
**Benjamin Sells, *The Soul of the Law* 80-128
(Rockport, Massachusetts: Element, 1994)**

Law Has a Mind of Its Own: “. . . Law has a mind of its own, its own preferences and peculiarities.” [80]

The Litigious Mind and the Psychology of Adversarial Practices: “One of the most powerful images in the Law is *adversity*. . . . [T]he modern mind . . . believes justice is forged in the crucible of adversity.” [*Id.*]

The adversary nature of our quest for justice—that is, the adversary nature of our legal system, and the way it shapes our thinking about law—makes *winning* a central part of law’s psychological existence. [81]. “Litigation’s fixation on winning is psychologically corrosive.” [*Id.*]. “[T]he psychology of litigation suggests that *litigation is dedicated to carrying on strife, not resolving it.*” [82] [emphasis in the original]. “Every litigator knows that litigation can take on a life of its own, get out of hand, make things worse, create new problems and inflame new grounds of conflict. . . . [L]itigation must be recognized as a psychological force in its own right.” [*Id.*]

On Not Knowing Who We Are: “There are careerists who, after defining themselves primarily as representatives of a profession for thirty years, look up to realize that they no longer know who *they are.*” [90]

Transpersonal Perspective (and the Psychology Behind It): “[W]e have been imagining the Law as having an integrity independent from, or at least not reducible to, its human practitioners. This is in keeping with a long and honored tradition within psychology of imagining human endeavors as having a transpersonal core, as if there is something going on that is more than human, something perhaps divine.” [93] “The Law is only one of the soul’s imaginings, and . . . has its own direction and plumbs unknowable depths. *This basis in soul gives the law its instinctual quality and numinous authority*; and there is a sense in which lawyers serve the Law as holy men and women serve their Gods.” [95] [For Sell’s earlier reference to the “divine influences” of the Law, see p. 16].

Benjamin Cardozo reminded us that behind the facade of law in modern society, we find:

the ancient mysteries crying out for understanding—rest and motion,
the one and the many, the self and the not-self, freedom and necessity,
reality and appearance, the absolute and the relative Deep

beneath the surface of the legal system, hidden in the structure of the constituent atoms, are these attractions and repulsions, uniting and disserving as in one unending paradox.

[Benjamin Cardozo, *The Paradoxes of Legal Science* 4-5, 7 (New York: Columbia University Press, 1926)]

Sells picks up on Cardozo's reminder that Law is the "child of antinomies":

One way of looking at any occupation or profession is to see it as an attempt to satisfy the deep influences at its psychological core. This places the lawyer in quite a predicament, a mortal in service to the Gods. On the one hand, the lawyer feels a compelling need . . . to run with these professional currents, to be the kind of lawyer the Law expects, to stand for the Law's ideals But on the other hand the lawyer is only partly a lawyer and feels from within the powerful tug of other currents, other needs. This situation exists everywhere and for everyone, but is harder on the lawyer because of the Law's demanding tendencies. And so the lawyer must champion control and order while knowing in his or her heart that things are neither controllable nor orderly. [96]

Sells goes on to say that "[t]he lawyers lot like that of us all, is to contain this tension. The lawyer's opportunity is to find ways to live *from* this tension, recognizing it as source for wonder, creativity, and yes, pain in his or her life. Wondrous and creative because it engages the lawyer in the soul's eternal quests" [96]. "The rational mind always seems to be two or three steps behind experience, trying its best to impose a semblance of order and meaning in the wake of the imagination's inherent multiplicity and mystery." [95]

Tyranny of the Mind: We are dealing, as lawyers, "with a tyranny of the mind in which objective 'rationality' has declared itself sovereign and is oppressing other voices within the lawyer's soul. Again and again . . . there is the recurring theme that the lawyer's imaginal diversity has been retrained, restricted, and repressed." [102]

"It is sometimes difficult even to recognize this form of tyranny because it doesn't proclaim its ascendancy outright" [102]

"[L]awyers are trained to place consummate faith in the powers of the intellect. The legal mind has decreed that only reason, logic, and objective rationality are capable of furthering the Law's overriding concerns with order, stability, and consistency." [103]. "But as rationality is exalted, other forms of psychological existence are oppressed . . . and stripped of power and influence." [103]. We are talking here,

essentially, about one-sidedness, and how we ignore our own psychological resources; a onesidedness that is held in place by lack of self-insight. Here is a little story told by William O. Douglas about a lawyer's one-sidedness:

Night after night I worked until eleven o'clock or midnight, and often until 2:00 or 4:00 A.M., returning to my desk by nine-thirty or ten in the morning, but before that, teaching an eight o'clock class. I learned in those long nights that some men preferred law practice to love, compassion, family, hiking, or sunsets. The partner for whom I worked usually took me to Savarin Restaurant in the Wall Street area for dinner. Dinner talk was always shop talk, never about running fast waters in a canoe or the problems of unrest in India or the "red hunts" in New England.

I had a long series of nights working with H.A. Moore, an excellent lawyer of the old school and completely dedicated to "the law." He wore a green eyeshade and smoked cigarettes incessantly.

One night the telephone rang and he answered in an angry voice because he resented the intrusion, "What? The house is on fire? Why in hell bother me? Call the Fire Department."

Hanging up the phone with a bang, he said to me, "Can you imagine that? My wife calling me from Long Island to tell me our house is on fire. Hrrmmph!"

I saw him some years later. He was gaunt and gray, only a shadow of the man I once knew. He had never had the time to get to know the flight of the whistling swan or the call of the loons across northern waters. He had given his all to the law: and it had squeezed every other interest out—even listening to the music of Mozart, which he loved.

* * *

I looked around at the older men in my profession and I knew I didn't want to be like any of them. They couldn't climb a mountain, couldn't tie a dry fly; they knew nothing about the world closest to me, the real world, the natural world.

[William O. Douglas, *Go East Young Man* 150-151, 156 (New York: Random House, 1974)]

The Douglas story emphasizes the point that Sells makes: An “obsessive careerism . . . relegates all other aspects of the lawyer’s life to second-class status.” [104]. “Many of the symptoms plaguing lawyers can be traced to rebellions of the soul against the tyranny of the mind.” [106]

Legal Persona: “The substitution of professional persona for personal individuality can go on for years; some lawyers never get past it. But usually there comes a time when the person slips. A strange and unfamiliar face appears in the morning mirror. It is the face behind the mask, and its unfamiliarity is a good gauge of how far we have fallen from ourselves.” [125] [On the legal persona, see James R. Elkins, *The Legal Persona: An Essay on the Professional Mask*, 64 *Vir. L. Rev.* 735 (1978)]

The Places Where We Work: “Many offices are ‘well-designed’ in terms of work efficiency, but there is an almost overt avoidance of beauty. . . .” [111]. Sells points out that the need for “our work spaces [to] be aesthetically *interesting*. Lawyers are strong-willed, and accordingly they need powerful art capable of arresting their movement, overcoming their preoccupations, and piercing the veil of ‘objectivity.’ Workplaces must be as beautiful as they are efficient: they must feed the soul’s hunger for beauty if they are to provide spaces capable of holding our interest and giving us pleasure. . . . *The subtle withdrawal of beauty from the legal work environment contributes to the elevated levels of depression felt by lawyers.*” [111] [emphasis in the original]

The Artist and Artistry of Our Work: “The soul takes pleasure in the careful crafting, the aesthetic dimensions of work well done. How would work change if we looked at it as an artist might, judging it not only by how efficiently it is done or by its practical result but also by its beauty?” [127]. “Work deserves the best we have, all of us, all of the soul’s imaginative and creative capabilities. We must practice law as a musician practices music or an artist practices art. More is required than reluctant, begrudging toil. In a peculiar way, the lawyers’ lament that legal practice wants their soul might be pointing to a way out of this impasse.” [*Id.*]

There is Always Something More: “No lawyer is only a lawyer and no work assignment has only utilitarian ends.” [127]

“No individual’s life can be sustained by role playing, and certainly not by playing only one role. Obsession with work imposes just this limitation” [125]