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Special Issues and Topics

Law and Lawyer in Pop Music: A Reason for Self-Reflection

JENNIFER JAFF*

*In every culture in decline
The watchful ones among the slaves
Know all that's genuine will be
Scorned and conned and cast away
Dog eat dog.¹*

If part of the artist's role in society is to provide us with a mirror in which to self-reflect, then as lawyers, we ought to be aware of the pictures of our profession that artists choose to paint. If another part of the artist's social role is to communicate ideas which other members of our community share, then again, as lawyers, we ought to be attentive to the ways in which artists perceive us.

Some pop musicians have adopted the role of the socially responsible artist. They have created a picture of lawyers that is neither flattering nor consistent with the ideal of what we, as attorneys, should strive to be. If this picture is at all accurate, or even shared, it should cause lawyers to self-reflect on the reasons why artists portray us in such a poor light.

I. THE WATCHFUL ONES

According to the dominant view in aesthetics, works of art exist as a sort of social thought-stimulant.² In myriad forms, artists express that which is at the core of human life, "the most comprehen-

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1. J. MITCHELL, *Dog Eat Dog*, in *DOG EAT DOG* (© 1985).

2. "The work of art . . . is essentially a question, an address to the responsive heart, an appeal to affection and to minds." G. HEGEL, *ON ART, RELIGION, PHILOSOPHY* 105 (J. Gray ed. 1970). Though many share the view of artists as socially responsible, there are, of course, those who disagree, and who still advocate "art for art's sake," a position which prevailed in the early 19th Century. See *infra* notes 7-9 and accompanying text. A truly critical discussion of the role of art and artists in society is beyond the scope of this article. Instead, this article accepts what seems to be the dominant position among modern philosophers of art. For an excellent exposition of the history of the philosophy of art, see Beardsley, *History of Aesthetics*, in 1 *ENCYCLOPEDIA OF PHILOSOPHY* 18-35 (P. Edwards ed. 1967).

sive truths of the mind."³ Artists are more than imitators; they are teachers.⁴ They help us to understand our place in history,⁵ and express for us our essences and the essence of our existence.⁶ In this sense, artists are the "watchful ones" whose role it is to provide us with a mirror in which to see ourselves as we really are.

The artist has not always played a social role. In the 1820-1830's, "art for art's sake" dominated.⁷ The artist was viewed as an asocial being, with no special responsibility to society. His/her role was to create works of art that were pleasurable and satisfying to the artist him/herself, without regard to enhancing the viewer. The artist was seen as self-centered and alienated from society.

The French socialist sociologists, including Saint-Simon, Comte, and Proudhon, first asserted the notion that artists have a social responsibility. It was, however, Tolstoy who developed a theory of aesthetics that challenged artists to become accountable to society and to create art that communicates with, and educates, their audience. In Tolstoy's view, the artist's role is to "hand . . . on to others feelings he has lived through [so that] other people are infected by those feelings and also experience them."⁸

For Tolstoy, the essence of art as an activity is to communicate the artist's own emotion to others so that others experience that emotion with him/her.⁹ In this sense, art is a "means of union among men, joining them together in the same feelings, and indispensable for the life and progress toward well-being of individuals and of humanity."¹⁰ Indeed, "[art] is not a pleasure, a solace, or an amusement Art is an organ of human life, transmitting man's reasonable perception into feeling."¹¹

One modern feminist poet and author has expanded on Tolstoy's thoughts about the role of the artist:

What is always needed in the appreciation of art, or life, is the larger perspective. Connections made, or at least attempted where none existed before, the straining to encompass in one's glance at

3. G. HEGEL, *supra* note 2, at 29.

4. "Art has been, in fact, the first instructress of peoples." *Id.* at 81.

5. "Art is historical, and as historical it is the creative preserving of truth in the work." M. HEIDEGGER, *POETRY, LANGUAGE, THOUGHT* 77 (A. Hofstadter trans. 1971).

6. Artists make "explicit for [ourselves], that which [we are], and, generally, whatever is." G. HEGEL, *supra* note 2, at 57.

7. The following summary of the history of aesthetics is derived from Beardsley, *supra* note 2, at 30-31.

8. L. TOLSTOY, *WHAT IS ART?* 51 (A. Maude trans. 1960).

9. *Id.*

10. *Id.* at 51-52.

11. *Id.* at 189.

the varied world the common thread, the unifying theme through immense diversity, a fearlessness of growth, of search, of looking, that enlarges the private and the public world.¹²

Thus, the artist is not only a conduit of emotion, but is also able to induce universality from the variety of experience. Art is a means of transmitting shared understandings into feelings of connectedness, which form the basis of community.¹³

II. POP MUSICIAN AS ARTIST

Judged by their music, some pop musicians seem to have accepted this view of art. They not only have helped us to see ourselves as we really are, but also have expressed their own feelings so that we can experience them as shared, both with them, and, through them, with each other. The image they have portrayed of law and lawyers is not only frightening because of the image itself, but even more frightening because we are forced to recognize that image as shared, not only by many others, but perhaps even by ourselves.

The title song of Joni Mitchell's newest album, *Dog Eat Dog*, is a kind of overview of the artist's vision of today's society.¹⁴ The center of the song is the opening quotation of this commentary. In that passage, she portrays modern culture as "in decline," as scorning "all that's genuine."¹⁵ She sings:

It's dog eat dog—I'm just waking up
 The dove is in the dungeon
 And the white-washed hawks
 Pedal hate and call it love
 Dog eat dog
 Holy hope in the hands of
 Snake bite evangelists and racketeers
 And big wig financiers.¹⁶

Most of the songs on the album indicate that Mitchell accepts the view of the artist as socially responsible. For example, in *Fiction*, she illustrates the decline of truth and political choice by the implied assertion that all truths are really fiction:

Fiction of destroyers

12. A. WALKER, *Saving the Life that is Your Own: The Importance of Models in the Artist's Life*, in *IN SEARCH OF OUR MOTHER'S GARDENS* 5 (1983).

13. See Note, *Radical Pluralism: A Proposed Theoretical Framework for the Conference on Critical Legal Studies*, 72 *GEO. L.J.* 1143, 1153 (1984) ("The desire to 'connect up' with all of mankind . . . can motivate us to seek communal understandings.").

14. J. MITCHELL, *supra* note 1.

15. *Id.*

16. *Id.*

Fiction of preservers
 Fiction of peacemakers
 and shit disturbers¹⁷

The real point of the song is delivered in one line: "To lead you need some place to go."¹⁸ In other words, when all that is absolute becomes relative, society can no longer choose a direction, for to do so would be meaningless.¹⁹

The rest of the album proceeds in the same vein. *Tax Free* is a song about the moral majority, the merging of religion and politics:

You get witch-hunts and wars
 When church and state hold hands.²⁰

Smokin' (Empty Try Another) is a short chant which, through repetition of the title, illustrates the addictive nature of cigarette smoking, as well as other drugs.²¹ *Shiny Toys* is about the emptiness of materialism, and mourns the loss of:

Simple joys
 Walking on the beach at the end of the day.²²

Mitchell's despair culminates in *Ethiopia*, which, with its haunting chant, is a chilling reminder of the consequences of "human greed":²³

Hot winds and hunger cries—Ethiopia
 Flies in your babies' eyes—Ethiopia
 Walking sticks on burning plains
 Betrayed by politics
 Abandoned by the rain.²⁴

The teachings of the album as a whole demonstrate Joni Mitchell's acceptance of the social role of art and artists, and, as such, are important for all of us as members of society. For us as lawyers, however, the educative value of the album is concentrated in *The Three*

17. J. MITCHELL, *Fiction*, in *DOG EAT DOG* (© 1985).

18. *Id.*

19. For me, this conjures up my own initial responses to the critical legal studies movement. See Note, *supra* note 13, at 1144-45 (Conference on Critical Legal Studies should construct a positive vision to replace the liberal legalist views that it effectively critiques.). I should add, however, that my views on the necessity for critical legal scholars to provide a positive vision of law and society have changed, and I have come to better understand the positive aspects of the critique itself. See Gabel & Kennedy, *Roll Over Beethoven*, 36 *STAN. L. REV.* 1 (1984). Thus, I am not sure that Joni Mitchell is analytically correct on this point, although she has certainly echoed a feeling that I have had.

20. J. MITCHELL, *Tax Free*, in *DOG EAT DOG* (© 1985). This song includes a chilling "evangelist speech" performed by Rod Steiger.

21. J. MITCHELL, *Smokin' (Empty Try Another)*, in *DOG EAT DOG* (© 1985).

22. J. MITCHELL, *Shiny Toys*, in *DOG EAT DOG* (© 1985).

23. J. MITCHELL, *Ethiopia*, in *DOG EAT DOG* (© 1985).

24. *Id.*

Great Stimulants.²⁵ The “three great stimulants/of the exhausted ones” are “[a]rtifice, brutality and innocence.”²⁶ This song contains explicit references to law and lawyers:

While madmen sit up building bombs
And making laws and bars
They'd like to slam free choice
behind us.²⁷

She depicts the law is as a tool, along with bombs and bars of jail cells, for taking away our freedom of choice, rather than as the guarantor of liberty that it ought to be.²⁸

A little-known band with which Todd Rundgren played in the mid-1970's gave a particularly powerful rendition of this theme in a song called *Anthem*:

From the bureau of justice directives
have come
Send out the g-men, round up
everyone
Who is worshipping god instead
of the state
Who is teaching love is better
than hate.²⁹

Other pop musicians who accept the social role of art and artists have echoed this sentiment. Don McLean has characterized the law as a tool for the rich in *Respectable*.³⁰ The song tells the story of a wealthy hit-and-run driver who hires the most expensive lawyers and is acquitted:

And you won your case most easily
and soon you will be free
But there will be a million more
who lost their liberty
Not because of what they did but what
they did not do
They did not pay a lawyer or a
judge to see them through
...
Well if that's the kind of justice
that our hall of justice claims
Then I respect respect respect old

25. J. MITCHELL, *The Three Great Stimulants*, in *DOG EAT DOG* (© 1985).

26. *Id.*

27. *Id.*

28. See U.S. CONST. amends. I-X.

29. THE HELLO PEOPLE, *Anthem*, in *FUSION* (© 1968).

30. D. MCLEAN, *Respectable*, in *TAPESTRY* (© 1970).

Jesse James.³¹

In the eyes of Don McLean, those who can afford it buy innocence; those who cannot are guilty, "not because of what they did," but because they cannot pay for "justice."

In other songs, the law is seen as a powerful enemy to be fought against rather than followed.³² In *Johnny 99*,³³ Bruce Springsteen portrays the law as cruel and insensitive to the plight of the frustrated poor. Despite Johnny's explanation that:

I got debts no honest man could pay
The bank was holdin' my mortgage and they
was takin' my house away
Now I ain't sayin' that makes me an innocent man
But it was more 'n all this that put
that gun in my hand³⁴

Judge "Mean John Brown" sentenced Johnny to ninety-nine years in jail.³⁵ Thus, Springsteen saw the law as a harsh judge of those it does not care to understand.

There is significant scholarly support from within our profession supporting the view of law as a tool of those in power which they use to legitimize and maintain that power. For example, Professor Mark Tushnet has suggested that "the legal order helps to persuade the dominated elements in American society that their domination is justified—or that their material conditions of existence are justified, or equivalently, that they are not dominated at all."³⁶ Also, law arguably serves "to reinforce the legitimation of the dominant societal moral position in a subtle, disguised way."³⁷ Thus, even some lawyers see the law the way that pop musicians do: as a tool used by oppressors to justify oppression.

Pop musicians have also characterized law as unprincipled and paternalistic. In *Comin' to Get You*,³⁸ Carly Simon portrays the law as subjective, not principled. The song is about a child custody bat-

31. *Id.*

32. S. CURTIS, *I Fought the Law* (© 1961) ("I fought the law and/the law won.") (originally recorded by the Bobby Fuller Four and, more recently, by the Clash).

33. B. SPRINGSTEEN, *Johnny 99*, in NEBRASKA (© 1982).

34. *Id.*

35. *Id.*

36. TUSHNET, *Perspectives on the Development of American Law: A Critical Review of Friedman's "A History of American Law,"* 1977 WIS. L. REV. 81, 100.

37. Jaff, *Hiding Behind the Constitution: The Supreme Court and Procedural Due Process in Cleveland Board of Education v. Loudermill*, 18 AKRON L. REV. 631, 646 (1985) (citing Freeman, *Legitimizing Racial Discrimination Through Anti-discrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1051-52 (1978)).

38. C. SIMON, *Comin' to Get You*, in SPY (© 1979).

tle.³⁹ She sings:

They expect me to go before a judge
and stand there shaking
While my heart is breaking

....

Oh I'm gonna get me a judge who
is a lady
I'm comin' to get you, let there be
no mistaking
Maybe she knows about having a
baby.⁴⁰

In asserting that the outcome in this case would differ depending on the gender of the judge, Simon implies that judges base legal decisions on subjective understandings, not on principles of law.

The law's paternalism is satirized by the new-wave group Human League in *I Am The Law*:

You're lucky I care
For fools like you
You're lucky I'm there
You're lucky I'm there
To stop people doing the things
That you know they're dying to do
You know I am no stranger
I know rules are a bore
But just to keep you from danger
I am the law.⁴¹

Both of these themes have been widely discussed in legal scholarship. Professor Joseph Singer has summarized the work of critical legal scholars in the following way:

First, we have demonstrated in a variety of contexts that law varies according to time and place, and that this historical and social contingency applies to legal reasoning, legal rules, and governmental and social institutions. Second, we have shown that legal reasoning is indeterminate and contradictory. By its own criteria, legal reasoning cannot resolve legal questions in an "objective" manner; nor can it explain how the legal system works or how judges decide cases. Third, we have argued that law is not neutral: It is a mechanism for creating and legitimating configurations of economic and political power.⁴²

39. *Id.*

40. *Id.*

41. P. OAKLEY & P. WRIGHT, *I am the Law*, in HUMAN LEAGUE (© 1981).

42. Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 5-6 (1984) (footnotes omitted).

Thus, much of the body of work that is classified as critical legal studies is involved in exposing the contingent and subjective nature of law.⁴³

The paternalistic nature of law has also long been recognized and criticized from within the legal profession.⁴⁴ Legal philosophers have been engaged for decades in a debate over the proper role of morality in law.⁴⁵ That debate has been between those who believe that private vice is a proper subject for the law's proscriptions,⁴⁶ and those who believe that the law can proscribe only acts which cause harm to people other than the actor.⁴⁷ Many feminist legal scholars have strongly opposed the law's paternalism because, while seeking to protect the chastity of women, it "reinforces damaging stereotypes" of women as "lacking in sexual autonomy."⁴⁸ Thus, those within our profession as well as those outside of it have shared concern about the law's paternalism.

In contrast with the way in which most of us portray ourselves, pop musicians portray lawyers as litigious and profit-motivated. For example, Joni Mitchell sings:

I saw a little lawyer on the tube
 He said "it's so easy now,
 anyone can sue.
 Let me show you how your petty
 aggravations can profit you!"⁴⁹

Elton John, too, sees lawyers as concerned with money, not with people. In a powerful song about the role lawyers play in divorces, he sings:

The legal boys have won again
 and you and I have lost.
 They can't tell us how it happened
 But they'll let us know the cost.⁵⁰

43. See generally THE POLITICS OF LAW (D. Kairys ed. 1983) (collection of critical legal studies essays).

44. "Paternalism" is defined as the enforcement of moral principles that would protect individuals against harm to themselves. Note, *Private Consensual Adult Behavior: The Requirement of Harm to Others in the Enforcement of Morality*, 14 UCLA L. REV. 581, 585 (1967).

45. *Id.* at 581 ("The question is a perennial one . . .").

46. LORD DEVLIN, THE ENFORCEMENT OF MORALS (1965).

47. H. HART, LAW, LIBERTY AND MORALITY 4 (1963).

48. Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 405 (1984).

49. J. MITCHELL, *supra* note 25.

50. E. JOHN, *Legal Boys*, in JUMP UP (© 1982).

Lawyers are seen as interested in winning, and in their fee, but not in resolving disputes.

This view is dissonant with the ideal of what lawyers should be. The Preamble to the Model Code of Professional Responsibility states that "[l]awyers, as guardians of the law, play a vital role in the preservation of society."⁵¹ Again, however, there is significant support from within our profession for these artists' view of lawyers. For example, in *Kramarsky v. Stahl Management*,⁵² the Supreme Court of New York upheld a landlord's right to exclude attorneys as tenants because lawyers are "a source of trouble" due to their litigious nature.⁵³ Professor Alan Dershowitz has written that "[b]eneath the robes of many judges, I have seen corruption, incompetence, bias, laziness, meanness of spirit, and plain ordinary stupidity."⁵⁴ Judges have criticized lawyers for similar reasons. When Chief Justice Burger attended a judicial conference in Williamsburg, Virginia, in May 1975:

He complained there about some of the attorneys who appeared before the Supreme Court. "The quality is far below what it could be," he told a discussion panel. [Judge] Bazelon too was on the panel, and he praised the Chief Justice for speaking up about attorney incompetence. Bazelon agreed that it was "the most serious threat to the administration of justice."⁵⁵

Indeed, the Supreme Court has limited attorney advertising to exclude "in-person solicitation of clients" because of fears of "stirring up litigation, assertion of fraudulent claims, . . . and potential harm to the solicited client in the form of over-reaching, overcharging, underrepresentation, and misrepresentation."⁵⁶ All of this demonstrates that attorneys, themselves, have been concerned that we, as a profession, do not perform as ethically or as competently as we should.

Lawyers also have been circumspect about the public's perception of the profession. Both judges⁵⁷ and attorneys⁵⁸ have voiced such anxiety:

The image of lawyer as criminal has been etched indelibly into the

51. MODEL CODE OF PROFESSIONAL RESPONSIBILITY Preamble (1981). See also MODEL RULES OF PROFESSIONAL CONDUCT Preamble (1983) ("A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.").

52. 92 Misc. 2d 1030, 410 N.Y.S.2d 943 (Sup. Ct. 1977).

53. *Id.*

54. A. DERSHOWITZ, *THE BEST DEFENSE* xvii (1982).

55. B. WOODWARD & S. ARMSTRONG, *THE BROTHERS* 379 (1979).

56. *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 461 (1978).

57. B. WOODWARD & S. ARMSTRONG, *supra* note 55, at 257 ("[L]awyers were not held in the esteem they merited, the Chief complained.").

58. A. DERSHOWITZ, *supra* note 54, at 384.

American consciousness by such highly publicized prosecutions as those growing out of Watergate and Abscam, where many of the defendants were lawyers themselves.⁵⁹

Thus, members of the profession have felt apprehension which is consonant with the views of pop musicians.

Socially conscious pop musicians have conjured up an image of lawyers, and, indeed, of the law itself, that ought to make us stop and think. Maybe they are right. Maybe the law is a tool of oppressors that helps to reinforce, if not create, oppression.⁶⁰ Maybe lawyers are among the oppressors, or are so motivated by desires to win and to make money that they do not care whether they act to reinforce oppression.⁶¹ Even if these musicians are, in fact, wrong, lawyers ought to be concerned with the images that these and other artists create⁶² because those images reflect how many members of society, as well as of the profession, see us.⁶³ And even if society did not share those images up until now, the transmission of those feelings will cause others to experience the same feelings.⁶⁴ Thus, we should ask ourselves whether pop musicians have, in fact, portrayed law and lawyers accurately and whether we, as lawyers, do all that we can to correct this kind of portrayal by acting with these artists, against oppression, whenever we can.

III. CONCLUSION

If these musicians can force us as lawyers to self-reflect, then they have done a lot.⁶⁵ They have created true works of art by holding up a mirror to lawyers and to society so that we can see clearly "the most comprehensive truths" of our times, as well as of our profession.⁶⁶ They have also transmitted feelings so that others can experience them.⁶⁷ For us as lawyers, they have given us a reason to self-reflect which, if their vision is correct, or even shared, is past due.⁶⁸

59. *Id.*

60. *See supra* notes 36-38 and accompanying text.

61. *See supra* notes 49-56 and accompanying text.

62. *See, e.g.*, J. BROWN, *Lawyers in Love*, in *LAWYERS IN LOVE* (© 1983) (Note the cover of the album, which depicts Mr. Brown standing up through the moon roof of a Mercedes, paddling an oar.); W. ZEVON, *Lawyers, Guns and Money*, in *EXCITABLE BOY* (© 1978) ("Send Lawyers, guns and money/the shit has hit the fan.").

63. *See supra* notes 2-6, 52-56 and accompanying text.

64. *See supra* notes 9-13 and accompanying text.

65. Note, *supra* note 13, at 1154 (Self-reflection may lead to shared understandings, which form the basis of community.).

66. *See supra* notes 2-6 and accompanying text.

67. *See supra* notes 9-13 and accompanying text.

68. *See supra* notes 25-59 and accompanying text.

In all, they have done what artists should do: they have created true art. "It is in works of art that nations have deposited the profoundest intuitions and ideas of their hearts . . ." ⁶⁹ If pop musicians speak for society, then lawyers can afford to do no less than listen.

69. G. HEGEL, *supra* note 2, at 29.