THE SCHOLAR

Lizabeth A. Moody*

I believe that non-profit organization and activity, for mutual-and-public-benefit, is the finest feature of American (or any other) society. While altruism may not be the main force in most men's actions, it is the best part.¹

Howard Oleck was a man of many talents. Who’s Who in America listed him as a legal educator and writer, but his interests and vocations extended far beyond the simplicity of that description. Born in New York City in 1911, he obtained his A.B. from the University of Iowa in 1933, his J.D. from New York Law School in 1938, and his LL.D. from Baldwin-Wallace College in 1964.

During his life, he was a war hero, serving as a tank commander in World War II;² a war historian;³ a columnist; a dean;⁴ a professor at four law schools;⁵ a civil libertarian; a novelist; a poet; and a Unitarian. Most of all, to those who knew him best, he was a true

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³ See id. at 382.
⁵ The schools were: New York Law School (1947–56), Cleveland-Marshall University College of Law (1967–74), Wake Forest University (1974–78), and Stetson University College of Law (1978–81).
friend and their most unforgettable character.

Howard’s interests were vast. He wrote over 300 magazine articles in addition to his novels, poems, and scholarly output. A survey of his academic writings shows that he wrote about negligence, damages, equity, contracts, fraud, trial tactics, nuisance, doctor-lawyer relations, hospitals, court delays, school law, and premenstrual tension. In 1958, he authored a five-volume treatise on corporations. There were few areas of the law about which he had no well-founded opinion. In many articles he said a great deal about legal writing and legal education. He was a perennial advisor to the law review. Whatever and wherever he taught, he helped students to write and to think, as well as to learn the law in a particular area.

The crowning jewel of Howard Oleck’s scholarship, however, was his Merlin-like perceptions about nonprofit organizations. He could see that, in the future, these organizations would be important. His treatise on the subject was first published in 1956 and predated any interest by either lawyers or academics in these organizations. The treatise was not only the best source in the field, it was the only source. Now in its sixth edition, it is still a best seller.

Like the prophet crying in the wilderness, Howard Oleck raised an early alarm about excesses being perpetrated under the nonprofit umbrella. While Professor Oleck lectured and wrote about nonprofit organizations, others who worked in corporation law believed that something that was “nonprofit” was not worth worrying about. After all, representing nonprofits did not generate large fees for their lawyers. In fact most legal work for them was expected to be pro bono.

In discussing the “proprietary mentality” of nonprofit managers, he wrote:

Officers or employees who think that they “own the organization” are found in many business companies. In some cases they are

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6. A selected bibliography of Professor Oleck’s works is printed at the end of this Tribute Article.
When Congress began to investigate the organizations in the late 1960s, Professor Oleck was called to testify before the congressional committee looking into these organizations.12 No doubt his testimony influenced some of the legislation that resulted in some of the most far-reaching tax reforms in our time.13

But tax reform was not the real focus of Howard's interest. It was the permissive state laws on which he focused his disdain. New York's Not-For-Profit Corporation Law14 particularly attracted his attention. He was not reticent in his disparagement of the statute. He stated:

The whole statute revolves around [Section 201's] definitions; and it throws out the wisdom accumulated in centuries of experience in exchange for a most doubtful encouragement to “invest” for dividends in altruistic activities.15

He summed up his feelings about the new statute by writing:

The statute calls to mind a saying of one of my daughter's, much used by her when she was very young and disliked something fed to her: “Daddy, I fink I going to fwow up.”16

It was only in the 1970s and 1980s that state laws governing nonprofits began to receive some serious attention: California passed a sweeping revision of its law17 and the Business Law Sec-
tion of the ABA began a project to produce a Revised Model Non-
profit Corporation Act.18 Howard Oleck followed these projects with
great interest and some disapproval. In writing about the Revised
Model Act, he found its philosophy to be “permissive, vague, con-
trary to a wise estimate of human nature and almost certain to mul-
tiply confusion of valid and invalid — profit and nonprofit — pur-
poses and operations.”19 He wrote:

This writer and others have long argued that a different com-
mittee than that which currently drafts laws pertaining to for-
profit enterprises should draft nonprofit corporation statutes. I sug-
gest a wholly new approach to enactment of nonprofit corporation
law. First, the subject should be removed from the Bar
Associations’ Section of Corporation, Banking, and Business Law,
because that section is the wrong one for planning law for altru-
istic, voluntaristic, pro bono organizations — organizations whose
purposes are supposed to be selfless, spiritual, and in the public
service.

Secondly, a planning committee should be appointed which
would consist of a theologian, an anthropologist, a psychologist, an
historian, a teacher, a statistician, a parliamentarian, and other
such social and political scientists. These are the kinds of people
who can best set forth the concepts and principles that are most
likely to produce successful and socially constructive nonprofit
organizations.

Thirdly, lawyers skilled in “group operations” — such as cor-
poration and business lawyers — should be the supporting tier
members of the planning committee, not the primary tier.

Finally, the planning should envisage stern supervision by
public officials of nonprofit organizations, because of the certainty
that privileged status — which nonprofit organizations have — will
attract unprincipled exploiters who want the privileges but who do
not intend to accept the concomitant burdens of public duty and pro
bono selflessness.20

It was also during the 1980s that Howard Oleck, at Stetson Univer-
sity College of Law, organized a series of seminars on nonprofits.

19. Howard L. Oleck, Mixtures of Profit and Nonprofit Corporation Purposes and
20. Id. at 243–44 (citations omitted).
These were not only successful but also important in bringing together the people who, at last, were doing research and writing in the field.

Nonprofits are now both an important area of study and an important factor in our economy. Many of the country's largest employers are nonprofit organizations. Until his death, Howard continued to teach and to write about them. Importantly, he also inspired others to focus on nonprofits as well.

Two nonprofit projects that Howard Oleck undertook have not gained the attention either deserve. One involved parliamentary law. In his book on the subject, he sensibly suggests that *Robert's Rules of Order* may not be the last word for such organizations.\(^{21}\) The other is the model statute that is included in the earlier edition of his treatise, which sets forth a wholly different approach to regulating nonprofit organizations.\(^{22}\)

Howard Oleck's work is done, but the field he invented is flourishing. Centers for the study of nonprofit organizations have been established on many campuses. Scholars flock to the field. But much of what he said still goes unheeded. We can yet find wisdom to build on his words.

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22. See Oleck, supra note 7, at 96–110.
APPENDIX

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