RECONSTRUCTION IN THE LEGAL ORDER
(Towards a Model of Decisional Rationality)*

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Criterion of Rationality

The legal order is the totality of public decisions of the political community. Such decisions give rise to binding norms of different kinds. Among them are constitutional, statutory, judicial, administrative, executive and other types of norms. Such decisions are binding because they are acts of the Public Power or Government. The sole test of their validity is their source.[1] Their content is not relevant to the existence of legal character of the resulting norms.

These teachings of Legal Positivism have long been criticised as misdescriptive of law. The fiercest and most sustained challenge has come from proponents of the Natural Law theory.[2] Essentially, this theory (which has received varying statements) posits a moral order external to and independent of human action and volition, to which positive law must conform, otherwise it ceases to be law. The many attractions of this theory are offset by a fatal defect. This is the ambiguity of the moral code which supposedly overrides the inconsistent norms of positive law. It turns out that the content of the moral code varies with each proponent. The supposedly objective and external standard proves, upon inquiry and analysis, to be highly variable personal preferences.[3]

The shortcomings of the Natural Law theory do not prove Legal Positivism blameless or wholly free of defect. There is certainly something seriously wrong with a Theory of Law that makes no distinction between good law and bad law, law directed to virtue and law directed to evil ends. This area of blindness must be covered by a supplementary criterion found-

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1 AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED (1954); GRAY, THE NATURE AND SOURCES OF THE LAW (2nd ed., 1963); Hall, *Concerning the Nature of Positive Law*, 86 YALE L.J. 545-66 (1949); HART, THE CONCEPT OF LAW (1961); KELSEN, PURE THEORY OF LAW: A SOCIOLOGICAL INQUIRY (1943); WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION (1947).

2 FULLER, THE MORALITY OF LAW (Student ed., 1964): Hart, *Analytical Jurisprudence in Mid-Twentieth Century: A Reply to Professor Bodenheimer*, 105 U. PA. L. REV. 953 (1957); MARITAIN, THE RIGHTS OF MAN AND NATURAL LAW (1943).

3 Kelsen, H., *Plato and the Doctrine of Natural Law*, 14 VAND. L. REV. 23 (1960); Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958); Woltrecht, *Natural Law with Variable Content*, 10 J. COMP. LEG. 137-8 (1928).

ed on the purposive nature or character of law. Law is not an end in itself but only a means to an end.[4] This end is the well-being of the community, according to the community's own standards. Whether or not a particular legal enactment is a means to the community's well-being is susceptible of objective assessment. Apart then, from its origin in State Power, the validity of law can be tested by another criterion. This criterion is Rationality.[5]

Complexification

The dynamics of modern society compels reconstruction in the legal order along the criterion of rationality. Such dynamics flows from its organization as an industrial state.[6] In the industrial state, there are three key sectors: the technological, the industrial, and the governmental. The technological sector deals with the creation, development, diffusion and utilization of knowledge and skills. The industrial sector deals with the harnessing and application of knowledge and skills to industrial production directed to capital as well as consumer goods. The governmental sector provides the regulatory and facilitating mechanisms or arrangements directed to the development and efficiency of the technological and industrial sectors.

This concept of the industrial state applies both to capitalist as well as to socialist societies. Of course, in terms of concrete societies, the industrial state may be in varying stages of development. Thus, it is in an advanced state in industrial countries, such as America, Russia, Japan, West Germany, and Great Britain. It is only moderately advanced in countries such as China, India, Canada, Italy, Switzerland, among others. Substantial beginnings may be observed in countries like Mexico, Israel, Brazil, Greece, Spain, etc. On the other hand, it may obtain barely in nascent form in many Third World countries, such as Ethiopia, Thailand, Uganda, Syria, Egypt, etc.

Regardless of the stage of its development, the industrial state is the pervasive organization in all societies today. In all affluent and near affluent countries, unquestionably it has charge and control of the national destiny. In the less affluent and poor countries, its actualization or realization is the focus of national will and effort. It is the obsessive idea underlying the current agitation and struggle for development.

The forces in today's world that provide the impetus to reconstruction in the legal order may be summed up in one word. This is complexi-

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[4] JHERING, LAW AS A MEANS TO AN END (1924); FULLER, THE MORALITY OF LAW (Student ed., 1964).

[5] For approaches along this principle: Radin, Pound, Dewey, The Public and its Problems (Social Control).

[6] GALBRAITH, THE NEW INDUSTRIAL STATE (1967); WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION (HENDERSON & PARSON, EDS., 1947); MOORE, INDUSTRIAL RELATIONS AND THE SOCIAL ORDER (1946).

fication.[7] This is the process underlying evolutionary development towards more and more complex forms of organization. In the modern world, we are witness to the evolution of forms of human organization, which prior ages did not experience. These are unique, in terms of sheer size, complexity of organization, variety of associative relations, and control of resources. In business, we have the conglomerates, which are clusters of enterprises under the control of the same interests, effected generally through holding companies. We have also the multinational corporations, some of which operate in a hundred or more countries through subsidiaries or associated concerns.

It is, however, in the political field that illustrations of social elephantiasis abound. In the organization of states, there is nothing in history to match the superstates that have recently emerged. In terms of international organizations, we have the United Nations and its agencies and the regional associations. In terms of internal state machinery, the giant bureaucracies of the United States, Russia, and Western Europe are without historical precedent. This is also true in the social sphere. Consider such gigantic organizations in the trade union field, such as the AFL-CIO, or in the field of religion, such as the Roman Catholic Church, or even in sports, such as the Olympics Conference, with its hundreds of regional and national committees.

Aspects of Complexification

Complexification is an over-all process, within which contrasting subprocesses go on simultaneously.[8] Let us take two sub-processes operative within the industrial state. First is *differentiation.* Underlying this subprocess is specialization in knowledge, in skills, in life activities. The principle is division of labor. All types of activities requiring or permitting social collaboration tend to be divided or split in terms of specialties. There is segmentation of work into different units, each kind to be replicated by the same individual.

The second key sub-process is *combination.* Underlying this subprocess is social cooperation towards common goals. This takes place in all spheres of social life, where the attainment of shared values is likely to be facilitated by common effort. Several forms of combinations may be noticed. They are distinguished from one another by the kind of organization obtaining within the group. Where the authority of the organization directly operates on the individual, the combination is *collective.* Instances

[7] WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION (HENDERSON & PARSON, EDS., 1947); DURKHEIM, THE DIVISION OF LABOR IN SOCIETY (1964); PARSONS, TOWARDS A GENERAL THEORY OF ACTION (1951); KOHLER, GESTALT PSYCHOLOGY (1947).

[8] MERTON, SOCIAL THEORY AND SOCIAL STRUCTURE (1957); STRAWSON, INDIVIDUALS: AN ESSAY IN DESCRIPTIVE METAPHYSICS (1959); SMELSHER, THEORY OF COLLECTIVE BEHAVIOR (1963); WOODWARD, INDUSTRIAL ORGANIZATION, THEORY AND PRACTICE (1965); MARCH & SIMON, ORGANIZATIONS (1958).

in various spheres of social life includes the church, the local trade union, the stock corporation, limited partnership, the school, the fraternity, the bar association, etc. Here, organization is unitary as well as solitary, regardless of its complexity. Where within the same population of individuals, the grouping is of existing combinations, and the authority of the organization does not extend to individuals as such but only indirectly, through the combinations to which they belong, the combination is merely agglutinative. The grouping here is basically of groups or combinations themselves. Instances abound in modern society. In the sphere of business, we have chambers for various types of enterprise, such as commerce, industry, exporter, etc. In political life, we have coalitions of political parties, which are specially noticeable in parliamentary system. In religion, we have councils of churches. In athletics, we have national leagues in the major sports.

The third significant type of combination is the *federative*. Here, the over-arching organization exercises authority not only over the component organizations but over the individuals as well within such organizations. Federal jurisdiction over its defined sphere is supreme. These varieties of hierarchical orders often conjoin in interlocking systems, creating organizational complexity. In terms of the hierarchical relationships among their component entities, the giant business conglomerates in the West, some of which may be transnational in their operations, exhibit such structural differentiation.

Both differentiation and combination operate simultaneously in contrasting directions within the same major sectors of the industrial state. Often, they are interrelated. Specialization, by its creation of fields of operation that are more or less autonomous, threatens the essential unity that life activities must have if they are to be adequately performed. This disintegrative tendency in specialization is countered by appropriate structural unity to the differing but related specialties. Thus, whenever work of a distinct character requires different specialties for its proper completion, always some underlying organization gives unity to the effort. This applies to the construction of modern skyscraper, the flight of a jetliner, the navigation of a spaceship, the trial of a criminal case, the mending of a heart valve by open-heart surgery, the production of cars in an assembly line or even a championship game in basketball. Organization allocates to the specialties the sequence, or occasion of performance. Thus, in our example, the scalpel of the surgeon must be stayed until the anesthesiologist has done his work; the pilot takes over only when the jetliner is fully ready for flight; the state must present evidence before the defendant defends; the car engine must go in before the wheels go on; the pipes and wires must be laid before the cement is poured.

The major institutions of the industrial state testify to the essential complementarity that obtains between differentiation and combination, be-

tween specialization and organization. In the technological sector, we have the universities, the multidisciplinary centers, the data banks, the research institutes, libraries and training centers. In the industrial sector, we have banks and financial houses, industrial complexes, the factories, testing laboratories, storage depots, transport and communications systems, giant retail chains, department stores, and supermarkets. In the governmental sector, we have the civil service, the military services, departments and bureaus of administration, the national police, and the regulatory commissions.

In these institutions, the relationships between specialization and organization may follow variable patterns. One may be the cause, or the consequence, of the other. Generally, in the centers of learning, particularly the universities, a discipline or a special field of study must first obtain recognition, *before* a corresponding adaptation is made in the departmental organization. In the other sectors, the sequence may be reversed. In the industrial sector, work processes may be so reorganized as to create new specialities, for which new workers are retrained. The same pattern obtains in the government sector. Well established is the bureaucratic propensity to divide work and multiply work assignments, with consequent increase in personnel. In these latter situations, organization creates the need and the opportunity for specialization.

Monadization

In relation to the individual, progressive differentiation places him in the situation of diminishing orientation and competence. This is the phenomenon of *monadization*. The area of concern becomes narrower and narrower, as specialties multiply. This is most acute in the technological and industrial sectors. As learning in science, technology and the arts explode, feeding most vociferously on their own success, the scholar or student in quest of expertise is confronted by a choice of increasingly arcane disciplines or fields of study. In the sciences alone, there has been a proliferation of specialties. There are lists that include over three hundred fields of study. Some examples will make this point clear. *Bionics*—the study of inanimate things with properties of living organisms. *Hypnology*—the study of sleep. *Bionomics*—the study of the environment. *Edaphology*—the study of soils. *Astrobionautics*—study of life-needs in the course of space navigation. *Paleozoology*—study of extinct or fossil animals. *Stoichiology*—study of fundamental laws. *Hybernetics*—comparative study of the brain and electronic control systems. There is substantial truth behind the jest that specialists come to know more and more about less and less.

In the industrial sector, work processes are fragmented into smaller and smaller units to attain maximum efficiency. Through time and motion studies, industrial engineers have atomized manufacture for production into hundreds of discrete job patterns. Such compartmentalization or segmen-

tation confines most industrial workers to tiny fractions of the work process. Their situation is graphically depicted in that popular description: "a cog in a wheel in the machine". This ascribed status of "cog" imports a feeling of isolation, helplessness and insignificance.

The sense of inferiority and inadequacy thus engendered is aggravated by an environment saturated with large organizations. Earlier, we noticed the orientation of the industrial state towards combinations. By and large, such combinations are collectives, that is to say, with direct organizational authority over individuals. Not only do such combinations proliferate, their tendency is to grow ever larger, evolving into organizations of fabulous immensity. Our illustrations speak for themselves: among multinationals, General Motors; among trade unions, the AFL-CIO; among churches, the Roman Catholic Church; among parties, the Communist Party of the People's Republic of China; among bureaucracies, the great bureaucracies of the United States and Russia. The impulse to incremental growth springs from the conditions of the industrial state. First efficiency is linked to economies of scale. Second, as more and more sophisticated technological processes are developed and put to use, ever larger and more complex organizations are required to operate and administer them. Consider the manpower and resource requirements for the development and utilization of nuclear power, for developing and building ballistic missile systems, for developing and producing satellites and spaceships, for developing and building giant computer system, for developing and building the superjetliners of today, for constructing, maintaining and operating giant hydroelectric systems, and many other stupendous undertakings. Sheer necessity ordains that organizations be set up which are adequate to the task at hand.

Thus far, we have noticed complexification in terms of internal differentiation within the industrial state. In the contemporary world, however, virtually all the industrial states, from the advanced to the nascent, are linked by multiple systems of interchange. The cumulative force of such linkages has created the phenomenon of external *federalization.*

This is the steady absorption of national societies as discrete components of more inclusive orders. The phenomenon is the integrative effect of a complex network of multidimensional relationships that tie or bind nations together in the contemporary world. Such relationships are not merely bilateral, but multi-lateral as well, on a regional, hemispheric or even global basis. National societies then are caught in a web of interlocking supra-national norms.

Democratic Power Structure

We now turn to the significance of all these directional trends and developments, for the legal order, particularly in terms of its decisional processes.

Generally, we can say that in the light of these developments, the traditional patterns of decision suffer from fundamental weaknesses and inadequacies.

Specifically, the reliance of traditional decision making on the individual as the basic source of information and opinion is a basic shortcoming. Monadization renders the individual woefully inadequate for this purpose, no matter how learned, both in terms of perspective, as well as in terms of quantum and quality of information.

A second point is that the twin forces of specialization and organization have so revolutionalized knowledge and learning, that entirely new systems must be devised and instituted for reception, processing, storage, and retrieval for use with all due speed, accuracy and adequacy.

A third point is that the phenomenon of *federalization* has greatly widened relevant perspectives, and multiplied the range of variables for decisional consideration. Decisions on apparently domestic issues may have far-reaching implications or effects on current external commitments, or on international relations. The decisional apparatus should be programmed for appropriate consideration of all external factors.

A fourth point is that the instruments for decisional choices be remmodeled and refined, to ensure a high level of reliability. Complexification has not only multiplied the relevant variables but has also generated intricate and interlocking relationships among them. There is thus both the risk of serious error as well as its magnification, through the "ripple effect" common to integrated systems.

All these points lead to one conclusion. There must be reconstruction in the legal order in the direction of decisional rationality. Rationality, as used here, has two aspects. In terms of *ends,* including intermediate goals, the striving is towards the ethical, i.e., they reflect community values in a substantial way. Such decisions are deemed rational in the sense that, for purposes of the legal order, the ultimate arbiter as to goals or ends is the community. From this viewpoint, rationality of decisions concerning ends, including intermediate goals, is measured by substantial correspondence to community preferences. This is the only middle ground that, on the other hand, avoids the Scylla of absolutistic morals and the Charybdis of ethical relativism. The conflict between these two viewpoints is essentially insoluble. Hence, the only feasible alternative to a disabling impasse is to adopt the choices of the community as the governing ethical standard. Necessarily, such choices are to be determined through the democratic Power Structure.

Why democratic? The answer is simple. The Power Structure must be democratic because this is the only situation in which law is *of,* by and for the Community.[9]

[9] MILL, REPRESENTATIVE GOVERNMENT (43 Great Books Series); ROUSSEAU, THE SOCIAL CONTRACT AND DISCOURSES (1921); SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY (1952); WHEELER, DEMOCRACY IN A REVOLUTIONARY ERA.

Let me take up the necessity for a democratic power structure.

To the extent that the law embodies the goals of the community, to that degree, it is ethical, hence rational. To the extent that it does not reflect the community goals, it is not rational, because it is not instrumental in furthering community purposes. By its nature law is instrumental, it is the means to social ends.

The law cannot be the law of the community unless it is directed to the end or goals of the community. To the extent that it serves as special interests or parochial ends, sacrificing thereby the community interests, it is perverted, it is irrational.

Two pitfalls must be avoided in this regard. First is to suppose that the ends of the community are fixed, eternal or immutable. We have already mentioned the danger of absolustic ethics.

In the abstract, a community always strives towards the greatest happiness of the greatest number: its central goal is the realization of the highest potentialities of its members—their leading productive and happy lives.

But this central and general goal is always qualified by the time, place and circumstance: current experience may shape community perceptions as to the intermediate goals: reasonable differences are bound to arise over priorities.

Hence, community goals or end must be seen in terms of process—they are developed or re-shaped according to the prevailing circumstances and the exigencies of contemporary experience. In fact, we must leave open the possibility that the means available may affect our choice of ends, or re-shape even those that we retain.

This brings us very close to the other pitfall that we must avoid. This is thinking that since ends appear variable among communities, they are arbitrary and not subject to rational choice. The universe is morally indifferent; nothing is good or bad, but thinking makes it so. This is the sin of relativistic ethics. Values are incommensurable; there is no rational basis for choice. Value judgments are not amenable to scientific evaluation.

If it be accepted that the human community is first and foremost for human beings, then the standard is man himself. Man is the measure of all things. Hence, whether a value or end or goal has merit must be determined by its relation to man — how it will preserve him, or advance his welfare, or enable him to realize his best self.[10]

[10] For objective basis in humanistic ethics, see FROMM, MAN FOR HIMSELF (1946). Also DEWEY, HUMAN NATURE AND CONDUCT (1922).

It is the thesis of humanistic ethics that as science enables us to know more and more about ourselves, then more and more will we come to understand what goals, what ends are compatible with or congenial to our nature. If therefore the community must fashion its own ends or goals, and such goals are determined by the exigencies of experience in particular times and places, law will reflect the community's choice of values and ends only if the law is made with the participation of the community. Since the community decides on ends, law will be in accord with such ends only if the community controls those decisional processes by which law is made. Law will not be ethical, hence rational, if it diverges from the values of the community. And certainly, it will diverge from community values, unless the processes of its creation are within the community's full control. This argues for a democratic order. Through popular control, law-making agencies will reflect values that have community approval. Government becomes a medium for translating community choices and preferences into binding norms and policies.

A democratic order can take various forms. In today's world, democratic rule operates through representative government. In the near future, however, the advance in technology, particularly electronic and computer technology, may permit speedy decisions allowing the practice of the direct democracy.

Institutional Rationality

The other aspect is rationality in terms of means to democratically determined ends. Here, the striving is for decisions that are scientifically sound. In this sense, the decisional process is *rational* if the decision is arrived at on the basis of (a) the best available knowledge; (b) assessed by the best available scientific judgment.[11] Here, no absolutistic standard is intended. Neither Science nor Knowledge guarantees any certainty of result or outcome. *Rational* does not necessarily mean *correct*. There may be error even if in terms of data or judgment, the decision is rational. The risk of error despite all safeguards taken, is unavoidable. This is because human beings that we are, we bear the burden of Imperfect Knowledge. Such is our human predicament. As Mr. Justice Holmes observed, every day, if not every hour, we wager our salvation on prophecy based on imperfect knowledge.

Yet, our quest is not to be abandoned merely because the Absolute eludes us. We can know more and more, even if we cannot know all. It is in this spirit of realistic striving that we should seek decisions founded on the best scientific judgment possible under the circumstances. This is to be attained by a decisional structure incorporating a system of access to and use of Knowledge that can shed maximum enlightenment and expert opinion on policy questions.

[11] DEWEY, THE PUBLIC AND ITS PROBLEMS: HOW WE THINK (1927).

Technocratic Structure

To bring about such situation, two steps are required. First is organization of the technological sector so as to facilitate the creation, gathering, processing, storage, retrieval and use of learning and expertise in all areas of significance to national policy. Such organization will be referred to in this discussion as Technocratic Structure. The second step is to establish regular channels and linkages for interchanges between the Technocratic Structure and the Power Structure.[12]

What follows are mere illustrations of possible arrangements.

The Technocratic Structure has four components:

(1) the Societies
(2) the Institutes
(3) the Sectoral Academies
(4) the National Academy of Sciences, Arts and Professions

The Societies are national organizations of specialities. There are four major groupings:

(1) Science and Technology
(2) Industry and Agriculture
(3) Professions
(4) Social Studies and Humanities

Within each major grouping, there will be as many Societies as there are specialties with a substantial constituency. Where the constituencies are small, two are more allied specialties may combine into one Society.

In the first major grouping, the Societies include:

(1) Life Sciences
(2) Physical Sciences
(3) Engineering Sciences

In the second major grouping, the Societies include:

(1) Industry
(2) Finance and Commerce
(3) Agriculture

In the third major grouping, the Societies include:

(1) Health professions
(2) Engineering and Technical professions
(3) Law and Policy professions

In the fourth major grouping, the Societies include:

(1) Historical Studies

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[12] Compare ACKOFF (ed.) GENERAL SYSTEMS YEARBOOK, Vols. 5 *et seq.*

(2) Social Sciences
(3) Literature and the Arts

Each Society shall support an Institute dedicated to advancing knowledge, learning or expertise in the specialties of the Society. Such Institute shall consist of:

(1) A staff of scholars on full pay from the Society
(2) Faculty members from universities and colleges on part-time service, usually as consultants
(3) Researches on regular details from Government staffs

Each Institute shall:

(1) Prepare studies on the specialities of the Society
(2) Prepare semi-annual reports on developments significant to the Nation or sectors thereof, with recommendations
(3) Submit studies on including comments and recommendations on matters referred to them by the principal departments of Government

All the Institutes within each major grouping shall comprise the Sectoral Academy, thus:

(1) Academy of Science and Technology
(2) Academy of Industry and Agriculture
(3) Academy of the Professions
(4) Academy of Social Studies and Humanities

Work in each Academy shall be of the same type as that performed by the Institute, but embracing the specialities within the major grouping.

The staffs of each Academy shall consist chiefly of:

(1) Scholars on assignment from the Institutes
(2) Consultants from Universities and Colleges
(3) Visiting researchers detailed from Government staffs

The National Academy shall consist of distinguished men of learning, expertise or high research capability elected by the Societies. The Academy shall submit an annual report on developments and recommendations of significance for national policy.

Members of the Academy shall be constituted into as many Multidisciplinary Centers, as may be feasible. Such Centers shall prepare studies and recommendations for consideration by the Principal Departments of Government, and prepare comments and recommendations on policy proposals referred to them.

A Library of Arts and Sciences shall be maintained at government expense under the control and supervision of the National Assembly.

Semi-annual conferences shall be held on policy problems and on going studies, for each of the specialties, attended by:

(1) Representatives from each Institute
(2) Representatives from Government staffs
(3) Faculty members from Universities and Colleges

Report and recommendations shall be submitted by each Conference.

Engineering of Enlightenment

The next problem is how to ensure that due consideration is given the studies, reports and recommendations flowing in the Institutes, Academies, National Academy and its Multidisciplinary Centers.

In autocratic regimes, due consideration may be effected through prescribed procedures enforced by party discipline, or through legal sanctions. For example, no decisions shall be deemed made, unless the minutes relating thereto clearly show that these were discussed and considered. Here, the absence of a democratic Power Structure lessens necessarily the level of rationality.

In constitutional systems, the duty to take such matters into account can be engineered in several ways. *First,* specific legal accountability could be imposed on those responsible for decisions which were made without due consideration of relevant studies, reports and recommendations. *Second,* due consideration of such matters may be effected through constitutionally prescribed requisites, such as recital of such documents as the basis and grounds for the adoption of the measure, in mandatory explanatory notes. Specific references to the reports, recommendations and studies relied upon, or pertinent to the matter in the enactment, may be prescribed as a condition of validity. *Third,* in constitutional systems which provide for judicial review, due process requirements could be made to apply to all policy enactments, so as to require as a condition for validity, or at least for the presumption of validity, that appropriate references or recitals are made of such documents, with a discussion of the points raised.[13]

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[13] For a judicial referral of a highly complex problem to a private group (including an ethics committee) for ultimate decision, see *In re* Quinlan, 355 A. 2d 647 (1976). The Supreme Court of New Jersey held:

> Physicians, by virtue of their responsibility for medical judgments are, partly by choice and partly by default, charged with the responsibility of making ethical judgments which are sometimes ill-equipped to make. We are not always morally and legally authorized to make. The physician is thereby assuming a civil and criminal liability that, as often as not, he does not even realize as a factor in his decision. There is little or no dialogue in this whole process. The physician assumes that his judgment is called for and, in good faith, he acts. Someone must and it has been the physician who has assumed the responsibility and the risk.
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> I suggest that it would be more appropriate to provide a regular forum for more input and dialogue in individual situations and to allow the responsibility of these judgments to be shared. Many hospitals have established an Ethics Committee composed of physicians, social workers, attorneys, and theologians * * * which serves to review the individual circumstances of ethical dilemma and which has provided much in the way of assistance and safeguards for patients

Once the Technocratic Structure is in full operation, it may provide information, expertise or scientific judgment on important policy questions in the following areas:

(1) Revision or amendment of the Constitution
(2) National program prepared by the Executive
(3) National legislation
(4) Adoption of quasi-legislative regulations
(5) Administrative price-fixing
(6) Court cases with policy implications.

What has been attempted here is no more than a sketch of a model joining the Democratic Power Structure with a Technocratic Structure so as to bring to any area of significant policy decision, the knowledge and expertise available to the society. The key idea is an institutional design that permits rational consideration of *ends* as well as *means* in terms of relevant knowledge and opinion. Regardless of the actual arrangements that may be made, the purpose is served if through such design, progress is attained towards a satisfactory level of decisional rationality.

As an ultimate question, is rationality in the system of Power desirable? Doubtless, to rational minds it is desirable. Desirable or not, from the viewpoint of humanity and civilization, it is necessary, perhaps even indispensable. It is necessary, because the alternative is the Orwellian spectre.

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and their medical caretakers. Generally, the authority of these committees is primarily restricted to the hospital setting and their official status is more that of an advisory body than of an enforcing body.

The concept of an Ethics Committee which has this kind of organization and is readily accessible to those persons rendering medical care to patients, would be, I think, the most promising direction for further study at this point. * * * * [This would allow] some much needed dialogue regarding these issues and [force] the point of exploring all of the options for a particular patient. It diffuses the responsibility for making these judgments. Many physicians, in many circumstances, would welcome the sharing of responsibility. I believe that such an entity could lend itself well to an assumption of a legal status which would allow courses of action not now undertaken because of the concern for liability. [27 BAYLOR L. REV. 6, 8-9 (1975)].

The most appealing factor in the technique suggested by Dr. Teel seems to us to be the diffusion of professional responsibility for decision, comparable in a way to the value of multi-judge courts in finally resolving an appeal difficult questions of law. Moreover, such a system would be protective to the hospital as well as the doctor in screening out, so to speak, a case which might be contaminated by less than worthy motivations of family or physician. In the real world and in relationship to the momentous decision contemplated, the value of additional views and diverse knowledge is apparent, at 668-669.