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**Restrictions’ must be direct and immediate limitations on production**

CJ **Veeraswami** (Former Chief Justice of the Madras High Court, India) **1966** “T.M. Kannappa Mudaliar And Ors. vs The State Of Madras” Majority opinion, <http://www.indiankanoon.org/doc/838831/>

The collection of a toll or a tax for the use of a road or for the use of a bridge or for the use of an aerodrome is no barrier or burden or deterrent to traders, who, in their absence, may have to take a longer or less convenient or more expensive route. Such compensatory taxes are no hindrance to anybody's freedom so long as they remain reasonable; but they could of course, be converted into a hindrance to the freedom of trade. If the authorities concerned really wanted to hamper anybody's trade they could easily raise the amount of tax or toll to an amount which would be prohibitive or deterrent or create other impediments which instead of facilitating trade and commerce would hamper them. It is here that the contrast, between 'freedom' (Article 301) and 'restrictions' (Articles 302 and 304) clearly appears; that which in reality facilitates trade and commerce is not a restriction, and that which in reality hampers or burdens trade and commerce is a restriction. It is the reality or substance of the matter that has to be determined. It is not possible apriori to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to a trade, but the distinction, if it has to be drawn is real and clear. For the tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory it cannot operate as a hindrance. 12. Subba Rao, J. as he then was, concurring with Das, J. took substantially the same view and observed (at page 1430);: The word ' freedom ' is not capable of precise definition, but it can be stated what would infringe or detract from the said freedom. Before a particular law can be said to infringe the said freedom, it must be ascertained whether the impugned provision operates as a restriction impeding the free movement of trade or only as a regulation facilitating the same. Restrictions obstruct the freedom, whereas regulations promote it. Police regulations, though they may superficially appear to restrict the freedom of movement, in fact provide the necessary conditions for the free movement. Regulations such as provision for lighting, speed, good condition of vehicles, timings, rule of the road and similar others, really facilitate the freedom of movement rather than retard it. So too, licensing system with compensatory fees would not be restrictions but regulatory provisions;, for without it, the necessary lines of communication such as roads, waterways and airways, cannot effectively be maintained and the freedom declared may in practice turn out to be an empty one....It is for the Court in a given case to decide whether a provision purporting to regulate trade is in fact a restriction on freedom. The further observations as to what was meant by Restrictions in Article 302 are (at page 1433): But the more difficult question is, what does the word " restrictions " mean in Article 302? The dictionary meaning of the word " restrict" is "to confine, bound, limit." Therefore any limitations placed upon the freedom is a restriction on that freedom. But the limitation must be real, direct and immediate, but not fanciful, indirect or remote....Of all the doctrines evolved in my view, the doctrine of ' direct and immediate effect' on the freedom would be a reasonable solvent to the difficult situation that might arise under our Constitution. If a law, whatever may have been its source, directly and immediately affects the free movement of trade, it would be restriction on the said freedom. But a law which may have only indirect and remote repercussions on the said freedom cannot be considered to be a restriction on it. 13. Subba Rao, J., as he then was summed up his views in the following words (at page 1436): The foregoing discussions may be summarised in the following propositions : (1) Article 301 declares a right of free movement of trade without any obstructions by way of barriers, inter-State or intra-State or other impediments operating as such barriers. (2) The said freedom is not impeded, but on the other hand, promoted by regulations creating conditions for the free movement of trade, such as, police regulations, provision for services, maintenance of roads, provision for aerodromes, wharfs, etc. with or without compensation. (3) Parliament may by law impose restrictions on such freedom in the public interest and the said law can be made by virtue of any entry with respect whereof Parliament has power to make a law. (4) The State also, in exercise of its legislative power, may impose similar restrictions, subject to the two conditions laid down in Article 304 (b) and subject to the Proviso mentioned therein. (5) Neither Parliament nor the State Legislature can make a law giving preference to one State over another or making discrimination between one State and another, by virtue of any entry in the Lists, infringing the said freedom. (6) This ban is lifted in the case of Parliament for the purpose of dealing with situations arising out of scarcity of goods in any part of the territory of India and also in the case of a State under Article 304 (h), subject to the conditions mentioned therein. And (7) the State can impose a non-discriminatory tax on goods imported from other States or the Union territory to which similar goods manufactured or produced in the State are subject. 14. It is thus well established that regulatory provisions which do not directly or immediately impede or burden the free movement of trade, commerce and intercourse but provide or intend to provide facilities for trade, commerce and intercourse are not restrictions within the meaning of Part XIII and are compatible with the freedom of trade declared by Article 301. Atiabari Tea Co., Ltd. v. State of Assam , and Automobile Transport Ltd. v. State of Rajasthan , are both cases of imposition of tax. The first was concerned with the Assam Taxation (on Goods carried by Roads or Inland Waterways) Act, 1954,, which was successfully attacked on the ground that it violated Article 301 and was not saved by Article 304 (b). The Act imposed a tax on specified goods transported by road or inland waterways in the State of Assam. The majority in that case held that the Act put a direct restriction on the freedom of trade and, since in doing so, had not complied with the provisions of Article 304 (b), it must be declared to be void. In the second case the Rajasthan Motor Vehicles Taxation Act, 1951, was impugned as violating Article 301. But the majority did not accept the contention on the view that the Act was merely a regulatory measure imposing compensatory taxes for the use of trading facilities. The scope of Article 301 was again in the light of the earlier decisions referred to in Khyerbari Tea Co. v. State of Assam , where the Assam Taxation (On goods carried by Roads or Inland Waterways) Act as amended after Atiabari Tea Co. Ltd. v. State of Assam , was attacked on various grounds but without success. 15. As already seen, the distinction between a restriction and a regulation is fine but real, though the dividing line is not capable in the nature of things of a comprehensive and satisfactory definition. The test, broadly speaking, is whether the impugned provisions lay a direct and immediate burden on the movement of trade, commerce and intercourse or are intrinsically beneficial to and provide, in the ultimate analysis, facilities for better conduct of trade, commerce and intercourse. Observed Das, J., in Automobile Transport Ltd. v. State of Rajasthan

#### They violate Restrictions – Removing export or trade restrictions is untopical—border measures are not restrictions on production

Lothar Ehring (Assistant to Mr. Péter Balás, Deputy Director-General at the Directorate-General for Trade of the European Commission, responsible for multilateral affairs, as well as trade defence instruments and bilateral trade relations with Eastern Europe and Central Asia. Until 2008, Lothar Ehring served in the Unit of the European Commission's Directorate-General for Trade that is responsible for Legal Aspects of Trade Policy. He was the Coordinator for legal issues of multilateral trade, handled several WTO disputes and also represented the European Community in the negotiations on the reform of the WTO Dispute Settlement Understanding) and Gian Franco Chinale 2011 “Regulation of Energy in International Trade Law: Wto, Nafta and Energy Charter” p. 134-5

The perfect example to test and discuss this interpretation is the famous case of OPEC production quotas. These quotas. as implemented at the national levels of OPEC members, are horizontal restrictions on production. They limit exportation no more than domestic sales, and yet the argument is made time and again that they fall foul of Article XI:I of the GATT 1994.” The proponents of this thesis recognize that they are on thin ice. given that production limitations are as remote from being border measures as a restriction can possibly be. Equally clear is the fact that a production limitation definition does not discriminate against exports, neither de jure nor de facto. The proponents of the OPEC GATT-illegality attempt to overcome this conclusion with the argument that for some of the oil exporting countries in question, the near totality of the production goes to export. This. however, is legally irrelevant to the question of whether there is a discrimination against or higher burden on exports. The quantitative relationship between domestic consumption and exports can be very imbalanced for reasons of production and consumption capacities, in large part for reasons of a country’s size and the foreign demand for the product concerned. Also the conceptual argument that a restriction on production can be decomposed into a restriction on exportation as well a restriction on domestic sales is not plausible. The production restriction is precisely and inseparably both at the same time and this makes a qualitative difference that is impossible to set aside.

#### Financial incentives are committed funds directly tied to production

Webb, 93 – lecturer in the Faculty of Law at the University of Ottawa (Kernaghan, “Thumbs, Fingers, and Pushing on String: Legal Accountability in the Use of Federal Financial Incentives”, 31 Alta. L. Rev. 501 (1993) Hein Online)

In this paper, "financial incentives" are taken to mean disbursements 18 of public funds or contingent commitments to individuals and organizations, intended to encourage, support or induce certain behaviours in accordance with express public policy objectives. They take the form of grants, contributions, repayable contributions, loans, loan guarantees and insurance, subsidies, procurement contracts and tax expenditures.19 Needless to say, the ability of government to achieve desired behaviour may vary with the type of incentive in use: up-front disbursements of funds (such as with contributions and procurement contracts) may put government in a better position to dictate the terms upon which assistance is provided than contingent disbursements such as loan guarantees and insurance. In some cases, the incentive aspects of the funding come from the conditions attached to use of the monies.20 In others, the mere existence of a program providing financial assistance for a particular activity (eg. low interest loans for a nuclear power plant, or a pulp mill) may be taken as government approval of that activity, and in that sense, an incentive to encourage that type of activity has been created.21 Given the wide variety of incentive types, it will not be possible in a paper of this length to provide anything more than a cursory discussion of some of the main incentives used.22 And, needless to say, the comments made herein concerning accountability apply to differing degrees depending upon the type of incentive under consideration.

By limiting the definition of financial incentives to initiatives where *public* *funds are* either disbursed or *contingently committed*, a large number of regulatory programs with incentive ***effects*** which exist, but in which no money is forthcoming,23 are excluded from direct examination in this paper. Such programs might be referred to as *indirect* incentives. Through elimination of indirect incentives from the scope of discussion, thedefinition of the incentive instrument becomes both more manageable and more particular. Nevertheless, it is possible that much of the approach taken here may be usefully applied to these types of indirect incentives as well.24 Also excluded from discussion here are social assistance programs such as welfare and ad hoc industry bailout initiatives because such programs are not designed primarily to *encourage* behaviours in furtherance of specific public policy objectives. In effect, these programs are assistance, but they are not incentives.

#### They violate Incentives – the plan is a nonfinancial incentive

**Shapiro**, associate – Energy, Environment & Public Utilities Practice Group @ Cozen O'Connor, publisher – Green Building Law Blog, **2011**

(Shari, “Code Green: Is 'Greening' the Building Code the Best Approach to Create a Sustainable Built Environment?” Planning & Environmental Law 63:6, p. 3-12)

The explosion of state and local green building regulations has been extraordinary and has led to interesting regulatory experimentation. Many state and local governments begin by mandating green building practices for public buildings. Some local governments have expanded that mandate to require green building practices for both public and private development, often for new construction over a certain square footage. Others have sought to encourage green building practices through financial incentives. Still others have used non-financial incentives like expedited permitting or increased density to encourage the development of green buildings.

Mandatory green building requirements work very much like traditional "command and control" environmental regulations, the Clean Water Act and the Clean Air Act being preeminent examples. Direct regulation may mandate specific green building practices or the achievement of a green building standard such as the USGBCs Leadership in Energy and Environmental Design (LEED) standard.3 Green building codes such as CALGreen, discussed in detail below, fall into this regulatory category.

Financial incentives have taken the form of direct grants from government entities,4 tax incentives, and rebates.5 Other forms of financial incentives for green buildings are rebates of the typical government-related costs of building, such as application fees.6

Local governments are also experimenting with nonfinancial incentives for green building practices. These incentives are often attractive to municipalities because they do not deplete public finances directly and are therefore easier to get passed in difficult financial times or with teluctant constituencies.7 Examples of nonfinancial incentives include increased floor-to-area ratios for green buildings8 and expedited permitting processes.

#### Vote neg for Limits – border policy involves a separate lit base that makes it impossible to anticipate topic evolution. Domestic topics are already complex on enough levels that adding a new foreign policy sector makes it unmanageable.

### PTX

**Obama PC is key to convincing the GOP to compromise on the debt ceiling and sequestration now – failure causes global economic collapse**

Michael Shear and Jonathan Weisman (writers for the International Herald Tribune) January 3, 2013 “Republicans ready for another battle; Beaten on tax increase, they're spoiling to take on U.S. borrowing limit” Lexis

President Barack Obama's eyes narrowed late Tuesday, just hours after a divided House of Representatives passed legislation to avert big income tax increases on most Americans and prevent major spending cuts, as he looked sternly into the cameras and fired a warning shot in Republicans' direction. After the bruising year-end go-around with congressional Republicans on taxes and spending, he said he had no intention of getting pulled into a new negotiation, this one over raising the nation's borrowing limit or facing a default on government debt. ''I will not have another debate with this Congress over whether or not they should pay the bills that they've already racked up through the laws that they passed,'' the president said, pausing to repeat himself. ''We can't not pay bills that we've already incurred.'' But it is not clear exactly how Mr. Obama can avoid it. Following the president's fiscal victory - which will raise tax rates for the wealthy but do little to rein in spending - Republicans in Congress are betting that their refusal to raise the $16.4 trillion debt ceiling will force Mr. Obama to the bargaining table on spending cuts and issues like reform of Medicare and Social Security. Doing so would inevitably reprise the clash over the debt ceiling in the summer of 2011, when the government came close to defaulting before lawmakers and the president agreed to a $1.2 trillion package of spending cuts in exchange for Republican agreement to raise the debt ceiling by about the same amount. That is exactly what Republicans want. The party's caucus in the House will discuss a debt ceiling strategy at a retreat this month in Williamsburg, Virginia, a top Republican aide said. Party members are determined to insist again on spending cuts that equal the increase in the amount the country is authorized to borrow, the aide said. ''The speaker told the president to his face that everything you want in life comes with a price - that doesn't change here,'' the aide said, referring to John A. Boehner, speaker of the House, which is controlled by the Republicans. ''I don't think he has any choice.'' That strategy could risk a new round of criticism aimed at Republicans from a public fed up by Washington brinksmanship. The 2011 fight ended with a last-minute deal, but led to a downgrade in the rating of the United States' debt and a slump in the economic recovery. But Brendan Buck, a spokesman for Mr. Boehner, said Republicans had made it clear what they wanted in exchange for a willingness to allow borrowing to increase. ''If they want to get the debt limit raised, they are going to have to engage and accept that reality,'' Mr. Buck said. ''The president knows that.'' Mr. Obama also knows that the Republicans he is dealing with are not the Republicans of years past; battle lines and basic demands have shifted, complicating political calculations on both sides. Just a few years ago, the new tax deal would have been a Republican fiscal fantasy, a sweeping bill that locks in virtually all of the Bush-era tax cuts, exempts almost all estates from taxation, and enshrines the former president's credo that dividends and capital gains should be taxed equally and gently. But times have changed. Before the bill's final passage on Tuesday, House Republican leaders struggled all day to quell a revolt among caucus members who threatened to blow up a hard-fought compromise that they could easily have framed as a victory. Many House Republicans seemed almost determined to put themselves in a position to be blamed for sending the economy into a tailspin under the weight of automatic tax increases and spending cuts. The latest internal party struggle on Capitol Hill surprised even Senate Republicans, who had voted overwhelmingly for a deal largely hashed out by their leader, Mitch McConnell of Kentucky, along with Vice President Joseph R. Biden Jr.; only 5 of the chamber's 47 Republicans voted no. Yet 21 hours later, the same measure was opposed by 151 of the 236 Republicans voting in the House. It was further proof that House Republicans are a new breed, less enamored of tax cuts per se than they are driven to shrink government through steep spending cuts. Protecting nearly 99 percent of the nation's households from an income tax increase, as the bill will do, was not enough if taxes rose on some and government spending was untouched. The Republicans' intense focus on cutting spending is not news to the White House; it has been on notice for months that Republicans view the debt ceiling as leverage in the next budget fight. Now, the question is what Mr. Obama and his advisers can do to avoid that fight. Mr. Obama will have to make sure that lawmakers in his own party hold firm. While the president no longer has to worry about another election, Democratic lawmakers in the House and Senate do, and they may be more willing to negotiate in order to avoid a potential government default. The White House might also turn to business executives for help. Many top executives fear that a debt ceiling crisis could wallop the U.S. economy just as it is beginning to grow again - and just as the new fiscal deal brings some of the tax certainty that the financial community has long demanded. Those executives might try to pressure Republican lawmakers not to use the country's credit as a negotiating tool. Mr. Obama might also take to the road again, using the power of his office to secure public backing for his argument that another debt-ceiling fight could bring economic crisis. Public surveys after the last debt ceiling fight suggested that people largely blamed Republicans for the threat of a default. The president and his aides have signaled that they will try to explain to the public that the increase in the borrowing limit is needed to cover debts that the government has incurred. Mr. Obama offered a dire warning in his statement on Tuesday of what would happen if the country did not meet its obligations. ''If Congress refuses to give the United States government the ability to pay these bills on time,'' he said, ''the consequences for the entire global economy would be catastrophic - far worse than the impact of a fiscal cliff.'' The fiscal bill not only worked up the dander of many Republicans; it gave some Democrats pause, since it would make permanent virtually all of the Bush tax cuts. That is a goal that President George W. Bush spent years chasing, and the achievement of which Ari Fleischer, a Bush press secretary, called ''fantastic'' even while bemoaning the failure to bring down spending levels. It would make permanent five of the six income tax rates created in 2001 by the first Bush tax cut. It would codify Mr. Bush's successful push, in 2003, to make tax rates on dividends and capital gains equal so that one form of investment income is not favored over the other. Democrats say they had little choice. The Bush White House and Republican Congresses structured the tax cuts so that letting them expire would be politically difficult. Add the across-the-board spending cuts if Congress did nothing, and Mr. Obama felt he had to extend most of the tax cuts or watch the economy sink back into recession. ''New occasions make for new truths,'' said Representative Danny K. Davis, an Illinois Democrat and a veteran of the partisan wars over the Bush tax cuts. ''New situations make ancient remedies uncouth.'' Most galling for Republicans are provisions projected to add $330 billion in spending over 10 years, including $30 billion in unemployment compensation and $21 billion in payments to Medicare health providers. None of those provisions are objectionable on its own, but collectively they proved almost impossible for Republicans to accept. In the coming days and weeks, Mr. Obama is likely to try to focus negotiations on another looming issue: how to avoid deep, across-the-board cuts to military and domestic programs. The deal passed on Tuesday postpones those cuts for two months, but Mr. Obama and lawmakers in both parties are eager to avoid them, with Republicans focused more on military cuts and Democrats on domestic programs. Instead, the president wants a debate over spending cuts and tax changes that would remove loopholes and deductions for wealthy Americans. That fight is coming. The question is whether the president can avoid conducting it in the middle of a nasty, drawn-out debate over the debt limit.

#### Exports unpopular – almost every constituency

**Levi, ’12** David M. Rubenstein Senior Fellow for Energy and the Environment at the Council on Foreign Relations (CFR) and Director of the CFR program on energy security and climate change (Michael Levi, The Hamilton Project, June 2012, “A Strategy for US Natural Gas Exports,” [http://www.hamiltonproject.org/files/downloads\_and\_links/06\_exports\_levi.pdf)//CC](http://www.hamiltonproject.org/files/downloads_and_links/06_exports_levi.pdf%29//CC)

A revolution in U.S. natural gas production has forced policymakers to decide whether they should allow exports of LNG from the United States. They should say yes, within prudent limits, and leverage U.S. exports for broader gain. Yet the mere fact that the benefits of allowing exports would outweigh the costs does not mean that the political fight over allowing LNG exports will be tame. Operators of natural gas power plants will likely oppose exports, as will energy intensive manufacturers, though chemicals producers, if they are sufficiently enlightened, may take a more moderate stance. Most environmental advocates who are concerned with the local impacts of shale gas development will likely join in opposition, as will those who are convinced that gas should be trapped for use in cars and trucks, and those who believe that any rise in consumer energy prices is unacceptable. The most prominent proponents of exports will likely be oil and gas companies and advocates of liberal trade, perhaps along with a broader group of foreign policy strategists that finds the prospect of disrupting relations between gas-producing and gas-consuming countries appealing, as well as supporters of renewable power who see cheap natural gas as competition (Schrag 2012). Any decision on LNG exports is likely to be controversial. Enlightened leadership and a strategy that mitigates downsides for poorer consumers and the local environment are essential to a smart strategy for constructively moving exports forward.

**The plan obliterates any chance for compromise—Obama won’t have the negotiating position**

Richard McGregor (writer for the Financial Times) January 2, 2013 “Fiscal fights threaten US policy goals” <http://www.ft.com/cms/s/0/8f8ef804-5501-11e2-a628-00144feab49a.html?ftcamp=published_links%2Frss%2Fworld%2Ffeed%2F%2Fproduct#axzz2GtNWiw3I>

In the short term, fiscal fights will dominate politics for months to come and threaten to crowd out serious consideration of other issues, with a large potential downside for the economy in 2013. The fiscal cliff compromise alone will act as a drag on the economy, largely because of the end of the payroll tax holiday, which had added substantially to middle-class incomes, economists said. “The economy needs a stimulus, but under the agreement, taxes will go up in 2013 relative to 2012,” said William Gale of the Tax Policy Center in Washington in a blog post. “For most households, the payroll tax takes a far bigger bite than the income tax does, and the payroll tax cut therefore was a more effective stimulus than income tax cuts were.” The forthcoming confrontations will probably have a similar impact, as Republicans feel they enter talks over raising the debt ceiling in the coming weeks playing a far stronger hand than they had in the fiscal cliff. Under the fiscal cliff, taxes were going up no matter what Republicans did. The debt ceiling, however, cannot be lifted unless they vote for it. Barack Obama’s new cabinet will form the backbone of his administration, setting the tone for his second term in the White House Dave Camp, who chairs the congressional committee overseeing tax policy, said that House Republicans had not settled on a strategy for the debt ceiling but the central aim was to leverage it to cut spending further. “Before we raise the debt limit we have to reduce spending,” Mr Camp said. Many Republicans are less diplomatic in private and see the debt ceiling fight as a chance to get revenge both on the White House and the dealmakers within their own party for being forced into accepting a tax increase this week. Of all the issues crowding Mr Obama’s agenda, immigration has the best hope of passing in some form, as the disastrous vote recorded by Republicans among minorities in 2012 gives them a huge incentive to address the issue. But on everything else, with the Republicans remaining in control of the House, Mr Obama needs all the skills of cajoling, seducing and manipulating Congress that he has so far shown no signs of developing. “I find it remarkable that the president apparently continues to believe that he will not have to deal with people that he does not agree with,” said Mr Galston. “A president who is not disdainful of the art of legislating can get things done.” Forging a consensus on issues such as gun control and climate change, if the White House does take them on, will require Mr Obama to do more than just persuade some Republicans to support him. Many Democrats are wary of such reforms or oppose them outright, and a second-term president with declining political capital will face an uphill battle to shift their views.

### K

**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.

### CP

#### The United States federal government should approve all pending coal export applications. Russia should implement liberalization reforms as per the Shevstova evidence. The United States federal government should form an ad hoc commission on reactors per our Clemons evidence.

#### Solves trade and alt causes to your advantage – coal and Keystone

**Conclusion of their Neely ev, ’12** (Josiah, “Environmentalism’s Sword: Protectionism”, MasterResource, August 30, p.http://www.masterresource.org/2012/08/environmentalism-sword-protectionism/)//CC

Environmentalist groups have also sought to prevent coal exports, successfully blocking the expansion of a coal export facility at the Port of Grays Harbor in Washington state. In Oregon, plans for a similar expansion prompted the state’s Democratic Governor to call for a federal environmental review. And then there’s Keystone XL. The proposed pipeline by TransCanada would bring shale oil from the Alberta Tar Sands down through the United States to refineries along the Gulf Coast of Texas. Keystone provoked massive opposition among environmental groups. Approval of the pipeline was first delayed by the Obama Administration, then rejected outright after Congress forced a decision on the issue. The rationale for each of these actions turns the traditional case for free trade on its head. By preventing the transportation of energy into and out of the country, environmentalists hope to lower overall energy consumption and thus stave off the effects of global warming. Walling ourselves off from world energy markets is unlikely to have much of an effect on global energy demand.

#### Solves reactor crisis

**Conclusion of your Clemons ev** (editor for the Atlantic, March 30, 2012 The Atlantic – Steve, “Japan Heading for Energy Death Spiral?” )//CC

One solution he thinks is for former US Nuclear Regulatory Commission commissioners and other US-based, respected nuclear energy experts form an ad hoc commission designed to consult with the Japanese nuclear energy industry and political authorities -- and to create what would be a bilateral, or perhaps even an international, peer review structure. This might allow Japanese citizens to possibly fasten their trust in the international Commission even if doubtful about the solvency of their own business, political, and energy leaders.

### Condo Good

### Trade

**Trade doesn’t solve war**

**Goldstone 2007** (P.R., PhD candidate in the Department of Political Science and a member of the Security Studies Program at the Massachusetts Institute of Technology. He is a non-resident research fellow at the Center for Peace and Security Studies, Georgetown University, AlterNet, September 25, http://www.alternet.org/audits/62848/?page=entire)

Many hope trade will constrain or perhaps pacify a rising China, resurgent Russia, and proliferation-minded Iran, as it well may. Nonetheless, any prudent analysis must incorporate caveats drawn from states' particular political economy of security policy. In non-democratic states, however important global markets may be to the economy in aggregate, elites will be most sensitive to sectoral interests of their specific power base. This mismatch can cause systematic distortions in their ability to interpret other states' strategic signals correctly when genuine conflicts of interest emerge with a nation more domestically constrained. Leadership elites drawn from domestic-oriented, uncompetitive, or non-tradable constituencies will tend to discount deterrent signals sent by trading partners whose own domestic institutions favor those commerce-oriented interests, believing such interests make partners less likely to fulfill their threats. For example, one reason the BJP government of India decided to achieve an open nuclear weapons capability was that its small-business, domestic-oriented heart constituency was both less vulnerable to trade sanctions and less willing to believe that the US would either impose or long sustain such sanctions, given its own increased economic interests in India. Sometimes, deterrent signals may not be sent at all, since one nation's governing coalition may include commerce-dependent groups whose interests prevent state leaders from actually undertaking necessary balancing responses or issuing potent signals of resolve in the first place; the result can be fatally muddled strategy and even war -- as witness the series of weak attempts before the First World War by finance-dominated Britain to deter "Iron and Rye"-dominated Germany. The emergence of truly global markets makes it all the less plausible under most circumstances that a revisionist state will be unable to find some alternative source of resources or outlet for its goods. Ironically, the more the international economy resembles a true global marketplace rather than an oligopolistic economic forum, the less likely it would appear that aggressors must inevitably suffer lasting retaliatory cut-offs in trade. There will always be someone else with the capability to buy and sell.

#### No impact to trade wars

Lester, 9/10/12 (Simon a trade policy analyst at the Cato Institute, “A New Kind of Trade War” , http://www.unitedliberty.org/articles/11178-a-new-kind-of-trade-war)

In the past, a “trade war” was something to be avoided at all costs.  It meant a spiral of protectionist measures:  one country would adopt some form of protectionism, and its trading partners would respond in kind.  The impact on the global economy could be disastrous.

Today, by contrast, trade conflict often involves a tit-for-tat litigation process in which countries challenge each other’s trade barriers before the World Trade Organization.  The result can actually be beneficial, as successful complaints usually lead to the removal of trade restrictions.  As a result, the “trade wars” of today may lead to less protectionism rather than more.

### Japan

#### Reactors restarting, contingency plans solve, and the aff kills the economy

**Tabuch, 8/29** (Hiroko Tabuch, 29 August 2012, “Japan Strives to Go Nuclear-Free,” http://www.nytimes.com/2012/08/30/business/energy-environment/japan-faces-costs-of-closing-reactors.html?pagewanted=all&\_r=0)//CC

As Japan moves to cut back on nuclear power after last year’s disaster in Fukushima, it is running into a harsh economic reality: the cost of immediately abandoning its nuclear reactors may be too high for some big utilities to shoulder.

If the country’s 50 nuclear reactors were permanently closed this year, power companies would be hit with losses totaling 4.4 trillion yen ($55.9 billion), rendering at least four of them insolvent, according to calculations this summer by the government’s Agency for Natural Resources and Energy. The extraordinary costs of an immediate shutdown have emerged as a major concern for the Japanese government, which has struggled to balance the desire for improved nuclear safety with the bottom-line realities of the big utilities. Nuclear plants generated about one-third of Japan’s electricity before the Fukushima accident, but most remain at least temporarily offline. “People talk easily about shutting down Japan’s nuclear power plants, but the economic and financial consequences are severe,” said Reiji Takeishi, professor in environmental economics at Tokyo International University. The government is now considering at least three options to reduce the country’s dependence on nuclear power — and all of them would give the power companies until 2030 to shut their reactors permanently, allowing them to largely recoup their plant investments. By 2030 the majority of reactors would be older than 40 years and would face decommissioning anyway under Japanese guidelines.

### Gazprom