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Chaos and Beyond

The Best of Trajectories

Jury Nullification: Freedom's Last Chance

An old idea has resurfaced that may have major potential to slow or even

reverse the terrifying erosion of the Bill of Rights under the Reagan-Bush

team and their right-wing Supreme Court. I refer to the revival of the ancient

Saxon doctrine of Jury Nullification which has now become a projected

Constitutional amendment under consideration in 22 states.

Since Mr. Justice Brennan, the last plumb-line defender of civil liberties,

has retired, and the Supreme Court seems fated to move even further toward the

authoritarian right-wing, only Jury Nullification can preserve what still

remains in this perishing Republic of Anglo-American libertarianism.

Jury Nullification rests upon an old Common Law principle (which Lysander

Spooner in his scholarly "Essay on Trial by Jury" [1852] proved to underlie

the Jury clause of Magna Carta) -- viz, that the only way to prevent the

government from imposing unjust or nefarious laws is to grant juries the right

to negate such laws. This right, as Spooner demonstrated, explains the

tradition that a jury should consist of twelve citizens selected at random and

thereby representing (as far as scientifically possible) the full range of

common sense and common morality of the population in general (including the

recalcitrants and cranks among us, upon whom liberty has always depended in

bad times.)

In a once popular formulation, the doctrine of Jury Nullification holds that

"a jury may judge the law as well as the facts in the case." Since Magna Carta

this has been repeatedly upheld by courts in both England and America, only

occasionally denied by lower, and currently remains the law of both countries,

although judges have no legal obligations to inform juries that they possess

this right.

In fact, in one infamous decision, in the 1890s, the U.S. Supreme Court upheld

the right of Jury Nullification but simultaneously ruled that the judge not

only doesn't have to tell the jury they have this right but can prevent the

defense attorney from telling them. In other words, American juries have the

right to nullify the law, but the judge, if so inclined, can do everything in

her or his power to prevent them from knowing it.

In only one state out of the 50 -- Maryland -- does the State Constitution

oblige the judge to inform the jury that they have the right to acquit where

the facts prove the defendent technically guilty but the sensibility of the

jury holds that he or she did no real wrong. In the other 49 states, the right

exists nebulously, like a ghost, haunting old parchments; judges do not talk

about it, and juries, not knowing that they hold in their hands the final

checkmate against tyranny, do not exercise the authority they possess.

As Lord Denman wrote (in O'Connel vs. Rex, 1884): "Every jury in the land is

tampered with and falsely instructed by the judge when it is told that it must

accept as the law that which has been given to them, or that they must bring

in a certain verdict, or that they can decide only the facts of the case."

Outside Maryland, every jury in America is still tampered with and falsely

instructed in this manner.

The Fully Informed Jury Amendment can change all this, since it would require

judges to inform juries of their right to judge the law as well as the facts

and to refuse to enforce any law they find repugnant, tyrannical, nefarious,

or just plain idiotic.

Under the current government, we can expect abortion to become illegal again,

and some women will die in back alleys the way they did before Roe v. Wade.

But an informed jury can nullify any anti-abortion law by refusing to convict

doctors or patients or the counselors who send the patients to the doctors.

They can nullify the law "in the teeth of the facts" of the case; and even one

informed juror can hang the jury and cause a mistrial.

Similarly, the present idiotic "war" on drugs will continue indefinitely, at a

cost of billions, with further erosion of the Constitution, and with no

tangible good results credible to anyone with more than half an inch of

forehead. But an informed juror can again cause a mistrial. Certainly, the

anti-pot law, the silliest of our drug laws, could not survive, in a nation

with at least 70 million pot-heads, if juries knew they had the right of

nullification.

In the landmark William Penn case in England in the 1670's, the State proved

beyond doubt that Penn "was guilty"; i.e. he did consciously and deliberately

violate the law by preaching in a public street a religion not that of the

Anglican Church. The jury refused to convict, finding religious persecutions

repugnant. The judge, in a fury, confined them to the Tower of London until

they would agree to convict. After those twelve ordinary unheroic Englishmen

had served enough time in the Tower, public opinion forced the judge to

reverse himself and admit the jury had the right to decide the law as well as

the facts. And that, children, is how religious liberty came to birth in the

modern world after 200 years of bloody religious wars: 12 simple men who felt

sick and tired of religious bigotry and refused to enforce an intolerant law.

Similarly, in the John Peter Zenger case (New York, 1734), the State proved

conclusively that Zenger violated the law by printing anti-government articles

in his newspaper, the New York Weekly Journal. The jury simply refused to

convict him and nullified the law. That was the beginning of freedom of the

press in this country, even before the Revolution and the First Amendment.

As in Penn's and Zenger's day, Anglo-American juries today still have the

right to cry "Halt!" to any government that tramples upon human liberty; and

even if the FIJ Amendment does not pass all 50 states in the near future, the

very fact that it exists and is receiving publicity means that some jurors at

least will know their rights when they enter the jury box.

For further information, visit the FIJA Website or call 1-800-TEL-JURY for

introductory information.

The Future of the Future

There was a Fundamentalist Futurist back in the 1890's who demonstrated that

New York City would be abandoned as unfit for habitation by the 1930s. His

argument was based on projection forward of population trends, and he

correctly estimated that population would grow from 4 million to over 7

million in 40 years. (He didn't guess it would reach over 12 million by now.)

It was then obvious, he said, that the amount of horses necessary to provide

transportation for that many people would result in a public health hazard of

incredible dimensions: there would be horse manure up to the third floor

windows everywhere in Manhattan.

This illustrates the most frequent fallacy found in Future projections: the

"elementalistic fallacy" named by Alfred Korzybski. The elementalistic fallacy

as Korzybski noted, seems to be built into our very language. We can talk

about Joe Smith in isolation from his (or any) environment; we can therefore

think about Mr. Smith in such fictitious isolation; and in such

"elementalistic fallacy" we will always draw wrong conclusions, because Mr.

Smith cannot exist without some environment. (He will explode in a vacuum, and

without a social world his mind will similarly explode -- or implode -- or at

least mutate shockingly, as isolation experiments have shown. )

Projecting population forward without projecting other factors forward has

produced numerous elementalistic fallacies similar to thinking of Joe Smith

without an environment. Malthus, for instance, "proved" that population will

always increase faster than resources, but this was disproven by technological

history, and we now understand that "resources" only exist when identified by

analysis and each new discovery in pure science shows us new resources

everywhere.

One example: the Newtonian system allowed us to tap 0.001 per cent of the

energy in a glass of water; 19th Century thermodynamics showed us how to tap

0.01 per cent of that energy; we can now tap 1.0 per cent. Nobody knows how

much we'll be able to tap in 50 years.

Elementalistic fallacies abound in Future projections (including my own). We

are only gradually and gropingly learning to think "non-elementalistically"

(in Korzybski's phrase) or "synergetically" as Bucky Fuller liked to say. I

have found one quick way to avoid the more obvious elementalistic and

Fundamentalistic errors, which is this:

Whenever I project one trend forward, I then re-analyze the situation,

projecting at minimum five other trends forward also.

For instance, lifespan and population have both been increasing in the past

200 years. Projecting these trends forward elementalistically (in isolation)

has led to some notable Doomsday scenarios in which humanity overcrowds itself

to death. An entirely different picture emerges, however, if one projects

these trends synergetically along with five other trends, such as:

The effect of industrialism on population. As documented by Fuller (Critical

Path) a nation's population only rises rapidly in the transition from

feudalism to industrialism, then levels off when industrialism is well

established in a country.

The emergence of Feminism and self-choice among women, beginning with the

18th century radicalism of Mary Wollstonecraft and now including Women's

Liberation movements in all parts of the world -- even dawningly in Islamic

nations.

The movement of communication technology into space, with clear trends

indicating that "industrial" (or more likely, post-industrial) technology

will follow, with workers and then families and then schools and grocers and

museums, etc. moving into space colonies.

The continued improvement in birth control technology and the fading line

between contraception and abortion. There is already a heated debate, for

instance, about whether certain devices -- e.g. the IUD -- "are" or "are

not" abortifacients.

The neuroscience revolution (or H.E.A.D. Revolution -- Hedonic Engineering

And Development) with its increasing promise that humans in the near future

will achieve more freedom from mechanical conditioned reflexes (both

"physical" and "mental") than ever before.

Whenever I try to project all five of these trends even 40 years into the

future, I find the "overcrowding" problem seems less likely than New York

being buried in horse manure. To get a feel for synergetic thinking, try your

own projection, "guestimating" what the next decade will bring in each of

these fields, and the decade after that, and so on, to 2029.

Sex, Satanism, and Sodomized Dogs in Southern California

The Manhattan Beach Satanism/porno/child abuse case has at last come to a

climax, or at least a temporary anticlimax.

After all the hysteria and hoopla about devil worship, a sodomized dog, other

tortured animals, a "kiddie porn" industry in the schools, and assorted rites

of Voodoo and Black Magic; after the closure of schools and the repeated

vandalization of a church; after the ruin of dozens of careers and severe

damage to hundreds of lives; the final tallies, as far as we can determine,

run about as follows:

Number of Manhattan Beach schools accused by rumor of having Satanic

teachers during the original 1983 panic: 9

Number of churches similarly accused: 1

Total number of institutions accused: (9+1) =10

Additional charges circulated:

"An AWOL Marine sodomized the dog of one of the molested children!"

"Teachers at the nine schools belonged to a child pornography ring!"

"Teachers also belonged to a Satanic cult!"

"The cult existed not only in Manhattan Beach and nearby towns but

throughout the United States!"

"Animal mutilations and bloody sacrifices occurred in all local schools and

at one local Protestant church, St. Cross Episcopal in Hermosa Beach!"

"Hundreds of children had suffered molestation or had unwillingly

participated in Satanic rituals!"

"Heavy Metal Rock caused it all; if you play certain records backwards, you

can hear voices saying Satan is my Master!!!"

Additional interesting information:

Number of teachers accused of child molestation and/or Satanic rituals: no

exact figure can be found now, but somewhere in the neighborhood of one

hundred.

Mental status of original complaining witness: Previously judged paranoid

schizophrenic by psychiatrists; at the time she made the charges, receiving

Welfare on grounds of continued paranoid schizophrenia.

Number of Manhattan Beach institutions at which the District Attorney

finally decided enough evidence existed to indict suspects: one out of the

nine schools (the McMartin Pre-School), or 11.1% Including the church, one

out of the 10 institutions, or 10%

Fate of the 8 schools at which prosecutors found insufficient evidence to

indict: Due to public hostility, all 8 closed down and never re-opened.

Fate of the McMartin school: Sold to pay legal expenses of defendents.

Disposition of the alleged "Satanic" St. Cross Episcopal Church: No evidence

to indict found by D.A.; however, under harassment and death threats, the

pastor closed the church and moved to another part of the country.

Evidence of Satanic rituals considered by the D.A. strong enough to bring

into court: None (0.0%)

Evidence of a "child pornography ring" strong enough to bring into court:

None (0.0%)

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