, fixed values and conditioned responses and in this way allow them to dissolve by no longer giving energy to support them. The idea would be to permit the full human potential for creativity within each individual to flower, it would enable people to relate together in a more harmonious way and human needs and values to be acknowledged. In this fashion the organization or group dies and is reborn. In its new form it becomes at least as flexible and sensitive as the situation it faces. Now, using science, human creativity and the art of working with complex systems it may be possible to perceive a complex system correctly and model it within the organization. This new understanding would be the basis for a novel sort of action, **one that** **harmonizes with nature and society**, that does not desire to dominate and control and but **seeks balance and good order** and is based on respect for nature and society. Gentle Action explores images of new organizations and institutions that would be able to sustain this watchfulness. In place of relatively mechanical, hierarchical and rule-bound organizations there would exist something more organic in nature. In place of relatively mechanical, hierarchical and rule-bound organizations there would exist something more organic in nature. By way of illustrate one could draw upon ideas and concepts in systems theory, Prigogine's dissipative structures, cooperative and coherent structures in biology, neural networks, quantum interconnectedness and non-locality. In such a way organizations will be able to reach a condition in which they are as sensitive, subtle and as intelligent as the systems and situations that surround them. New Organizations, New Dynamics With this increased flexibility, organizations will now be able to internalize and model the complex dynamics of the systems that surround them. Rather than seeking to predict and control, they will now be able to enter the flux of change and engage in those actions that are appropriate to each new situation.

**Hence, our alternative: do nothing.**

**Rejecting the call to action in the face of crisis opens space for solidarity to emerge through deep reflection on our relationship with the Earth.**

**McWhorter 92,** Professor of Philosophy at Northeast Missouri State, 92 (LaDelle, Heidegger and the Earth, ed: McWhorter, p. vii-viii)

Heidegger frustrates us. At a time when the stakes are so very high and decisive action is so loudly and urgently called for, Heidegger apparently calls us to do - nothing. If we get beyond the revulsion and anger that such a call initially inspires and actually examine the feasibility of response, we begin to undergo the frustration attendant upon paradox; **how is it possible, we ask, to choose, to will, to *do nothing****?* The call itself places in question the bimodal logic of activity and passivity; it points up the paradoxical nature of our passion for action, of our passion for maintaining control. **The call itself suggests that our drive for acting decisively and forcefully is part of what must be thought through, that** the narrow option of will versus surrender is one of the power configurations of current thinking that must be allowed to dissipate.But of course, those drives and those conceptual dichotomies are part of the very structure of our self-understanding both as individuals and as a tradition and a civilization. Hence, Heidegger's call is a threatening one, requiring great courage, "the courage to make the truth of our own presuppositions and the realm of our own goals into the things that most deserve to be called in question." Heidegger's work pushes thinking to think through the assumptions that underlie both our ecological vandalism and our love of scientific solutions, assumptions that also ground the most basic patterns of our current ways of being human.

### Prolif

#### Isn’t feasible and doesn’t solve prolif

Sheen 11 – GSIS, Seoul National University, Seoul, Republic of Korea

(Seongho, “Nuclear Sovereignty versus Nuclear Security: Renewing the ROK-U.S. Atomic Energy Agreement”, The Korean Journal of Defense Analysis Vol. 23, No. 2, June 2011, 273–288, dml)

However, there are concerns over this promise. Most of all, the new technology is not feasible yet due to the high cost of building fast-reactors to burn fuel from pyroprocessing. The Generation IV International Forum (GIF) projects that the deployment of a next-generation reactor will be possible between 2020 and 2030 atbest.27 Furthermore, some U.S. experts argue that pyroprocessing is not much different from reprocessing. They argue that pyroprocessing goes through the same procedure of reprocessing. In addition, whoever acquires pyroprocessing technology will be able to reprocess spent fuel if they wanted to.28 A 2008 U.S. Department of Energy study concluded that the alternative reprocessing methods such as pyroprocessing did not offer many advantages over traditional reprocessing in reducing proliferation risks by states.29

#### Ending reprocessing is literally the best thing we can do for prolif leadership – they cause rapid spread of nuclear material that won’t occur in the status quo – we’ll beat this advantage on this card alone

**Ferguson 9** – Philip D. Reed senior fellow for science and technology at the Council on Foreign Relations

(Charles, “An Assessment of the Proliferation Risks of Spent Fuel Reprocessing and Alternative Nuclear Waste Management Strategies”, Testimony to Committee on Science and Technology, U.S. House of Representatives Hearing on “Advancing Technology for Nuclear Fuel Recycling: What Should Our Research, Development, and Demonstration Strategy Be?”, dml)

U.S. leadership is essential for charting a constructive and cooperative international course to prevent nuclear proliferation. An essential aspect of that leadership involves U.S. policy on reprocessing spent nuclear fuel. The United States has sought to prevent the spread of reprocessing facilities to other countries and to encourage countries with existing stockpiles of separated plutonium from reprocessing facilities to draw down those stockpiles. The previous administration launched the Global Nuclear Energy Partnership (GNEP), which proposed offering complete nuclear fuel services, including provision of fuel and waste management, from fuel service states to client states in order to discourage the latter group from enriching uranium or reprocessing spent nuclear fuel—activities that would contribute to giving these countries latent nuclear weapons programs. The current administration and the Congress seek to determine the best course for U.S. nuclear energy policy with the focus of this hearing on recycling or reprocessing of spent fuel and nuclear waste management strategies.¶ Here at the start, I give a brief summary of the testimony’s salient points:¶ • Reprocessing of the type currently practiced in a handful of countries poses a significant proliferation threat because of the separation of plutonium from highly radioactive fission products. A thief, if he had access, could easily carry away separated plutonium. Fortunately, this reprocessing is confined to nuclear-armed states except for Japan. If this practice spreads to other non-nuclear-weapon states the consequences for national and international security could be dire. Presently, the vast majority of the 31 states with nuclear power programs do not have reprocessing plants.¶ • The types of reprocessing examined under GNEP do not appear to offer substantial proliferation-resistant benefits, according to research sponsored by the Department of Energy. However, more research is needed to determine what additional safeguards, if any, could provide greater assurances that reprocessing methods are not misused in weapons programs and whether it is possible to have assurances of timely detection of a diversion of a significant quantity of plutonium or other fissile material.¶ • Time is on the side of the United States. There is no need to rush toward development and deployment of recycling of spent nuclear fuel. Based on the foreseeable price for uranium and uranium enrichment services, this practice is presently far more expensive than the once-through uranium fuel cycle. Nonetheless, more research is needed to determine the costs and benefits of recycling techniques coupled with fast-neutron reactors or other types of reactor technologies. This cost versus benefit analysis would concentrate on the capability of these technologies to help alleviate the nuclear waste management challenge.

#### Reprocessing allows for prolif – state and non-state actors pose equal threats

-reprocessing tech is inherently dual-use and could be redirected for a weapons program

-reprocessing creates vulnerable material that could be stolen

-also makes an implicit alt cause argument – there’s really no way the plan can do anything about vulnerable fuel in other countries

**Ferguson 9** – Philip D. Reed senior fellow for science and technology at the Council on Foreign Relations

(Charles, “An Assessment of the Proliferation Risks of Spent Fuel Reprocessing and Alternative Nuclear Waste Management Strategies”, Testimony to Committee on Science and Technology, U.S. House of Representatives Hearing on “Advancing Technology for Nuclear Fuel Recycling: What Should Our Research, Development, and Demonstration Strategy Be?”, dml)

The potential proliferation threats from reprocessing of spent nuclear fuel are twofold. First, a state operating a reprocessing plant could use that technology to divert weapons-usable fissile material into a nuclear weapons program or alternatively it could use the skills learned in operating that plant to build a clandestine reprocessing plant to extract fissile material. Second, a non-state actor such as a terrorist group could seize enough fissile material produced by a reprocessing facility in order to make an improvised nuclear device—a crude, but devastating, nuclear weapon. Such a non-state group may obtain help from insiders at the facility. While commercial reprocessing facilities have typically been well-guarded, some facilities such as those at Sellafield in the United Kingdom and Tokai-mura in Japan have not been able to account for several weapons’ worth of plutonium. This lack of accountability does not mean that the fissile material was diverted into a state or non-state weapons program. The discrepancy was most likely due to plutonium caked on piping. But an insider could exploit such a discrepancy. For commercial bulk handing facilities, several tons of plutonium can be processed annually. Thus, if even one tenth of one percent of this material were accounted for, an insider could conceivably divert about one weapon’s worth of plutonium every year.

#### Restarting domestic reprocessing quintuples the amount of vulnerable fissile material in the United States

**Ferguson 4 –** Philip D. Reed senior fellow for science and technology at the Council on Foreign Relations

(Charles, “Risks of Civilian Plutonium Programs”, <http://www.nti.org/analysis/articles/risks-civilian-plutonium-programs/>, dml)

The nuclear ploughshare offered by reprocessing to close the fuel cycle, however, leads a double-life as a nuclear sword. The same technology can allow a nation to extract plutonium for use in nuclear bombs. In 1974, the "peaceful" nuclear explosion in India served as a wake-up call to the dangers of the proliferation of reprocessing methods. India had produced plutonium in the Cirus heavy-water research reactor (which used heavy water, rather than light water, as coolant and moderator for the reactor core). Canada had provided the reactor, and the United States had supplied the initial batch of heavy water. Through the dispersion of reprocessing knowledge stemming from U.S. President Dwight Eisenhower's Atoms for Peace program, which began in December 1954, India was able to acquire all that it needed to create and extract plutonium from a modestly sized reactor.¶ India's nuclear test provoked a reversal of U.S. government policy concerning plutonium reprocessing. Until 1977, the United States had supported closing the nuclear fuel cycle. In April of that year, then-President Jimmy Carter decided to defer indefinitely commercial reprocessing of plutonium. He also sought to persuade other nations to reconsider their commitments to reprocessing on the grounds of preventing nuclear proliferation and saving money. An important venue sponsored by the United States to broadcast this message was the International Nuclear Fuel Cycle Evaluation (INFCE) Conference, but opposition from France and the United Kingdom, in particular, which had invested substantial resources into reprocessing plants, stopped the INFCE from gaining traction.¶ In 1993, the Clinton administration reiterated this 1977 U.S. government policy by stating that "the U.S. does not encourage the civil use of plutonium and, accordingly, does not itself engage in plutonium reprocessing for either nuclear power or nuclear explosive purposes."[2] (The Ford Administration laid the groundwork for the Carter decision. Just prior to the 1976 U.S. presidential election, President Ford ordered a hold on the start of a new reprocessing plant in Barnwell, South Carolina, while safeguards issues were being examined.) While the Bush administration still adheres to this policy, it has expressed strong interest in proliferation-resistant methods of reprocessing, as discussed later.¶ As suggested above, economics played a role in contributing to Carter's decision. In particular, by the mid- to late 1970s, the nuclear industry experienced a major downturn in the demand for new nuclear power plants in the United States, and there was a realization that uranium supplies were not going to run out in the coming decades. Thus, reprocessing was and remains a more expensive endeavor than using uranium-based fuels in a once-through cycle. Nonetheless, the "energy crisis" during the 1973 Organization of Petroleum Exporting Countries (OPEC) oil embargo sounded an alarm about the urgent need to invest in alternative energy resources instead of relying heavily on fossil fuels, such as petroleum and natural gas. Japan, for instance, around that time began investing significant resources into a pilot-scale reprocessing plant at Tokai-mura. Development of a commercial-scale plant at Rokkasho-mura proceeded gradually as Japan tapped into the reprocessing capabilities available in Europe. France and the United Kingdom built large reprocessing facilities at La Hague and Sellafield, respectively.¶ Despite the U.S. decision to halt plutonium reprocessing, these industrialized countries, including Russia at the Mayak RT-1 facility, have continued to separate plutonium from spent fuel. Japan has yet to commission its commercial-scale plant, but Rokkasho-mura, when completed, could reprocess about 800 metric tons of spent fuel annually yielding approximately seven metric tons of separated plutonium.¶ Reprocessing activities, to date, have accumulated a large stockpile of civilian plutonium. In particular, reprocessing plants have separated more than 200 metric tons; of that, more than 175 tons remain in storage waiting to be used in nuclear power plants. These plutonium stocks would probably have grown much larger if the United States had continued to encourage separation of plutonium. For comparison, worldwide use of nuclear power has, to date, amassed more than 1,000 metric tons of plutonium in spent nuclear fuel. Conceivably, if reprocessed, this spent fuel could more than quintuple the amount of separated civilian plutonium. The civilian plutonium stockpile is somewhat less than the estimated military plutonium inventory of about 250 metric tons. At current trends of plutonium separation and use, the civilian stocks will exceed the military supply within the next 20 years.

#### Empirics prove – reprocessing doesn’t solve spent fuel

-France is a country that had a fully operational reprocessing program – it didn’t do anything

**Ferguson 9** – Philip D. Reed senior fellow for science and technology at the Council on Foreign Relations

(Charles, “An Assessment of the Proliferation Risks of Spent Fuel Reprocessing and Alternative Nuclear Waste Management Strategies”, Testimony to Committee on Science and Technology, U.S. House of Representatives Hearing on “Advancing Technology for Nuclear Fuel Recycling: What Should Our Research, Development, and Demonstration Strategy Be?”, dml)

With respect to nuclear waste management, an important point is that reprocessing, as currently practiced, does little or nothing to alleviate this management problem. For example, France practices a once-through recycling in which plutonium is separated once, made into MOX fuel, and the spent fuel containing this MOX is not usually recycled once (although France has done some limited recycling of MOX spent fuel). The MOX spent fuel is stored pending the further development and commercialization of fast reactors. But France admits that this full deployment of a fleet of fast reactors is projected to take place at the earliest by mid-century. France will shut down later this year its only fast reactor, the prototype Phénix. Perhaps around 2020, France may have constructed another fast reactor, but the high costs of these reactors have been prohibitive. In effect, France has shifted its nuclear waste problem from the power plants to the reprocessing plant.

#### The US can’t prevent proliferation.

Mez, ‘12

[Lutz, senior Associate Professor at the Department of Political and Social Sciences, Freie Universität Berlin, and managing director of the Environmental Policy Research Centre, “Nuclear energy – any solution for sustainability and climate protection?” Energy Policy, Science Direct]

Viewed in historical terms, military use of nuclear energy has gone hand in hand with the development of civil nuclear technology, because most countries attached first priority to the development of nuclear weapons and other military uses, with production of energy in nuclear power plants at first only being a waste product. This by-product developed its own momentum, however: nuclear power became an icon for clean, highly modern technology and technological progress. Moreover, it was a risk-free, highly profitable business for operators of plants because governments paid considerable sums in subsidies and producers could pass on costs to electrical power customers. Branches of the economy which are the most intensive users of electrical power profited from cheap nuclear power —as did the militaries in countries with nuclear weapons—because civil nuclear facilities offer many possibilities for military use.¶ The borderlines between military and civil nuclear technology and thus between war and peace are often hazy (Mez et al., 2010). In order to minimize the risks of military use, regulation of civil use of nuclear energy have been contemplated within a multilateral framework for some time. The idea of establishing an international atomic energy agency (IAEA), to which states are to transfer uranium stocks and other fissionable material, was proposed by former US President Dwight D. Eisenhower in his Atoms for Peace speech3 as far back as 1953 and during the first Geneva atomic conference in 1955. The purpose of the IAEA was to develop methods to ensure that fissionable nuclear material can be used by humankind in a peaceful manner—in agriculture, medicine and energy production for countries and regions of the world with limited energy resources. The Non-Proliferation Treaty, which went into effect in 1970, constituted an attempt to prevent nuclear beggarsfrom becoming nuclear powers through civil nuclear technology transfer. In reality, however, a series of countries including Israel, India, Pakistan and North Korea have obtained nuclear weapons under the pretext of civil use of nuclear power, while other countries such as Iran are accused of having this same intention. This development shows that it is difficult to prevent nuclear weapons from being built and that there is a great likelihood that more and more countries will obtain nuclear capabilities in the future. When a nuclear infrastructure is in place and the basic material for weapons is being produced in facilities for enrichment or reprocessing—in military reactors, dual-purpose reactors or fast breeder-reactors—then it is merely a question of political will and willingness to invest in nuclear technology which decides whether a country develops nuclear weapons or not.

#### Nuclear leadership is impossible -- US arsenal creates hypocrisy and international resentment.

Perkovich, ‘8

[George, vice president for studies and director of the Nonproliferation Program at the Carnegie Endowment for International Peace, “Abolishing Nuclear Weapons: Why the United States Should Lead,” October, http://www.carnegieendowment.org/files/abolishing\_nuclear\_weapons.pdf]

This Brief summarizes four security interests that would be served by making the longterm project of abolishing nuclear weapons a central purpose of U.S. policy: preventing proliferation; preventing nuclear terrorism; reducing toward zero the unique threat of nuclear annihilation; and fostering optimism regarding U.S. global leadership. Each of these objectives can be (and has been) pursued without the larger purpose of eliminating nuclear weapons. However, the chances of success will steadily diminish if the few nuclear-armed states try to perpetuate a discriminatory order based on haves and have-nots and if they enforce it firmly against some states and hollowly against others. Such inequity breeds noncooperation and resistance when what is needed now is cooperation to prevent proliferation, nuclear terrorism, and the failure of deterrence. Why should everyone cooperate in enforcing a system that looks like it was designed to favor just a few?

#### Institutional inertia prevents any international leadership.

#### Wellen, ‘9

[Russ, a Scholars & Rogues blogger and a Foreign Policy In Focus contributor, 1-12, “Abdicating U.S. Nonproliferation Leadership,” Foreign Policy In Focus]

This is merely the last item in a list of leadership failures. Under the Bush administration, the United States has maintained much of its nuclear arsenal on hair-trigger alert, refused to renounce first-use, and sought to develop a new generation of nuclear weapons. Also, we've signed a preliminary deal to station interceptor missiles in Poland. Ostensibly intended as a defense against Iranian missiles, it's perceived as a threat by Russia, which reacted by moving missiles of its own to its border with Poland. It's natural to assume that the momentum behind these policies will decline with the Bush administration. But in reality, the engine of nuclear proliferation is a perpetual motion machine: Militaristic think tanks never stop generating strategies and networking. The think tank that's most active promoting nuclear weapons, as well as missile defense, is the National Institute of Public Policy. A product of the Reagan years, NIPP and its President, Keith Payne, later produced a study titled "Rationale and Requirements for Nuclear Forces and Arms Control," which served as a blueprint for the Bush administration's 2002 Nuclear Posture Review. But in the years between Reagan’s and George W. Bush’s presidencies, organizations like the Smith Richardson Foundation provided NIPP with grants that enabled it to continue its work advocating missile defense and withdrawal from the Anti-Ballistic Missile Treaty. It still does. Following closely is the Center for Security Policy (CSP), headed by Frank Gaffney, the hard-right ideologue whose columns scorch the Web. During the last Democratic administration, it circulated a famous letter signed by neocons far and wide urging former President Bill Clinton to attack Iraq. It also played key roles in the two Rumsfeld Commissions (one promoted missile defense; the other, space weapons), and was instrumental in abolishing the government's Arms Control and Disarmament Agency. Meanwhile, the conservative Heritage Foundation is trying to generate buzz for a documentary it's releasing early in 2009 entitled 33 Minutes, which is intended to promote (or scare viewers into acquiescing to) missile defense. Finally, in a recent interview, William Kristol intimated that the Democrats' rise to power might call for a new PNAC. The original Project for a New American Century, founded by Kristol and Robert Kagan during the Clinton years, called for the United States, dominant since the demise of the Cold War, to become a "benevolent hegemony" via, when necessary, the preemptive use of force. Also, in a recurrent conservative theme, PNAC condemned arms controllers for concentrating on getting rid of weapons, rather than the regimes that possessed them. Disarmament in Name Alone The studies, papers, and articles militaristic think tanks and individuals produce are critical for their efforts to undermine arms control while advocating weapons systems. In a policy brief for the Carnegie Endowment for International Peace entitled "Abolishing Nuclear Weapons: Why the United States Should Lead," George Perkovich wrote that, in recent years, U.S. officials "sometimes invoke lawyerly arguments either to dispute the nature of the disarmament obligation under the NPT or to argue that it is being met." A perfect example is a piece by Christopher Ford, the Bush administration's special representative for nuclear nonproliferation — until, that is, he recently resigned and himself joined a militaristic think tank, the Hudson Institute. Published by the Nonproliferation Review in November 2007 — oddly enough, the organ of an arms control organization — "Debating Disarmament: Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons" is basically a handbook of the objections conservatives have to the NPT and treaties in general, as well as their techniques for sabotaging them. With a new Democratic president, one might be inclined to dismiss such concerns. But the tricks conservatives use to defend a Republican president for dragging his feet on nonproliferation, as well as obstructing it, are the same they will use to cast an administration that dares to be sympathetic to the NPT as soft on security.

#### US won’t be able to exert prolif leadership -- too many bureaucratic constraints.

**NEI, ‘12**

[“Improved Policies for Commercial Nuclear Trade Will Create American Jobs,” June, http://www.nei.org/resourcesandstats/documentlibrary/newplants/policybrief/improved-policies-for-commercial-nuclear-trade-will-create-american-jobs?page=1]

While U.S. firms offer some of the most innovative and safest nuclear energy technologies, they are hampered by cumbersome trade regulations, lack of coordination among the federal agencies involved, an inefficient export licensing process, limited options for financing nuclear exports and the absence of an international liability regime. These companies face intense competition from suppliers in nations with less restrictive policies and substantial government subsidies for their nuclear industries. To facilitate a greater U.S. role in the global commercial nuclear market, government support must be integrated into a seamless mechanism that includes coordination of nuclear trade policy, creation of bilateral agreements, export control reform and enhanced export financing. It also is vital that the United States pursue the international adoption of effective civil nuclear liability regimes.

#### The failure to accept spent fuel undermines U.S. nuclear leadership

**BENGELSDORF, 07** – consultant and former director of both key State and Energy Department offices that are concerned with international nuclear and nonproliferation affair (HAROLD, “THE U.S. DOMESTIC CIVIL NUCLEAR INFRASTRUCTURE AND U.S. NONPROLIFERATION POLICY”, White Paper prepared for the American Council on Global Nuclear Competitiveness, May, http://www.nuclearcompetitiveness.org/images/COUNCIL\_WHITE\_PAPER\_Final.pdf) //DH

During the last several decades, the U.S. has been struggling to implement a national policy for management of commercial spent nuclear fuel, independently of whether it will result in direct disposal of the spent fuel or reprocessing and recycle. In fact, the U.S. Government is presently in protracted litigation with most U.S. utilities for monetary damages associated with DOE's inability to accept their spent fuel and dispose of it as called for in contracts that it has with each of these customers. One adverse implication that this may have on U.S. nuclear nonproliferation policy is that it seriously undermines the ability of the U.S. to offer fuel leasing or cradle- to-grave fuel cycle services to foreign countries. The ability to make such offers could be a valuable tool for discouraging the spread of sensitive nuclear technologies.

#### Expanding nuclear leadership increases tech transfer and causes prolif -- the US won’t be able to control the process.

**Keeny, ‘7**

[Spurgeon, former deputy director of the U.S Arms Control and Disarmament agency, 6-18, “PANEL II OF A COUNCIL ON FOREIGN RELATIONS SYMPOSIUM; SUBJECT: CAN NUCLEAR ENERGY GO BEYOND THE ENERGY POLICY ACT OF 2005?” Lexis]
MR. KEENY: I'd just like to add one point. Going back half a century, President Eisenhower had a well-intentioned unfortunate initiative and that his "Atoms for Peace" proposal and it was well- intentioned and was based on a thesis that nuclear power would be so commonplace that it had to be accepted as a worldwide phenomenon, and by encouraging it on our terms we would have a better role. And I think that with based on a misunderstanding status for nuclear power at that time that led to a different -- a very foolish program of spreading nuclear reactors all over the world to people who hadn't the remotest idea what to do with them -- how to use them. And -- (inaudible) -- last couple of decades trying to retrieve the remnants of that program, I think we should -- not totally analogous but should carefully examine what we do in introducing -- (off mike) -- because we're going to have to subsidize it. These really poor undeveloping countries can't afford the capital costs of any kind of nuclear program. We should be very careful in thinking it through as to whether we can control the inevitable by doing things at our initiative that will soon get out of -- (inaudible) -- not necessarily stay under our control because I think -- I sort of see that theme emerging again and themes that are strangely reminiscent of that -- (off mike) -- fast -- (inaudible).

**No motivation—terrorists want political attention not extinction**

**Moodie 2** – president of the Chemical and Biological Arms Control Institute (Brad Roberts and Michael Moodie, Biological Weapons: Toward a Threat Reduction Strategy, http://www.ndu.edu/inss/DefHor/DH15/DH15.htm)

The argument about terrorist motivation is also important. Terrorists generally have not killed as many as they have been capable of killing. This restraint seems to derive from an understanding of mass casualty attacks as both unnecessary and counterproductive. They are unnecessary because terrorists, by and large, have succeeded by conventional means. Also, they are counterproductive because they might alienate key constituencies, whether among the public, state sponsors, or the terrorist leadership group. In Brian Jenkins’ famous words, terrorists want a lot of people watching, not a lot of people dead. Others have argued that the lack of mass casualty terrorism and effective exploitation of BW has been more a matter of accident and good fortune than capability or intent. Adherents of this view, including former Secretary of Defense William Cohen, argue that “it’s not a matter of if but when.”

The attacks of September 11 would seem to settle the debate about whether terrorists have both the motivation and sophistication to exploit weapons of mass destruction for their full lethal effect. After all, those were terrorist attacks of unprecedented sophistication that seemed clearly aimed at achieving mass casualties— had the World Trade Center towers collapsed as the 1993 bombers had intended, perhaps as many as 150,000 would have died. Moreover, Osama bin Laden’s constituency would appear to be not the “Arab street” or some other political entity but his god. And terrorists answerable only to their deity have proven historically to be among the most lethal.

But this debate cannot be considered settled. Bin Laden and his followers could have killed many more on September 11 if killing as many as possible had been their primary objective. They now face the core dilemma of asymmetric warfare: how to escalate without creating new interests for the stronger power and thus the incentive to exploit its power potential more fully. Asymmetric adversaries want their stronger enemies fearful, not fully engaged—militarily or otherwise. They seek to win by preventing the stronger partner from exploiting its full potential. To kill millions in America with biological or other weapons would only commit the United States—and much of the rest of the international community—to the annihilation of the perpetrators.

### South Korea

#### Relations resilient – military exercises

**USAF, 9/5** (US Air Force, 5 September 2012, “Largest exercise wraps up in South Korea,” http://www.af.mil/news/story.asp?id=123316121)//CC

"We've wrapped up another year of successful training and planning. I am proud of the hard work and effort our service members and Korean allies have put forth," said Lt. Gen. Jan-Marc Jouas, Combined Air Component commander and 7th Air Force commander. "The (South Korea-U.S.) alliance is the strongest military alliance in the world, built on a foundation of more than 60 years of service and sacrifice, and exercises like Ulchi Freedom Guardian only make this alliance stronger." Throughout UFG, participants engaged in a simulated conflict that exercised the alliance's abilities to handle a variety of events and actions regarding current and future threats to the region. A number of realistic scenarios extending beyond defeating a conventional military attack were implemented during the 10-day exercise.

#### Alliance resilient – security and economy outweigh

**VOA, 9/8** (Voice of America, 8 September 2012, “U.S. - South Korea Enjoy A Strong Alliance,” http://editorials.voa.gov/content/us---south-korea-enjoy-a-strong-alliance-132096283/1482773.html)//CC

"The Republic of Korea is one of our strongest allies," said President Barack Obama in Washington D.C. during a joint press conference with South Korean President Lee Myung-bak: "South Koreans have served bravely with us in Afghanistan and Iraq. South Korean forces have partnered with us to counter piracy off the shores of Africa, and stem the spread of weapons of mass destruction. Once a recipient of aid, South Korea has become a donor nation, supporting development from Asia to Africa." The two Presidents praised a free trade agreement, five years in the making and newly-ratified by the U.S. Congress. It is the biggest free trade agreement that the United States has signed since the 1994 North American Free Trade Agreement with Canada and Mexico. The new pact will not only significantly engance the already vibrant trade relationship between the two countries, but will draw the people of Korea and the United states even closer together. "It’s a win for both our countries," said President Obama. But the new emphasis on trade relations will not take a back seat to the decades-long cooperation between the two countries, traditionally anchored by their opposition to communist-governed North Korea. "Because we’ve stood together, the people of South Korea, from the ruins of war, were able to build an economic miracle and become one of our largest trading partners, creating jobs and opportunity for both our peoples. Because we stood together, South Koreans were able to build a strong and thriving democracy and become a steady partner in preserving security and freedom not only on the Korean peninsula, but beyond," said President Obama: "As we expand our economic cooperation, we’re also deepening our security cooperation. Guided by our joint vision for the alliance, we agreed to continue strengthening our capabilities to deter any threat. I can never say it enough: The commitment of the United States to the defense and security of the Republic of Korea will never waver." "As we have for decades," said President Obama, "the United States will maintain our strong presence in the Asia Pacific, which is a foundation for security and prosperity in Asia in the 21st century."

**Peaceful rise and no war**

**Rosecrance and Qingguo 2010** – \*political science professor at Cal and senior fellow at Harvard’s Belfer Center for Science and International Affairs, former director of the Burkle Center for International Relations at UCLA, \*\*PhD from Cornell, Professor and Associate Dean of the School of International Studies of Peking University (Jia Qingguo and Richard Rosecrance, Global Asia, 4.4, “Delicately Poised: Are China and the US Heading for Conflict?”, <http://www.globalasia.org/l.php?c=e251>, WEA)

Will China and the US Go to War?
If one accepts the previous analysis, the answer is “no,” or at least not likely. Why?
First, despite its revolutionary past, China has gradually accepted the US-led world order and become a status quo power. It has joined most of the important inter-governmental international organizations. It has subscribed to most of the important international laws and regimes. It has not only accepted the current world order, it has become a strong supporter and defender of it. China has repeatedly argued that the authority of the United Nations and international law should be respected in the handling of international security crises. China has become an ardent advocate of multilateralism in managing international problems. And China has repeatedly defended the principle of free trade in the global effort to fight the current economic crisis, despite efforts by some countries, including the US, to resort to protectionism. To be sure, there are some aspects of the US world order that China does not like and wants to reform. However, it wishes to improve that world order rather than to destroy it.
Second, China has clearly rejected the option of territorial expansion. It argues that territorial expansion is both immoral and counterproductive: immoral because it is imperialistic and counterproductive because it does not advance one’s interests. China’s behavior shows that instead of trying to expand its territories, it has been trying to settle its border disputes through negotiation. Through persistent efforts, China has concluded quite a number of border agreements in recent years. As a result, most of its land borders are now clearly drawn and marked under agreements with its neighbors. In addition, China is engaging in negotiations to resolve its remaining border disputes and making arrangements for peaceful settlement of disputed islands and territorial waters. Finally, even on the question of Taiwan, which China believes is an indisputable part of its territory, it has adopted a policy of peaceful reunification. A country that handles territorial issues in such a manner is by no means expansionist.
Third, China has relied on trade and investment for national welfare and prestige, instead of military conquest. And like the US, Japan and Germany, China has been very successful in this regard. In fact, so successful that it really sees no other option than to continue on this path to prosperity.
Finally, after years of reforms, China increasingly finds itself sharing certain basic values with the US, such as a commitment to the free market, rule of law, human rights and democracy. Of course, there are still significant differences in terms of how China understands and practices these values. However, at a conceptual level, Beijing agrees that these are good values that it should strive to realize in practice.
A Different World
It is also important to note that certain changes in international relations since the end of World War II have made the peaceful rise of a great power more likely. To begin with, the emergence of nuclear weapons has drastically reduced the usefulness of war as a way to settle great power rivalry. By now, all great powers either have nuclear weapons or are under a nuclear umbrella. If the objective of great power rivalry is to enhance one’s interests or prestige, the sheer destructiveness of nuclear weapons means that these goals can no longer be achieved through military confrontation. Under these circumstances, countries have to find other ways to accommodate each other — something that China and the US have been doing and are likely to continue to do.
Also, globalization has made it easier for great powers to increase their national welfare and prestige through international trade and investment rather than territorial expansion. In conducting its foreign relations, the US relied more on trade and investment than territorial expansion during its rise, while Japan and Germany relied almost exclusively on international trade and investment. China, too, has found that its interests are best served by adopting the same approach.
Finally, the development of relative pacifism in the industrialized world, and indeed throughout the world since World War II, has discouraged any country from engaging in territorial expansion. There is less and less popular support for using force to address even legitimate concerns on the part of nation states. Against this background, efforts to engage in territorial expansion are likely to rally international resistance and condemnation.
Given all this, is the rise of China likely to lead to territorial expansion and war with the US? The answer is no.

**No full scale war**

Paul **Stares**, CFR Center for Preventive Action Director and Conflict Prevention Senior Fellow, 8/12/20**10**, “Handling Tensions on the Korean Peninsula," http://www.cfr.org/publication/22788/handling\_tensions\_on\_the\_korean\_peninsula.html, access 12/7/2010

Other than firing some coastal artillery and detaining a South Korean fishing boat that recently strayed into North Korea waters, Pyongyang has responded primarily with belligerent rhetoric and apocalyptic warnings. The recent ROK-U.S. naval exercises, for example, elicited threats of a "retaliatory sacred war." But by historical standards, such bombast is unexceptional. The recent North Korean provocations also pale in comparison to earlier attacks and skirmishes, most notably during the late 1960s when, among other things, the Blue House--South Korea's presidential residence--was attacked, or in the 1980s when the South Korean cabinet was bombed during a visit to Burma.

These far-worse periods of inter-Korean tensions never ignited another war, and the incentives to prevent this from happening are even greater today. South Korea fears losing its hard-won prosperity, while a much weaker North knows that it would never survive another major conflict.

#### Side-letters kill

**Hibbs, 12** SENIOR ASSOCIATE, NUCLEAR POLICY PROGRAM (Mark Hibbs, Carnegie Endowment, 7 August 2012 “Negotiating Nuclear Cooperation Agreements,” http://carnegieendowment.org/2012/08/07/negotiating-nuclear-cooperation-agreements/d98z)//CC

U.S. resolve to include a no-ENR pledge in the body of new bilateral agreements will be seen by some countries as arrogant and unacceptable. Incorporating ENR terms into side-letters or preambles may be less offensive. That approach would also more easily facilitate including reciprocal commitments by the United States into its 123 bargains with foreign countries. These might include guaranteeing nuclear fuel supply through participation in the U.S. fuel bank, facilitating the country’s access to other back-up sources of nuclear fuel, and, in the future, perhaps even taking back U.S.-origin spent fuel.

#### Alliance impact empirically denied – past 50 years of negotiations prove

**TKT, 7/24** (The Korea Times, 24 July 2012, “Conflict on nuclear pact,” http://www.koreatimes.co.kr/www/news/opinon/2012/07/202\_115815.html)//CC

Under the nuclear pact signed in 1972 and revised in 1974, Korea is barred from reprocessing its own nuclear fuel rods. The U.S. put in these restrictions out of concern that Korea could obtain materials to produce nuclear weapons if it is allowed to enrich uranium and reprocess spent fuel, which would set a bad precedent in U.S. efforts to stem nuclear proliferation.

#### Reprocessing study delays the impact for 10 years, sidesteps the alliance

**Horner, 12** editor of Arms Control Today, senior editor with the Platts Nuclear Group, which publishes Nucleonics Week, NuclearFuel, and Inside NRC, master's degree from Tufts University's Fletcher School of Law and Diplomacy and a bachelor's degree from Yale University (Daniel Horner, Arms Control Association, September 2012, “S. Korea, U.S. at Odds Over Nuclear Pact,” http://www.armscontrol.org/act/2012\_09/Sout-Korea-US-at-Odds-Over-Nuclear-Pact)//CC

The current U.S.-South Korean pact gives the United States a strong say in South Korean reprocessing of U.S.-origin fuel. Seoul wants the new agreement to give it a freer hand in activities such as pyroprocessing. In an attempt to sidestep the disagreement over pyroprocessing or at least prevent it from holding up renewal of the expiring accord, the two countries agreed to conduct a joint fuel-cycle study; work on it began last year. In an Aug. 20 e-mail to Arms Control Today, a State Department official said the purpose of the study is to “assess the technical and economic feasibility and nonproliferation aspects of spent fuel management options, including electrochemical recycling, otherwise known as pyroprocessing.” The study, which is slated to take 10 years, includes three phases, the official said. “Questions on how to proceed on spent fuel management options will be addressed once the study is completed,” the official said.

#### And, solves relations – it’s a diplomatic fig leaf

**Yurman, 8/2** (Dan Yurman, 2 August 2012, “Revisiting Reprocessing in South Korea,” http://ansnuclearcafe.org/2012/08/02/revisiting-reprocessing-in-south-korea/)//CC

A face-saving plan offered in principle by the U.S. is for South Korea to adopt a so-called “proliferation resistant” technology for reprocessing fuel called pyroprocessing. The method does not initially separate plutonium in a way that allows it to be refined for use in a nuclear weapon. The U.S. has offered South Korea financial assistance to conduct tests on the technology. Critics call this a diplomatic fig leaf, saying that eventually weapons grade material could be extracted if the country really wants it.