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The Power of Chaos

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I'm the only non-academic on the panel and I'm a little in awe of the preceding speakers. I want to begin by thanking the three of you because I thought the three papers were incredibly thought-provoking. And now what I'll do is speak to some of the thoughts that came to me as I read those papers.

First of all, I was struck by the congruity, and I use that term advisedly, between Dean Perritt's paper and the David Post and David Johnson paper. Both papers led to the conclusion that a unified system isn't feasible or maximal. In other words, what was really fascinating in the Post and Johnson paper was that little curve at the very end, which says to me that smaller units maximizing their own function and then integrating together get the job done. If you think about the world we live in, the world of human affairs, I think it's an accurate conclusion. A variety of smaller units, working together, create the strength in a system.

Another point made in both papers is that no system can remain closed. It has to be open to new information; there has to be movement of parts; and there has to be growth of new units. That is evolutionary in a sense. So to me the truths, the very human truths, that I pulled out of those two papers were, first, diversity is the norm within the world, is very powerful, and is a source of strength as long as the diverse units don't become too ingrown or too closed. The second truth is that chaos is a necessary element for growth and continuity of social systems. In other words, the point at which a
system is maximized is not seen in a straight line to the top. Rather, there has to be room for chaos, for growth, for different elements to come into play, for evolution to happen, and for new things to come into the system, which then gets maximized and integrated. I saw this in Dean Perritt's paper when he talked about the NGOs coming out of nowhere. That's the chaos element and the diversity, which leads to greater strength and power.

Now, this did raise a question for me, guys, because I don't know what this conclusion about chaos and diversity means when we start talking about technical standards. We tend to think that technical standards should be developed to the max, and should have congruity of one point. I guess that question will have to await a whole different symposium.

Another thought I had after reading the papers is that the Internet, because it allows for so much global communication and for such rapidity of communication, brings us more diversity and more chaos than societies have experienced in the past, and that that may be the source of the power that people feel with the Internet. When I go back to the beginning of Netscape three years ago, what struck me over and over again when people would talk to me is that they felt so empowered by their browsers. Perhaps it is the combination of so much diversity and so much chaos in one place that makes this particular technological and social change so stunning.

I don't know where we go with that, but it may be profound. In some ways the social power of the Internet, and what people are feeling with that power and their inability yet to harness that power, is probably comparable to what scientists felt when they discovered new sources of physical power, like nuclear energy. It's huge: What do we do? How do we harness it?

That's why we need to do the thinking that is reflected in these papers. It will help us understand. That people are frightened by this power is also why we're seeing backlash, like the Communications Decency Act. I gave a speech once about some of the benefits of the Internet, and a lady in the audience became very upset, saying "this will mean that my children won't read books!" This taps into people's real fears. Change is a part of it, but it's also the power that goes with it. It's why some government officials are saying "we've got to control what happens through the Internet."

Yet another thought I had after reading these papers is that there is a gap today between reality and theory when it comes to
cyberspace. Every day we at Netscape are trying to sell products into this space and to deal with the legal issues that come up for people who are doing business on the Internet. One thing I have learned through this experience is that social change happens very slowly. Although the ideas in these papers are so appealing, putting those ideas and theories into play is going to take a long time.

Professor Burk’s paper was particularly helpful to me in this regard. Some of the vested interests in the copyright area are doing everything they can to preserve the past in the face of this new medium simply because it threatens their revenues. I don’t fault them for that, but one of the things I’ve been trying to do for the last two years, literally, is bring together the CEOs of some of the media companies with the CEOs of some of the Internet companies, the ISPs, to have a conversation about where the law needs to go in the copyright area. What I want to say to these folks is, “trade places, sit on opposite sides of the table, and let’s solve the problem.” I can’t even get these people in the same room. Because vested interests are always going to be a factor, the theory is going to be confused, distorted, and certainly delayed by the realities of how social change occurs.

These papers also raised for me the question of whether we will ever be free of geography. I don’t think we’ll know the answer until we are populating outer space, for although we sit at computers and do interact in cyberspace, we are also still dealing face to face, we still have neighbors, we still have local communities, we still get taxed locally, and so on. So it’s probably an overstatement to say that we’re totally free of geography. We should look hard, though, at where the intersection of geography and cyberspace occurs. My mother used to say when I was growing up, “everybody has to be somewhere.” I never understood it but it was the thought I had as I was reading the paper.

My next thought arose from Professor Burk’s written paper, where he said tort law is different because in the tangible world one is subject to a variety of geographic jurisdictions. I think the same is true with intellectual property law as well. As the EU is implementing new copyright laws, we at Netscape know that our products won’t stop at the border and that we may be subject to those laws. It goes to the question of competitive federalism and beyond spillover.

That led me to ask whether there is or should be a difference
between laws that are based on residency and laws that are based on transactions. This bears on my prior point about that intersection between geography and cyberspace.

Finally, as I was thinking about these papers, it occurred to me that they actually caused me to ask "what is law anyway?" Is law a complex social system, or is it something more finite? Is it a standard, as used in Professor Burk's paper? And do our very specific laws need to facilitate a diverse and chaotic world in a different way than they do? What is the intersection between social systems and the law? I think these kinds of questions could be explored in a whole new seminar here.

In closing, you've presented three different perspectives on what is the law, and it's very intriguing to think about. With that, I think I've probably raised more questions than anything else, but I know your work will help get them answered, gentlemen. Thank you again for your fine, thought-provoking papers.