

Jeanne Hoffman. Welcome to the Kosmos Online podcast. I'm Jeanne Hoffman. Today we are talking with Tom Bell, professor of law at Chapman University School of Law. Professor Bell specializes in high tech legal issues, and has written a variety of papers on intellectual property and Internet law, and has taught at several IHS Summer Seminars, including one that I attended. Welcome, thanks for joining us.

Tom Bell. Thanks for having me.

JH. So what made you want to be a law professor?

TB. I saw my own law professors when I was in law school, and recognized, pretty quickly, that they seemed to have really great jobs. They got to talk about ideas all day long with people who wanted to talk about those ideas with them. And I have to admit, I also noticed they were held in high regard, and seemed to get paid pretty well, and had pretty good salaries, and benefits, vacations. It all looked good.

JH. And I know that you are also involved a lot with IHS, who deals with people who want to become academics. Were you involved with IHS only when you were in law school, or did you get involved beforehand?

TB. I knew IHS before I went to law school, and I'm glad I did. It really helped me a lot to go to the law school I wanted to go to, and pay for it too. I started working with them, I went to my first seminar when I was in grad school in philosophy. And then I went to IHS, and worked there for a year before I went to law school. And I know most students won't have that opportunity, or won't be interested in it, but in my situation it was wonderful. That whole year I was applying to law schools I was hanging out in the same office with people who could give me good advice, and did give me really good advice. And then when I went to law school I continued the relationship.

JH. And you are a past winner of the IHS's Humane Studies fellowship. The application for this season just went online so I was wondering if you could tell the audience a little about your experience with that.

TB. It's been a long time since I applied. I did get very generous support, for which I was very grateful. Financial, of course, and that was no small matter. But it also put me in touch with people, a community of people really, who have, throughout the years, given me good advice, and just encouragement, and a lot of fun times too, which is no small matter. As far as specifically the support I got, it made it possible for me to not spend many years in practice. So the real blessing of it was it gave me freedom. It gave me freedom to pursue the career that interested me most. It gave me financial freedom.

JH. And what were you researching back then?

TB. Before I went to law school? Well, it turns out, I did have a research program, kind of, on the side when I was working at IHS. I was mostly a menial lackey who carted boxes around, but I was writing then about polycentric law, and wrote a short piece that appeared in *Humane Studies Review*. I'm guessing it probably today wouldn't look much like great scholarship, but the charm of it was, for me, it focused my research in law. It gave me something to go looking for writings on, and it gave me an occasion to get used to legal research and writing. And this is all before I went to law school. So it was a really nice way to warm up to the academic enterprise that I had lined in front of me.

JH. And then, your classical liberal beliefs. You obviously had those before law school, otherwise you wouldn't have worked for IHS, but how far back do they go?

TB. When I was in high school I used to, as I'm sure many of your listeners have, I used to describe myself as socially democrat and economically republican. I wouldn't do that now because... Well, for reasons that would only make me cranky to go into. But, I'm not sure where I got that, it could have been just the culture I grew up, and maybe some sort of innate disposition. Maybe I am just naturally ornery and resistant to authority. But I will say this, both of my parents worked, in some guise, for the government. My mother was a librarian in the local schools. More importantly, as far as this aspect goes, my father was a civil servant in the department of agriculture. And he would come home, and tell us stories around the dinner table that you could not hear and end up concluding from, "Oh, government works really well. This is the solution to our problems." My dad had too much experience in the way government works, which he shared with us to convince me of that.

JH. And then, throughout your academic career, both grad school, law school, being a professor, were your colleagues aware of your sympathies?

TB. I think so, I've never dissembled certainly, about my beliefs. I've sometimes selectively, just kind of, shut my trap. But I will say, even when I was untenured, I'm not sure this is good advice, but this is my take. Even when I was untenured, I was always very vocal at faculty meetings, I've tried to be civil, but I guess I just never really thought about keeping my views secret. I always thought, I'm going to treat other people respectfully, even if I disagree and I think they are going to do that to me. They haven't always. But it's a chance I have taken and I'm glad I have, because it's no fun being a friend of liberty if you can't blow your trumpet every once in a while.

JH. What kind of reactions did you get from people then? You kind of laughed about it there.

TB. You can never be sure what people say behind your back, of course, but I've ended up in a career position I'm very happy with. So I don't think, at least materially, my career has been sabotaged. Again, I don't know what opportunities I

missed out on. I think, by and large, if you're all around a respectful person. If you are good company, and friendly, people can disagree with your views but they will find it hard to dislike you. At least I like to think that. I still disagree with my colleagues, it happens all the time, but we often have wonderful email exchanges. I'm very careful. Very careful to always be civil, maybe to a fault. Find nice things to say, find things I can agree with, and I emphasize those. And then once in a while, I'll get to the prickly stuff. But, if you've built up that reservoir of trust and good faith, you can pretty fearlessly be frank about your political views.

JH. I think that's great advice. Switching tracks a little bit, you've done quite a lot of work on intellectual property. That's a field that's been changing quite rapidly with new questions that didn't exist because the technology didn't exist a few years ago. And I know that the idea of IP has generated a lot of conversation even in libertarian circles, where people are split on the issue of whether or not there is really such a thing as intellectual property. What are your thoughts on that?

TB. You are inviting a long answer with that. But I'll be brief, I think your characterization is pretty accurate. That self-described libertarians and classical liberals, they often disagree about intellectual property. My own take, in very brief, is that it is a statutory invention. And it's in contrast to what I believe are natural rights to person and property, and indeed, in conflict with them. So I call it, when I'm being careful and it doesn't seem to silly, I call it intellectual privilege. At least I use that label for copyright and patents. Privilege, because it's a statutory invention. Now, in the United States it happens to be constitutional, which is a little unusual for much of what the federal government does, and welcome, but essentially I view it as just like another government program. One that is, expressedly in the Constitution, so that's a bonus. Which, may or may not be good public policy, depending on a number of factual issues. But I do not think it qualifies as a natural right, and indeed, I think it contravenes our natural rights to person and property. As does, of course, does taxation. Now taxation, may or may not, be a good idea, depending on whether the fruits of government outweigh the costs. And it's the same thing again, I think, with regards to copyright and patents. There are some great policy arguments for them, but its all contingent on facts and most importantly, because it is a prima facie violation of our natural rights: to say you can't say something, or sing something, or use your machine chop to build something. Prima facie violation of our natural rights to person and tangible property. Because of that, if and when copyright and patents prove superfluous, unnecessary, redundant, we got to get rid of them. Just as we would get rid of government programs, if they prove redundant, superfluous and unnecessary.

JH. Now looking at all of the research you've done on the subject of intellectual property, is there one work that stands out as the one you are most proud of?

TB. No, I don't have a great answer to that, because I haven't sort of sat down and scored everything. But I guess I would say *Escape from Copyright*, something I wrote sometime ago. And it was one of my first attempts at this, so far pretty distinctive,

view of intellectual privilege, as I call it, that I have now. So I guess that, because it was my first stab. *Escape from Copyright*, it was in Cincinnati law review. It was an okay placement, and yeah, Ill go with that.

JH. Okay. And looking at your field, do you think there are any current issues that classical liberals should address that they haven't been addressing?

TB. There hasn't been a lot of classical liberal work in intellectual property, patent, copyright, trademarks. I've been pretty pleased with what work I've seen come from my fellow travelers in that area, even though they don't always agree with me. For example, Adam Mossoff at GMU, has a very different view. A very different view of patents than I have. But he is speaking from a shared tradition, and I like to see that. Adam quotes Locke, and he understands Pufendorf, and he understands property theory. He respects property rights. Like I say, I don't agree where Adam ends up all the time, but he and I have a common pool of sources we draw on, it gives us a shared language, and a lot of shared understandings. So, I would say, more of that would be great. And I would like to see more people apply the fundamental precepts of classical liberal theory to this new area. There is still a lot of work to do. And new stuff comes out all the time, you are not going to run out of things to write about, even if you exhaustively cover everything that is out there, because give it a year and legislators will have another statute. Probably an ill advised one. Another statute that you can analyze from a Hayekian, or Lockean, or Millian point of view.

JH. Well, thank you very much for joining us Professor Bell.

TB. You are very welcome. Thanks for your time.

JH. And for more interviews with leading scholars, visit KosmosOnline.org. That's KosmosOnline.org, connecting the network of liberty advancing academics. And this is Jeanne Hoffman, signing off.