BYU Law Review

Volume 1975 | Issue 3 Article 2

10-1-1975

# In Defense of the Langdell Tradition

Lewis F. Powell Jr.

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*The Honorable Lewis F. Powell, Jr.**

This is a sentimental journey for me. Dallin Oaks and I were colleagues at the American Bar Foundation, where he was widely respected as a scholar and splendid administrator. Although I fully understood the priority of the high calling to become President of this University, I was distressed when he left the American Bar Foundation.

In view of my personal admiration and affection for Dallin Oaks, I am especially happy to be on his campus on this memorable occasion. I have particularly enjoyed the opportunity of visiting with the students and faculty of the J. Reuben Clark Law School.

At the student forum yesterday, a student—with some apprehension in his voice—asked me whether I really thought this law school was a good one. One normally would be hesitant, if he spoke honestly, to answer that question affirmatively about any school that had not graduated a single class. Yet the fact is that I am deeply impressed by what I have seen during my two days here: a quality faculty already has been assembled; the physical plant, especially the library, is second to none; and, perhaps most important of all, the students display a spirit, dedication and enthusiasm which are contagious.

The moot court yesterday afternoon was an unprecedented one. It was composed of the entire active bench of the Tenth Circuit Court of Appeals, Judge Wallace of the Ninth Circuit, and me—a full panel of nine judges. The participants had the benefit of only two years of law school training. I agree, nevertheless, with the view expressed by Chief Judge David Lewis of the Tenth Circuit Court of Appeals when he said that he had never heard better moot court presentations.

In passing even a tentative judgment on a law school, one must consider the university of which it is a part. Central to my confidence in the quality of this law school is its relationship to Brigham Young University, described this morning by the Chief Justice as one of the finest centers of learning in the Western World. With these assets, one may predict with confidence that the J. Reuben Clark Law School will not merely be a good one,

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but that in due time it will rank as a great one.

I am proud to have a part in the ceremonies here today, but I am a bit puzzled as to what to say. Typically thoughtful, President Oaks suggested that I engage in pleasantries for about ten minutes, rather than go to the trouble of preparing anything formal. The warmth of your hospitality, and the charm of your campus, have indeed inspired me, but I doubt that I could manage ten minutes of pleasantries or that you could stand them. Weighing my alternatives, and considering the importance of this occasion, and the quality and influence of this audience, I have decided to speak seriously—I promise, for only ten minutes.

We are all here today because of our interest in the new law school. At the opening ceremony in August 1973, President Oaks described the "expectations of the . . . University" for the law school. With eloquence and conviction, he identified six expectations or goals. All are worthy, but I will comment only on one. President Oaks said:

> [T]he J. Reuben Clark Law School should concentrate on teaching fundamental principles of law. Its approach should be predominantly theoretical . . . . The law school should resist the inevitable pressure to be too fashionable in curriculum or instruction.

If I were tendering curricula advice to any law school, new or old, Dallin Oaks' words would be my text.

The current fashion in law school curricula is "clinical legal education." There is no precise definition of that phrase. It refers generally to practical learning by doing. For many years law schools wisely have afforded some "doing" experience through law reviews, legal aid, and moot courts. But current usage of the phrase connotes a great deal more. In its broadest reach, clinical education encompasses any sort of practical training outside of the traditional academic and theoretical teaching of law.

The most enthusiastic advocates of the "how to do it" approach openly challenge long accepted precepts of legal education. These precepts, as every lawyer knows, are rooted in the teaching philosophy of Dean Langdell, who introduced them at Harvard in the 1870's. Langdell believed that the law should be taught in a school, not in an apprentice's workshop. He perceived law as an academic discipline, more or less self-contained and susceptible to analysis as well as description. He discarded the treatise in favor of the casebook, and he initiated that venerable pedagogical device that has confounded and enlightened generations of first-year law students—the Socratic dialogue.

To be sure, Langdell's method has not remained static. Casebooks now also include statutory materials, explanatory notes, and commentary. Subjects are taught through lectures, in seminars, and in other formats that depart from rigid adherence to the Socratic model. Increasingly, the study of law also is enriched by reference to the social science disciplines. But for all of this, the great law schools of our country are still building on the legacy of Langdell.

I do not denigrate the need for or importance of some measured use of clinical instruction, with emphasis on advocacy. I note, in passing, that such instruction is more likely to be meaningful when supervised closely by faculty and carefully integrated with the academic curriculum. But I speak today in support of the Langdell tradition in the law school.

This tradition views the law as an academic discipline whose mysteries are revealed through rigorous doctrinal analysis of appellate cases. It is a tradition that has dominated our law schools for 100 years. It has not survived for so long a time because it is a particularly efficient way of teaching the catalog of rules and exceptions that laymen characterize as the law. Indeed, it is not. The enduring role of the Langdell tradition derives from the judgment, confirmed by long experience, that it is the best means yet devised for imparting to students the capacity for analytical thinking that is the essence of being a lawyer. As Attorney General Edward H. Levi, then President of the University of Chicago, put it:

> Law schools deserve their distinction because of their dedication to the application of structured thought, with precision and persuasion, to complex human problems and transactions.

This capacity for analytical thought, including the ability to reason independently of the pressures and fashions of the moment, is of timeless value. It is as critical today to genuine professional competence as it was when Langdell came on the scene in 1870.

Having this conviction, I commend this university on its insistence that the first duty of a law school is to teach the fundamental principles of law and legal analysis. Having known and admired Dallin Oaks for many years, I am not surprised that he listed this goal high among his expectations of the J. Reuben Clark Law School.