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John Lord O'Brian

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JOHN LORD O'BRIAN

LL.B., University of Buffalo Law School, 1898.

J. D. HYMAN*

The Spring 1952 issue of *The Buffalo Law Review* contained a Note from the Editor which opened as follows: ¹

This issue completes Volume 1 of *The Buffalo Law Review*, and it is our hope that the Review has significantly contributed to the area of legal knowledge.

It did, and succeeding volumes have made a steadily more significant contribution. The primary focus on legal scholarship is still right for a law review. But the question—scholarship for what?—which may have seemed odd to us twenty years ago, has become a burning question today in institutions of higher education, public and private, large and small, across the nation. Those who choose to thrust it aside do so not only at their own peril but at the peril of the future of the nation.² The failure of the universities to furnish convincing answers to the question may be illustrated by a reference to the Godkin Lectures given at Harvard University in 1963 by Dr. Clark Kerr, published under the title, "*The Uses of the University*." This became one of the more highly regarded in the flood of books about higher education which the '60's produced. Dr. Kerr suggested that "the social sciences and the humanities may find their particular roles in helping to find the good as well as the true and add wisdom as well as truth."³ Although the call is inescapable, there is very little else in the book about wisdom.

A University Law School can no longer pursue traditional forms of legal scholarship in the reasonable expectation that doing so will automatically further the growth of wisdom and the effective application of scholarship and wisdom to the critical problems of our society. Former President Meyerson's establishment within the State University of New York at Buffalo of a separate Faculty of Law and Jurisprudence reflected a conviction that this effort

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1. 1 BUFFALO L. REV. vii (1952).

2. See, e.g., the recent REPORT OF THE PRESIDENTIAL COMMISSION ON CAMPUS UNREST (Scranton Commission).

3. *Id.* at 124.

could be significantly furthered by bringing the centuries-old discipline of the law into the larger academic community and at the same time facilitating a flow from the larger University into the discipline of the law. In many ways the Faculty of Law and Jurisprudence is cultivating that opportunity, and it is pleasant to be able to report to the readers of the *Review* that many segments of the larger University community have been cordially responsive.

But a law school and a law review have another fundamental connection to maintain and foster: the connection with the professional community of which most of its graduates become a part. The toughness of the Anglo-American traditional legal discipline, with its largely pragmatic growth, is a consequence of the roots of the lawyer in the professional world. One question which arises was anticipated by Holmes when he addressed Harvard undergraduates in 1886 on the *Profession of The Law*. He said:⁴ "How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shop keepers' arts, the mannerless conflicts over often sordid interests, make out a life?" Holmes' answer was to point to the challenge of intellectual power,⁵ "to show the rational connection between your fact and the frame of the universe." This is the way already mentioned: the link from the law to other scholarly disciplines. Again in Holmes' words:⁶ "If your subject is law, the roads are plain to anthropology, the science of man, to political economy, the theory of legislation, ethics, and thus by several paths to your final view of life."

But the link to the profession of the law, already mentioned, suggests that there is another path than that of scholarship, however varied. Brandeis, Holmes' great colleague on the Supreme Court, was an exemplar of this other path. For Brandeis, the law provided not only an opportunity, but by virtue of the responsibility which comes to one by being a member of the legal profession, a call to bring the skills and perspective of the law to the broader problems of one's society. In the words of his biographer, Thomas Alpheus Mason:⁷ "Brandeis's public campaigns were guided by a deep sense of continuing responsibility for community welfare, and his life exemplifies what for him were the responsi-

4. COLLECTED LEGAL PAPERS 29 (1921).

5. *Id.* at 30.

6. *Id.*

7. BRANDEIS: A FREE MAN'S LIFE 642 (1946).

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bilities of citizenship. . . . For Brandeis, men, not things are the source and goal of progress, and that society is richest which takes fullest advantage of all its human possibilities, not only those of the able and the astute, but also those of the little people, the small men with one or a few talents."

In choosing to dedicate this Twentieth Anniversary issue to John Lord O'Brian, the Editors have set before themselves, their successors, and the legal community an inspirational model of this aspect of the challenge of the profession of the law. A graduate of the Class of 1898, the tenth class to graduate from the Buffalo Law School,⁸ Mr. O'Brian was reported to have been the "brightest" man in the class. His legal career began with the practice of law in Buffalo, which he continued, despite an ever broadening series of involvements in public life, until his removal to Washington in 1945. During the years both before and after 1945, he became an increasingly prominent and respected member of the bar, appearing frequently before the Supreme Court of the United States. One notable achievement was his successful appearance on behalf of the Tennessee Valley Authority in the landmark constitutional law case of *Ashwander v. T.V.A.*⁹ That appearance exemplified Mr. O'Brian's deep conviction that the lawyer who achieved distinction in the private practice of law was professionally obligated to make his skills available in response to public calls upon them. However outstanding, this case was only one in a very long series of assignments in the public service which Mr. O'Brian gladly undertook. From service in the New York State Assembly (1907-1909), he became U.S. Attorney for the Western District of New York (1909-1914), Delegate-At-Large to the New York Constitutional Convention of 1915, Chairman of the Draft Board of Appeals for Western New York in 1917, then to Washington as head of the War Emergency Division, United States Department of Justice (1917-1919), Assistant to the United States Attorney General (1929-1937), General Counsel, Office of Production Management and War Production Board (1941-1944). These are the principal full time government jobs. Throughout this period there was a long string of public and private service in a broad range of civic, educational, and public appointments, among

8. G. PETERSEN, BUFFALO LAW SCHOOL, SEVENTY-FIVE YEARS, 1887-1962, A SHORT HISTORY 38, 50 (1962).

9. 297 U.S. 288 (1936).

them sixteen years as a Regent of the University of the State of New York (1931-1947), twenty-six years as Trustee of the University of Buffalo (1903-1929), Overseer of Harvard University (1939-1945), and National Chairman of the Endowment for the Harvard Divinity School (1950-1957).

It is easy to recite the list of activities undertaken by Mr. O'Brian in meeting the call of professional responsibility. It is difficult to identify the special quality of intellect and character which made that service outstanding, although reference can be made to the many distinguished lawyers who speak glowingly of the professional sense of public obligation which permeated the office of the General Counsel of the War Production Board. There is, happily, however, a public document which does convey the nature of Mr. O'Brian's sense of professional obligation. In 1955 he gave the Godkin Lectures at Harvard University.¹⁰ This was a time when the nation was experiencing a fear of Communism to which it had reacted by a series of measures designed to prevent the spread of ideas thought to be subversive. Mr. O'Brian described this pattern "as something like a new system of preventive law applicable to the field of ideas and essentially different from traditional American procedures." In the face of this threat, Mr. O'Brian declared that there was an urgent need for American leaders to "awaken to their obligation to protect the freedom of the human spirit." The Lectures were an important contribution to the awakening development of an effective opposition to the threat; for it was a time when merely to challenge the legality, morality or wisdom of the suppression of unorthodox political ideas was to open one's self to personal suspicion and to threaten one's career, and Mr. O'Brian's voice was not one which the community could disregard.

It is not necessary here to attempt to recreate the atmosphere of the McCarthy era or to detail Mr. O'Brian's appraisal of the dangers to freedom created by a blind zeal to repress, or his suggestions for arousing the American community to meet those dangers. What is pertinent is that in honoring Mr. O'Brian the Editors have set before the legal community the model of a man of law whose response to a crisis of confidence in American society was not to intensify the anxiety, but courageously to provide a profes-

10. J. O'BRIAN, NATIONAL SECURITY AND INDIVIDUAL FREEDOM (1955).

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sional lawyer's breadth of perspective, sensitivity to fundamental American values, and ingenuity in seeking new ways to mobilize social resources against real dangers without eroding our best ideals. Such a dedication can only encourage the Editors in the years to come to stimulate the best spirit of legal scholarship and of professional responsibility in solving the ever shifting form of the deep problems facing American society and the world at large.

