

lawgivers who assisted in their creation.
What follows are a sample of both laws
and lawgivers.

In addition, the settlement provided for some flexibility (under which the *Green Bag* might suggest a substitute for Jefferson):

The parties agree that defendant may, in its discretion, add additional laws and lawgivers to the display. But, in no event shall the number of lawgivers and their laws be less than eight.

The agreed-upon octaptych is on display in the Washington County courthouse.

Although the parties to the *Adkins* case have not abandoned their original litigating positions, they do appear to have arrived at a formula for peaceful relations between inveterate adversaries: stick with the Eight Greats, their laws, and the “separate explanation” disclaimer. Truly, this must be the product of Divine Inspiration, who spreads her wings behind Truth and Justice on the west wall frieze in another courthouse, in Washington, DC.

Sadly, there is every reason to fear that the *Adkins* formula may not catch on, the illogical life of the Establishment Clause being what it is, and so the parties should consider a fall-back position. One solution that has not yet failed is philosopher-comedian Steve Martin’s proposal for the “Nine Suggestions.”

Committee for Public Education and Religious Liberty v. Regan, 444 U.S. 646, 671 (1980) (Stevens, J., dissenting); *10 commandments settlement reached*, INDIANA LAWYER, Dec. 6, 2000, at 10; *Adkins v. Washington County, Indiana*, No. NA-00-143-C B/G (S.D. Ind. Feb. 9, 2001); Steve Martin, *The Ethicist*, THE NEW YORKER, Mar. 5, 2001, at 50.

Steve Martin’s “Nine Suggestions”

Change all the “Thou shalt not”s to “Don’t”s. Cut the one about covering your neighbor’s wife (now regarded as “too little too late”). Change the word “Commandments” to “Suggestions.” You now have “The Nine Suggestions.” This should make everyone happy.

BEWARE OF THE FROG

THE ANALOGY, according to H.W. Fowler, “is perhaps the basis of most human conclusions, its liability to error being compensated for by the frequency with which it is the only form of reasoning available.” But this overall utility is no excuse for perpetuating “the essential stupidity of ... fabricated analogies, against which no warning can be too strong.”

So be warned against the famous story of the complacent frog, told here by a respected jurist:

Scientists say that if you place a healthy frog in a shallow pan of boiling water, it will instantly sense disaster and leap out of the pan. Place that same healthy frog in a shallow pan of warm water, and it will bask in environmental delight. If you then slowly turn up the heat, the frog will acclimate to the rising temperature and will remain in that pan until boiled to death.

Federal and state judges, law professors, bureaucrats, even national political leaders have relied on this frog story as an analogy to explain everything from the dangers of gradually growing imbalances in our global ecosystem, to the failure of some judges to protest steadily increasing caseloads, to regimes to alter social norms, to public complacency in the face of slow erosion of civil liberties, to the growth of Medicare entitlements, to, well, anything else gradual.

The problem with this striking image of the frog – and, by analogy, humanity – trapped by its ignorance or insensitivity as the end draws slowly nearer is that it is wrong, at least with respect to the frog. Scientists do not say that frogs behave that way. Frogs, individually and collectively, are very sensitive and responsive to environmental conditions.

Six years ago *Fast Company* reported on the science of the complacent frog story. The magazine inquired at the National Museum of

Natural History, where the curator of reptiles and amphibians described it as “bullshit.” Other experts agreed. The magazine also orchestrated a not very scientific (and perhaps cruel) test described as, “Implementing Gradual Change: Gradual Versus Rapid Pace”:

We placed Frog A into a pot of cold water and applied moderate heat. At 4.20 seconds, it safely exited the pot with a leap of 24 centimeters. We then placed Frog B into a pot of lukewarm water and applied moderate heat. At 1.57 second, it safely exited the pot with a leap of 57 centimeters.

More generally, frogs are so sensitive to their surroundings that some biologists, environmentalists, and environmental lawyers look to frogs for clues to gradual or imperceptible but potentially dangerous changes in our environment. According to two lawyers at the Center for International Environmental Law,

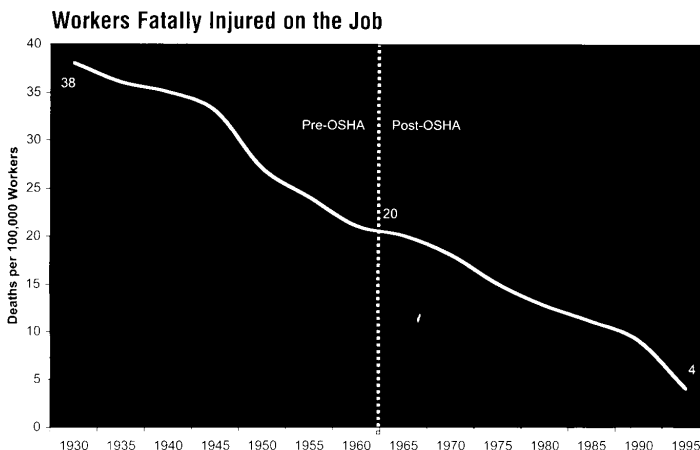
Frogs first evolved approximately 200 million years ago. They have weathered several ecological transitions and have survived the two most recent extinction crises (the last extinction crisis, which occurred 66 million years ago, killed the dinosaurs). The current decline of frogs could be viewed as a warning about the ramifications of environmental degradation for life on Earth and the severity

of the current extinction crisis. Frogs are living environmental assayers, moving over their life cycles from water to land, from plant-eater to insect-eater, covered only by a permeable skin that offers little shield from the outside world. As such, frogs are extremely sensitive to the environment and could be the amphibian equivalent of a canary in a coal mine, warning of impending ecological disaster.

Whatever else they may do, frogs do not “acclimate.”

In other words, the story of the complacent frog is baseless. It is analogous to nothing. Moreover, it is difficult to imagine an animal as poorly suited as the frog for the role of insensible victim of gradual change. As one of the *Fast Company* test administrators observed, “The change myth assumes a very narrow view of people. If frogs can do it, people definitely can.”

Leigh Ingalls Saufley, *The Judicial Process: Amphibians and Appellate Courts*, 51 Me. L. Rev. 18, 18 (1999); Al Gore, *EARTH IN THE BALANCE* 42 (Houghton Mifflin 1992); *Next Time, What Say We Boil a Consultant*, www.fastcompany.com (Nov. 1995); Dana Clark & David Downes, *What Price Biodiversity?*, 11 J. Envtl. L. & Litig. 9, 14 (1996) (punctuation and citation omitted).



SOURCES: National Safety Council, *Accident Safety Facts*, annual (Chicago); and Charles Murray, *What It Means to Be a Libertarian* (New York: Broadway Books, 1997).