

American State Courts, Five Tsunamis, & Four Alternative Futures
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By Jim Dator

The American states, and the state judicial systems; America, and all of its institutions and value systems; indeed every nation and community in every part of the world; every institution, every person is now in the beginning stages of what will be one of the most exciting, challenging, daunting, and uncertain periods humans have ever faced. It will thus also be a time of unparalleled opportunity--opportunities for vision, leadership, courage, imagination, resolve. Largely because of political, economic, and technological decisions and their consequences, largely unanticipated, of the past two hundred years, and especially those of the past fifty years (since the Second World War) and then even more especially because of those made during the last decade and a half, the world has embarked, more on less unwittingly, on a voyage to the end of the earth where we stand, in the words of William Irwin Thompson, with the winds of the future whistling through our teeth.

Maybe a better metaphor is that we are white-water rafting down the rapids of change without a paddle--indeed while most of us are facing the rear of the boat and arguing about who did what to the landscape we see in the rapidly receding distance behind us.

But actually, the metaphor that I have been using is different still. Thompson's image of humanity standing at the end of history with the winds whistling about us may be accurate to the extent that we all stand where no one has ever stood before, and that we seem at best transfixed--unable to decide what to do next, and indeed uncertain that there is anything we can do under the circumstances. As I say, that may be accurate, but it is not the image I want to convey, and, more importantly, it is not the posture I want you to assume towards the future. While the challenges are daunting, we must become more active in assessing the future and trying to do whatever we can to make the best of it.

Similarly, the image of humanity hurtling out of control down the rapids of change while arguing about who did what to whom in the past and why, may even more accurately describe the present human condition. But it similarly ignores the future, and leaves us helpless to do anything but to curse, scream and shout. Also, the image of a raging river suggests that we are being pushed into the future from the past. That of course is a very popular view, made still more vivid in our minds by concepts like Naisbitt's Megatrends--huge, unstoppable forces from the past which are pushing us relentlessly forward whether we want to go or not.

Of course, in this view, if we would all turn around and face the front of our raft, and if we could fashion some paddles or poles from the flotsam in the water or from the trees on the bank as we rush by, then we might at least be able to have some measure of control over our fate; we might be able to avoid some of the rocks ahead, even though we still must go where the river is pushing us.

As I say, that image is better than that of having humanity merely stand and wait. At least there is some possibility of our doing something.

But the image of the human situation that I have been using recently is different still. Perhaps because I live on an island more clearly in the middle of nowhere than any other spot on earth I see Hawaii as a harbinger of things to come for the world as a whole in many ways. For one, Hawaii's past and present has been shaped many times by what are called "tsunamis"--perhaps you know them by the old term, "tidal waves." Tsunamis are gigantic waves often set in motion by underwater earthquakes which then rush up on the shore unexpectedly, causing tremendous damage and loss of life. As a consequence, Hawaii has created an elaborate tsunami scanning and warning system to track any possible tsunamis and to give the residents time to flee for higher ground before they strike.

FIVE TSUNAMIS FROM THE FUTURE

I see the future as approaching us in the form of five or six mighty tsunamis. Indeed, the ocean already is rough and the rising wind is blowing fiercely. Gale warnings are being hoisted, and we are being advised by many shrill voices to run for the hills.

But most of us are utterly oblivious to those warnings. Instead, we have spread our blankets out on the warm sand and are preparing to have a fine picnic. Still, we are annoyed by the sand which is blowing into our drinks, and the ants which are streaming to our sandwiches, and we are bickering rather loudly among ourselves as to whose fault it is that someone forgot to bring the potato salad and accusing one another of eating the desert.

And we are doing all this with our backs to the ocean, oblivious of the mounting roar of the onrushing tsunamis.

I urge, I beg, that we stop our petty bickering, and that we turn around, and face those waves. Indeed, I suggest we adopt the attitude of a surfer, and learn to surf those tsunamis of change. Have you ever watched a surfer prepare for the ride? An experienced and successful surfer does not run blindly from the beach to the water and surf the first wave that comes her way. Rather she stands on the beach for some time and carefully studies the sets of oncoming waves. She asks the other surfers what the conditions are, where the rip tides are pulling, where the sharks are trolling. Then, when she has made up her mind where and when to ride, she waxes up her board and plunges in, swimming stoutly through the oncoming brine, finally rising to catch the chosen wave as it rushes towards her.

THAT is the attitude I want you to take today, this week, and forever: forget the petty squabbles of the past; forget the real annoyances and privations of the present; study the shape and interrelation of the tsunamis of the future, then wax up your board and paddle out there and surf them.

I will consider briefly three aspects of each of these five tsunamis--the situation in the US, in the world, and my suggestion about what the bottom line implication of each tsunami might for American state judiciaries.

1. Demographics

Nationally:

America as a whole has a progressively aging and only slowly growing population. However, the white European-American population is aging and declining both in proportion and in absolute numbers. Persons of color, however, especially African-Americans and Hispanic/Latino-Americans are rapidly increasing in proportion and numbers (thus getting younger as well as more numerous absolutely and proportionally). The greatest percentage (but not number) increase is among certain Asian-Americans (Filipinos, Hong Kong/Taiwanese Chinese, Koreans, Southeast Asians).

America is thus becoming a "mosaic society" overall, with no ethnic group a majority. Moreover, in many urban areas, the white minority is rapidly diminishing.

Growing numbers of wealthy and well-educated permanently-resident foreigners, especially from East Asia and western Europe, will be more apparent as well.

Globally:

World population continues to rise catastrophically, but this global statement also hides two very different trends: a rapidly aging and numerically declining industrial world, on the one hand, and an even more rapidly younging and numerically increasing undeveloped and developing world on the other.

The Bottom line:

Global overpopulation is a serious threat to the continuation of human life on this planet. Moreover, the potential for ethnic and intergenerational violence in the US and around the world is great. But at the same time, the potential for the enrichment of all cultures by the examples of others (including in management organization and styles, and in conflict resolution) is even greater. Thus, we should use the increase of cultural diversity in the US and the world as a resource and not treat it as a threat.

2. Economics

Nationally:

Charles Murray, a conservative scholar at the American Enterprise Institute, fears what he calls the "Latin Americanization" of the US with the emergence of a two-tier society composed of an unusually large number and proportion of rich, well-educated people (10-20% of the population) and a much larger number (more than 50%) of working poor and permanently unemployed.

Secure, lifetime jobs, are mostly gone for everyone, rich and poor. While many new high-paying jobs, requiring exceptional skills and intelligence, do and will exist, most new jobs are, and will continue to be, low-skill, dead-end so-called "service" jobs.

White collar, as well as blue collar, jobs will continue to be eliminated through automation and increasing artificial intelligence. More good jobs will be eliminated than created.

Public services will be severely strained--using obsolete technology and assumptions, in disrepair, and deeply in debt.

But private sector progress is similarly restricted by even heavier corporate and consumer debt (especially in rural and urban core areas). We cannot count on the private sector taking over from the public sector any more. Its resources too are severely limited.

Globally:

There are virtually no local markets anywhere any more, and there are not many purely national ones either, for even the largest nations. Capital, labor, technology and markets will soon be entirely global, responding to forces which no state or national government (including state or national judiciaries) can significantly influence, much less control.

At the same time, the probability that the current global recession will linger, and perhaps sink into a serious to catastrophic global economic depression, is by no means negligible. A brighter conventional economic future depends on Europe avoiding the black hole of tribalism it appears to be sinking into and joining China as the chugging engines of renewed economic growth.

Bottom line:

Things do not look good for current economic systems, just considering them on their own conventional terms. But when other tsunamis from the future are also factored in, the future of current economic systems looks bleaker still. But does that mean dangerous turbulence and violence lies ahead because of economic crisis? Probably, unless new economic theories and practices arise from one of two sources (or both competitively):

a) Many people around the world say they wish to recover values and ways of life destroyed or at least marginalized by industrial societies. The Green Movement (which may be growing in the US and is already a serious political presence in much of Europe, New Zealand, and Australia), some of the so-called "New Age" groups, and many indigenous people take this position, either out of preference or because they feel we really have no other choice if we wish to have a sustainable future.

b) On the other hand, many futurists believe that it is possible, and preferable, to create a post-economic society where most people do not "work" at "jobs" but instead do socially and/or personally satisfying things with their time while still receiving all the cybernetically-produced goods and services they want without "working" for them--as used to be the case for everyone in many traditional societies.

I strongly urge you to prepare for the worst, but to work for the best, by which I mean that you work for, and support others who are working for, the creation of new and viable economic systems.

3. The Environment

Nationally:

While there are still many skeptics, plenty of contradictory evidence, and much uncertainty about the timing and severity of impact and consequences, what is lamely called "global change" seems very likely: dangerous rise in the pollution of land, water, and air; atmospheric warming leading eventually to melting of the ice caps with sea level rise and the inundation of substantial parts of the world's most densely populated areas;

destruction of the ozone layer leading to disruption of crop and livestock production and certainly to the end, or substantial reduction, of sun-based tourism, and on and on.

The present political and economic owners of the US are among the most reluctant in all the world to acknowledge global change and to prepare policies to respond to it. But there are signs that even these people are beginning to get the message, though what they may actually do about it is unclear.

Globally:

Of course, this is a global problem if there ever was one, but it was not "globally" caused. It was a few, rich, comparatively small industrialized nations and areas in the North who "caused" environmental change through their industrial policies and practices, though everyone will suffer. The South has already made it clear that it is not going to take this lying down, with a smile on its face for the whole human race. This is another reason why increased inter cultural conflict and violence seems likely.

Bottom Line:

Dealing with all of the many effects of environmental degradation, not the production and distribution of goods and services, will be the focus of many, perhaps most, human activities by the early 21st Century. The longer preventative and ameliorative action is delayed, and resources expended on other activities, especially military weapons and adventures, the more difficult and costly it will be to find satisfactory solutions in the future.

4. Technologies

Nationally:

Technologies, or at least certain industrial and military technologies, are responsible for much that is good as well as bad in the present and the future. The Canadian social philosopher, Marshall McLuhan, put it well: "We shape our tools, and thereafter our tools shape us." Unfortunately, "we" are much better at "shaping our tools" than in trying to anticipate how they might "shape us." Thus, to this extent, we have marched into the future while staring into a rearview mirror and have had to deal with the social and environmental impacts of our technologies well after the fact.

But at least until recently, most of the technologies were "ours"-- invented, developed, sold, and used by Americans. Over the last decade, and for the foreseeable future, new technology research and development will increasingly take place in Europe and EastAsia. But American consumers will be no less eager than now to acquire and use them as soon as they are made available.

Some of the present and future probable impacts of electronic technologies have already been mentioned: namely, almost complete automation of all aspects of production, distribution, and even intelligent decision making. But there are others lying immediately ahead which are changing the meaning and experience of reality. Advances in, and the marriage of, television, computers, telephones, visualization, dematerialization, and related technologies are rapidly leading to the emergence of what is being called "virtual reality" making it possible for individuals and groups, perhaps widely separated in time and space, to create

and experience together realities beyond anything Mother Nature ever invented.

At the opposite end of the same technological spectrum lies "embodied virtuality" which has been defined as the process of drawing computers out of their electronic shells, miniaturizing them, and placing them in everything--cars, buildings, appliances, human bodies (even judges)--and certainly in court houses.

But emerging soon from a biotech plant, perhaps near you, more likely somewhere overseas, will be new processes of food and materials production, and of the purposeful engineering of "life," that will render obsolete almost all present forms of energy production and distribution, agriculture, industry, transportation, warfare--everything once characteristic of life in the US during the late 19th and 20th Centuries.

And the promise--or threat--of molecular engineering (also called "nanotechnology") shortly thereafter (that is, by the mid 21st Century and beyond) is even more revolutionary.

Bottom line:

If electronic, biological, and molecular technologies continue to be developed and used at approximately the same, or greater, rate as they are now, the world of the 21st Century will be even more different from the 20th than the 20th was from the 17th or 18th.

It is very difficult to overstate the extent and magnitude of technologically-induced social and environmental change over the next decades. It almost certainly will surpass anything we have experienced personally or historically. Since, as I said before, we all want to use analogy, precedence, and past experiences to understand new experiences, the future will seem extremely chaotic and confusing to everyone.

Moreover, since disputes arising from only a few people using, or desiring to use, these new technologies are liable to appear in the courts before the public is aware of them, and thus before any elected body is likely to have set public policy dealing with them, the courts will continue to have to deal with "outrageous," "immoral," "futuristic," "science fiction"-like issues as creatively as any futurist--and far more significantly.

For this, if for no other reason, future-oriented exercises are of great practical importance. And this is certainly a good reason why systematic futures-scanning activities should become a routine part of all judicial administration activities at all levels of courts. Everything you can do to avoid being taken by surprise and thus having to make rash judgments should be of great value to you. Routine incorporation of futures research into judicial administration and decision making should be of considerable practical utility to each and every one of you.

5. Governance and Politics

For better or worse, policies and practices over the past decade and more have reduced the major functions of the US government to basically two: waging war and reinterpreting the Constitution. Federal budgetary and personnel restrictions are so severe that it is highly unlikely that the kind of centralized welfare state found in the US in the 1960s and early 70s (timid and tiny though it was by the standards of the welfare states of Europe and Japan) will ever return in the foreseeable future.

But it will be very difficult for the US federal government to carry out even the most minimal functions. Indeed, those who favor the privatization of all government functions must be tickled to death with the fact that the US apparently can only wage war, as it did in the Persian Gulf, if somebody else pays for it.

And the future trajectory of the US Federal courts is too well known by all of you for me to make any comments--especially when I reflect prudently on what my judgment of the federal courts might be in contrast to yours. Let me just say that the future of mediation, arbitration, and neighborhood justice centers is very bright as groups and people increasingly do everything possible to avoid having their disputes come to the attention of the federal courts.

The bottom line is that while there is plenty of governing that needs to be done, the US federal government is not going to be able, much less willing, to do most of it for the foreseeable future. That leaves it up to the states--and to emerging new forms of regional, North American, and global governance.

As a consequence of my duties in the World Futures Studies Federation, I have spent a lot of time in various parts of Europe (what was East as well as West) over the past decade and a half. I am very impressed, and more than a little worried, by what I see there. Part of what worries me is the return to expressions of nationalism and racism I hoped were dead but which turn out rather to have been moldering and festering. But I will still be worried, for the US in any event, if these nationalistic and racial problems are solved, and a more localized, while at the same time, unified, vigorous, and prosperous "United States of Europe" emerges, as still seems possible.

I am also impressed by the breakdown of large nation-states, and the creation of smaller ones, which I see going on everywhere in the world, except the US. The USSR and every country in Europe are obvious examples, but even our good neighbor to the North, Canada, seems (as usual) on the verge of disintegration. I find it difficult to believe that the US won't soon begin to fragment too. Some years ago, a book was written describing the "nine nations" which actually exist in North America, in contrast to the three which legally exist here. Just as the European Community is redefining the map of Europe from the Arctic Peninsula to the Rock of Gibraltar, and from Cornwall to Vladivostok, so also do I expect new nations to emerge and reunite from Hudson Bay to the Panama Canal, and from Newfoundland to the Aleutian Islands (but not to Hawaii, Guam, Samoa, and the Northern Marianas, by the way: they will be something else entirely, I suspect).

Over the past fifteen years, I have also spent a lot of time visiting with officials and citizens of the various US states, and I have been enormously impressed by their abilities and values. If the impoverished and enfeebled US government were to stop putting its mouth where its money isn't, and let the states do the governing they are capable, and which desperately needs to be done, our future could be a lot brighter.

But I have been even more impressed by the strength and wisdom which the states have gained from various umbrella organizations they themselves have created and fund, such as the Council of State Governments; the Council of Governor's Policy Advisors; the Conference of Chief Justices; the Council of Chief Judges; and many more. I especially highlight the excellent work of the State Justice Institute, the only federal funding agency I know of that has taken the future seriously. All of these organizations and others like them demonstrate that federalism really works when the states get to create agencies which serve their needs, rather than the other way around.

As I say, this disintegration and re-unification of old and new nation-states is a global process, augmented by the technological, economic, environmental and demographic/cultural processes I have already touched upon. Moreover, I believe that the widening chasm between the peoples of the Northern and the Southern Hemispheres will replace the East-West, communism-capitalism preoccupation of the post-World War Two period. And the North itself will more clearly be divided into three regions, in order of priority: EastAsia, Greater Europe, and North America.

The North presently and for the immediate future has the wealth, and the South has the population. It seems clear to me that more of the South is going to be more effective in getting more of the wealth as the 21st Century rolls onward, and that the South's burgeoning and restive population will continue to strain to move Northward until it does.

So the long-range trajectory is for the creation of effective forms of global governance which I can only hope will be more democratic as well.

FROM TSUNAMIS TO ALTERNATIVE FUTURES

Now, because the future is approaching us in the form of mighty and interactive waves of change, it is impossible for anyone any more to predict what the future will be. While once upon a time, long, long ago when tomorrow was basically like today, it might have made good sense to prepare for the future by remembering and recreating the past, it does not make much sense to do so any more. It is with some, but not total, regret that I must inform you those days are gone--indeed that they have been gone for many decades, even though, as Alvin Toffler correctly predicted when he coined the phrase "future shock," most of us have been so disoriented by the world in which we actually live that we have pretended we live in the world of yesterday where dad went soberly to work at a safe and secure job where he made enough money for mom to stay at home and raise their (and only their) very own 2.5 children in a quiet, shady house in a safe and all white neighborhood, with the kind and courteous and very cheap assistance of one black maid and one black mammy neither one of which, slavery being what it was, could be called "illegal aliens."

It may be that some of you still do live like that, and think all should or could. But unfortunately or not, most of the people in the world, and even in the US, do NOT live that way: never did, and never will. It is desperately important that we--each and everyone of us--try to recover from our future shock and face the world as it actually is. No, rather, as it actually will be. No. That's impossible. To face the future as it might be, and then, given the tsunamis, the alternatives, and our own resources and desires, to help create the future as we want it to be.

So, while no one can predict the future, it is possible to forecast several alternative futures, which might come into existence as forecast IF the waves clash and tumble together in certain ways, and IF we choose to ride them one way rather than some other. So what I intend to do for the remainder of my brief talk with you today is to suggest four different alternative futures of American state courts over the next 10, 20 to 30 years or so.

These are four of the many possible ways in which the future might actually become the present at a later time, determined, as I say by which tsunamis hit

in which sequence and how we have prepared--or failed to prepare--ourselves to surf them.

1. Teleworking Global Justice

The first future I want to you consider briefly today is one I call "Teleworking Global Justice." To be frank, I must confess it contains some elements of what I think will happen, and how we might try to shape it to be the way we want it to happen. It also represents some of my thinking that is going into a project which the Hawaii Research Center for Futures Studies is just beginning to contemplate called "Teleworking Justice, some remote possibilities". But I know that it is a vision of a possible future which some of you also may share, or at least towards which some of you are already contributing by virtue of decisions and actions already undertaken or planned. Indeed, I would appreciate it if those of you who feel your judiciary is already well on the road to teleworking justice, or at least tending in that direction, would tell me more about it.

Marshall McLuhan once asked, "what if television had been invented before the printing press?" We might ask more basically, what if electronic communication technologies in general had been invented before the printing press, or before the steam engine, or before the public school system? What if, in 1215, the Macintosh PowerBooks of the English Barons had all been networked together by LANs and WANs or Bitnet or Intelnet?

Would the Barons have met at Runnymede that bleak June day to force King John to put his seal to the parchment on which they--or someone--had laboriously handwritten the Magna Carta? Couldn't they just have run several drafts back and forth over e-mail and sent a cc to the good King informing him of their demands and of his expected compliance?

And if the good lords and ladies in 1628 had had their very own Newton Apple Computers, or Motorola Iridium Handsets--wireless, hand-held, cellular phone-like devices that now in 1993--or soon within the next few years--will allow anyone to communicate to anyone or any group wherever in the world you or they might be via voice, or fax, or email, or digital video, would Sir Edward Coke have bothered to write, among all the other things he wrote, the Petition defining the rights and privileges of Parliament against to royal prerogatives asserted by King Charles I?

Or if, in 1776, the American Founding Fathers, isolated from each other in the thirteen separate colony-nations with no system of roads at all connecting them, had each had had access to the Holodecs of Star Trek within which they could meet together in virtual reality, would they have endured the heat and filth of a Philadelphia summer to write a US Constitution? Indeed, would they have "written" anything at all--at least anything in words on parchment? Wouldn't they have written the software or invented the microchip implant which would have made a government of the people, for the people and by the people actually possible? Would they bothered to have gone to the trouble of overcoming distance and ignorance by inventing a bicameral legislature, one house of which was to be composed of presumed "representatives" elected by some privileged white males in local districts in each states, and the other chosen directly by the state legislators? Would they have fretted over the

presidency and created that hippopotamus called the electoral college? Would they have mandated one supreme court and such other courts as congress may from time to time ordain and establish? Would they have bothered with all of the structures of government we now have, so little changed in any of the 50 states and territories from what they did create two hundred plus years ago before the advent of the personal computer, powerbook, hypercard, multi-media, Newton Apple, camcorders, interactive video, LANs, WANs, virtual reality and all the other new communication networks and technologies rushing towards us from the future? If they had had all these, wouldn't they just have gone for directly electronic democracy?

Then why don't we now, since we DO have them, and will have many more which make modern representative governments and our present structure and system of courts, state and national, as relevant to our needs now as a buggy whip on the Space Station Freedom.

Indeed, why have nations anyway? We live in a global world--breathe globally-polluted air, watch globally-distributed television shows, buy globally-manufactured products, eat food grown we know not where, shipped to us we know not how, the waste of which is transported from our homes to sites somewhere on the face of the planet, perhaps under the seas, perhaps shot by rockets into outer space--we don't know. Labor moves across national boundaries, legally or illegally, where capital needs it. Capital moves across the same boundaries seeking profits wherever they might be found. Capital, like rust, never sleeps. The earth is round and there is a stock market open somewhere to which our digitized money is electronically shuttling while we dream of monstrous profits or fear of catastrophic loses.

Canada, Mexico and the US are knitting themselves together, via NAFTA, into one big economic market. Much of the rest of Central and South America looks on with concern, dread, anticipation, envy. Meanwhile Europe, after the lavish euphoria following the Fall of the Wall, seems caught, mid air, between a United States of Europe and World War III. A "Pacific Century" looms, dominated--by whom? Japan? Perhaps. More likely China with nearly 1/3 of the world's bloated population not only on its very diverse mainland and across the straits in prosperous Taiwan but also, as so-called "Overseas Chinese", spread worldwide, and soon, perhaps to embrace the other Confucian powers--the reunited Koreas, Singapore, perhaps even a subdued Japan itself.

So what do we mean by "National Sovereignty" any more? Show me one nation that is big enough to control its own destiny.

The crying need of the immediate future is for new forms of global governance which can deal effectively, fairly, and hopefully democratically with the globalization of everything else.

Now, neither the English Barons in 1215, nor Coke in 1628, nor The Founding Fathers in 1776 had electronic communications technologies, so we can not fault them for using the technologies and ideologies they did have to build the political institutions they did build. But we do have new technologies, new ideas, new aspirations and new tsunamis of change bearing down on us. In 1776--indeed, in 1876-- the United States had two broad oceans on either side

and a great gulf below separating us from the rest of the world. It took weeks to get people or news from one side to the other. Now, those waters are spanned by technologies that move people and goods in hours, and information in seconds. As a consequence, many of us know--and care--more about what is happening in London, Paris, Moscow or Tokyo than in Peoria, Portland, or Pierre. Indeed, we know more about what is happening in Bosnia than in Boston.

World-encompassing businesses need global--not national, and certainly not state or local--policies in order to plan and carry out their affairs fairly, efficiently, and profitably. And global businesses also need global means by which to resolve their disputes. They need courts whose jurisdiction is the world and whose venues are at the same time everywhere and nowhere. In addition, each citizen of the world needs to know that her civil rights will be respected, defended, and guaranteed worldwide.

In the globally-linked teleworking virtual judiciary of the future, the judge can be on the beach at Waikiki, the defendant at home in Auckland, his lawyer in Beijing, the prosecuting attorney in Paris, the clerk in Nashville, the probation officer in Pyongyang, the witnesses on the Moon, at L5, exploring life in the superhot plumes of an abyssal trench 40,000 leagues under the sea, climbing Mount Everest, between tennis matches at Wimbledon. Who cares--who knows--where anybody is? At last we have the answer to the question asked by the FireSign Theater more than twenty years ago: How can you be in two places at once when you are really no place at all?

What language are all these diverse parties at court speaking? English? English is not likely to be the universal language of the future. But again, who cares? The Hitachi Mouth/Ear Electronic Translator enables each person to speak the language she wishes and to hear the language she prefers.

The files, the mountains and mountains of papers, tracking the case, where are they? Nowhere and everywhere, but nowhere on paper. And the laws which govern the case, where are they? It's hard to say that they are written down and must be looked up. Where is up and what is down in the electronic surround of the future--the future of teleworking global justice?

2. Green, Native, Feminist Justice.

How absurd! How totally absurd. How dangerously absurd! If there is anything the world, and most of its inhabitants, neither want nor need, it is such high tech folly. You said one thing correctly, Dator, and then drew the wrong conclusion from it. "Why have nations anyway?" you asked. Precisely. Why indeed? Why at least have the 19th Century monster states still lingering in the present which are capable only of oppressing, in the name of some mythic "national interest," the true desires of native and other locally-oriented people everywhere? Just look around you. Can't you see what's going on?

When people are able to have their way--when ordinary people (rather than the multinational corporations who pursue no values other than blind profit and maximum destruction of all competing values, cultures, and of the earth itself)--when people who still revere the land and the ways which for millennia sustained humanity and the earth in a loving balance of

interrelations--when these people are able to make their voices heard, and their wishes felt, what is the result? Not globalism! Not more and better technology! Not the genocide of noble native cultures! Not the wanton destruction of mother nature! And not the further thrusting, raping, conquering, swaggering macho patriarchy of some global high tech world!

No, whether in the former Yugoslavia, or the former Soviet Union, or in Kashmir, in Catalonia, in Ireland, in Palestine, in Quebec, in Wales, in Scotland, in Hawaii, indeed (truly in this case) everywhere in the world, the response of people is to regain control of their lives and of their future by returning to ways and values long ridiculed, marginalized, destroyed, and all but forgotten. Whether it be the Green Parties of America, which are winning electoral victories everywhere, or the velvet (sometimes purple) revolution of feminism which is steadily, stealthily, effectively insinuating itself into the positions of patriarchal power and bending them subtly but surely into submission; or the uprising, sometimes violent, often peaceful--the renaissance, the transformation, the reinvigoration of indigenous cultures everywhere--isn't the evidence clear to all but the most technologically and patriarchally obtuse that the wave of the future is washing away all the gigantic and cancerous forces of national, much less, global dominance?

Isn't it clear that people want control returned to the lowest possible level, on the most human scale? Isn't it clear that no human being wants your global high tech justice? And they don't want the blind, inhuman "justice" of the industrial state either. Just because people are fed up with the delays, the rules, the regulations, the rudeness and pomposity of everyone involved in the present judicial system doesn't mean that they want something bigger, more distant, less personal, for chrissake! It means they have no respect for any of these impersonal systems even now. Speaking of "contempt of court"--who can be held lower in the esteem of most people than a lawyer, unless it is a lawyer that has become a robed, wigged, elevated, and wholly out of touch with anything human judge. Who needs Virtual Justice at the electronic hands of Robby the Robot Resolver when you have the crazy system we have now? Making it bigger can only be making worse.

If we listen to what the thousands of indigenous people who are regaining their voice are trying to tell us, we know that they want to recapture and restore their tried and true ways of settling disputes. They reject the claims of the reified "state" to have jurisdiction over them. They want to settle their disputes the way their ancestors did for millennia before Julius Caesar, or Edward Coke, or Alexander Hamilton, or Grover Cleveland wiped them out.

If we watch people voting with their feet by going to neighborhood justice centers and commercial mediators--even rent-a-judge services--(anything to avoid the formal judicial system), we must conclude that something is wrong, desperately wrong, with the present system, and that people want something closer, more personal, more traditional. Something that let's them tell their story their way, and not the way the formal system insists. Indeed, if we could just wrest alternative dispute techniques away from the hands of the lawyers and judges who have usurped it, the neighborhood justice centers would be even more popular than they are now. It is because human justice has been once again appropriated to serve the needs of the formal system, rather than

the needs of human beings, that ADR may appear to have fallen on evil days recently.

And where native peoples still use their traditional techniques to solve problems, let them continue to use them, and empower them to use them, instead of requiring recourse to the formal judicial system. Where native peoples have been forced against their will to "forget" their traditional techniques, assist them in relearning and reinvigorating them, not only for themselves, but also for all the other millions of people who want to settle their disputes in a more satisfying, humane way.

3. Inertia Forever

Dator, what have you been smoking? Do you live in a fool's world, or what?! So far, we have heard nothing but the most ridiculous blither we've ever been subjected to: first a brave new wonderful world of global high tech interconnectedness (I'm surprised you didn't throw in robots, cyborgs, and extra-terrestrials in order to complete your high tech superoptimistic fantasy). Then you give us the most nauseating New Age/Nobel Savage drivel we've ever heard.

You said we should take your tsunamis seriously. Why should we take them seriously if you obviously don't? Isn't it clear that on the one hand the cultural, economic, and environmental issues are much more serious than you seem to admit, and on the other that there is absolutely no evidence that the formal judicial system--or anyone else--is prepared to take them seriously?

The only realistic, probable future--the only one that matters; the only one we should be concerning ourselves about here--is the one that might be called "Inertia Forever." Instead of wasting our time being titillated with dreams of global interconnectivity, or a sudden outburst of noble savagery, shouldn't we be dealing with some reality here? Otherwise, I advise that SJI stop funding AJS, and we all stop wasting our time considering "the future" if the only future worth considering is not even mentioned.

OK, OK. I get the point.

Let's remind ourselves of what is going on around here. Many of our cities are already pretty much what they were forecasted in the late 1970s/early 1980s they would look like in the old Mad Max movies. Or Bladerunner. Or Escape from Manhattan. Or a million more.

Miami, LA, Detroit, DC--you name a large American city and you are naming a smoldering powder keg ready to explode into race/class warfare. The gap between rich and poor has never been bigger than it is in the United States now, and it is continuing to grow. The problem is not only that the number of poor and permanently unemployed or underemployed is growing catastrophically. It is also that the number--and proportion--of rich and superrich among Americans also grew at an unprecedented rate in the 1980s. That is what makes the present and significant future so different from anything we have experienced before. Even though the rate of growth of the very rich has slowed, if not stopped, in the US, the absolute number of rich people remains unprecedentedly large. And they have every intention of

remaining as rich as they possibly can be, while the numbers of the poor increase and the job-secure middle class and working class continues to evaporate to nothing.

That is a recipe for class warfare in the US--or at least for an underclass uprising against the class warfare which has been waged against them over the past two decades.

This also unfortunately is, or is perceived to be, race warfare. The very poor are far more likely also to be African-American, Hispanic-American or some other nonwhite hyphenated American. The very rich are equally far more likely to be white or East Asian.

In the meantime, policies and propaganda over the past several decades have also destroyed and delegitimated government in America at all levels. Ronald Reagan boldly proclaimed that he would destroy the federal leviathan and return the responsibility of governing to the states. A man of his word, and having the trust of many Americans, Reagan did what he promised. Bush continued the legacy, and now Clinton can only deal with the consequences, whatever his intentions might, or might not, be. The fiscal, personnel, and policy resources of the US federal government are now severely limited, and with every passing day, they get weaker and weaker. Congress may issue laws mandating this or that, and the Federal Judiciary may uphold or contradict what Congress requires. But there is very little that any Federal administration can do to carry out those decrees, be they sinister or sublime. The monstrously growing federal debt, like a cancer well-advanced in an already weakened body, saps the Federal government of all power to act even if it had the will to act. The severely straitened nonmilitary federal civil service is similarly enfeebled. With the Cold War regrettably over, there seems to be no good reason to continue the forty-five years-old policies of the military welfare state. Yet even more economic and human misery results from every attempt to scale down just slightly the bloated military bureaucracy and its welfare recipients.

So this leaves the states perhaps with the responsibility to govern, and even with some of the requisite human resources, but with almost none of the economic and political resources necessary for governing.

Moreover, while the people want schools to educate their children, roads on which they can safely drive their cars, bridges which they hope to use without fear of their falling--and airplanes, too--jobs which offer them some reasonable chance for living both at least a minimally-secure and modestly-comfortable present and a decent retirement, air they can breathe, seas that do not rise beyond their historic boundaries, water they can safely drink, food which they can afford, heat in the winter, cool in the summer, and a reliable roof over their heads, and, all in all some hope for a future at least as bright for their children--while all people clearly want all this, few of us seem willing to pay for it even if we are able, and every day fewer and fewer seem able.

So what is a government to do?

And, in all this, what is a state judiciary to do? State courtrooms are already clogged, and more laws, more lawyers, more law suits, more contestants are

threatening to choke many of them. At the other end, although new jails and prisons are rising like mushrooms after a rain, most are filled to capacity before they are finished. In many jurisdictions, a prisoner must be released--rehabilitated or not--before a new criminal can be sentenced to prison.

New judgeships are created, new judges elected or appointed, new courtrooms are built, but who can say the quality of justice is improved--or even maintained? Indeed, isn't it the case that many jurisdictions are now approaching something like "generic justice"? Isn't the demand so great and the supply so small that justice is now dispensed in a dismal assembly-line process in most cases?

Due Process Be Damned (or only minimally met) BANG! Next case!

And, given the decline in resources as well as the decline in the legitimacy of all governments everywhere, isn't the situation clearly going to get worse? Isn't this the future we should be contemplating seriously at this conference, and attempting to address--never mind technology; never mind some Green or female dreams, or any other so-called "alternative futures?"

4. Judicial Leadership into the 21st Century

And who in the world can address it better than the state judiciaries?

As you know, over the past twenty years I have had the extraordinary opportunity to work with many different state judiciaries as they have tried to think about their futures. Over this time I have learned a lot of things, many of which surprised me. First of all, I had to rid myself of certain prejudices I had about courts and judges. Secondly, I had to try to help judges and other court officials rid themselves of certain misconceptions they held about themselves--or rather to understand that certain myths they perpetuated about courts and judges should not mislead themselves into inactivity, but should and could be utilized to the greater advantage of society as a whole. And thirdly, I came to see that in many ways, because of the very nature of their day-to-day jobs, and the nature of the American political system, judges, as a group, were both the philosophers and the futurists for America. And, if this is the case, then they might as well make the most of it. America rather desperately needs a unifying philosophy and a compelling, guiding future vision. If, in the American system of government, this seems to be something that only state judiciaries can provide, then let them get on with the job and exercise some leadership here.

In May 1990, an extraordinarily important national conference on the future and the courts was held in San Antonio, Texas. Many people in this room were there. Several hundred judges, administrators, lawyers, scholars, and advocates from many state courts, federal courts, law schools, and legal and rights activist groups met and considered the trends, alternative futures, and preferred visions of the American systems of justice.

At the conclusion of the conference, and then through a subsequent mailout procedure, ten preferred visions of the future of their state judiciary in the year 2020, which had been developed by the participants, were presented back to the participants, and they were asked to indicate their number one

preference among them. None of the ten visions presented back to them was chosen by a majority of all the participants voting. But three very clear results were obvious: 1. Even though virtually all of the participants were highly successful operators in the present judicial system, only 11% of those voting chose "the present system somewhat improved" as their preferred future judiciary in 2020. 2. Four of the visions presented to the participants were very significantly different from the present. Nonetheless, 40% of the participants chose one or another of those very different alternatives. 3. The vision of the future chosen by more of the participants voting than any other--by 41%--was (da, da!): Judicial Leadership.

I am certain that many of you share some aspect of that vision. You recognize that in the American political system, judges often do make significant social policy because the other two branches of government often shirk that duty and leave it up to the courts to decide the really tough social issues. Those of you who are judges, or who work closely with judges, will also realize that judges are often asked to decide conflicts about matters concerning which ordinary citizens, and thus their elected representatives, are completely unaware. Indeed, if they were informed about some of these issues they would consider them to be a story from far-out science fiction. But trial judges, and then appellate court judges, and ultimately supreme court judges almost every day are being asked to decide cases dealing with scientific, technological, and interpersonal controversies which, though far beyond the ken of a majority of our citizens, are of very grave import to a few, and ultimately of extreme consequence to us all. Thus, judges, more than most of us, are the true futurists in our society, deciding cutting-edge questions while the rest of us are still worried about yesterday.

If this is the situation, and I am absolutely convinced that it is, then let's help judges make the most of it. Let's help them be the best futurists possible. And, in order to do that, we need to help the courts, and the legal/judicial system most broadly defined, effectively to consider the many substantive, technological, philosophical and methodological issues of the future, and of futures studies, and to incorporate this knowledge and skills into their decisions, and into all the routine administrative and educational policies and practices at all levels in all of the American state judiciaries.

I believe that is what this conference is all about. That is why you and all the rest of us are here. Please take your assignment seriously, creatively, and with an open mind and heart.

And please, please remember that to the extent the future is not like the present or the past that any useful statement about the future should initially appear to be ridiculous. When you hear statements alleged to be about the future which sound to you reasonable, comfortable, familiar then I suggest that you reject them. But if you hear statements which disgust you, surprise you, discomfort you, then consider them very carefully. These might be the very things that will be riding towards you on the crests of the onrushing tsunamis. There are some strange creatures rising with the rising tide. Prepare to ride with them, eagerly and as your new-found friends.

OK. Wax up your boards. Surf's up!

(*) **Note:** This paper was presented at a workshop titled, "Conducting Futures Activities with Limited Resources," held in Nashville, Tennessee, April 29-May 2, 1993. Except for the inclusion of the material concerning the "five tsunamis," the paper is published here almost exactly as it was presented there. The section on "five tsunamis" was itself adapted from part of a talk which I gave for the Annual Seminar of the Council of Chief Judges (state appellate judges) at Sedona, Arizona, November 9, 1991. Since that paper was distributed to the persons attending the Nashville workshop beforehand, it seemed appropriate to include it here.

The Nashville workshop represented a turning point in judicial foresight conducted by many groups and persons through various grants from the State Justice Institute, a federal funding agency located in Alexandria, Virginia. People from the few state judiciaries which had not yet conducted any kind of futures-oriented activity were brought together with representatives from the many state judiciaries which had. The intention was that the latter would share their experiences with the former and inspire them to undertake some kind of futures activity of their own.

A report of that conference is being prepared by the American Judicature Society which was responsible for organizing this judicial foresight activity, as well as others. The National Center for State Courts, the Institute for Alternative Futures, and the Hawaii Research Center for Futures Studies are among the many other organizations which have conducted judicial foresight activities for state judiciaries through SJI grants.

More information about judicial foresight both in general and within the context of a national judicial foresight conference held in San Antonio, Texas in May 1990, can be found in James A. Dator and Sharon J. Rodgers, Alternative Futures for the State Courts of 2020, published in 1991 by the State Justice Institute and the American Judicature Society (25. E. Washington Street, Suite 1600. Chicago, Illinois 60602. USA. Phone: 312-558-6900) .

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