

Oklahoma Law Review

Volume 62 | Number 3
Centennial Issue

2010

OU Law: Cultivating Character

Brad Henry

Follow this and additional works at: <https://digitalcommons.law.ou.edu/olr>

Recommended Citation

Brad Henry, *OU Law: Cultivating Character*, 62 OKLA. L. REV. 399 (2010).

This Introduction is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in Oklahoma Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

OU LAW: CULTIVATING CHARACTER

GOVERNOR BRAD HENRY*

*Service is the rent you pay for the space you occupy.*¹

-Lloyd Harlan Henry

Although I find supposition a bit careless, I nevertheless presume that I have been afforded the distinct privilege of writing for this centennial issue largely, or perhaps entirely, as a result of my title. It is doubtful that my former station, many years ago, as managing editor of this scholarly journal played a role. Even so, I must underscore that I have an abiding affection for this school of legal learning that equipped me with the tools and motivation to aspire to the title.

My first order of business, therefore, is to congratulate the OU College of Law on reaching the milestone of its 100th year of continuous service. In addition, I applaud all who consider themselves members of the OU Law family. There are literally thousands who, like me, have benefitted enormously from their association with this outstanding institution.

In addition to bringing cheers on the occasion of our centennial celebration, I have a message (and a little bit of history) to impart. The premise is simple but, I think, powerful. A law school's purpose and mission should encompass more than simply training students to be good legal technicians. That is important, but the more vital mission of a law school is to cultivate good citizens who are motivated to use their legal skills to engage and combat injustices and improve the lives of others. And that, I believe, is exactly what OU Law has been doing (although there is always room for improvement).

Let's stir in some history. In order to understand where OU Law is headed in its next century, it is instructive to look to the past.

Establishing a law school and determining its proper purpose and role in the instruction of its students is no easy task. This is in part because, despite the existence of many institutions of legal instruction today, the law school is of relatively recent pedigree. Early legal education took place in apprenticeship

* Twenty-sixth Governor, State of Oklahoma, 2003–Present; J.D., University of Oklahoma College of Law, 1988; Managing Editor, *Oklahoma Law Review*, 1987–1988. While the opinions and inadequacies of this essay are my own, I wish to convey special appreciation to Conor Cleary for his invaluable contributions in the researching and drafting of this essay. I would also like to thank Michael Brooks for his patience and editing assistance.

1. My late uncle, Lloyd Harlan Henry, who was a district judge for fifteen years in the 23rd Judicial District, situated in Pottawatomie and Lincoln counties, claimed to have coined this bit of wisdom when he served as president of the Shawnee Chamber of Commerce, although it is entirely possible that he borrowed the quotation from someone else.

programs, not in the halls and classrooms of a formal law school.² There, students spent hours “reading the law” compiled in treatises by famed legal minds like Sir Edward Coke and Sir William Blackstone.³

The first law schools grew out of this apprenticeship model. In the early 1800s, law schools developed within law offices. For example, Yale University’s law school grew out of a school formed within the office of a New Haven lawyer.⁴

For decades, law schools struggled to find their niche in American higher education. Only in the latter half of the nineteenth century did America see the establishment of formal law schools with a defined curriculum.⁵ Significantly, with this development came the application of the principles of pragmatism to American legal education and the creation of the dialectical process of study known as the “case” method.⁶

Harvard Law professor Christopher Columbus Langdell is generally credited with this pedagogical innovation.⁷ He conceived of law as a science, something that could be taught and analyzed systematically by the study of prior cases in order to distill the governing legal principles.⁸ Langdell’s case method of instruction is still used today in the vast majority of American law schools.

When Julien Charles Monnet, the first and longest-serving dean of the University of Oklahoma College of Law, arrived in Norman in the summer of 1909 to head the first state-supported law school in the nation’s newest state,⁹ he borrowed a few pages from Langdell’s playbook. Monnet, a product of Harvard Law, shared much of Langdell’s vision of legal education.¹⁰ Like Langdell, Monnet abhorred legal education that stressed the importance of

2. See generally W. Hamilton Bryson, *The History of Legal Education in Virginia*, 14 U. RICH. L. REV. 155 (1979). A number of the young men who went on to lead the American Revolution and shape the early Republic began their legal careers in this way. Thomas Jefferson, James Madison, John Marshall, and Henry Clay all studied under the tutelage of George Wythe, widely considered the first law professor in America. See *id.* at 159, 172, 174.

3. See *id.* at 159, 161, 168-69.

4. See John H. Langbein, *Blackstone, Litchfield, and Yale: The Founding of the Yale Law School*, in HISTORY OF THE YALE LAW SCHOOL 17, 32 (Anthony T. Kronman ed., 2004).

5. See Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 908-10 (1933).

6. See *id.*

7. See *id.*

8. See *id.* at 910.

9. See BOB BURKE & STEVEN W. TAYLOR, THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW: A CENTENNIAL HISTORY 3-4 (2009). The OU College of Law was not the first law school in Oklahoma. The first law school was established in 1907 at Epworth University, a predecessor to Oklahoma City University, by prominent members of the Oklahoma City bar and the Methodist Church. *Id.* at 3.

10. See DAVE R. MCKOWN, THE DEAN: THE LIFE OF JULIEN C. MONNET 195 (1973).

“reading law” by poring over tomes such as Blackstone’s *Commentaries on the Laws of England*.¹¹ Monnet was an educator who believed in the teaching of law.

Before accepting the position as dean of OU’s law school, Monnet insisted that he be given full control of the development of the school and its curriculum, free from political meddling.¹² Monnet waged one of his earliest battles against the local bar, which objected to the case method of instruction and its departure from the “reading of law.”¹³ Rejecting the arguments of those who espoused the older method, Monnet maintained that “there can be no question about the superiority” of the case method that “stands in contradistinction to the old method of ‘reading law’ which depends upon taxing the memory of man first to learn and then retain all the rules, tenets and precepts of the law.”¹⁴ For Monnet, the objective of Oklahoma’s law school was “to prepare future lawyers of this state with a sound understanding of the principles and fundamentals of the law,” an understanding that could only come from a “dissection of actual cases from real life.”¹⁵

It is ironic that Langdell, a man who so forcefully criticized the “reading of law,” was himself a librarian during his time as a student at Harvard Law.¹⁶ In fact, it was a joke among his peers at Harvard that he often slept in the law library because he loved his books so much.¹⁷

In the first half of the twentieth century, some scholars questioned whether Langdell had really departed from the “reading of law” tradition. Jerome Frank, later a judge on the Second Circuit Court of Appeals, criticized Langdell’s belief that a complete understanding of the law could be derived purely from “printed books.”¹⁸ With a not-too-subtle dig at Langdell, Frank argued that legal education was not “library law.”¹⁹ For Frank and other “legal realists,” law was not a science like other academic disciplines. The law did not necessarily develop in a linear and logical fashion. Instead, “non-rational factors” such as a lawyer’s ability to persuade, the “face-to-face appeals to the emotions of juries,” and the social laboratory of legal policy dictated legal

11. *See id.* at 110 (noting that Dean Monnet “was especially interested in new and innovative teaching methods” rather than “the age-old textbook pattern of instruction”).

12. *Id.* at 129.

13. *Id.* at 195-96; *see also* Robert H. Henry, *Studying Repeated History: Remarks at the Ground Breaking for Renovations to the OU Law School, 1999*, 53 OKLA. L. REV. 1, 4 (2000).

14. MCKOWN, *supra* note 10, at 183 (quoting Dean Monnet’s remarks to the Oklahoma Bar Association in February 1910).

15. *Id.*

16. *See* Frank, *supra* note 5, at 907.

17. *See id.*

18. *Id.*

19. *Id.* at 908.

results just as much as any particular legal rule or decision.²⁰ As Oliver Wendell Holmes famously remarked, “The life of the law has not been logic; it has been experience.”²¹

The problem with approaching the study of law too scientifically is that legal education becomes an end in itself.²² If law is nothing more than a set of preordained rules waiting to be discovered, the study of law becomes an individualistic enterprise with success or failure measured only by whether the student can learn the law’s letter, regardless of whether its spirit can be appreciated. Law schools train the lawyer to be but a technician who invokes the law’s text at the client’s command, without a consultation of his own conscience. As the Model Rules of Professional Conduct make clear, however, while a lawyer no doubt “is a representative of clients” who should “zealously assert[] the client’s position,” a lawyer is also “a *public citizen* having special responsibility for the *quality* of justice.”²³ An attorney “whose professional thoughts begin and end with his own private clients is a pitiable mockery of what a great lawyer really is.”²⁴

Although much of a law school’s curriculum is dedicated to teaching important legal rules and principles, these precepts are only the beginning; they are but the foundational means to achieve the most important end of law—the *administration of justice*.²⁵ Law, former Harvard Law dean Roscoe Pound opined, is “judged by the results it achieves, not by the niceties of its internal structure.”²⁶ He might just as well have been speaking about legal education.

Dean Monnet understood that legal education did not begin and end with the principles distilled from a casebook. Although Monnet resembled Langdell in his approach to legal education, he certainly was not Langdell’s clone. Monnet championed the casebook approach to teaching and the Socratic Method, but he never had quite the same restricted view of legal instruction as Langdell. Perhaps it was Monnet’s diverse academic background—with a degree in philosophy and significant coursework in political science, literature, and

20. *See id.*

21. OLIVER WENDELL HOLMES, *THE COMMON LAW* 1 (Boston, Little, Brown & Co. 1881).

22. *See* Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 *STAN. L. REV.* 1695, 1701 (1993) (“[S]tudents, responding to a law school culture that extols the virtues of analytical and rational reasoning, withdraw from humanitarian, people-centered concerns.” (alteration and internal quotation marks omitted) (quoting E. Gordon Gee & Donald W. Jackson, *Current Studies of Legal Education: Findings and Recommendations*, 32 *J. LEGAL EDUC.* 471, 495 (1982))).

23. MODEL RULES OF PROF’L CONDUCT pmb1. ¶¶ 1-2 (2007) (emphasis added).

24. Arthur T. Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 *A.B.A. J.* 31, 32 (1954).

25. Roscoe Pound, *Mechanical Jurisprudence*, 8 *COLUM. L. REV.* 605, 605 (1908).

26. *Id.*

history²⁷—or his dealings with undergraduate disciplines during a brief tenure as president of the University of Oklahoma²⁸ that shaped his educational worldview. Whatever the reason, for Monnet, the teaching of law, and the mission of the law school, could not be confined solely to casebooks.

Former OU Law professor John Cheadle once described Dean Monnet as a “pioneer,”²⁹ and in the field of legal education, he certainly was. It was education in the liberal arts that propelled the Dean.³⁰ For him, legal instruction was cross-disciplinary. This explains his stubborn effort to locate the law school in Norman, in the heart of the undergraduate campus, against the wishes of influential attorneys who wanted it placed in Oklahoma City.³¹ His experience at other universities “had shown him the fundamental error of physically separating a school, any school, from the main campus where university life is lived.”³² Erecting the law school “in the center of the university” would allow it “to enjoy all the associations attending and all the amenities surrounding college life.”³³ The Dean won the battle, and the law school has remained in Norman ever since.

Broadening the study of law to encompass various academic disciplines reflected Monnet’s belief that a law school’s purpose was not simply to train students to be legal technicians, formalistically applying legal rules of decision. It was about (and this is the heart of my message) *inspiring* them as well, *building character* and *cultivating an ambition to better society* through a profession that “wrestles with all [the] most difficult, most complicated, and most entangled situations that arise in social and business life,”³⁴ and which also “constitutes the leadership in nearly all . . . movements for civic improvement and for the advancement of the general welfare.”³⁵ Monnet was absolutely right.

Departing from Langdell, Monnet rejected the formalist understanding of the law. “[L]aw is not a science,” he remarked.³⁶ The triumph of the law in facilitating good governance and resolving society’s most complex disputes did not result from the application of automatic rules. Monnet dismissed the idea that the law could be “so clear and comprehensive as to remove all doubt” as

27. See MCKOWN, *supra* note 10, at 15-38.

28. *Id.* at 200-14.

29. John B. Cheadle, *Julien Charles Monnet: Pioneer Legal Educator*, 5 OKLA. L. REV. 117 (1952).

30. See Henry, *supra* note 13, at 3 (citing MCKOWN, *supra* note 10, at 32).

31. MCKOWN, *supra* note 10, at 163.

32. *Id.*

33. *Id.*

34. Cheadle, *supra* note 29, at 125 (quoting Dean Monnet).

35. *Id.* (emphasis added).

36. *Id.*

“Utopian.”³⁷ Instead, he believed that the law triumphed when properly interpreted, applied, and administered, and that this work would be done by the law students—the future lawyers, judges, and scholars. This could happen, however, only if the students had a richer, deeper appreciation of the law and its proper purpose than that provided in many law schools.

This tradition of OU Law accords with my vision of the most important functions of a law school: building character, instilling the value of service to others, inspiring students to be good people, and cultivating ambition to improve the lives of others (especially those who are most vulnerable and least able to help themselves) by taking leadership roles and tackling injustices. After all, law is not a business; it is a profession.

Upon a more in-depth review of the role of lawyers in our society, their connection to public service becomes more apparent. Lawyers have both direct and general relationships to the public. Obviously, lawyers’ most important direct relationship is with their clients; for without them and their grievances, there would be little for lawyers to do. Simply put, the law profession is about helping people.

Former Supreme Court Justice Louis Brandeis once remarked that the “greatest achievement” of the American system of government “is the attainment of liberty through law.”³⁸ This attainment, however, must be had by recourse to our judicial bodies, and this often requires the assistance of an attorney versed in the procedure of the legal system and the substance of the law. Yet lawyers do not operate in a vacuum, merely debating the form the law should take. They are necessarily connected to the broader citizenry, because it is on lawyers that the burden of administering the law falls, and lawyers have the obligation to make the law function in a way that benefits society at large.

Our legislative bodies promise social services, but it is inevitable that difficulties will arise in guaranteeing those services. It is the lawyer’s job to ensure that those promises are met and that those services are administered properly. Consequently, the lawyer is often the intermediary between the citizen and the state; the lawyer bridges the gulf between expectations and reality. Justice Brandeis noted that Alexis de Tocqueville, when visiting the United States in the early nineteenth century, observed that lawyers were the closest thing to a noble class in America and that early American society regarded them with much importance, holding them in high esteem because of their role in ensuring the orderly achievement of justice.³⁹

37. *Id.*

38. Louis D. Brandeis, *The Opportunity in the Law*, 39 AM. L. REV. 555, 555 (1905).

39. *See id.* at 555-56.

Lawyers have a general relationship with the entire population because their work and its results affect people in almost every aspect of their daily lives. Our common law tradition and the principle of *stare decisis*, of course, mean that the resolution of a dispute in a particular case impacts and influences future litigants with similar disputes.⁴⁰ The arguments lawyers offer in a legal proceeding, informed by the rules and principles learned in law school, have an effect that extends far beyond the venue in which those arguments are made. It is in recognizing this broad, general effect on the lives of others that lawyers can develop a deeper appreciation for the law's relationship to public service.

My family long ago recognized OU Law's holistic approach to legal education and how this would assist with a career in public service. Six Henry brethren have attended OU Law, and five of us actually graduated. My grandfather was the first to attend, and, although he did not graduate because of illness and the bite of the Great Depression, my father and uncle soon followed in his footsteps. In my generation, besides me, two cousins graduated from this respected legal institution. All of us have used our experiences at OU Law in pursuit of careers in public service. We've become judges, legislators, teachers—even an attorney general and a governor. Regardless of the specific path in public service each of us has chosen, however, one thing is clear: the comprehensive education we received in law school has been essential to the quality of that service.

Each of us elected to attend OU Law because its legal training promised to prepare us “especially to grapple with the questions which are presented in a democracy.”⁴¹ Law school provided an appropriate foundation for public service because the “pursuit of the legal profession involves a happy combination of the intellectual with the practical life.”⁴² And it has not just been the members of my family who have deployed their legal skills for the benefit of the public. Many of Oklahoma's greatest public servants are graduates of the University of Oklahoma College of Law, including former U.S. senator Fred Harris; former governors Leon “Red” Phillips, J. Howard Edmondson, and Frank Keating; former mayor of Oklahoma City and current dean of the law school Andrew Coats; chancellor of higher education Glen Johnson; and president of the University of Oklahoma, and former governor and U.S. senator, David Boren.

In this centennial year of the OU law school's existence, the school continues, unabatedly, the tradition of encouraging its students to use their legal knowledge to serve others. In addition to the standard first-year curriculum, the

40. See 20 AM. JUR. 2D *Courts* § 129 (2005).

41. Brandeis, *supra* note 38, at 556.

42. Louis D. Brandeis, *The Living Law*, 10 ILL. L. REV. 461, 469 (1916).

school enriches its students' appreciation of the law with courses in American legal history, seminars on the triumph of the law over forces and events like slavery and the Civil War, and comparative examinations of international law and foreign legal systems. Students can take classes like Federal Indian Law and Oil and Gas that have particular utility and practical value in the State of Oklahoma. Additionally, in recognition of a growing new industry in renewable energy that offers the potential for economic progress for our state, the law school has become one of only a few legal institutions in the country to offer a course in wind law, making our students among the most qualified to work in this important, emerging area of law.

Students also have the opportunity to serve others while still in school by volunteering in one of three clinical programs, helping those who cannot otherwise afford legal services resolve their civil or criminal troubles. Additionally, just this past year, the law school opened an international human rights clinic, allowing students to serve a global public by preparing reports for the United Nations on various countries' compliance with human rights commitments and obligations. And, while law school tuition and student loan debt skyrocket nationwide and pressure graduates to pursue more lucrative careers in the private sector, OU Law makes careers in public service financially feasible, with over 75% of the entering class earning merit-based scholarships.⁴³

Former chief justice of the New Jersey Supreme Court Arthur Vanderbilt once remarked, "[E]very great lawyer must be prepared to answer the call for public service when it comes."⁴⁴ The University of Oklahoma College of Law has prepared its students to answer this call. The school has never focused solely on the short-term goal of teaching students the information necessary to pass the bar exam. It has always had a far grander and more vital mission: cultivating character. It is my hope and belief that during the next one hundred years and beyond, this great institution will continue to mold good people of character and inspire students to use their talents and legal knowledge to address injustices in an effort to improve the lives of others—just as it has done in its first one hundred years.

43. Information regarding current courses, programs, costs, and financial aid at OU Law may be found on the school's official website. The University of Oklahoma College of Law, <http://www.law.ou.edu/> (last visited Mar. 22, 2010).

44. Vanderbilt, *supra* note 24, at 32.