

# HASTINGS COLLEGE OF THE LAW THE FIRST CENTURY

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## BIBLIOGRAPHICAL NOTES

University of California  
Hastings College of the Law Press

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# Bibliographical Notes

This bibliographical note is intended to indicate the principal sources for the study of Hastings during its first century, with particular attention to material not otherwise cited in the notes to the text. It is not a comprehensive bibliography of all works consulted and used. Hopefully, it will serve to direct a reader into areas for further study, some of them beyond the bounds of Hastings proper.

## ARCHIVES

Hastings College of the Law is poor in archival sources from its origins to about 1940. The early records of the College, such as they were, were destroyed in the great earthquake and fire of 1906. All that survived, and that because it was kept in one of the Director's offices not destroyed in the calamity, was the Minute Book of the Board of Directors. The first volume of the Minute Book is for 1878 to 1948; the second volume, 1948 to the present. The first Minute Book is a rich source because of the Board's involvement in much of the routine administration of the College. From the deanship of D.E. Snodgrass (1940-63), the Board was increasingly less involved with administration and more concerned with finances and policy matters; the second volume makes its contribution in these latter areas. The papers of the early deans were considered private property and were not left in the College—they have disappeared. In fact, save for business records generated in the College, including financial records and student records, there was probably little documentation created in the course of early administration. Most "running" of the College was done by word of mouth until the post World War II expansion made this impossible. I am surprised that more financial materials from 1906 to the end of Harrison's deanship, 1925, are not extant. From 1926, the College has maintained good student records, thanks to the assiduous businesslike attention of Juanita Olsson, first as dean's secretary and later as registrar from 1925 to 1946, who began an archival tradition continued by her successors. With Snodgrass, the bulk of the College's archives begins. His papers (cited as Snodgrass Pprs.) include correspondence, memoranda, newspaper and magazine clippings, and miscellaneous printed materials. Sammis' papers (cited as Sammis Pprs.) are of the same nature for his deanship, 1963-70,

with the bonus of a considerable amount of documentation relevant to his tenure as registrar, 1947-63, under D.E. Snodgrass. The documentary sources of the present administration of Dean Marvin Anderson leave nothing to be desired—save better arrangement and a policy as to retention.

The University of California at Berkeley has a splendid archive. Because Hastings was (and is) “the law department” of the University, among both the Regents’ Papers (CU-1) until about 1930 and the President’s Papers (CU-5) from William Wallace Campbell’s presidency in the 1920s there are virtually annual files of documents relating to Hastings. Without this material, the history of the College in its early and middle periods would be very thinly founded.

Special collections in the Bancroft Library, on the Berkeley campus, though not necessarily archives in the formal sense of the term, provide useful evidence. The papers of Mary McHenry Keith (CB595), who was the first woman graduate of Hastings, are particularly valuable for the insight they give into the Pomeroy System in the curriculum. Incidental documentation in other collections have provided additional information on Serranus Clinton Hastings and his contemporaries.

The California State Archives, Sacramento, furnish important insights into Serranus Clinton Hastings as attorney general (Dr 4718, Loose Letters, 1850-56) and some materials on the early years of the University and its “law department” (Dr 652, LP6:270). In files of the Department of Finance, there are a number of items relevant to Hastings, including the ABA visitation report of 1959 (D 525, F3453-14).

Though perhaps not archival material in the formal sense of the word, the tape-recorded oral interviews which I undertook as part of this project will be available for use in the Bicentennial History. Most of these interviews were of older alumni, some of past or present faculty and staff. All were useful. However, the shortcomings of the procedure were soon evident. Precise factual details usually elude the interviewee, the passage of time erodes accuracy, and the bias of the person interviewed is difficult to deal with because of his self-consciousness in making “historical record.” The principal value of the tapes was the general impressions of the interviewees. Perhaps “oral evidence” is a more exact name for the enterprise than “oral history.” I also did not hesitate to write or phone people who could perhaps supply information on particular points. The personal evidence provided by tapes, letters, and conversations contributed greatly to this history.

## PRINTED WORKS

### California

California has a rich and well-titled historical literature. It is best to begin with a sound general history, and Walton Bean’s textbook, *California, An Interpretive History*, 2d ed. (New York, 1973) is excellent and up-to-date. Besides furnishing a succinct overview, its bibliography is a guide to deeper investigation in both the classical histories of the state and the

extensive monographic literature of the last half-century. Such works provide the broader political, economic, and social context of California's development in which Hastings was set and from which its students came.

For the urban and regional setting of Hastings, three recent works, each different in kind and approach, are particularly valuable. Gunther Barth, *Instant Cities: Urbanization and the Rise of San Francisco and Denver* (New York, 1975) is a comparative study in urban history revelatory of the peculiar development of San Francisco during the nineteenth century, from founding, through the search for order, the development of culture, and change under the impact of technology. Barth picks up where Roger W. Lotchin, *San Francisco, 1846-1856: From Hamlet to City* (New York, 1974) left off. Kevin Starr's *Americans and the California Dream, 1850-1915* (New York, 1973), the first of two volumes that will recount the intellectual and cultural history of the state, avowedly deals with "the imaginative aspects of California's journey to identity [vii]." It is brilliant and full of suggestion, sometimes perilously seductive, always stimulating. Taken together, Barth, Lotchin, and Starr provide the context for Hastings' urban setting and its early cultural milieu. There is not yet a similar range of recent scholarship of the same high quality for San Francisco and its region in the twentieth century. Walton Bean, *Boss Ruef's San Francisco* (Berkeley, 1967) enjoys a solitary eminence in revealing graft and corruption at the hands of labor and big business in turn-of-the-century San Francisco—the villain, a graduate of Hastings, a hero, its dean.

The *California Historical Quarterly*, 56 volumes to date from 1922, seldom failed to provide a volume with an article or note relevant to this study. Institutional history, political history, aspects of economic and legal developments, cultural and educational history, and biographical sketches all figure in its pages.

## Legal Developments

American legal history as a genre of scholarly investigation is still in its infancy. The point of departure for obtaining a grasp of America's legal development is James Willard Hurst, *The Growth of American Law: The Law Makers* (Boston, 1950). In Lawrence M. Friedman, *A History of American Law* (New York, 1973), the field finally has a general survey, uneven in places because the secondary literature for so many aspects of American legal history is sparse. A sparkling set of lectures given at Yale by Grant Gilmore, *The Ages of American Law* (New Haven, 1977) is particularly useful for aspects of law in transition in the twentieth century, especially the Realist-Langdellian controversy.

The nineteenth century is increasingly receiving attention from American legal historians, and this has relevance to the founding of Hastings. Though none of them is directly concerned with California legal development, three recent books are essential to an appreciation of the epoch that produced Serranus Clinton Hastings and his fellow lawyers of early California. James Willard Hurst, *Law and the Condition of Freedom in the Nineteenth-Century United States* (Madison, 1967) points the direction to understanding the interaction of economic growth and legal change.

Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, Mass., 1977) provides a great deal of insight into this development in the early national period, though his thesis is controversial because it rests upon the notion of an "instrumental conception of law" that might not have been shared by all jurists everywhere throughout the period and leaves unexplained developments in the law that were obviously not "instrumental." Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven, 1975), with a narrower focus on one area of legal development where there was definitely an instrumental conception of the law at work on the bench, is particularly helpful in understanding the position of John Norton Pomeroy on constitutional law. To measure the impact of Blackstone on American law, its influence on lawyers of Hastings' vintage, the *Commentaries* must be read in any of the numerous editions; to render that almost intractable work comprehensible, the best guide is Daniel J. Boorstin, *The Mysterious Science of the Law: An Essay on Blackstone's Commentaries* (Boston, 1958).

California legal history has not been so fortunate. Much of its literature remains in the rather ephemeral stage of articles. Richard R. Powell's *Compromises of Conflicting Claims: A Century of California Law, 1760-1860* (Dobbs Ferry, 1977) is a step in the right direction, but it deals with early legal development primarily at the doctrinal level. Four major areas of California legal history in the nineteenth century alone cry out for detailed study of the law in its social, political, and economic context: land-claims settlement, water and mining rights, the impact on the law of populist agitation against the railroads, and California codification. A book on each of these subjects would have been exceptionally helpful to this study of Hastings.

Lawrence M. Friedman, in *Contract Law in America: A Social and Economic Case Study* (Madison, 1965), affords insight into a major legal development over the course of the nineteenth and twentieth centuries, drawing on the materials available in one jurisdiction, Wisconsin, with applicability beyond its boundaries. This brilliant and provocative book contributes necessary background to the Realist-Langdellian controversy of the 1930s, and provides the starting point for Grant Gilmore's *The Death of Contract* (Columbus, 1974). The Realist-Langdellian controversy was the spawn of academic legalism, and thus immediately important to what the law schools were attempting to do. Besides the relevant works of Langdell, Keener, and Williston cited in the text and in the notes for Chapter IX, Langdellianism can be appreciated by recourse to a standard text that had a half-century's currency, Eugene Wambaugh, *The Study of Cases. A Course of Instruction in Reading and Stating Reported Cases, Composing Head-Notes and Briefs, Criticising and Comparing Authorities, and Compiling Digests* (Boston, 1892) chs. I-II, IX-X. A foreign jurist, trained in the Civil Law, attempted to unravel the Langdellian case method at the behest of the ABA; he only partly succeeded but did provide considerable analytical insight into it: Josef Redlich, *The Common Law and the Case Method in American University Law Schools*, Carnegie Foundation for the Advancement of Teaching Bulletin 8 (New York, 1914). For a judicious but not uniformly profound treatment of the advocate of Realism, the recent study by William Twining, *Karl Llewellyn and the Realist Movement* (London, 1973), should be consulted

(one feels sympathy for an English scholar, trained in English law, attempting to comprehend the remarkable influence of legal academics in America). The Llewellyn sorties into the controversy in the 1930s but is followed in the law reviews, but his fully developed theories of law in historical context in its relation to social science are best seen in *The Common Law Tradition: Deciding Appeals* (Boston, 1960), based upon lectures given at Yale in 1940. If the theories are somewhat mystifying, Richard Danzig, "A Comment on the Jurisprudence of the Uniform Commercial Code," *Stanford Law Review*, 27 (1975) 621-35 helps in decoding them. As for the UCC itself, *Uniform Commercial Code, May 1949 Draft* (1949) and *American Law Institute: Consideration of Proposed Final Draft of the Uniform Commercial Code, 1950*, mimeographed, are of prime importance. The latter, a transcript of the debate, reveals Llewellyn at his rhetorical best. That he could practice the social science that he preached is evident in K.N. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way—Conflict and Case Law in Primitive Jurisprudence* (Norman, 1941), a legal-anthropological study in which Llewellyn was in yoke with a cultural anthropologist; it is stimulating reading.

## Education

The historical literature on education in America is vast. A useful place to begin is with the concept of liberal education as Hastings and his contemporaries understood it. Besides the works of John Henry Newman, Mark Pattison, and Mark Hopkins, the essence of the Classical tradition can be found in Sheldon Rothblatt, *Tradition and Change in English Liberal Education: An Essay in History and Culture* (London, 1976). The changing complexion of secondary education paralleling the first three-quarters of a century of Hastings College of the Law and affecting the quality of its entrants is treated in Edward A. Krug, *The Shaping of the American High School*, 2 vols. (Madison, 1964-72). A lively and contemporary treatment of higher education in California is provided by John R. Thelin, "California and the Colleges," *California Historical Quarterly* 56 (1977) 140-63 & 230-49.

The particular role of the University of California in the history of Hastings requires recourse to a number of works devoted to the University. The oldest, by William Carey Jones, *Illustrated History of the University of California* (Berkeley, 1901) is still useful, written by an intimate of Serranus Clinton Hastings and the founder of Boalt. William Warren Ferrier, *Origin and Development of the University of California* (Berkeley, 1930) is an accurate and detailed study of the University. UC's centennial in 1968 produced Verne A. Stadtman's *The University of California, 1868-1968* (New York, 1970), which does justice to UC's lively past, but which because of its length does not afford the detailed treatment that the archives would allow, and *The Centennial Record of the University of California*, V.A. Stadtman ed. (Berkeley, 1967), a mine of factual information. Two major crises of the University since World War II are given detailed attention in David P. Gardner, *The California Oath Controversy* (Berkeley, 1967) and Max Heirich, *The Spiral of Conflict: Berkeley 1964* (New York, 1971), the latter on the beginnings of student unrest in the Free Speech Movement.

Legal education in America has produced a large corpus of law school histories (to which the present work is an addition) and a number of surveys, reports, and many articles on the subject. *Legal Education, A Selective Bibliography*, Dusan J. Djonovich (Dobbs Ferry, 1970) is the most useful guide into the subject.

Of the histories of particular law schools, Harvard has received the most attention. Charles Warren, *History of the Harvard Law School*, 3 vols. (New York, 1908) and the *Centennial History of the Harvard Law School, 1817-1918* (Cambridge, Mass., 1918) are dated, though still useful. Arthur E. Sutherland's *The Law at Harvard: A History of Ideas and Men, 1817-1967* (Cambridge, Mass., 1967) is a splendid study, and particularly useful on Langdell and Ames. *A History of the School of Law, Columbia University*, Julius Goebel ed. (New York, 1955) is a composite of essays of varying merit, but together they comprise a sound study. Yale is chronicled in four short works by Frederick C. Hicks, *Yale Law School* (New Haven, 1935-38), from its foundation to 1915. Elizabeth Gaspar Brown, *Legal Education at Michigan, 1859-1959* (Ann Arbor, 1959) is a compendium of factual data of considerable interest but almost impossible density and dryness. The University of Chicago has made a beginning with Frank L. Ellsworth, *Law on the Midway: The Founding of the University of Chicago Law School* (Chicago, 1977), which deals with the early years and whets the appetite for more. Brief portraits of the law schools in existence about 1890 (including Hastings) are to be found in the Boston lawyers' magazine, *The Green Bag*, beginning with vol. 1 in 1889.

The most recent treatment of legal education in America is Robert Stevens, "Two Cheers for 1870: The American Law School," in *Perspectives in American History*, Donald Fleming & Bernard Bailyn eds., 5 (Cambridge, Mass., 1971) 403-548. Trenchant, Stevens' study touches all issues relevant to the curriculum development of the schools and the Realist-Langdellian controversy. In the same volume, Jerold S. Auerbach, "Enmity and Amity: Law Teachers and Practitioners, 1900-1922," 548-601, provides another perspective on legal education. For all the merits of these extended essays, the history of legal education in America must start with Alfred Zantinger Reed, *Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States*, Carnegie Foundation for the Advancement of Teaching Bulletin 15 (New York, 1921). Besides its value as an historical survey of meticulous scholarship, Reed's book was, of course, the manifesto for legal educational reform. The follow-up study, Reed's *Present-Day Law Schools in the United States and Canada*, Carnegie Foundation for the Advancement of Teaching Bulletin 21 (New York, 1928) and the annual *Review of Legal Education in the United States and Canada*, compiled by Reed and published by Carnegie, 1913 and 1915-1934, continued by the ABA (Will Shafroth ed.) as the *Annual Review of Legal Education*, must also be used. More recent works on curriculum reform have value both as primary sources and secondary literature: Albert J. Harno, *Legal Education in the United States* (San Francisco, 1953) and *Training for the Public Professions of the Law: 1971*, Report to the AALS (Washington, 1971)—the "Carrington Report." Other materials are cited in Chapter VI, particularly the various publications of the American Bar Association and the Association of American Law Schools. The

two surveys of legal education in California are [W. Shafroth & H.C. Horack] *Report of the California Survey Committee 1933* and [J.A. McClain, Jr., T.F. McDonald, & S.P. Simpson] *Legal Education and Admissions to the Bar in California* (Los Angeles, 1949). *The Proceedings of the California Bar Association*, beginning in 1910, and the *Journal of the State Bar of California*, beginning in 1926, round out the sources for the local dimension of legal education. The *Journal of Legal Education*, 29 vols. (1948 to date) is essential reading for seeing changes in educational ideas and practices during the past three decades.

## Hastings

Previous essays in the history of the College are the *Golden Jubilee Book, 1878-1928, Hastings College of the Law of the University of California* [San Francisco, 1928] and Edward A. Hogan, "History of the Hastings College of Law," *Hastings Law Journal*, 4 (1953) 89-100. The latter is of little use; the former is extremely valuable because of the personal recollections of men connected with the College during its first half-century.

Most of the available sources on the Founder, Serranus Clinton Hastings, are cited in the notes to Chapter I. Of particular importance to understanding his motivation in founding and his ideas concerning the College are his two early formal speeches: *Address of S.C. Hastings, Founder of Hastings' Law Department of the University of California, before the Regents, President and Faculty* (San Francisco, 1878) and *Annual Address delivered to the Students of the Law Department of the University of California, August 1879*, by S. Clinton Hastings (San Francisco, 1879). A good deal of miscellaneous information about Hastings is to be found in early San Francisco newspapers, in the record of his litigation, and in articles in the *California Historical Quarterly*. Time did not permit me to make as thorough a search for surviving materials on the Founder as I would have wished; he deserves a study in his own right. Since no corpus of his personal papers appears to have survived, a thoroughgoing biography will be difficult.

Serranus Clinton Hastings and his contemporaries, as well as some of the early graduates of the College, are noticed in Oscar T. Shuck, *History of the Bench and Bar in California* (Los Angeles, 1901). This collection of antiquarian essays and overblown, short biographical notices is valuable far beyond its demerits. J.C. Bates, *History of the Bench and Bar of California* (San Francisco, 1912) imitates Shuck in more than title alone, but does additionally provide a great many biographies of lawyers who achieved prominence in the 1890s and 1900s. The early graduates of Hastings are listed in *Catalogue of Graduates of Hastings College of the Law*, T.A. Perkins ed. (San Francisco, 1897), *Directory of Graduates of the University of California, 1864-1916*, California Alumni Association (Berkeley, 1916), and William Carey Jones, *Illustrated History of the University of California* (San Francisco, 1895); the latter also provides a brief career-note on each graduate to '94. Hastings graduates are noticed in *The Golden Book of California*, Robert Sibley ed. (Berkeley, 1937). Later biographical compilations, particularly *Bench and Bar of California, 1937-38* (Chicago, 1937) and *Bench and Bar of California: Centennial Edition, 1949* (San Francisco, 1949), are useful. *Who's*



*Who in America* (1897 to date) and *Who Was Who in America* (1943 to date), the *Dictionary of American Biography* 22 vols. (1943), *Great American Lawyers*, 8 vols. William Draper Lewis ed. (Philadelphia, 1907-09), and the *Directory of Law Teachers*, published almost annually by the AALS since 1922, provide biographical information. The last compilation is especially useful for the 65 Club members. For early women lawyers connected with Hastings, *Notable American Women, 1607-1950*, Edward T. James, Janet Wilson James, & Paul S. Boyer eds., 3 vols. (Cambridge, Mass., 1971) and Lelia J. Robinson, "Women Lawyers in the United States," *The Green Bag*, 2 (1890) 10-32 are helpful. Brief vignettes of Serranus Clinton Hastings and his contemporaries on the state supreme court as well as of successive chief justices (Presidents of the Board of Directors) were done by J. Edward Johnson as a series in the *Journal of the State Bar of California*, 21-47 (1946-62). To date, of the Hastings faculty only Dean Taylor has found a biographer: Kenneth M. Johnson, *The Life & Times of Edward Robeson Taylor, Physician, Lawyer, Poet, and Politician* (San Francisco, 1968).

The Pomeroy System of legal education is revealed in the printed *Syllabi*, [1880-84]. A number of libraries have these, but the most extensive set (still lacking some courses) is in the College library, the gift of Frank M. Angellotti, '82. Pomeroy's works are treated above in Chapter III. His pedagogical ideas, both as to substance and method, are set forth in *The Hastings Law Department of the University of California: Inaugural Address of John Norton Pomeroy, LL.D., August 8, 1878* (San Francisco, 1878). After Pomeroy and until the 1950s, the curriculum must be reconstructed from the annual *Announcement* of the College, either in loose form or as incorporated in the annual *Register of the University of California*. The *Announcement* lists texts as well as courses throughout the period before faculty records begin in the 1950s. The *Announcement* also is a principal source for the names and residences, and usually degrees, of students.

Hastings' relationship with the San Francisco bar can be uncovered in *The Bar Association of San Francisco: An Illustrated History*, J.O. Denny ed. (San Francisco, 1923) and Kenneth M. Johnson, *The Bar Association of San Francisco: The First Hundred Years, 1872/1972* (San Francisco, 1972). On the more general matter of the development of the large firm, the sharpest light is cast by Robert T. Swaine, *The Cravath Firm and its Predecessors, 1819-1948*, 3 vols. (New York, 1946-48), a work of remarkable scholarship by a senior partner of that eminent New York firm, which was the first big law office. Until a similar study is done of a major San Francisco firm, it will be difficult to say exactly how local growth differed from the New York development.

The patent relevance to Hastings of official California publications, particularly the *Statutes*, the *Journal of the Assembly*, and the *Journal of the Senate*, has required continuous recourse to them. Also, the law reports have supplied a great deal of information, some of it directly related to Hastings; this material is cited in the notes to the text.

Newspapers have been used with discretion in this study. The scholar, like the general reader, must treat the press with skepticism. The following San Francisco papers, the *Chronicle*, the *Evening Bulletin*, the *Examiner*, the *News-Call Bulletin*, and the legal paper, the *Recorder*, and the *Oakland Tribune* have furnished useful information.

The College's own publications, the students' *Hastings Law News*, the alumni magazine *The Hastings Community*, and the scholarly journals, particularly the *Hastings Law Journal*, contain a wealth of information. For the most recent events and developments they are an invaluable source supplementing the more formal records of the College.