

A TRIBUTE TO PROFESSOR HOWARD L. OLECK

THE SCHOLAR

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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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1. Howard L. Oleck, *Proprietary Mentality and the New Non-Profit Corporation Laws*, 20 CLEV. ST. L. REV. 145, 145 (1971).

2. See Thomas C. Marks, Jr., *The Officer, Captain, Armored Infantry, U.S.A.*, 27 STETSON L. REV. 377 (1997).

3. See *id.* at 382.

4. See Martha E. Stewart, *The Professor*, 27 STETSON L. REV. 369 (1997).

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.⁶ 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.⁷ 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 write⁸ 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.⁹ 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.¹⁰

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

6. A selected bibliography of Professor Oleck's works is printed at the end of this Tribute Article.

7. HOWARD L. OLECK, *MODERN CORPORATION LAW* (1958).

8. See HOWARD L. OLECK & RUTH FLEET THURMAN, *PRIMER ON LEGAL WRITING* (4th ed. 1979).

9. HOWARD L. OLECK, *NON-PROFIT CORPORATIONS AND ASSOCIATIONS: ORGANIZATION, MANAGEMENT, AND DISSOLUTION* (1956).

10. HOWARD L. OLECK, *NON-PROFIT CORPORATIONS AND ASSOCIATIONS: ORGANIZATION, MANAGEMENT, AND DISSOLUTION* (6th ed. 1997).

correct, where, for example, the officer is the controlling shareholder in a business corporation. But the same human phenomenon is seen, all too often, in nonprofit organizations. And *there*, that kind of *proprietary mentality* is quite improper — even if the organization was founded and funded entirely by the owner. This is because a nonprofit organization is, by definition, one that nobody owns.¹¹

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-

11. Oleck, *supra* note 1, at 146.

12. The rules regulating private foundations were the outcome of these hearings.

13. *See* I.R.C. § 509 (1994). The Tax Reform Act of 1969 was part of this reform.

Id.

14. N.Y. NOT-FOR-PROFIT CORP. LAW § 201 (McKinney 1997).

15. Oleck, *supra* note 1, at 150.

16. *Id.* at 152.

17. *See* CAL. CORP. CODE § 5003 (West 1997).

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, contrary to a wise estimate of human nature and almost certain to multiply confusion of valid and invalid — profit and nonprofit — purposes and operations.”¹⁹ He wrote:

This writer and others have long argued that a different committee than that which currently drafts laws pertaining to for-profit enterprises should draft nonprofit corporation statutes. I suggest 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 altruistic, 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 corporation 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 University College of Law, organized a series of seminars on nonprofits.

18. See REVISED MODEL NONPROFIT CORP. ACT (1988).

19. Howard L. Oleck, *Mixtures of Profit and Nonprofit Corporation Purposes and Operations*, 16 N. KY. L. REV. 225, 244 (1988).

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.

21. See HOWARD L. OLECK, PARLIAMENTARY LAW AND PRACTICE FOR NON-PROFIT ORGANIZATIONS (2d ed. 1991).

22. See OLECK, *supra* note 7, at 96–110.

APPENDIX**SELECTED BIBLIOGRAPHY****Books**

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