Government and Technology

Technological development flourishes where individual rights, including property rights, are highly regarded

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I am one whose legal training led him toward becoming what might be called an industrial generalist with just enough exposure to business/government relationships — both here and around much of the world — to have formed views on the importance of the form and scope of government in relation to the value which inventor's ideas may have to the social and economic progress of a society.

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We would not and will not long be concerned for the problems relating to *transfer* of technology *between* sovereignties unless we find *within* a sovereignty (and it is our own about which we must be most concerned) a continuing climate for the development of technology.

We are not, of course, the first society to have developed advanced scientific ideas, although it has been observed that 90% of all the scientists who have ever lived are presently alive.

We are constantly amazed at what historians discover to have been within the knowledge of early civilizations in China, Egypt and portions of South America. In many disciplines, we are only now beginning to learn what had been discovered centuries ago.

Why did ancient evidences of individual inventiveness never take off in a surging wave of economic and social progress such as we have seen in the last several hundred years, both here and in Europe?

I believe that it is in no small part attributable to the fact that an industrial revolution requires an industrial democracy. Put in different terms, the industrial revolution was simply not possible before society began to embrace the revolutionary concept that individual citizens had *rights* — property rights, rights to intellectual property, as well as physical, rights to contract, rights to political, religious, and academic freedom. And that the role of government was to *observe* and *protect* those rights rather than to supplant or supress them in the name of the state, or even to just ignore them.

Not until the Renaissance did concepts of law relating to private contract dealing with commerce between individuals — and later, groups of individuals associated for the purpose of advancing commerce — begin to emerge. The role of government in relation to its citizens and their business, began to be refined further as political struggles against the idea that subjects had only such rights as the Crown gave them took place in

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France, Germany, Britain and elsewhere. The role ultimately evolved into the concepts embodied within — most perfectly, we like to think — the four corners of our own very precious Constitution, now nearly 200 years old.

Not until individuals began to see a climate within which they had the opportunity for a continuing reward for their inventiveness, not until they could assert property rights in certain of their ideas in their emerging technology — and had been freed of the expectation that they might at any moment be expropriated in the name of the state — not until then did technology begin to flower and to take shape in the form of institutions of business and commerce destined to provide the basis for the extraordinary social and economic progress so broadly evident in modern times.

It should come as no surprise that technological development has continued to flourish most in those portions of the world known as the free world, in particular in those portions which have shown a high regard for a full panoply of individual rights, including the right to own property of all kinds, intellectual as well as physical. And the acid test of whether the existence of such rights is reliably established within the fabric of any governmental system, is the existence of the right to be critical of government without fear of imprisonment or expropriation. That is a vital aspect of "human rights" — whose relationship to trade and technology transfer has been the basis for much debate. More about that later.

The lesson from what we have been discussing thus far is just this: A government cannot force inventions into being; it cannot force translation of inventions into productive technology; it cannot successfully force technology transfer.

It can forbid it; it can destroy; it can becloud the climate of opportunity for these phenomena.

Or, it can create the conditions within which they may flourish.

Testimony

History provides abundant testimony to the fact that a society in which an individual feels he can be sufficiently rewarded for pursuit of his individual initiative

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will evoke substantially more of such initiative than if the individual is expected to produce merely out of his love for fellow man.

Unfortunately, some will say, but true. Socialism's stubborn resistance to recognition of this fact of life lies at the root — both of their comparative lack of social and economic growth — and of their hope that others who have achieved such growth will willingly share it with them.

Out of such attitudes arose the U.N. declaration four years ago in support of a New International Economic Order which appears to call for redistribution of the world's wealth according to need rather than according to effort. The developing nations complain that there has been no discernible response.

Until the world achieves a closer approximation to a condition reflecting the perfectibility of man, they must recognize that the average man, in whatever political system he may exist, moves more in response to self interest than from eleemosynary motives. The role of government, therefore, is best directed at rules which keep his response from being at odds with the public interest, rather than trying to force responses which are at odds with his private interest.

I have been commenting on what creates a climate for inventiveness in political economies in general, and in a very general way.

R&D in U.S.

Before we proceed to discuss some of the problems of technology transfer between the United States and other nations, it is appropriate to spend a fewmoments thinking specifically about the role of our government in terms of its effect on our own climate for technological development. For unless we can expect a continuing flow of development here at home, all talk about conditions for its transfer to others would in time become sterile.

It is a discouraging fact, but a fact, nonetheless — and one about which, happily, our government has recently expressed real concern — that the last several decades have witnessed a noticeable decline in U.S. innovativeness. There has been a decline in R&D spending as a percent of GNP by U.S. industry; there has been less emphasis on basic research and more on applied research which might have a quicker return; there has been more emphasis on manpower saving than on product development and quality improvement. Equity financings of high technology companies have been in decline.

These developments, as well as our falling behind other developed nations in our productivity trend rate, have resulted in no small part because the climate for profitability of business, in real terms, and for capital formation and replacement, had been deteriorating. A second depressant has been the extent to which the country seemed afflicted with a no-growth syndrome, reflected both in environmental overkill and in opposition to new energy developments.

Just as the new tax and energy bills had begun to encourage hope for a change of climate, the President felt compelled to announce his new inflation program. Its emphasis on limiting prices and profits could well become a new discouraging factor.

It is discouraging indeed to see how easily even our form of government can justify the the impairment of private contracts. (Unless, of course, the contract is for wage increases.) And such impairment is implicit whenever prices and profit limitations are enforced. It is discouraging also to see how far our own society has come in justifying expropriation of private property in the public interest, without providing just compensation. Yet, this is exactly what is done when a new law provides that a production facility built fully in accord with the laws and customs of the time can no longer be operated without the expenditure of massive new sums of money for the meeting of new environmental standards.

I have chosen not to discourse upon governmental actions in the specific fields of patents and licensing—actions which, I am told, have considerably impaired the value of rights to intellectual property—because you are far more familiar with them than I.

Suffice it to say, for these and other reasons, we are indeed entitled to complain that the climate for the development of new technology in the U. S. is not what it used to be and what it ought to be.

Democratic Capitalism

Yet, the fact which is of salutary importance for purposes of my discussion is that we remain fundamentally a society of democratic capitalism, premised upon nongovernmental (i.e., private) ownership of the means of production—upon open markets in which prices are *normally* (and today that word must be emphasized) not the responsibility or concern of the government bureaucracy. Hence, it is one whose intellectual property and technology is in the main privately owned and is transferred whether nationally (domestically) or internationally only as a result of private contracts voluntarily entered into.

Its owners are these days much confused by the nature of our own government interference in transfers of technology to other nations, and they are confounded by the conditions upon which the developing nations assert their entitlement to such transfers.

Developed and developing nations alike seem bent upon defending their own sovereignties while seeking ways to project themselves into that of other nations.

The international transfer of technology is, of course, but one aspect of international trade. As such, it inevitably takes on not only all of the overtones relating to foreign policy, international economics, and international politics which are present in basic trade in *goods*, but a few more besides, as we will note a little later on.

Businessmen with goods to sell are normally inclined to feel they ought to be able to sell them to anyone who needs them and can pay for them; and that they ought to be able to buy what they need from anyone who can deliver.

Conditioning their freedom to buy and sell upon some overriding ideology being advocated or enforced by their own government, or by some other, seems to them unwarranted and irrelevant.

This does not mean that the average businessman feels he should have an unfettered right to pursue his own financial interests to the detriment of the interests of the larger society *within his own nation.* He would readily recognize the logic of any restriction

which had a clear relationship to national defense. Moreover, he is convinced that trade in goods, if it is to have any continuity, must be of *mutual* benefit, i.e., it must benefit *both* the importing and the exporting nations. No matter the direction of trade it should be of net benefit to his home economy.

Accepts Restrictions

Hence, he readily accepts restrictions imposed by his own government which appear clearly supportive of his own national economy and which strengthen its position as a nation in the world community. But he is confused and angered by what he perceives to be efforts to project our sovereignty into other economies as happens when we try to project our notions of antitrust, of environmental standards, of product safety, and of commission payments, for example into the conditions of international trade.

He is confused and angered also by what he perceives as efforts to project our own political ideology, as is done when trade is embargoed or products are boycotted because of some rather poorly defined sloganeering, such as we have seen with respect to "human rights," to which I made reference earlier.

It is not that he objects to the idealism implicit in encouraging a higher level of observance of human rights but rather that when interjected as a condition of trade, it makes for such great inconsistencies. He has difficulty in understanding a prohibition on *sales* to certain South American countries or prohibitions on *purchases* from certain South African countries, each existing contemporaneously with substantital efforts to promote an enlargement of trade with the Soviet Union.

He believes that foreign policy, no different from foreign trade, should be pursued with one overriding purpose in mind—and that is to be supportive of our own national economy. So long as this objective is kept in mind, he would argue that trade ought to be politically blind, or perhaps more appropriately said, idealogically neutral.

All of this makes pretty good sense right up to the point where trade relationships are expanded *beyond* the mere *transfer of goods* and *into the transfer of investment and transfer of technology*.

At this point, no longer can either businessman or his government possibly remain unconcerned for the political complexion of a sovereignty into which a transfer is to be made.

And the reason is that the transfer of either investment or technology, if it is to be attractive to the transferor and effective for the transferee, requires a continuity in the recognition of property rights, whether in the form of equity participation or contract observance. This is the fundamental premise of commercial transactions within and between economies predicated on what we might call democratic capitalism.

Unfortunately, however, when expressed as a condition for transfers to the developing countries, many of which have embraced some form of socialism, it is viewed as an infringement upon their sovereignty. Most of them seem to assert the right to nationalize (expropriate) foreign investment at less than full economic value, regardless of commitments made to attract such investment initially; and they assert the right to modify contracts relating to transfer of technology in ways which destroy their value to the transferor, and to do so almost at will.

Obligations

But, we can't go back to earlier and simpler times. The developing nations no longer want just simple trade in goods. In order to build their economies and to achieve social and economic growth, they need and invite transfer of investment and technology. Unfortunately, they seek it as a matter of a redistributive obligation on our part. They seem unable, ideologically, to seek it on the basis of mutually beneficial transactions. In short, they apparently would like to "socialize" what the developed nations have — as well as the property of their own economies.

The net of this suggests to me that unless new governmental and/or commercial mechanisms are found (and none are yet in sight) democratic capitalism and socialism will be on an unavoidable collision course over the foreseeable future.

Our average businessman from the United States is simply not going to be able to pursue rewards from commercial transactions predicated upon transfer of either investment or technology into another sovereignty unless he is fully as concerned for the form of its political economy as he is for his own. He will be unable to pursue such transactions without drawing his own government in behind him. And if our government hopes for an expansion of such transactions, it will have to become as concerned for the observance of property rights as for human rights, within other sovereignties. They are, after all, cut from the same cloth.

Russia has long sought to export its idealogy to the developing nations, oft times, more by force than by persuasion. Such nations have, of course, been fertile soil; decades of colonial domination did not prepare them with either a financial or an educational base for successful embracement of democratic capitalism. Their ruling elites would no doubt feel challenged if pressured to adopt the ways of capitalism at this time.

We, of course, would not want to discourage their great present concern for pursuit of independence, or their present concern for avoiding anything which might appear to impair their sovereignty. Their nationalistic defense of such sovereignty is in fact a principal bulwark against the effective pursuit of ambitions for world domination by any super power.

But we cannot avoid being concerned for the direction toward which their political economies may be moving. We must help them to understand that the *recognition of property rights* both in industrial and intellectual property — is the fundamental predicate for the faster economic growth which they so badly want; that such recognition is absolutely necessary to attract the investment and technology transfer which they need to build their own economy, and to strengthen its relative independence.

It is sometimes said that the alternative is to help the developing nations build the educational base from which can spring the development of a technology most suitable to their own conditions. Perhaps so, but the results would be intolerably slow, and in the end would not form the base for needed commercial development

unless property rights in the emerging technology could be recognized at least for their own nationals.

It will be interesting to watch future developments. Instead of hearing our businessmen complain because our government limits trade with some nations because of their non-observance of *human* rights, our government may complain that our businessmen refuse to do business with other nations because of their non-observance of *property* rights.

More likely, I hope, our government and our businessmen will be joining forces to achieve recognition of both — because they have been shown to be inseparable from each other — and inseparable, in fact, from maximizing the opportunity for mutual economic and social progress for all nations.

The subject of this conference permits no escape from the fact that the nations of the world are organized into two basically opposing systems of political economy.

One of them is predicated upon academic, religious and political freedom, freedom of the press, and freedom of ownership and of enterprise; the other is not. Such freedoms have an affinity for coexistence — and conversely, where any one is suppressed, the others soon disappear.

Hence, we in the free world believe in our system. But believing may no longer be enough. The competition between the systems was once along military lines; hopefully, that day is past. But the competition has now become virtually a daily confrontation on the commercial front. One or the other must, in due course, prevail.

The fact may be papered over while one group of nations or the other joins in publishing declarations as to the kind of conduct expected of the other. But so long as we hope to pursue mutual advantage from the transfer of investment and technology, we cannot avoid facing it.

Let us hope that all of us, whether in the public or the private section, can join in keeping our own system functioning well enough that we continue to have the investment capability and the technology which the developing world wants. If we do, the developing world will, in time, lean our way.