

University of Michigan Law School

University of Michigan Law School Scholarship Repository

Articles

Faculty Scholarship

2007

Homer Clark: Colleague and Friend

James Boyd White

University of Michigan Law School, jbwhite@umich.edu

Available at: <https://repository.law.umich.edu/articles/2084>

Follow this and additional works at: <https://repository.law.umich.edu/articles>



Part of the [Legal Biography Commons](#)

Recommended Citation

White, James Boyd. "Homer Clark: Colleague and Friend." *Colo. L. Rev.* 78, no. 1 (2007): 3-9.

This Article is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

* * *

HOMER CLARK: COLLEAGUE AND FRIEND

JAMES BOYD WHITE*

Born in Chicago in 1918, Homer Clark was raised in the Long Island suburbs of New York City. After high school he attended Amherst College, where he was an athlete—playing football, squash, and I think baseball too—as well as of course a good student. There he met the major influence in his intellectual life, Theodore Baird, who was the dominant academic figure at Amherst in those days. Baird was an English teacher, whose extraordinary freshman composition course opened the minds of generations of students. Baird and Homer hit it off, especially after they got into an argument in class. Homer asserted that he could smell fish in a stream; Baird thought this was incredible, and said so; Homer insisted, and together they visited a fish hatchery, where Baird realized his error. Homer and Baird became lifelong friends, correspond-

* L. Hart Wright Professor of Law, Professor of English, and Adjunct Professor of Classics, University of Michigan.

ing for over fifty years.

During his Amherst summers, or at least one of them, Homer accompanied one of his geology professors on researches in the West. They camped out much of the time, sometimes by trout streams, which gave Homer a taste of the life that was later to be his.

After Amherst came Harvard Law School, of which it is fair to say that Homer took a dim view, especially as a teaching institution. Then two immensely important events: he married Jean Kramer, with whom he enjoyed a long and happy married life until her death just a few years ago; and he joined the Navy and went to war. He was posted to a destroyer in the Aleutians, where the Japanese were active, actually occupying one or more of the islands I believe. His ship hit a mine which blew much of it away, killing many men Homer knew and knew well, and inflicting on him a wound that is with him still.

When he returned from the Navy, Homer clerked for Judge Peter Woodbury on the First Circuit, then practiced for a couple of years in New Haven. Then came a teaching job in Montana, a place Homer has always spoken of as a fisherman's heaven. When the winters became too much to endure in Montana, Homer and his family moved to Boulder, Colorado, where his children grew up and where Homer lives to this day. It is in Boulder that I first met him, for it was there that my own life of law teaching began.

I had first heard of Homer a bit earlier, from Theodore Baird, who was my teacher at Amherst too. During my second year in law practice, in 1966, I had written Baird, telling him that I was interested in becoming a law teacher. I explained why I wanted to teach, what I was nervous about, and so on, and he had the idea of putting me in touch with Homer, who responded to my queries with a lengthy letter.

Thinking of myself as eager to teach, but not eager to devote myself to grinding out law review articles—which seemed to me to be, for the most part, a dreadful form of expression—I asked Homer, among other things, about the pressure to publish. His response in the letter was this:

In our own case there is somewhat less external pressure on younger faculty than in the larger schools, but if the pressure is not external it will be internal on the part of those who are worth anything. I believe the position is that in spite of the difficulties and frustrations of law teaching, what one makes of it is entirely up to him. If he has the firmness of character to concentrate on what is important, he can do it. If he is disposed to blame his environment for his failures, the environment will provide plenty of excuses. All that can categorically be said is that there is more personal freedom than in law practice or in any other line of work I ever was acquainted with. The unpleasant side of this fact is that if a law teacher turns into a promoter (as many

do) or a paper-pusher (as many do) or a dean (as many do), he has only himself to blame. Hence the large incidence of alcoholism.¹

You can perhaps begin to imagine the effect of such a letter on the mind of a young man eager to make a life of his own. The evident intelligence and strength of mind, the willingness to make judgments, the insistence upon the possibility of meaning—and the opposite—in one's work and life, all cast in a style of direct speech and laconic understatement (inherited perhaps from Icelandic forebears), these were to me irresistible. The almost Emersonian promise of the letter was of a life in which one would be free to make what one could out of one's experience and the opportunities it offered. But this promise was coupled with a threat, the threat of failure arising from one's own defects: insufficient firmness of character, or the simple lack of the internal pressure necessary to doing anything important. With this letter there began a friendship that has continued to this day, forty years later, an essential part of which has been Homer's relentless insistence upon the highest standards for himself and others.

It is worth stressing that there is something truly daunting in this letter. Even after all these years when I read those words I ask myself whether I have met the standards they imply, or not. Have I collapsed into being a promoter, a paper-pusher, or a dean, or otherwise failed at the task of living in the law fully and deeply and honestly? I am certain that I have on occasion blamed my environment for the imperfections of myself. But I am most grateful indeed for the part of my environment that took the form of Homer Clark, not the least because of his extraordinarily high standards, his determined realism, and his insistence that our aspirations should know no limit.

As for teaching, in his letter to me Homer said simply:

I never have the feeling that I teach in a trade school because I do not teach that way. I try to emphasize the impact of the law on the lives of those who have legal problems, although I do find it salutary, at times, to talk about practical questions of procedure. I find that this deflates those pretentious students who want to talk of metaphysics. In general I like law students and find that they respond to being treated as adults who are concerned with real issues.²

This captures much of what was most remarkable both about Homer as a teacher and about the school he did so much to shape, the University of

1. Letter from Homer Clark to the author (Oct. 22, 1966) (on file with the author).
2. *Id.*

Colorado Law School. As Don Sears told me on my appointments visit there, "This is a teaching school. The student comes first." In this world, law teaching was its own craft of art and life. It involved thinking constantly about what could be said and done in the language of the law, in particular cases, by lawyers and judges, always with an awareness that the stories it told were real stories, and that the losses and sufferings of which it spoke were real too. We also tried to be aware that our students were real people, about to become lawyers with all that might mean.

The effort to connect the world of law with human experience—the experience of clients, lawyers, judges, students—was for us what made the teaching so interesting, demanding, and amusing. We did not regard the law as a system of rules, let alone a theoretical structure, but as a living language with which to work in the world. Our job was to help equip our students for the life of learning and challenge, both intellectual and ethical, that they had perhaps unwittingly chosen. Teaching law was not a way of getting ahead in the world, or earning prestige, or elaborating one's theories, but a form of legal practice, with its own meaning and its own justification. Perhaps half the conversations I had with my colleagues here were about teaching—about a particular moment in class or about a student, or a more general problem of approach and attitude. Homer was not solely responsible for this fact of the School's life, to which many people contributed, but he surely influenced it deeply, as he influenced every aspect of the School.

Of course I never took a class from Homer, but I visited some classes, and can still remember the wonderful sense I had of a teacher asking real questions—questions without right answers, questions calling for thought and judgment—and waiting patiently for the answers, responding with more questions, often with a somewhat mordant wit. This was all done on the assumption that the student might have something valuable to say (or not), which must be one of the greatest gifts a teacher can give a student. Just as in his letter to me, he conveyed to the students in his class a complex sense of both the responsibilities and opportunities of the lawyer's life. Law teaching for him was real teaching.

For a number of years we taught the same course, his course, Domestic Relations. His casebook was the best I had ever seen, on any legal subject,³ in large part because of the penetrating and demanding questions it contained. I learned immensely from that book, and from Homer, not only about the law of domestic relations but also about the

3. HOMER H. CLARK, JR., *CASES AND PROBLEMS ON DOMESTIC RELATIONS* (1st ed. 1965) (herein after "CASEBOOK").

law more generally, and how to teach it.

His great work was his treatise, published by West and titled simply *The Law of Domestic Relations*.⁴ This was not only a learned and thorough treatment of a complex and important, yet often neglected body of law, it was a model of legal thought and writing. The core of its achievement was the extraordinary consistency of voice and force of mind it exemplified.

At the time there were in wide use legal encyclopedias such as *American Jurisprudence* and *Corpus Juris Secundum*, as well as annotations of the kind found in *American Law Reports*. For these works of legal thought, Homer had thinly disguised contempt, regarding them as useful only for the cases they collected. The heart of their failure—which may recall the failure threatened in his letter to me—was a virtually complete absence of mind and responsibility, a fact Homer liked to expose when he was acting as a judge in a moot court case. If a student quoted a sentence from one of these works, Homer would typically ask him please to read the next sentence; this almost invariably began with “however” and went on to articulate a principle opposite to the one quoted. Once one identifies their equivocality, these works become unreadable sequences of “on the one hand . . . on the other hand” without any conclusion or judgment at all, just a reiteration of commonplaces. This is not law as Homer thought of it then or thinks of it now.

Needless to say, Homer’s own writing was not evasive or empty in such a way. About the defense of recrimination in divorce, for example, he begins:

Recrimination is the outrageous legal principle which ordains that when both spouses have grounds for a divorce, neither may have a decree. Like other rules which have no perceptible basis in social policy, the explanations for it are historical, but the history of recrimination is unusual.⁵

In this passage you are brought to inhabit a world in which legal doctrine can be sensible or outrageous, in which it can be understood or misunderstood, in which it can be shaped by history or social policy, in which it is possible to make good and bad judgments. Then, at the end of the

4. HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* (1968) (hereinafter “TREATISE”).

5. *Id.* at 373. This sentence is followed by a footnote, simultaneously revealing a piece of Homer’s wide and deep reading and locating the law in a wider cultural context, which reads as follows: “That English marriage was often a battle in which the chief weapons on both sides were misrepresentation and concealment is evident from Daniel Defoe’s *Moll Flanders*, first published in 1722.”

second sentence, you are told that you are going to learn something about history that will explain the evident absurdity of the doctrine in question. If you are like me, at least, you want to read on, and for many of the same reasons that I wanted to come to Colorado after reading his letter. You, like me, want to continue to be in the presence of this mind and to experience what it has to teach.

For another example of Homer's mind and style, consider his treatment of the English rule respecting fraud as a ground for setting aside a marriage, namely that the only fraud recognized as having such an effect is fraud as to the identity of one of the parties. The policy underlying this severe rule was, he says, "undoubtedly to prevent the dissolution of marriage."⁶ He goes on:

It is something of a paradox that although marriage was often looked upon by the English upper and middle classes as primarily a financial and property transaction, fraud was condoned in the negotiations leading to marriage which would not have been tolerated in commercial contracts. The English man of business was held to a higher standard when selling a bale of cloth than when arranging the marriage of his daughter. If, as seems plain enough, the rule concerning marriage was of ecclesiastical origin, we have a striking example of the immorality produced by certain kinds of officially sanctioned moral rules.⁷

Homer's mind—constantly at work asking questions, pursuing them, and coming to conclusions he stands behind—and his voice—at once forcible and clear, and at the same time sensible and fair, give remarkable unity to this book. Without these traits, *The Law of Domestic Relations* would be like so many other treatises, a simple collection of rules and cases and principles. One can sit down with this book and read it for pleasure and enlightenment, indeed for amusement, as I myself have done. In this respect, the achievement is a bit like that of Gibbon's *Decline and Fall of the Roman Empire*,⁸ one of the favorite books both of Ted Baird and Homer Clark, which is also held together by its voice and mind. Perhaps Gibbon was a model Homer actually had in mind. In any event, there cannot be many works of the common law that so perpetually reward attention and interest.

Homer and I became friends not only in school but in the mountains

6. *Id.* at 102.

7. *Id.*

8. EDWARD GIBBON, *THE DECLINE AND FALL OF THE ROMAN EMPIRE* (E.P. Dutton & Co. 1910).

as well. We learned to ski together and covered much of the terrain from the Moffat Tunnel to Lawn Lake in Rocky Mountain National Park, going out almost every Saturday during the snow season to climb for hours up through the woods and across snowfields, then to come down the trails we had made. And in the summer we fished the streams of Colorado and southern Wyoming as often as we could. In the mountains he was my teacher, in a certain, distinctive, Homer-like way. When I went with him on my first fly-fishing trip, as we arrived at the stream, after a long walk in, he said to me, "You go upstream, I'll go down, and we can meet here for lunch at noon." That was the sum of my instruction and it was teaching of the most important kind.

Those were wonderful days, in the memory running together in an endless sequence. Ted Baird once said something about Homer that was interesting, true, and surprising, especially if you have ever been exposed to his somewhat pessimistic and sardonic side. He said that Homer has a capacity for sheer enjoyment of life unmatched by anyone he knew. People in Amherst might enjoy tennis for an hour or two, Ted said, but for Homer the whole day out in the mountains was a source of continuous pleasure. This was true in my experience, from the moment, often in the dark, when we set forth for the mountains until that time, hours and hours later, when we returned, tired and happy.

I think it is likely, and not to my credit, that I as a highly parochial Easterner would not have had the sense to choose Colorado over a more familiar alternative, in what was then my own part of the country, had Homer not been here ahead of me, demonstrating that even a person from the East (and Amherst College too) could build a life of independent mind and character in the world of the West.

I have learned from him and have relied upon him in every way.

As Joe Sax, then a Michigan colleague who had also been at Colorado, once told me, "To know Homer is an education in itself."

* * *

* Distinguished Professor Emerita and Research Professor of Law, King Hall, University of California, Davis.