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Just Decisions

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Professor Dorsey was a first-term student at Yale Law School during the spring of 1946. Concurrently, F.S.C. Northrop's The Meeting of East and West was first published. This book's tremendous impact reached far beyond the field of philosophy of culture. Profiled in "The New Yorker" and quoted by "Life," Professor Northrop was invited to speak across the United States and abroad. Northrop's book made the definitive case for the influence of culture upon society and law. The Meeting of East and West demonstrated some of the radical differences in the world's cultures. Accordingly, Northrop argues, attempts to achieve international peace and justice must reckon with cultural differences. Professor Dorsey was utterly convinced, visited with Professor Northrop, and promptly enrolled in Northrop's course in the Philosophy of Culture in Yale's Silliman College.

Professor Dorsey, however, was troubled by one aspect of Northrop's thought—what Edel and Flower refer to as his "epistemological determinism." To Professor Dorsey, Professor Northrop's account of how cultural premises influence social and legal norms seemed too rationalistic. Accordingly, when Professor Dorsey joined the faculty at Washington University School of Law, he developed the courses described in the Introduction. "Jurisprudence," which examines sets of ideas about justice, did not adequately describe courses or analytical methods concerned with beliefs. Consequently, Professor Dorsey coined and adopted the term "Jurisculture."

Frank Fowle is one of Professor Dorsey's students whose thoughts and reactions contributed to the development of Jurisculture I, Jurisculture II, and their method. Because of his intense interest in the heroic traditions that sustain cultures, societies, and civilizations, the implications of Jurisculture for Fowle are more extensive and personal than those of Professor Dorsey's other students.

JUST DECISIONS*

FRANK F. FOWLE, III**

Dear Reader in the year 2074:

In the academic year 1987-88, retiring Professor Gray L. Dorsey was

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honored by his employer, Washington University Law School in St. Louis, Missouri, United States of America. Professor Dorsey had spent the greater part of his academic career working out an original theory, which he styled "Jurisculture". The Law School honored him for this work by sponsoring a "Festschrift" in which scholars across the world in Jurisprudence and International Law commented on the meaning and implications of this useful theory.

I have been selected to contribute as a former student who has been influenced by the teaching and writing of Professor Dorsey.

I have decided to address the readers in the year 2074 because it will be 86 years from the publishing of this "Festschrift". Why 86 years? That is how long it took for John Locke's ideas on natural rights in *Concerning Civil Government*, to be used by the founding fathers of the United States of America, practical men of affairs, who justified their creation of a new nation in The Declaration of Independence. The greatest honor that a scholar can ever receive is to witness his ideas benefitting society. Imagine how pleased and honored John Locke would have felt to witness his words—eighty-six years later—inspiring Americans to a point where the ideas in The Declaration of Independence were so widely shared, believed and accepted that they were held to be the "common sense" of the matter.

In a moment I would like to take one idea—equal decisional competence—from the corpus of Professor Dorsey's "Jurisculture" and offer it to the generation in being in 2074 as something that could be widely shared and appealed to by people professing the democratic faith to build a more just society.

But first let me share with you how at least one student, myself, was influenced by the teaching and writing of Professor Dorsey. Why is this useful? For the simple reason that his ideas helped me considerably in determining all my actions towards the ideal of justice. Thus, in sharing with you how this occurred, it will pay him due honor because deeds are the real test of knowledge, not written exams.

I. FOUR INFLUENCES

Professor Dorsey and his Jurisculture theory have influenced my life in four major ways: first, his jurisculture course inspired me in part to become a bard; second, it was a major catalyst that inspired me to unify all my performances around that idea of justice; third, he helped me develop

a script and obtain a booking for my premiere performance of *The Declaration of Independence*; fourth, his book, *American Freedoms*, continues to exert an influence on me as one of the finest fruits of his Jurisculture theory. And his idea of equal decisional competence originates in this little big book.

A. The first influence: I am a bard. I tell of the deeds of heroes. The genesis of my becoming a bard occurred during the second semester of Professor Dorsey's Jurisculture course. In it we devoted ourselves "to a study of law and justice in periods of social change incident to industrialization." We studied Samuel Taylor Coleridge and several other authors of British Empirical Jurisprudence. For some reason I suspected that Coleridge might have expressed his jurisprudential ideas in a clearer and more compressed form in his poetry. So I went to the public library, obtained a recording of Coleridge's "The Rime of the Ancient Mariner" by the famous 20th century actor, Richard Burton. I was so transformed and compelled by Burton's performance that I spent the next several weeks learning the entire poem by heart. This was not an assignment. I was determined to this action by myself alone. That summer I performed "The Mariner" for family and friends. And in my final year in Law School I persuaded the administration to let me take an elementary course in acting for credit on the theory that it would help me in the courtroom. That same fall (1978) I started to perform for pay. After graduating from Law School, I practiced law for about a year; but in 1980 I left the practice of law to become a bard full time. Since then dramatic performances of classics¹ has become my livelihood. Such was the juriscultural genesis of my barding career.

B. The second influence was the role his jurisculture course played in my movement to the concept of justice as a unifying ideal for my work. In the first four weeks of the second semester of that course we studied the contribution that four different sets of jurisprudential ideas had on changing a society's views as to what constitutes justice. The four ideas are: American Social Action, German Historicism, Soviet Revolutionary Historicism as well as British Empiricism. We were then assigned a seminar paper. Because this exercise was designed to train the student in the use of the Juriscultural technique, it is useful to cite the precise words of the assignment in the spring of 1978:

1. THE ILIAD OF HOMER, THE REPUBLIC OF PLATO; Pericles' Prizes of Valor Speech (also known as "The Funeral Oration"); The Declaration of Independence; and the "The Rime of the Ancient Mariner."

Each student will select a recent significant development in philosophy, political theory, sociology, psychology, biology, ecology or behaviorism and write a paper analyzing the potential *contribution of that development to a more just distribution of rights, obligations and benefits* in a post-industrial society, and discussing the uses that various interest groups might make of the implications of this development to justify their respective claims and demands.

I state it word for word because you, the reader in 2074 AD, can now see how, over 20 years, Professor Dorsey was able to use smart, striving students to help him test and develop his tool of jurisculture to trace ideas from description, to implication, to application in the real world. I would estimate that Professor Dorsey has well over 300 such examples of juriscultural idea-implication-application exercises. Indeed they would form an interesting appendix to his work in this area.

The reason this exercise had such an impact on me is because I truly believe that I discovered something useful as a result. Let me briefly explain. I synthesized Descartes' *Rules for the Direction of the Mind*² and Teilhard de Chardin's *The Phenomenon of Man*.³ My synthesis was essentially as follows: Teilhard's thesis was "fuller being is closer union." This was the main idea of his book, *The Phenomenon of Man*. Man is the primary producer of what Teilhard calls the "noosphere" which is similar to Anaxagoras'⁴ "nous" or pure intelligence. This thought encircles the earth and use of it allows man to control his destiny. Quite simply noosphere is power.⁵ Man transits to closer union by increasing his knowledge (his connection with pure being). Descartes fits in comfortably and usefully here because his *Rules* provides a method for extending knowledge, for discovering fresh truths. Thus by using Descartes' method as set forth in *Rules*, man grows in knowledge and being and thereby moves along the path to closer union.

This is not the place to get into the details of this synthesis of Descartes and Teilhard. The paper was successful in Professor Dorsey's course. But in my heart, I knew it was good. This might seem inappropriate to relate all this in a "Festschrift," but I think it is important because, using the method of jurisculture, I had discovered something I *knew* was important.

2. DESCARTES, RULES FOR THE DIRECTION OF THE MIND (Haldane and Ross trans. 1901) [hereinafter, RULES].

3. TEILHARD DE CHARDIN, THE PHENOMENON OF MAN (Wall trans. 1959).

4. Greek natural philosopher circa. 500 B.C.- 428 B.C.

5. BACON, 1 NOVUM ORGANUM (1620).

The next year I carried the process one step further in an independent research course. This time I was trying to apply my synthesis of Descartes' *Rules* and Teilhard's *The Phenomen of Man* to the study of law. My focus point was the concept of justice. After all, Professor Dorsey's Jurisculture always argued for "a more just society." But the concept of justice, I thought, was important for another, more powerful reason, namely, that in American society "justice" is the explicit and legitimate original intent of our duly constituted society. We know this because the U.S. Constitution says so right at the beginning: "We the people of the United States in order to . . . establish justice . . . do ordain and establish this Constitution . . ." So it's right there: legitimate, explicit and inescapable. Furthermore, by article VI the Constitution is the supreme law of the land. This means that all laws (from common law made by judges to codified law made by legislatures) must tend to produce justice. In juriscultural terms, justice is the legitimate or lawful ordering ideal of American society. It should be noted that there are several "official" segments (perhaps I should say interest groups) of the American society that are bound by oath to regulate their activities so that they conform to the ordering ideal of justice. I am speaking of all lawyers admitted to any bar, all judges, all politicians (state and federal—all the way to the President of the United States) and all members of the military (officer and enlisted). All of them take an oath that they will support (and in the case of the military, defend) the Constitution. How can they fulfill this oath, this promise unless they know what justice is? Therefore, they are duty bound to ascertain a working definition of justice.⁶ The implication for law schools is that it is legitimate and appropriate to ask of each decision in each branch of the law: Is this a just result?

It would seem, then, that the question "What is justice" is appropriate.

6. I should note that at this writing, justice is not a fashionable subject in law firms, law schools and political science departments in universities across the nation. Indeed there is a current joke at the Harvard Law School that if you want to know what justice is you should go across the street to the Divinity School. Furthermore, when you talk to these people about the relationship of law to justice, they are somewhat embarrassed—they either laugh at the question or become visibly uncomfortable. I would wager that a substantial majority of students produced in today's law schools have only a vague, inchoate concept of the relationship between law and justice, i.e., that law is supposed to produce justice. The situation is growing dangerous. I say "dangerous" because when justice is driven out of a society, it will decline and fall apart. See R.H.C. Davis's discussion of St. Augustine's argument that the Roman Empire fell because it was not founded on justice in his book, *A HISTORY OF MEDIEVAL EUROPE FROM CONSTANTINE TO ST. LOUIS* 38-42 (1952).

After all, how will you ever know that you have arrived at a particular destination unless you know the earmarks of that destination?

The technique of Jurisculture bids us to seek for something that can be "widely shared." Thus to appeal to a broad base, the idea must be simple. Indeed the simpler and easier the idea is, the broader will be its appeal. Descartes concurs with this because it is one of his primary rules of thought always to start with the clearest, easiest and simplest observations. Following these principles I reasoned as follows:

What justice is must be extremely obvious.⁷ But the answer didn't seem to leap out at me with extreme self-evidence; so, I looked at the problem from a different point of view. What is the opposite of justice?

Obviously it is injustice.

The next question is a littler harder: How can you tell that an injustice occurred? What is the mark, the sign, the indication of an injustice?

The answer is pain, suffering, hurt, harm, damages, injury. In short, I say *injury is the first sign of injustice*. The legal concept of "standing" is illustrative. In order to have a "case" before any judge (or legislative body for that matter), you must show injury in fact fairly traceable to (caused by) the acts of the defendant.

Thus, if injury is the first sign of injustice, a condition of no injury must be the sign of justice. Many people would like to say healing or repairing the injury is the sign of justice. But wouldn't the parties have preferred it if no injury had occurred in the first place? Therefore, justice is a state or condition of no injury. A good word that describes an injury-free condition is healthy. Thus, I say that justice is health.⁸ For the sake of discussion, I say that the just society is the healthy injury-free society.⁹ Notice that we have arrived at an image of justice that permits

7. Disease is simply injury at the cellular level. *N.B.*, laws regarding controlling the spread of infectious diseases.

8. Defining the nature of absolute justice has been a task undertaken by the most eminent political philosophers since the beginning of recorded history, the Bible included. Suffice it to say that the first book of Plato's *REPUBLIC* supports the general idea about to be described, that justice is essentially a healthy, injury-free society.

9. A more complete discussion of this idea of justice will appear in my forthcoming book, *THE IMAGE OF JUSTICE*. See also DORSEY, *AMERICAN FREEDOMS* 15 (1987) [hereinafter, *AMERICAN FREEDOMS*] which echoes the idea and the image nicely:

We are all dependent upon the effective functioning of a society. This is so fundamental that we tend to forget it. The lone human being cannot long survive. By the power of social organization and action human beings have triumphed over wild animals, have sheltered themselves against the elements, have moved with speed and comfort over the face of the earth, on and under its seas, through and beyond its skies. It takes an effectively functioning society to put food on your plate or a man on the moon, to protect from violence,

us to escape from the quicksand of abstractions.

Consider this image in Juriscultural terms. It would seem that every individual person has a natural, constant and uninterrupted desire to live a life free from injury and disease—in short, a healthy life. This seems to be so obvious as not even to be worth mentioning. But therein lies its strength, namely, it is an underlying and extremely widely shared desire, belief, or ideal. I would go so far as to say that it transcends political (or national) boundaries, i.e., it is universal.

It would seem reasonable to conclude, therefore, that all officials tasked with the administration of justice (all lawyers, judges, politicians and —arguably—the military) must constantly ask themselves whether the results of their daily *decisions* (written or unwritten) have produced a healthier (i.e. more just) society. The immediate consequence of this discovery (that justice is absence of injury) for law schools is that the analysis of all decisions could properly begin with a full description and classification of the injury, and then move towards judging who is responsible for repairing that injury. Now this might result in a whole new method of legal analysis and study, but so what? It would compel lawyers to make and interpret laws to produce the injury-free society that people really want.

I have come to this conclusion by the aid of Jurisculture and Descartes, both of which diligently seek that which is most absolute.

To sum up influence number two, by developing the implication of my work in the Jurisculture course I discovered the nature of absolute justice and its supreme importance as a formative and legitimate ideal. Indeed, I have since embraced it as the ideal towards which all the selections in my repertoire are aimed. Let me briefly explain: I am a bard. As a bard I tell of the deeds of heroes. Any organization—from an individual, to a family, to a city, to a state, to a nation or society, to a civilization—that allows coward and hero to be held in equal honor¹⁰ will sooner or later fall apart, a distinctly unhealthy (i.e. unjust) event.

This concept of justice appears to me to be strong and irrefutable. It inspires me. It is the major influence in my life. And it all began with Professor Dorsey's Jurisculture course.

or to provide you with a stable and tranquil situation in which to learn, work, create and enjoy.

10. See Book IX of THE ILIAD OF HOMER. It would be a mistake not to see the contemporary analogues of coward and hero, namely never-do-well and exceller, in all the fields of endeavor, e.g., the professions, sports, arts, sciences, etc.

C. The third influence was Professor Dorsey's invaluable assistance in helping me produce a script for my performance of *The Declaration of Independence* and in helping me schedule a premiere performance of it. Over several months he gave me extremely valuable advice as I evolved the piece through 5 or 6 successive scripts. His best advice was on the title. I had settled on "The Soul of the Nation." But he suggested "The Conscience of the Nation" instead. It was perfect. Few people in the United States or elsewhere understand what the word soul means. But the word "conscience" — there is a word that has an extremely wide recognition factor, which incidentally, gives it juriscultural power because it is "widely understood."

Furthermore the word "conscience" has a strong moral-imperative connotation that has the force and effect of suggesting right conduct, i.e. just conduct or conduct that avoids injuring the interests of others.

Professor Dorsey also helped me obtain my premiere performance of *The Declaration of Independence* on March 29, 1985, at a meeting of the Missouri Bar Advisory Committee on Citizenship Education at the University of Missouri, Columbia.

D. The fourth influence is Professor Dorsey's little book, *AMERICAN FREEDOMS*. I had been performing my Declaration of Independence piece for a short while when Professor Dorsey sent me this short book on the Bill of Rights. In it he says that to perpetuate and strengthen the "Democratic Faith," it is proper for public schools "to teach the beliefs and values that, as a matter of historical fact, are embodied in the Declaration of Independence, the Constitution and the Bill of Rights."¹¹ The key phrase for me was and is that beliefs and values were to be treated as historical facts and that it was right to teach them as facts.¹² Now the main idea of the Declaration of Independence is that all human beings are born with the same bundles of natural rights and that government exists to secure those rights. Injuries occur when those rights are taken away, disregarded, invaded or otherwise violated. The Declaration complains about 28 such "injuries." Thus the obvious implication is that good government protects against injuries. The concept of justice outlined above clearly underlies *The Declaration of Independence* as a mat-

11. *AMERICAN FREEDOMS*, *supra* note 9, at vi.

12. As has been stated above, "justice" is one of the legitimate ends of our republic as the Constitution precisely states. Because the idea of justice is normally considered a "value," what we have here is merger of fact, value and legitimacy. They all coincide in the Constitution. Therefore, it is quite appropriate to teach "justice" as a legitimate fact-value.

ter of fact. And, following Juriscultural analysis, the Declaration of Independence was, as is well know, the “common sense” of the matter. In other words the value of justice that it contains was widely shared as an ordering belief of the new nation. What does all this amount to? This: the values of The Declaration of Independence can be taught as a fact, and therefore the ideal of justice can be taught as a fact. My dramatic performance of The Declaration of Independence brings this value-fact to life.

Professor Dorsey’s book does more than this, however. It contains the clearest explanation of American fundamental rights that I have ever read. And as such it is a perfect tool to transmit knowledge of those rights from one generation to the next. In other words it is a perfect teaching tool.

But most of all Professor Dorsey sets forth in *American Freedoms* what I consider to be the finest fruit of his Jurisculture theory, namely, “equal decisional competence” as the fundamental ordering belief of the American democratic faith. He traces it from the Ancient Greeks and Romans down to the Founding Fathers, in particular, Benjamin Franklin. He says quite plainly:

On the whole, and compared with other actual societies rather than utopias, American society has moved in the direction of increasingly embodying in social and governmental institutions the common belief in equal decisional capacity so that everyone, in fact as well as ideal, will come to have equal competence to make important decisions.¹³

Immediately after this quote, Professor Dorsey gives the most beautiful description of American rights I have ever read. I deliberately refuse to quote it, because I urge you, the reader in 2074, to seek out the book and find it yourself. I predict that this little book will eventually become one of the great classics in the democratic canon. Every time I perform The Declaration of Independence, I present a copy to my sponsor as a sign of good will.

Such are the four influences Professor Dorsey and his Jurisculture have had and continue to have on my life.

II. EQUAL DECISIONAL COMPETENCE

As I understand Jurisculture, the task is to look at a society’s constellation of beliefs. Professor Dorsey would call the most widely shared

13. AMERICAN FREEDOMS, *supra* note 9, at 8.

belief the ordering belief or idea. In essence he is describing a state-of-mind. If a group of people is "one-minded"¹⁴ about certain things, they are very likely to make decisions based on that state of mind.

In the first chapter of *American Freedoms*, Professor Dorsey states: "Beliefs that are used to guide the ordering of society and government are those having to do with the capacity of persons to make important decisions."¹⁵ After describing the origins of the American ordering belief of equal decisional competence of rational, morally responsible persons, he then goes on to compare it with the Marxist-Leninist ordering belief of limited decisional competence where the few (the Communist Party members) "monopolize decision making."¹⁶

The key word, obviously, is "decision." If we look up the word in the dictionary, we find that it is synonymous with choice. And from Milton's *Areopagitica* (1644),¹⁷ we learn that "reason is but choosing." Thus by the transitive property we can safely assert that to decide is to reason.

Let's carry this a step further. A person is free insofar as he makes decisions and is determined to action by himself alone. On the other hand, he is compelled (a slave) when he is determined to act *by another* in a fixed and prescribed manner.¹⁸ Thus the degree of freedom of any organization (family, city, corporation, state, nation) is easily discerned by looking at the decision-making apparatus of that organization. This is precisely what Professor Dorsey's little book does. It bids us ask where the deciders are in each society, where is the seat of reason.

Although Professor Dorsey talks about "equal decisional capacity," he certainly doesn't mean that each citizen in the United States has the same capacity, the same power, of making decisions. Quite obviously people vary widely in this respect. Indeed, stupid decisions are made daily throughout the United States, but so are wise ones. What he means, I believe, is that each of us is held equally accountable for the conse-

14. Another way of saying this is that a society or group or nation "operates by internal consensus" as Japan does. See, *THE ECONOMIST*, Oct. 16, 1987, at 19. This article describes how Japan is likely to "mould its own era" because of its great wealth. The word consensus means unanimity, which in turn means one mind. This article is a good, though probably unwitting, example of Jurisculture.

15. *AMERICAN FREEDOMS*, *supra* note 9, at 1.

16. *Id.* at 25.

17. See 32 *GREAT BOOKS OF THE WESTERN WORLD*, 394 (1952).

18. *SPINOZA*, 1 *ETHICS*, Definition 7 (circa 1664 A.D.). See *id.* vol. 31 at 355.

quences of our decisions. Put differently, we each have the equal opportunity to exercise our reasoning powers to determine our own lives.

So the strength or health (justness) of a society is measured by the degree to which its people make wise and good decisions. Enter the rationale for our entire educational system. In every state of the Union the young from age 6 through 18 (in most cases) are required to be educated. What compulsory education does, presumably, is to produce reasonable people. Reasonable people make just choices. That is, choices that keep the incidence of pain, suffering, hurt, harm, damages-injury to a minimum, or better yet they make choices that genuinely benefit mankind. The state steps in through laws. The state (courts and legislatures) is there as a referee and guarantor of the injury free, healthy society.

In sum then, education is supposed to build good "choosers" (deciders, reasoners). This prepares them to live in the world of market economics, which is essentially a world of choice because

markets expand choice, by allowing each individual more partners to deal with. They [markets] also dissolve personal power. In the check-out queue, all are equal. Nobody needs to explain or to justify the purchase of a pound of tomatoes, and if one shopkeeper is surly, there is always another next door. Competitive pressure . . . favors "the survival of the helpful."¹⁹

And the world is moving inexorably toward greater choice. As of this writing, the two major Marxist-Leninist societies, namely Communist China and the Soviet Union, are gradually moving away from central planning (where all important decisions are made by the party) towards a diffusion of choice, where individual citizens make important life decisions. To be sure, China and the Soviet Union are moving very slowly and carefully so that the Party doesn't lose control. The slogan for diffusion of decision in the Soviet Union is "glasnost" or openness. The world is waiting to see how far this will go. In China a similar openness resulted in student uprisings demanding more democracy (in other words, choice). These uprisings were quickly quelled in 1986, but the market principles are gradually taking hold in Communist China.²⁰

Two other forces are driving the world toward greater choice. They are: (1) The explosion in the use of computers along with telecommunications—i.e. information technology which greatly enhances the power

19. THE ECONOMIST, September 28, 1987, at 28.

20. "The main point of reform [in Communist China] is to delegate decision-making power from central planners to factory managers." THE ECONOMIST, August 1, 1987, at 20, China's Economic Survey.

of the individual and (2) the great increasing freedom of capital movements between nation-states.²¹ All this makes for greater diffusion of decision making power, away from the few and towards the many.

The winners in such a world are those who are good at the skill of decision-making. In other words, their decisions are good in that they bring happiness not misery. After all, if a decision brings sorrow, presumably we would not have made it. This is why Aristotle defined prudence as making wise decisions relative to happiness.²²

A useful implication, then, of Professor Dorsey's *American Freedoms* is that the best way to sustain and even improve a society based on the ideal (or ordering belief) of equal decisional competence is to improve each individual's capacity to make good decisions. Good decisions obviously are ones that benefit (do good) all concerned. So throughout the society decisions are to be cultivated that promote health, well-being and happiness while at the same time they avoid injuring the property and personal interests of all other people. In short, the goal is to cultivate just decisions at the most diffuse level of decision-making. This means developing what Cicero called "right reason."²³

III. THE PROBLEM

A direct result of my reading *American Freedoms* was to see the primacy of decision-making in a society. It led me to write the following letter that was published in part in *The Economist* on June 20, 1987:

In the May 24th issue the article entitled "The Cloud over Gorbachev" (Chernobyl's lesson for Russia's leaders) stated: "But it is still the party's high officials who *decide* . . ." This statement about who makes the decisions in the Soviet Union is a clear indicator of a long term fatal illness of the Marxist-Leninist methodology. Here is the nature of the illness: From Lenin to Stalin to Krushchev . . . all the way down to Gorbachev, the soviet people have been taught (no, drilled) that the party makes all the decisions. From Milton's *Areopagetica* we learned that reason is but choosing. And since choosing is a nearly perfect synonym (i.e. convertible) for deciding, the only reasonable conclusion is that since the party has been in charge, there has been a progressive erosion in the ability to make decisions at all levels of that sad society. I would wager that when the Chernobyl nuclear accident happened, the key people at the various levels of the party were

21. THE ECONOMIST, September 26, 1987, at 114.

22. I RHETORIC, chapter 9. See 9 GREAT BOOKS OF THE WESTERN WORLD, 609.

23. CICERO, 23 DE LEGIBUS I at 8 (circa 50 B.C.).

simply unable to make decisions. They are simply *in the habit* of letting others decide.²⁴

The problem is how to build good decision making at all levels of society.

IV. THE SOLUTION

The problem is solved by Professor Dorsey's book, *American Freedoms*. The key to strengthening the democratic society is to improve the decisions of the citizens so that they make wise and just decisions more often than foolish, injury-causing ones.

Some will instantly say that this is already being done. But I say that it is not. The three major areas of knowledge that are transmitted from one generation to the next are the humanities, the social sciences and the natural sciences. The transmission of this knowledge consists mainly in students sitting passively in classrooms or lecture halls taking notes like secretaries taking dictation. They read assigned texts. Then they study their notes. Then at the end of the semester (perhaps more often in some schools), they have to take exams to see if they have learned the material. An exam is the teacher's way of certifying that the transmission of knowledge has occurred accurately. Many teachers would say that the exams would also teach them how to get knowledge—the phrase so often used is “learning how to learn” or “learning how to think.”

But how often are students (from 1st grade through graduate school) required to make decisions—real decisions with real-life consequences? How often are the students required to evaluate the knowledge they presumably get in school through the prism of decisions? Another way of looking at this is by constantly asking the question of the knowledge you acquire: how will this help me make better decisions or how will this knowledge light my will in all the choices of life?²⁵

Viewed this way, knowledge does not become an end in itself. In other words, the question of knowledge should constantly be “how will this

24. THE ECONOMIST, June 20, 1987. In America an example of long-term usurpation of decision making to the detriment of the individual is in professional football. In 1987 Mr. Gene Upshaw, the National Football League's player representative, appeared on national television and said, in effect, that from high school through college and all the way through a professional football career, players are told what to do. They make no decisions for themselves (except marriage). Then it all comes to an end when, either by injury or old age, they are no longer useful to the team and they are “let go”. Suddenly they are on their own and they are simply unable to make decisions. They never had to make decisions before. It was all done for them. In effect they have been robbed of their true humanity.

25. See Comment to Rule 1 from DESCARTES, RULES.

improve man's life?" An argument could be made that all branches of knowledge could be studied from the point of view of decisions.

Let me give some useful examples. In the humanities students study tragedy (both ancient and modern). And what we study there are, quite simply, the harmful consequences of stupid decisions.²⁶ The benefit to the reader is that he/she is not likely to make that choice!

Consider economics. Trace the consequences of nation-states making the decision to erect trade-protection barriers. Or trace the consequences of various interpretations (as gleaned from *decisions* of the U.S. Supreme Court) of the commerce clause of the U.S. Constitution.

In history consider Barbara Tuchman's popular book *The March of Folly*, which traces the consequences of extremely stupid decisions, for instance how the British lost America.

In natural science, trace the new directions plotted out (to make a decision is to set a direction in which to move) by the scientific community with regard to the discoveries of natural selection (Darwin), analytic geometry (Descartes), gravity (Newton), electricity (Faraday), psychoanalysis (Freud), penicillin (Curie), dynamite (Nobel), special relativity (Einstein), *et al.*

In law trace the deleterious consequences of the *Dred Scott*²⁷ decision or *Plessey v. Ferguson*.²⁸

It seems that every branch of knowledge has traced a given path since its own inception. What causes the path to change direction? What makes it stand still? What makes that knowledge zone suddenly leap ahead when for years it was barren and stagnant? In each case, some forceful person or group of persons made decisions. It is useful and appropriate in cultivating effective decisions in the next generation to analyze the choices of history.

Hindsight makes it easier to say something was good or bad. The key is to develop foresight in students by constantly teaching them to look at and evaluate the consequences of an option. Teaching a body of knowl-

26. Injurious, damaging, painful, suffering; this is why we call them tragic choices. See also 1986-87 YALE LAW SCHOOL BULLETIN at 57 where a course on "Tragic Choices" is described. Note that it is taught by the Dean of the Law School. Another example of a collective decision that can be studied over a long period is the decision by the U.S. Government to proceed with the extremely expensive B-1 Bomber. This decision started with the Eisenhower administration in the 1950s and extended through the Reagan administration in the 1980s. Nick Kotz's book, *The Wild Blue Yonder, Politics, Money and the B-1 Bomber* (Pantheon Press, 1988), discusses this in detail.

27. 60 U.S. (19 How.) 393 (1856).

28. 163 U.S. 537 (1896).

edge is one thing; but teaching students *to make decisions based on that knowledge* is what is really necessary.

Furthermore, schools should encourage decision-making from the earliest possible age so that with time it gets stronger and stronger, i.e. more and more reasonable and just.

The sad fact is that most people prefer to be told what to do; most people are submissive to authority even when the consequences are a bit uncomfortable.

However, when the generation in being fosters independent decision-making on a routine basis both on written tests²⁹ and in service exams,³⁰ then the ideal of equal decisional competence may actualize, flourish, and spread.³¹

So, reader in the year 2074, I close with a simple statement. Know that in the 20th century there were people who genuinely saw the importance of justice. Know that they offer you a useful idea in promoting that end, namely, the ordering belief of equal decisional competence. Finally, know that we believe that wise and just decisions are cultivated in the populace by training all citizens from an early age to make decisions and accept the consequences of them because this, by trial and error and wise supervision, will build right reason and a just (i.e., injury free and healthy) society.

29. For example, where students are required to speculate on the consequences of possible decisions.

30. Exams should be conducted so that students are actually required to apply their "knowledge" by making decisions in the real world or as close to it as possible (e.g., in student run businesses, in political games, in legal games, in war and peace games, in civilization games, etc.). Or imagine top students of one section of a city going to a less fortunate section of that city to teach spelling and vocabulary to the less advantaged.

31. Indeed, being a genuine decision maker could make the difference between being employed or unemployed. Mr. Peter Drucker, a famous thinker on business management in the late 20th century, foresees a drastic pruning of ranks of corporate middle management. He says that "whole layers of management neither make decisions nor lead. Instead their main, if not their only, function is to serve as 'relays' " between the directors and line managers of a company. These non-deciders clog the organization and they will be pruned. *See THE ECONOMIST*, Jan. 23, 1988, at 59.