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Political Adaption to a Technology Surfeited Society: Comment

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COMMENT

BY MASON WILLRICH

LET me be brief in commenting on Frank Huddle's paper and then I will discuss some problems of legal education that we should address. Let me focus first on the problem of the need for national goals. This is always a great dilemma and I gathered, despite the President's commission report on the subject, that there is very little chance of making any progress on national goals. Perhaps the history of that commission bears out this conclusion. Even if we were to adopt some goals in an affirmative sense, the greatest risk might not be that we would attempt to blindly follow the goals that we set out. I question whether we have the wisdom to arrive at wise goals.

The Ten Commandments are a series of "thou shalt nots" and I would suggest, in terms of goals, that we should address our attention to the need for ecological commandments of this negative sort. The real priority is again one of human values beginning with survival, secondarily human health, and thirdly human welfare. But I would suggest that we think at the national level, in terms of some very strong "thou shalt nots."

Since human survival, health, and welfare are goals common to all nations, it would seem logical to consider the international impact of our goals, or our "thou shalt not" commandments. Many of the solutions which we propose will become undone by competition at the international level because we only represent a piece of the problem. On the other hand, our country, with 6 percent of the world's population, is consuming 40 percent of the world's resources and contributing 40 percent of the world's pollution. Any ecological goals that we set, and attain, are bound to make a big dent in global problems. If we can arrive at some commandments which we apply first of all to ourselves, we may indeed arrive at a situation where our pattern may be emulated to some extent on an international level.

In terms of the commandments, we must grapple with the problem of "scale," which was mentioned yesterday. I think that in the future we have to scale down everything we do. We must somehow permit human heroes to emerge again. Perhaps for the benefit of the lawyers we could draw an analogy. Antitrust laws are designed to preserve a particular environment, an economic environment where competition and a certain amount of free enterprise prevail. If we could take an approach to this problem of scale in technological enterprise that was administered on a simple size approach, perhaps something would be achieved at the national level. It would be a matter of saying that is too

big or there is too much risk involved in the size of that technological creation. Assuming that the national goals should be "negative," and basically protective or conservative, I would suggest that the positive goals be formulated at the local level. Hopefully we will have plenty of room for pluralism and diversity. And at the local level we need a reassertion of local government initiative. The power should really flow *out* of Washington. We are not going to get anywhere, in a positive sense, by thinking in broad national categories. We have heard over and over again that science and technology is a universal problem. Well it is indeed, but in terms of its application there are impacts on individual people and on people in very localized situations. Hopefully a social environment would evolve in which there is real competition among various localities. Our thinking could be done in manageable political units, not necessarily pointed at large scale solutions. We could break the problems down so that they are small enough to gain some success. I am just suggesting that we think in terms of a rebirth of the city-state concept within this country.

I am troubled by the degree of rationalization that we have found necessary in order to condone putting nontechnical professionals into the area of technological assessment. Any technological assessment is going to be dominated by uncertainties. I think we could unwisely spend an inordinate amount of our intellectual effort trying to refine one small "certain" part of a larger "uncertain" problem. The areas of uncertainty are just too vast and despite everything we are going to have to make some choices because the problems are going to demand decisions, whether wise or not. If we have these negative commandments as guidelines we can at least take a conservative approach to these problems.

As to the implications of my preceding remarks for legal education, I would try to revive again the concept of the lawyer as a social architect, perhaps more architect than engineer. I would also build in much more conservatism in the outlook of the law. We must begin to reject what I view as reckless reliance on past decisions and on our history of successful discovery of natural resources. History will not repeat itself if there are no resources to locate. A more realistic view would be to look at future needs and to plot our technological decisions against the fact that the "spaceship earth" does indeed have limitations. In developing rules to operate this "spaceship earth" we must be conservative if we intend to have the spaceship around much longer.

Finally, I am troubled by the student who says, "[j]ust clean up the air, it's as simple as that." I think this student has a point that we try to avoid by saying that the problem is just too complicated for a simple decision. We follow that up by listening to what we can do about the problem and then putting forth an enormous effort to invent

a social technology to make the decision. The social decision is just as complicated as the hard core technology itself. I have the impression that the social technology that we are trying to invent is going to function about as effectively as the hard core technology.

There is an argument to be made on behalf of simplicity. I think that in terms of education, legal and otherwise, we have to instill or reinstill the notion of the need for simplicity in terms of how we relate to people through things. I do not think that the problems we are grappling with here can be studied in legal education alone. These problems embrace the whole university. Law schools are a unique American institution. England, for example, does not have any law schools and yet they produced some fine legal practitioners and have not suffered a shortage of lawyers. In Europe there are no law schools and in Latin America there are no law schools, but we have them here. The notion that somehow the law schools should become the center of policy analysis is to me, a little bit overbearing. Consider the possibility of providing some portion of legal education at the college level. The young people want to get involved and they want to get out into the world. We insist that they drag out their adolescence for seven years before entering a law firm, and in fact, a lot of them wind up behaving like adolescents for seven years. But it seems to me that we might at least try turning out some lawyers with 5 years of education after secondary school.

Furthermore, I am very concerned about the general availability of legal education to various people. As I mentioned last night, if you make legal education into a postgraduate 3-year curriculum and insist on full-time participation, the implications in terms of the kinds of people who have access to legal education are obvious. We face this problem in terms of being able to recruit blacks and the people who really want some law on their side but who presently do not have it. They are not going to get it in our present educational process. If we put some legal education into the undergraduate school at least we have broadened the base of opportunity to go into the study of law.