

The Last Man Who Knew Everything

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Hastings lost a tremendous resource when Geoff Hazard died. But he was a resource for much more than Hastings. Indeed, he was probably the most significant resource for American law, or at least those parts devoted to procedure, of the last fifty years. I want to try to pay tribute to both Hazard the Scholar and Hazard the man.

HAZARD THE SCHOLAR

How can you say enough about Geoffrey Hazard as a scholar? As Steve Burbank put it in a collection honoring Geoff on his eightieth birthday, thinking of him reminds one of the old saying about the best and the brightest—when they assembled, the brainpower was so great that one had to look back to the last time Thomas Jefferson dined alone to find its equal.¹

My comparison is a little different, but to the same point. About fifteen years ago, as Chair of the Appointments Committee, I introduced our enthusiastic recommendation that the Faculty appoint Geoff a Distinguished Professor and, recalling Aristotle (“The last man who knew everything”), I said that Geoff was “the last man who knew everything”—about law.

And that wasn’t all blather. For instance, when Richard Posner—no mean scholar himself—wrote an essay for the hundredth anniversary issue of the *Harvard Law Review* in 1987, he entitled it *The Decline of Law as an Autonomous Discipline: 1962-1987*.² Posner was President of the Harvard Law Review in 1962 and, as a prime mover in the Law & Economics movement, had played a prominent role in that decline. But I doubt he foresaw this future while he was still in law school.

Geoff Hazard got there first, however. In 1960, when he was in his second year as a law professor and all of thirty-one years old, Geoff was approached by the Walter E. Meyer Research Institute of Law to contribute a monograph for its effort

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1. Stephen B. Burbank, *Not Since Thomas Jefferson Dined Alone: For Geoff Hazard at Eighty*, 158 U. PA. L. REV. 1283 (2010).

2. Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962–1987*, 100 HARV. L. REV. 761 (1987).

to probe beyond the conventional in legal thought.³ Along with many other things, including the first edition of his path-breaking civil procedure book,⁴ Geoff produced a far-ranging study of the flaws in then-contemporary legal research on procedure, which foresaw not only what Posner reported on a quarter century later but also much more, such as the growing importance of empiricism in legal research.⁵ Though that work was not published until 1963, most of the work was done in the summer of 1960,⁶ when Posner had just finished his first year in law school.

By the mid-1960s, Geoff had been hired away from Boalt by the University of Chicago and had become Director of the ABA Foundation, which pioneered many empirical studies of legal matters. Along the way, he served as Reporter of the hugely influential Restatement of Judgments (Second). By the 1980s, after he moved to Yale Law School, he had become Director of the American Law Institute, where he presided over and deeply influenced projects affecting a huge array of legal fields, including several that had not even been recognized as legal fields when Posner was in law school and Hazard was getting going as a law professor. To list a few of them as examples proves the point: In the 1980s, he guided the ALI in fashioning its Principles of Corporate Governance, an extended effort in compromise and innovation.⁷ Of course, he was a natural to guide the ALI's development of Principles of Transnational Procedure, but also headed up the ALI's development of projects on such diverse fields as Property, Restitution,

3. The remarkable aspirations of this Institute are described in David Cavers book. See DAVID FARQUHAR CAVERS, "TO THROW LIGHT ON MATTERS WHICH WILL BE OF AID IN SECURING TO HUMANITY A GREATER DEGREE OF JUSTICE:" A HISTORY OF THE WALTER E. MEYER RESEARCH INSTITUTE OF LAW (John Henry Schlegel ed., 1997). As detailed in this book, Hazard was not the only young and exceptional scholar enlisted in this cause. Professor Herbert Packer of Stanford prepared a similar study of criminal law, his specialty. See *id.* at 67. But Packer tragically died in 1972, at age forty-seven. Had Hazard died that year, rather than in 2018, the legal profession would have lost enormous contributions on many topics. For procedure buffs, the Meyer Research Institute played a role later in the 1960s, when it supported research by Professor Maurice Rosenberg of Columbia Law School on the use of the pretrial conference in the New Jersey state courts. *Id.* at 123–24. It also supported a critically important empirical research project that led to the publication of WILLIAM GLASER, PRETRIAL DISCOVERY AND THE ADVERSARY SYSTEM (1968), which laid the empirical foundation for comprehensive amendments to the discovery rules in the Federal Rules of Civil Procedure that went into effect in 1970.

4. See DAVID LOUISELL & GEOFFREY HAZARD, PLEADING & PROCEDURE (1962).

5. See GEOFFREY C. HAZARD, JR., RESEARCH IN CIVIL PROCEDURE (1963). This book is a joy to read for its penetrating analysis, but also for its wry commentary about the state of scholarship as the legal academy perched on the brink of the "law and . . ." revolution. Consider, for example, the following:

I think university legal researchers may have abandoned the exercise of the skills in doctrinal research in which they have been trained and at which they are expert in favor of adventures in non-technical methods, such as philosophical or psychological reflection, at which they are in varying degrees amateurs. I think this may be attributable to an uncritical adoption of the premises of "legal realism" without adoption also of the obligation to be "realistic" in a systemic and disciplined sense.

Id. at 57. With regard to faculty work more generally, he also observed that "many of those who have published are more concerned with having written something than having said something." *Id.* at 56.

6. See *id.* at v.

7. See *In Memoriam: Geoffrey C. Hazard, Jr.: ALI Director 1984–1999*, 40 A.L.I. REP. 1 (2018).

Suretyship, Torts, Trusts, Family Dissolution, and Transnational Insolvency.⁸

In the process, if not from the start, he developed such a breadth of view that I have no hesitation saying that he nearly *did* know everything about law, and I'm sure there's nobody else who will ever deserve that mantle in the future. Despite (or perhaps because of) that, he constantly cast his penetrating gaze over exceptionally broad horizons.⁹

HAZARD THE MAN

When I picture Aristotle, I do not imagine him as a folksy guy. To know everything, you probably have to have your head in the clouds. But that was certainly not the way of Geoff Hazard. When he died, it was extraordinary the volume of tribute within Hastings about things he had done for people during his time here. And it was equally extraordinary that he had been doing these things throughout the school—the tributes came from people at all levels of Hastings. For example, the initial proposal that the flag on the 100 McAllister Tower be flown at half-mast in honor of Geoff came from one who got to know him as a member of our security detail.

That breadth of contact also seems to have been a life-long trait. As evidence of that, I offer a tale from around 1962 told by Michael Tigar, one of the most famous Boalt Hall graduates (whose son is now a U.S. District Judge in San Francisco). Tigar was appalled by the McCarthy era pledge the California State Bar then required first-year students to sign, and went to the library and found a Supreme Court case called *Cramp v. Board of Public Instruction*¹⁰ that said one could not constitutionally be required to swear never to have given “aid, support, advice, counsel or influence to the Communist Party.”

Armed with this find, Tigar wrote a memo he intended to distribute to first-year students, saying that he would not sign the pledge and urging them to refuse also. That's where Geoff makes his appearance:

Before I sent the memo, I made an appointment with Professor Geoffrey Hazard, who taught civil procedure and seemed to be quite active in the California bar. I took volume 368 of the *U.S. Reports*, where *Camp* was reported, with me. I put the bar form and the case before Professor Hazard. He read through both of them, looked up, and to my surprise said: “You are absolutely right. What do you want me to do?” I said, “Help me.”

Hazard was then and is now witty, articulate, and given to grand gestures. He picked up the telephone and dialed the general counsel of the California bar, whose name I no longer remember. Let's call him Bill.

“Bill, this is Geoff Hazard. I am sitting here with one of my students and we have

8. *See id.* at 4.

9. One of Geoff's recent books, published when he was in his eighties, surveys and comments on the sweep of philosophical, religious, and moral development, but also brought these intellectual currents to bear on contemporary events. *See* GEOFFREY C. HAZARD, JR. & DOUGLAS W. PINTO, JR., *MORAL FOUNDATIONS OF AMERICAN LAW: FAITH, VIRTUE, AND MORES* (2013).

10. 368 U.S. 278 (1961).

been looking at this form you make all first-year law students sign.” Hazard read the question aloud. “I also have a Supreme Court case right in front of me—unanimous, by the way—that holds that question cannot be asked. Denies due process, because it’s too vague. Now, Bill, the question is, are you going to delete the question or are we going to have a dispute about it? I have to support these students because they are right about this one.”

I was amazed at the alacrity and commitment of Hazard’s response. . . . This vignette showed why I came to law school.¹¹

This sort of thing was repeated again and again within the Hastings community.

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Hastings will not see his like again. I fear America will not see his like again. It is an honor to be permitted to honor Geoff Hazard.

11. MICHAEL TIGAR, *FIGHTING INJUSTICE* 44–45 (2002).