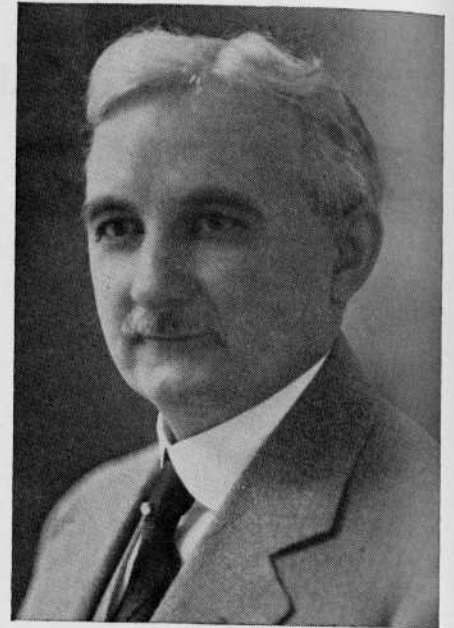


Oliver Wendell Holmes, one of the best loved citizens of the United States, was the subject of the annual Phi Beta Kappa Founder's day address delivered by Dr. Victor H. Kulp, brilliant professor of law in the school of law of the university. (Right). The address is published in full below

## A great jurist

OLIVER WENDELL HOLMES

BY VICTOR H. KULP



MR. PRESIDENT, MEMBERS OF PHI BETA KAPPA AND GUESTS:

**L**AWYERS, as a rule, love their profession, and when they pursue it with sincerity and ability, they can be of immense service to humanity.

Phi Beta Kappa makes us all think of work well done. It denotes a degree of accomplishment in intellectual pursuits.

When the committee invited me to appear before you this evening, my mind turned naturally to some of the mental giants in the legal profession. And as I reflected upon the lives of some of them, I was a bit surprised to see how closely they personified the ideals of Phi Beta Kappa. All of them exhibited great learning, scholarship combined with effective leadership, and manifested those qualities of the heart that transcend all endowments merely intellectual however great they may be, and without which no fame can be enduring.

I thought of some of the famous English jurists of the past, such as Lord Coke, who was in public life for fifty years, and who, while on the bench, judged fearlessly during very troublous times. How he managed to keep his head, speaking both literally and figuratively, has always been a source of wonder to me. Then there is Sir William Blackstone, famous as a teacher, a wise judge and commentator. His Commentaries for fully one hundred years were accepted as the best expositions of the English Law. I also thought of Lord Mansfield, noted for

his clear and brilliant thinking, and Lord Eldon who did so much to develop equity jurisprudence while it was in its infancy.

In our own country one immediately thinks of Chancellor Kent, America's first law teacher, an able judge and legal writer, sometimes referred to as "the Blackstone of America." Justice Story also comes to one's mind as one who was appointed to the United States Supreme Court at the age of thirty-two and for many years served in the dual capacity of judge and professor of law at Harvard University, and what is perhaps still more remarkable, during this dual service produced nine books in fourteen years.

But no list of American jurists however short would be complete without mention of Chief Justice Marshall, who upheld and protected the Constitution at a very critical time in our history.

However, I have chosen none of these. Instead I have selected one who has been termed the "greatest living American," a phrase which he would probably be the first to deny,—Oliver Wendell Holmes.

Carlyle has intimated that all men are hero worshippers. While I do not wish to subscribe to that doctrine, if admiration for and appreciation of so noble and useful a life is hero worship, it might be hard to deny it.

Before proceeding further it may not be amiss to refresh your memories by giving a brief sketch of the important events in his life. Born in Boston in March, 1841, he was graduated from Harvard College at the age of twenty, enlisted in the Union army during the

Civil War, was thrice wounded in battle, and is said to carry one of the bullets in his body; he left the army at twenty-three with the rank of Lieutenant Colonel, and immediately entered Harvard Law School, being graduated in 1866 with the distinction of being one of two who received the highest general average ever attained for the LL.B. After practicing law for several years he began teaching Constitutional Law at Harvard College and soon after became editor of the *American Law Review*, a leading legal journal of the time. In 1873 he again entered the practice and continued therein until 1882, when he accepted a professorship in Harvard Law School, but the same year accepted an appointment to the Massachusetts supreme court, where he served for twenty years, the last three as chief justice.

In 1902 President Roosevelt called him to the Supreme Court of the United States from which he resigned January 12 of this year. (1932).

Chief Justice Taft said of him a few years ago, when Justice Holmes was high in his eighties "He is still the most learned man on the Supreme Court," a very high compliment when one considers the qualifications and achievements of that body of distinguished men.

In addition to the degrees of Harvard, Yale university, the Universities of Berlin and Oxford and others have recognized his intellectual and moral greatness and have conferred degrees upon him.

Justice Holmes comes from an illustrious family. His father was one of America's foremost poets. Oliver Wen-

dell Holmes the poet, was also a novelist. Perhaps he is best known for his delightful story of *The Autocrat of the Breakfast Table*.

To bring before you a little of the cultural background and the poetic atmosphere in which Justice Holmes was reared I will, with your indulgence, read two short poems of the father. The first was given on an occasion like this—a Phi Beta Kappa dinner at Harvard in 1844. That was shortly after the first railroad had been built. I give it with apologies to the president.

*"I was thinking last night, as I sat in  
the cars,  
With the charmingest prospect of cinders  
and stars,  
Next Thursday is—bless me—how hard  
it will be,  
If that cannibal president calls upon me!*

*There is nothing on earth that he will  
not devour,  
From a tutor in seed to a freshman in  
flower;  
No sage is too gray, and no youth is too  
green,  
And you can't be too plump, though  
you're never too lean.*

*While others enlarge on the boiled and  
the roast.  
He serves a raw clergyman up with a  
toast,  
Or catches some doctor, quite tender and  
young,  
And basely insists on a bit of his tongue.  
Poor victim, prepared for his classical  
spit,  
With a stuffing of praise, and a basting  
of wit,  
You may twitch at your collar, and  
wrinkle your brow,  
But you're up on your legs, and you're  
in for it now."*

The other poem written many years later is entitled "To the Teachers of America."

*"Teachers of teachers! Yours the task,  
Noblest that noble minds can ask.  
High up Aonia's murmurous mount,  
To watch, to guard the sacred fount  
That feeds the stream below;  
To guide the hurrying flood that fills  
A thousand silvery rippling rills  
In ever-widening flow.*

*Rich is the harvest from the fields  
That bounteous Nature kindly yields  
But fairer growths enrich the soil  
Ploughed deep by thought's unwearied  
toil.*

*In Learning's broad domain.  
And where the leaves, the flowers, the  
fruits,  
Without your watering at the roots  
To fill each branching vein?*

*Welcome! the Author's firmest friends,  
Your voice the surest Godspeed lends.  
Of you the growing mind demands,  
The patient care, the guiding hands,  
Through all the mists of morn.  
And knowing well the future's need,  
Your prescient wisdom sows the seed  
To flower in years unborn."*

Justice Holmes possessed the same lingual felicity, the same loveliness of character, but he chose to use his great talents in the solution of the more practical problems of life, and in enriching the literature of the law.

His writings outside of his opinions, are not voluminous. His one sustained work is *The Common Law*—a real classic. There is another volume in which are gathered his articles and important addresses.

Justice Holmes has a very wide appeal. To the masses he is the Great Human Judge. To be sure, to him the safety of the state, the government, is paramount, but that once assured, he has been eager to champion the protection of human rights. But he is also a believer in protecting property rights, though not to the extent of permitting them to control the state.

No doubt the love and esteem in which he is held by the common people is due, in a large measure, to his attitude toward legislation concerning hours of labor, and the espousal of the rights of free speech.

Although a liberalist he is by no means a radical and does not believe in radicalism or socialism. The time, place and circumstances were always weighed carefully. In a case involving the right of free speech, he intimated the doctrine had limitations, and elucidated it by declaring the right did not exist if one were suddenly to shout "Fire, fire" in a crowded theater.

But his appeal is not confined to the rank and file. To the lawyer the outstanding thing is perhaps his independence of thought. This is all the more remarkable as lawyers are taught almost to revere precedent. But through his independence of thought he freed himself and others from the bondage of tradition. This earned for him the title of The Great Dissenter, not in any derogatory sense, however. I should hasten to explain also that out of fifty-five dissenting opinions written while on the Supreme Court of the United States, seventeen cases were decided by bare majorities, while in twenty others, two colleagues agreed with Justice Holmes, and in only one case did he dissent alone. Furthermore, the cases where he was with the majority outnumbered those in which he dissented in the ratio of eight or ten to one.

To him a dissent was a matter of deep conviction. He maintained that although the dissent did not control the

disposition of the case in which it was given, a dissent carefully thought out and supported by reason tended to become law in the future. In this he has been amply vindicated, particularly in cases involving legislation dealing with hours of labor, although the court may not have accepted the reason on which he based his earlier dissent. And in one case involving the Sherman Anti-Trust Law he had the satisfaction of seeing the Supreme Court reverse itself after seventeen years.

But that is not all. To the man of Science his method of approach should find ready favor. He has the mind of a research scholar. He traced a law right to its origin, ascertained the circumstances out of which it arose and the reasons that gave it birth. Equipped with this knowledge he tackled the problem in hand, and decided whether the law or right should continue to receive recognition, be modified or denied.

In his treatise on the Common Law he writes:

*"The law embodies the story of a nation's development and cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation."*

While very logical himself, he realized that "The life of the law has not been logic; it has been experience," and also that "general propositions do not decide concrete cases."

He was ever conscious that human law can rarely if ever be final, but must be continually formative. This explains in a way, the difficulty many laymen have in understanding why lawyers and judges have such a time with the interpretation of words and phrases.

Let me illustrate. If you desired to make a study of the Constitution of the United States and supplied yourself with a copy of that historical document and the best dictionary you could get, and then looked up every word of which you had any doubt as to its meaning, when you had finished you would know very little about the law of the Constitution, or the real meaning of the due process clause, or the commerce clause, or what is meant by the equal protection of the law. Why? As Justice Holmes so beautifully puts it "A word is not a crystal, transparent and unchanged. It is the skin of a living thought, and may vary greatly in color and content, according to the circumstances and the time in which it is used."

I have asked myself what are the secrets of his success, what fundamental concepts have been the guiding springs, the controlling motives of his thought and action. Have they any application



Cherry street, Drumright, Oklahoma, is instructor in journalism in Drumright high school.

### 1931

Dr. Roy A. Morter, '31med, medical superintendent of Kalamazoo State hospital, Kalamazoo, Michigan, was recently elected president of the Kalamazoo Academy of Medicine.

Johannes Malthaner, '31M.A., instructor in the University of Oklahoma, plans to leave for Germany in May, 1933, in order to visit his relatives and to study at the University of Heidelberg.

### 1932

George O. Hopkins, '32journal, has received an appointment as editor of the National Editorial association bulletin and service letter in the Chicago office.

Anne Sarah Robinette, '32as, is teaching in the public schools of Oklahoma City. Her home address is 900 Northwest Thirteenth street.

Charles Grady, '32as, 1514 Northwest Twenty-ninth street, is teaching history in Harding Junior high school, Oklahoma City.

### 1933

A play, "B. M. O. C.," written by Ernie Hill, '33journal, Norman, was broadcast over WKY, Oklahoma City, by remote control from WNAD, university radio station, Wednesday night, February 15.



## THE FIRST ALUMNUS COMMENCEMENT SPEAKER

(CONTINUED FROM PAGE 165)

and an adopted Oklahoman was on his way to stardom in the Newspaper World.

He remained as editor of the *Cleveland Press* for about two years, and then a new position was created for him. He was made Editor-in-Chief with the responsibility of directing all of the papers in what was known as the Southwestern Group, making his headquarters at Houston, Texas, and looking after the production of the papers in Oklahoma City, Fort Worth, Houston, Memphis, Birmingham, El Paso and Albuquerque. Two years of steady application to this assignment demonstrated to Bob Scripps and Roy Howard, the latter having come into the firm as a partner, that Mr Parker was the man to direct the editorial destinies of the entire group. He was transferred to Washington, and put in charge of the editorial end of the entire Scripps-Howard group. He later moved to Cleveland for several years, and directed the work from there. In 1929, following the purchase of the *New York Telegram*, and the *Pittsburgh Press*, he was transferred to New York, and made Editor-in-Chief of the organization and a partner in the concern. With the active editorial direction of twenty-five aggressive American daily papers, Mr Parker now holds what is considered the biggest newspaper job in America.

His intense interest in Oklahoma has never abated, and he and his family have always considered it their home. One of the most striking things he has ever done in an editorial way was during the Walton war, when it looked like the streets of Oklahoma City would run

red with blood, and that grim tragedy would follow in the wake of impassioned politics. The then editor of the *Oklahoma News*, Morrison Toomer, was fatally ill in an Oklahoma City hospital. Mr Parker was residing in Houston, giving his attention to the direction of the S. W. Group. With the emergency arising for clear headed responsible direction Mr Parker rushed back to his old desk on the *Oklahoma News*. He ended the tense situation with a striking and dramatic editorial, which covered the entire front page of his paper under the caption "We want neither Klan nor King," setting out on one hand the excesses of Walton's military rule, and on the other the dangers that might come from the Hooded Empire, charting the straight course for the clear-thinking man to follow, and raising the flag under which the middle citizen could enlist. The tense situation collapsed with the publication of this editorial, and it was perhaps more due to Mr Parker than any other individual that the threatened disasters of this dangerous situation never occurred.

Mr Parker visits Oklahoma at every opportunity, always returning, if possible, for the annual Homecoming game on the university campus. He prefers to spend his vacations at the famous T-Bone Ranch on the edge of the Salt Plains near Cherokee, Oklahoma, and when he comes back to make the university address twenty-four years after his graduation, it will be as the Sooner school's most distinguished alumnus.



## A GREAT JURIST

(CONTINUED FROM PAGE 167)

to us in the field of teaching and education?

I take it there are two types of teachers as there are two classes of judges—one that helps to mold thought and the other that is content to reflect or tries to reflect the thought generally prevailing at the moment.

Justice Holmes once said: "No doubt every calling is great when greatly pursued." Of his own he wrote: "Law is the business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and when I perceive what seems to me the ideal of its future, if I hesitated to point it out, and to press toward it with all my heart."

From various sources I have gathered a few gems of thought, pearls of wisdom, that reveal profound truths and were exemplified in his life. They grow in beauty and power as their meaning is sensed. The first one might well have been written for the teaching profession. He said:

"The main part of intellectual edu-

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cation is not the acquisition of facts, but learning to make facts live."

The second gives is a bit of idealism that will bear rich fruit if observed. "No man has earned the right to intellectual ambition until he has learned to lay his course by a star which he has never seen, to dig by the divining rod for springs which he may never reach."

If there is need to guard against intolerance might we not consider this one: "Whether we know it or not we are fighting to make the kind of a world that we would like, but that we have learned to recognize that others will fight and die to make a different world with equal sincerity and belief."

If inclined to be dogmatic and to be governed by prejudice this one would be a good antidote: "Certitude is not the test of certainty. We have been cocksure of many things that were not so. But while one's experiences thus make certain preferences dogmatic for oneself, recognition of how they came to be so, enables one to see how others, poor souls, may be equally dogmatic about something else."

To Justice Holmes life is a battle—not with men, but with ideas. How much misery this world would be spared and how much easier the solution of many problems would be if this fundamental principle were always observed!

This wrestling with an idea, Justice Holmes expressed in a figure of speech of which I have become very fond. He says: "When you get the dragon out of his cave, on the plain and in the daylight, you can count his teeth and claws, and see just what is his strength, but to get him out is only the first step. The next is either to kill or to tame him and make him a useful animal."

To me the one quality or characteristic that outshines all of his many virtues is his humility, not the kind of humility that is conceived of as a sign of weakness, but true humility, which as you know portrays great strength of character and calls for moral courage of the finest sort. It has nothing of egotism in it, is ever tolerant of others but does not underrate the power to achieve.

Justice Holmes looked upon himself as a soldier to whom the divine plan of battle may not have been fully revealed. In this battle, however, he has been fighting according to his highest sense of right.

You will remember that on his ninetieth anniversary, last year, radio addresses were delivered by Chief Justice Hughes, the dean of Yale law school, the president of the American Bar Association and others, and that after listening to these eulogies he was asked to make a response. I shall conclude this address by quoting those memorable words:

"In this symposium my part is only to sit in silence. To express one's feelings as the end draws near is too inti-

mate a task. But I may mention one thought that comes to me as a listener-in. The riders in a race do not stop short when they reach the goal. There is a little finishing canter before coming to a standstill. There is time to hear the kind voice of friends and say to oneself, 'The work is done. But just as one says that the answer comes, The race is over, but the work never is done while the power to work remains.' The canter that brings you to a standstill need not be only coming to rest. It cannot be, while you still live. For to live is to function. That is all there is in living."

▲ ▲ ▲

### A SPANISH TRIBUTE

(CONTINUED FROM PAGE 164)

Spanish government. His "futuristic" style won him international recognition and Gimenez Caballero is today one of the principal exponents of surrealism. His biography of Azaña caused the government to intervene, but later, Señor Gimenez began a column on *Informaciones*. One day Miss Tandy saw the manuscript of *Manuel Azaña* and asked what he did with his manuscripts. The author replied that he destroyed them and intended to destroy this one; then he asked whether Miss Tandy would care for it. "And did I!" Miss Tandy wrote friends in Norman. "Now I have it proudly tucked away in my trunk."

Miss Tandy is impressed by the attitude of the Spaniards toward "the stress they put on the development of human talents; let them be a hundred years 'behind the times,' they are hundreds of years ahead of the Anglo-Saxons in the conception of beauty, tranquility, contentment, happiness."

She received her B. A. degree in the University of Oklahoma in 1930 and two years later her M. A. She was secretary to Dr. J. W. Shepherd, director of the extension division and was a popular favorite in that division, where her co-operative spirit such as shown toward the community institute and other enterprise won her many friends. Her high scholarship is attested by election to Phi Beta Kappa. She was one time president of the Spanish club. She is a member of Kappa Gamma Epsilon, modern language fraternity, and held a modern language fellowship.

How small is this world was indicated one day in the Museo del Prado. Miss Tandy met Mr and Mrs Wells M. Sawyer. Mr Sawyer is an artist whose work sometimes is used for *Literary Digest* covers. In the course of the conversation Mr Sawyer mentioned that a brother lives in Lawton, Oklahoma. Mr Sawyer recalled visiting Tulsa thirty-five years ago, "before you were born," he remarked to Miss Tandy, his eyes twinkling.

Miss Tandy plans to return to the United States sometime this year. Mrs Louise Postlewait of Norman is a sister.

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