

DAVID SCHUMAN*

James M. O’Fallon
1944–2017
In Memoriam

Those of you who are part of the academic community know that the university expects its faculty to meet high standards in scholarship, service, and teaching. In each of these areas, Jim O’Fallon’s career at the University of Oregon Law School serves as an example to which the rest of us can only aspire.

His scholarship includes a 1994 *Stanford Law Review* article,¹ one of the most influential and important works about *Marbury v. Madison*,² the most influential and important Supreme Court opinion in the history of the nation. The article has been cited and discussed by other scholars more than ninety times, including two times this year alone.³ Jim also wrote leading works on the jurisprudence of Justice Holmes,⁴ Justice Douglas,⁵ feminism,⁶ equal protection,⁷ and legal history.⁸ His writing was lucid but never simplistic, authoritative

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¹ See James M. O’Fallon, *Marbury*, 44 STAN. L. REV. 219 (1992).

² See *Marbury v. Madison*, 5 U.S. 137 (1803).

³ 1 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW-SUBSTANCE & PROCEDURE UPDATE § 1.3 (2017); 6 *id.* § 23.6(b)(i).

⁴ See e.g., James M. O’Fallon, *Mr. Justice Holmes: A Dissenting Opinion—The Speech Cases*, 36 STAN. L. REV. 1349 (1984).

⁵ See e.g., NATURE’S JUSTICE: WRITINGS OF WILLIAM O. DOUGLAS (James M. O’Fallon ed., 2000).

⁶ See e.g., James M. O’Fallon & Cheyney C. Ryan, *Finding a Voice, Giving an Ear: Reflections of Masters/Slaves, Men/Women*, 24 GA. L. REV. 883 (1990).

⁷ See e.g., James M. O’Fallon, *Adjudication and Contested Concepts: The Case of Equal Protection*, 54 N.Y.U. L. REV. 19 (1979).

⁸ See e.g., James M. O’Fallon, *The Case of Benjamin More: A Lost Episode in the Struggle over Repeal of the 1801 Judiciary Act*, 11 LAW & HIST. REV. 43 (1993).

but never arrogant, original but never disrespectful of the canon, rigorous but never obtuse.

Jim's service to the law school and the university was legendary. Most conspicuously, he was the university's long-serving faculty athletic representative, and within the law school, he took on the thankless position of associate dean. That job requires the ability to process a daunting amount of paperwork, to provide counsel to the dean and other administrators, to mollify numerous constituencies whose demands are frequently in tension, if not at war, with each other, all the while trying to promote and sustain institutional vitality. Jim navigated these difficult waters with goodwill and cheerful diligence, and with the unprecedented skill of a canoeist shooting Class IV rapids. In other official committee work—admissions, appointments, and promotions in particular—he was a passionate advocate for excellence. The passion, however, was always modulated, reasoned, and thoughtful. I never heard Jim raise his voice, and I never heard him launch an *ad hominem* attack on a colleague, student, or applicant.

Jim's most remarkable service, however, was neither committee work nor associate dean work. It was his informal service to his colleagues. This took many forms. An anecdote related by our colleague Ibrahim Gassama most accurately captures this quality:

I recall that after one rather awful presentation of my first work in progress, I retreated to my office to contemplate whether I had any business here. Shortly, there was a knock on my door and there was Jim with a short volume by one of the giants of international law. Jim, with that ever-present gleam in his eyes, handed it to me, saying something like, "Your talk reminded me of this." I accepted it gratefully and built my early writings upon the ideas expressed in that slim text.⁹

And teaching . . . I first knew Jim when he was my Constitutional Law professor in 1982. Since that time, he has been my colleague, my mentor, my counsellor, and my friend. In every role, to me and to everybody else who had the good fortune to come within the expansive sphere of his influence at the law school and beyond, he was always a teacher. He taught that there is room in the study and practice of law, not only for analysis and craft, but for ideas and values. I do not mean doctrinal ideas like, for example, the relationship between constitutional text and structure. I mean ideas

⁹ Ibrahim Gassama, Frank Nash Professor of Law, University of Oregon School of Law.

like, the nature of citizenship in a democracy, the concept of civic virtue, the quality of justice, the meaning of equality. And I do not mean doctrinal values like, for example, the value of judicial restraint or legal precedent, or even the value of a written constitution. I mean values like equal respect for the dignity of all people, the value of reasoned discourse, the value of integrity in private and civic life. He taught these things using the traditional tools of pedagogy but, more importantly, he taught them by living them. Again paraphrasing Ibrahim Gassama, Jim O'Fallon was a person who, by his very presence and without uttering a word, inspired you to be your best self. Our greatest tribute to Jim would be if, in his absence, his memory continued to exert that influence. As Hamlet says about his father in Shakespeare's play, "He was a man, take him for all in all. We shall not look upon his likes again."¹⁰

¹⁰ WILLIAM SHAKESPEARE, *HAMLET* act 1, sc. 2.

