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Absolutely Positively True Story: Seven Reasons Why We Sing**

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I SING BECAUSE I'M HAPPY: SOME RANDOM THOUGHTS ON "AN ABSOLUTELY POSITIVELY TRUE STORY: SEVEN REASONS WHY WE SING"

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My initial overall reaction after reading your article was to be impressed as much by what came through of yourselves from how you wrote and what you said as by the ideas contained in what you wrote. The question I would ask of you is are you really that negative? I would find it extremely difficult to teach without the excitement that I still find after twenty years of introducing new students to the magic of the logical process that you seem to find so stultifyingly abhorrent. One might be tempted to ask why are you in law teaching at all? I hope that the sense of futility and hopelessness that I felt shining through your article was not conveyed to your students.

As will be demonstrated by my comments, I look at the same things that you look at or, at least, I believe that I peer in the same direction and I see and perceive hope in the very same things in which you find so much reason for despair. The glass is, at least, half full. Perhaps, it is the tint of my glasses like the tint of my skin that causes me to see things differently. Being Black and teaching at a predominantly Black law school does tend to give one a different point of view. Your article made me all the more aware of that fact. Perhaps, it is because for Blacks the law as a profession has been viewed both as a vehicle of escape from one's personal poverty and as a source of social change, if not social justice, for we have approached the teaching and the study of law with a different mind set.

First of all, I view the law as a necessary, natural, noble and freedom giving creation rather than some device designed in a conspiracy by those who would dominate their fellowbeings. My reality may not be yours but is the only one that I have.

This land is "my land." Then what? How can it be my land? What causes that to be and what are the consequences of it? Sounds like an interesting beginning for the consideration of the concept of ownership, albeit admittedly private ownership. My bias as a Property teacher is showing through, perhaps. It is only Woody's or anybody else's if there exists some basis for that recognition. What is that basis? Hmmm, that sounds like theory rather than practice. "It is mine," only has meaning

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when others recognize that right. But, why should they? Because without that recognition, there is no right, only power exercised through force.

Gee mom, did you know? At times you sounded like the small child discovering all the wonderous things of childhood without yet realizing that most, if not all, of us have travelled that same path and made those same discoveries. There is a certain arrogance of "first discovery" of the "real truth" that comes through in your piece.

The teaching of law by good teachers has always been not simply about the practice of hammering but about building of which hammering is simply a part. Hammering is an essential part of the undertaking just as the alphabets are an essential part of language which is a necessary essential for creative thought. However, who would confuse the teaching of the one with the other? On the other hand, who would doubt the necessity of the mastery of the first for the accomplishment of the second? The law has a certain special abstract beauty for it is a pure idea without physical form and has existence solely as ideas. What could be more challenging than the effort to understand the evolution and, yes, even application of those principles? Its application, its manifestations may be seen in a physical way, but not its corpus. I think, therefore, there is law. For me, neither the study of law or the teaching of law has ever been about learning or teaching "the rules." I like to believe that it is about an understanding of the principles that govern fundamental relations that are necessary for a society to exist and why, for heaven's name, those principles were formulated in the first place. In other words, is there any inherently rational basis for them?

When we would supplant the existing order, we had better be ready to replace it with something of value. That which is different might temporarily seem better but as often as not, it too is soon discarded for what it simply was—different and not really better. While simple longevity ought not dictate retention, it, at minimum, must stimulate dialogue as to why it has endured. When there is too much deviation (witness the Antioch Law School experience)¹ from the norm, students who are fraught with notions about what law school ought to be are frightened because the school does not conform to the preconception.

We have more to teach than a technique. We fill it with ideas, understanding, concepts of hows and whys. Although I teach Property, the subject is really irrelevant; for what I try to teach is an understanding of

1. Antioch attempted to teach law through a non traditional program designed to integrate the theoretical with the practical in an almost total clinical setting. There were courses titled Public Law and Private Law. There was even a course called Wrongs which combined criminal law and torts. The students, rather than eagerly enhancing this new concept, rebelled when they discovered, through contacts with other law students in Washington, that they were not receiving a "traditional" legal education.

how and possibly why we have constructed the system as we have, and how we function with it and within it. The basis for challenge is knowledge. Even the men of the demolishing company know that you don't remove a load-bearing wall while standing unprotected under the ceiling.

The acquisition of the data base of basic information is as essential for the student of law as was the memorization of the alphabet to Shakespeare. The teacher ought to be able to infuse the thinking process into the necessary routine of garnering the data base by the exciting prospect of what worlds will then be open to explore after its acquisition. Unfortunately, I have found no viable substitute to the pedestrian task of information acquisition that I suspect even the philosopher had to endure before engaging in serious philosophizing. There is no way to hurry the maturation process. Twenty-five years of experience will, I suspect, always require the passing of twenty-five years.

The answer is not to simply read more cases but to think about the underlying principles necessary to predict outcomes. The case can then be read as a validation of one's prediction. One ought to be able to understand the basis of the prediction without accepting that it represents the ultimate validity. What is normally counterproductive is to spend an inordinate amount of time arguing that validity before enough of the interrelationship is understood. The problem with the first year student as philosopher is that he ought to first know what has preceded before he attempts to construct what ought to be. Some "truths" always have to be accepted on faith from those we trust. There could be little transfer of knowledge if each succeeding generation deemed it necessary to start all inquiry anew. When I was fifteen, I thought my father was the dumbest person alive. When I was twenty-one, I was amazed to see how much he had learned in just six years.

It is not necessary or desirable to exclude ones "prior lives and thought" and rid oneself of all doubt at the risk of failure in law school. This is only true to the extremely limited extent that it is necessary to acquire a logic that is different from the one that we believed to be the one and only true God. After all, it was not so difficult to accept the notion in higher mathematics that 1 plus 1 really is not 2 unless we have first made certain that each of the 1's that we are considering is in truth an absolute 1 and not simply some number that is more than zero but less than 2.

In the clinic, was it not possible to convey the message that each of us simply does the best that he or she is capable of doing? The criticism should not be of the failing in the particular goal but in failing to prepare and then giving the best that is in us, whatever that is. Ask any parent.

Your statement that students are required to, ". . . check their souls at the door [of the law school]" is patently unfounded. Does any practitioner believe that the judge checks his soul when he ascends the bench

or that he deposits his life's experiences in his chamber? We never do. What is to be hoped is that the legal training teaches one to be intellectually honest so that the soul and life, while not being ignored, will not carry one to a conclusion, no matter how personally desirable it might seem unless there is a logical basis for it. Does not the philosopher demand the same?

Does logic just happen? Are not students of philosophy required to learn logic as a discipline for philosophical inquiry? Is this any different than requiring law students to learn the "logic" of the law? Have you rejected traditional logic because you can't prove that other people exist? Have you rejected traditional logic because it allows you to establish that you cannot cross the room while you are pondering this absurdity by pacing back and forth across the room? We live in our assumptions and our faith as well as our logic, lawyers and law students included.

Are things really irreconcilable as long as we have the ability to choose? To choose is, for good or evil, to reconcile in a "civilized" society.

I agree, the whole thing is about, "the nature of coexistence in society." That is the whole point. The considered wisdom of the past regarding what is necessary for that coexistence is embodied in the law. The truth of the law is as much in its history as in its logic. If we accept that we have a property interest in our own being, then all that is involved in coexistence is based on our legal concept of property. "This land is your land." Without law there is no property. There might still be land but there would be no property for "property" is a legal rather than a physical reality. And without property, there would be no coexisting.

How can it be that lawyers serve very few of the people when the people are the law in a free society? Admittedly, a great part of the problem is that the necessity to earn a living interferes with the active serving of more persons; however, the law—by merely being—serves all.

Tina Turner spoke of a different revolution than the one that you saw. When Black people speak of revolution, they are not speaking of change in any traditional revolutionary sense of requiring a destruction of the present system and replacing it with a new order—they are speaking of participation. "Don't try to keep me out or there'll be hell to pay." This is not a threat to destroy or to change the institution but a demand to be let in, to be allowed to participate. You missed the point as Whites often do who try to interpret for Blacks what they mean.

Do we not do an injustice if we do not first teach students how it is before we attempt to teach them to dream of how it should be? How else will they know how it should be if they do not know how it is? How do we know that we want change until we know what we have? Too much

is abandoned for the sake of change to simply find that the new new is, in truth, nothing but the old old rediscovered. Those who do not know history, etc., etc.

Law is still the liberator from the dictatorial rule of the few. The few may benefit more from the specific "rules" that have been legislated for that purpose, but is that "the" law? A lawyer friend of mine tells the story which I often share with my classes of the white southern judge who announced his decision in a criminal trial in the following manner: "I find the nigger who probably stole the radio not guilty." For all the apparent racism and bigotry displayed by the statement, it is still a beautiful example of the system at work. The judge for all his predisposition and even his belief of probable guilt was, nevertheless, unwilling to do violence of the principles of reasonable doubt and burden of proof to convict the "nigger" that he thought was guilty. Why? Because he very well understood that the system does protect him and that to bend it for his own desired result without complying with the built in requisites would do violence to the institution that he had helped build to protect himself and his kind. The student thus learns that while disapproving of the system and its manipulation, that he can perhaps make it work one day in his favor, in spite of the predilection or bias of the arbiter.

If we are to "coexist" are we not required to seek freedom not simply in obedience to authority but in recognition and respect for the freedom of others? Is not the "no trespassing sign" a legitimate expression of one's wish to be free from the intrusion of others? Or would you deny this freedom as being too "individualistic"?

Who in legal education considers big pictures and experience irrelevant? What did Mr. Justice Marshall mean if not that the Supreme Court must keep the "big picture" in mind when he enjoined all to remember, ". . . that it is a constitution that we are expounding"? It seems that you are forgetting the big picture which as you have correctly stated it is, "the nature of coexistence" that the law is supposed to interpret, and I would add, make possible.

How do we know that anything is change without knowing what went before? We all must earn the right to philosophize about the utopian legal system by first paying the dues of discipline necessary to learn the rules and the operation of the present system. I would imagine that even Carl Lewis had to learn to walk somewhere along the way to Los Angeles. We need to remember also that Jonathan Livingstone Seagull did not assume that his disciple, although a bird, was capable of flying, and thus, before attempting to teach him the higher order of his being, started with level flight. Don't we have to do the same thing in law school? Is it fair to assume that a law student has enough life experiences to inherently understand the existing system and, hence, can immediately embark upon

dialogue about what the law ought to be when Jonathan was unwilling to take for granted that another seagull knew how to fly?

Picasso and Van Gogh, for example, proved their entitlement to their art forms by first demonstrating that they could draw and paint. I could never accept the so called genius of some modern artist who wallows in paint on a canvas to create his masterpiece and who disdained to lower himself to attempt a "realistic" creation. My belief is that all that he can do is "create" in his mystical medium and has little ability to construct a new reality because he has never known, let alone understood, the old one. How then can a first year student construct a new legal order unless he first knows some of the insanities of the present one? He ought to, at least, know that little jewels like the doctrine of worthier title were created so that the king could exact his duties on the transfer of property and is an anachronism of the first order and ought to have been and, indeed, has been renounced by most states. He ought to know that some of these troglodites stayed on long beyond their time because the law is about certainty and predictability, and there is a belief by some that those are virtues, and that even anachronisms have their place if we have come to depend upon them in planning our affairs.

If logic did not dictate that equivocation be banished, would not those of us who are bound to act be frozen into immobility? We lie at the mercy of our assumptions. Is there any other way?

As outsiders become insiders, do not the insiders become outsiders? And then is the new order any different from the old? It is the worst system device except all others.

All things are relative. Is change more desirable than stability? Without stability how could the luxury of contemplation about the nature and desirability of change be possible?

Is not the law a celebration of our creativity?

Did not we minorities, at least, budge the social order through law? I find the nigger not guilty.

But is the one not necessary for the other? If there were no protection for the artist, yes even protection from his fellow artist if need be, could his spirit be loosed to soar and to sing? To put it more crassly, if his intellect were not recognized as property, would he so effectively and prolifically create?

Although I can say it, cannot I sing for the sheer joy that the singing brings? "We shall overcome. I sing because I'm Happy."

The lawyer as hired gun. Need she be? May not the hired gun in pursuit of a noble cause also be noble? Is not participation in the sustaining of the system of coexistence noble? Anyway, the adversarial portion of the system in which the hired gun is glorified is simply the method by which we arrive at the facts, which is probably the least critical aspect in the process.

If we construct a world around the primacy of shadow, what will hold it in place? Law is the matrix that holds our society together. What would be the matrix of your shadow world? Would you have a constitution? How about rules? If you think it through to its logical end, don't you have to construct some method of providing for the coexistence of the inhabitants of the shadow; or are you building it for an occupancy of one? But isn't that the height of the individualistic, rule-oriented world that you are attempting to escape? Does not law give us the foundation upon which that construction takes place? If there were no law, would not it be necessary to invent it? Society may exist without lawyers, but it most assuredly cannot exist without law.

Dispute resolution, predictability of results. The glass is half full. And thus we look at or, at least, toward the same object and see different things.

Are the rules to protect individuals from each other or to insure that freedom is available? You see the former. I choose to see the latter.