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William Carney Jones and the Founding Boalt Hall

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Fifty years ago at the dedication of Boalt Memorial Hall of Law at the University of California, William Carey Jones declared his belief that a great law school, rightly planned and rightly manned, would become one of the mighty contributing agencies in improving the law, whether in legislation, in the practice of the profession, or in the procedure of administration. The two chief faults of the American law school, he said, were that it did not lay a broad foundation in the history of the law, nor did it equip the student precisely and definitely with the techniques for the practice of his profession. It was his strongly held belief that a law school should be integrated with the whole life of the University: "If any branch of knowledge calls for teaching of a university character, it is that of law. If any branch of knowledge should be cultivated by university methods..., it is that of law."¹

I

WILLIAM CAREY JONES

William Carey Jones, who became head of the new School of Jurisprudence at its creation in 1912, was speaking from a background of forty years of close association with the University of California, where he earned a reputation as a pioneer educator in jurisprudence and the law in the West. President Benjamin Ide Wheeler said of Jones: "One way to live is to merge one's life in an institution. This is what William Carey Jones has done to an extraordinary degree."²

Jones was born in Washington, D.C., in 1854, the son of a United States Land Commissioner, also named William Carey Jones. The elder Jones,

¹ Jones, The Problem of the Law School, 1 CALIF. L. REV. 1, 9 (1912). This address, which also appears in 13 UNIVERSITY OF CALIFORNIA CHRONICLÉ 324 (1911), was delivered at the dedication of Boalt Memorial Hall of Law, April 28, 1911.

² See FERRIER, ORIGIN AND DEVELOPMENT OF THE UNIVERSITY OF CALIFORNIA 133 n.12 (1930).
who was also a lawyer, was interested in securing a site for an institution of learning in the Oakland area as early as 1853. The mother of the younger Jones was a daughter of Senator Thomas Hart Benton of Missouri; his aunt was the wife of General John C. Fremont. Jones entered the University of California in 1871, just three years after its opening, and was graduated in 1875 after writing a bachelor's thesis, "Alfred the Great and George Washington."

After graduation Jones began studying law on his own with the intention of practicing, but his acceptance of requests for his services at the University ultimately prevented this. He was appointed instructor in Latin in 1877 and served as Recorder of the Faculties. After passing the bar examination and receiving an M.A. degree in 1879, he attempted to resign his University position in order to enter practice in San Francisco. To his surprise, the Regents referred his resignation to a special committee. As a result of the persuasive efforts of its chairman, Dr. Horatio Stebbins, Jones was enlisted in the cause of building a great university. His interest in Latin, which he taught while preparing for the bar, led him into the field of Roman law, and in 1882 he began to teach a course in that subject. He regarded that course as the real germ of the Department of Jurisprudence and contended throughout his career that Roman law should have a special place in the legal curriculum.

In 1882 Jones' title was changed to instructor in United States History and Constitutional Law. He noted that the history side of the title indicated a need of the University for instruction in American history, while the legal side of the title indicated his desire "to mark out a path for the recognition of law from the cultural point of view." For the next twelve years, as a member of the History Department, Jones taught courses in Roman law, constitutional law, international law, and jurisprudence. He devoted more and more of his time to teaching legal subjects as liberal arts courses, thereby causing another department to emerge from within the Department of History—that of law in its more academic aspects. This fact was recognized in 1894, when the President and the Board of Regents created a new Department of Jurisprudence, with William Carey Jones as its head. This marked the introduction of legal education to the Berkeley campus. The liberal arts approach of the new department was supplemented in 1898 by the addition of a new instructor and a professional curriculum which included courses in torts, crimes, and contracts. Thus, a second

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3 Id. at 133.
4 Jones, The Genesis of a Law School, 15 University of California Chronicle 262 (1913). The main body of the address, which was delivered at a student law association banquet March 9, 1912, is quoted in McMurray, William Carey Jones, 12 Cali. L. Rev. 339 (1924).
5 Id. at 265, 12 Calif. L. Rev. at 341-42.
school for the training of lawyers was established under the direction of the Regents of the University of California, the first having been founded in 1878 in San Francisco.

II

THE FOUNDING OF HASTINGS COLLEGE OF THE LAW

Hastings College of the Law had its basis in the provisions of the University of California’s 1868 charter. Its authors contemplated the establishment of colleges of medicine and law and of other professional schools that would retain their own property and administration and yet would be affiliated with the University upon mutually agreeable terms. Recognizing the intention of the founders, who saw the need for a law school in the West, the Regents in 1870 appointed Stephen J. Field, an associate justice of the United States Supreme Court, as professor of law—an honorary title, since Field never taught on the campus.

The actual founding of a law school was delayed for a decade because of a shortage of funds. In 1878, however, Judge S. C. Hastings paid $100,000 into the state treasury with the provision that the state should pay an annual interest of seven per cent toward the maintenance of a law school. On March 26, 1878, the legislature approved an act creating the Hastings College of Law and provided for its affiliation with the University. Judge Hastings, who was the first Chief Justice of the State of California, became Dean of the school, and John Norton Pomeroy, an eminent jurist from the East, became the first teaching professor. The control of the college was placed in the hands of directors, who were empowered to choose their own successors, as well as to choose the professors and instructors. The President of the University was also the President of the Faculty, and degrees were conferred by the Regents of the University. The newly chartered institution was opened in Pioneer Hall in San Francisco on August 9, 1878.

On several occasions, William Carey Jones had discussed the plans for the law school with Judge Hastings. Jones said that Hastings hoped the lectures eventually would be transferred from San Francisco to Berkeley and that he wanted Jones to be the local representative of the law school in Berkeley. "The scheme was impracticable," Jones recalled, "but the suggestion nurtured an already sprouting idea in my mind." In adopting the affiliation provisions of Hastings College with the University, the Regents

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7 REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 86-87 (1928).
8 Kidd, supra note 6, at 9.
9 Cal. Stats. 1878 ch. 351.
10 FERRIER, op. cit. supra note 2, at 432–33.
11 JONES, ILLUSTRATED HISTORY OF THE UNIVERSITY OF CALIFORNIA 319 (1901).
12 JONES, supra note 4, at 264, 12 CALIF. L. REV. at 341.
resolved to provide a hall at Berkeley for instruction in law. But this resolu-
tion was not put into effect, because the primary demand for legal instruc-
tion at that time was being met in San Francisco.\textsuperscript{18}

While Hastings College was providing for the practical training of
lawyers, the new Department of Jurisprudence in Berkeley was giving
university-level instruction in broader aspects of the law. The department's
purposes, according to Jones, were to lay a foundation for the professional
study of law, to supply the legal elements of the education planned for in
the College of Commerce, as well as to subserve the purposes of a liberal
education.\textsuperscript{14}

When first-year professional courses were added to the Department of
Jurisprudence in 1898, a cooperative relationship between the University
and Hastings College was effected. Graduates of the University who had
taken the first-year law subjects as seniors at Berkeley were admitted into
the second year class at Hastings. In his reports to the Governor at the
turn of the century, President Benjamin Ide Wheeler reiterated Jones’
views favoring legal studies within the University, noting that Hastings
College of the Law would furnish an opportunity for young men who must
spend part of their time working in offices in San Francisco, or who were
otherwise unable to attend classes in Berkeley.\textsuperscript{15} He called for full coopera-
tion with Hastings, but supported a further enlargement of the Depart-
ment of Jurisprudence. There is no reason, he said, why two years of a legal
training should not be offered at the University.\textsuperscript{16}

III

BOALT HALL AND THE SCHOOL OF JURISPRUDENCE

In his 1898–1900 Report, President Wheeler pointed out that the ex-
perience of recent decades had shown that the most effective teaching of
law took place in a department that operated in close connection with a uni-
versity, and that such teaching especially should be carried on in coopera-
tion with related departments such as history and political science. Further-
more, President Wheeler said, teachers of law should be trained as teachers
as well as lawyers and should give their chief attention to teaching. The
experience at Harvard and Columbia, the President wrote, amply demon-
strated that the best place for a law school is within a university, where

\textsuperscript{13} \textsc{Ferrier, op. cit. supra} note 2, at 601-02.
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\textsuperscript{14} \textsc{Jones, op. cit. supra} note 11, at 324.
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\textsuperscript{15} \textsc{University of California, Biennial Report of the President 1898–1900, at 31–32
(1900) [hereinafter cited as \textsc{President's Report (date)}]; President's Report 1900–1902, at 26
(1902); President's Report 1902–1904, at 40 (1904).}
\hfill
\textsuperscript{16} \textsc{President's Report 1898–1900, at 32 (1900).}
close contact is possible with university courses, libraries, and intellectual life.\textsuperscript{17} These views were shared by William Carey Jones.

After the addition of nine courses in 1898–99, the Department of Jurisprudence continued to augment its staff and professional offerings. In 1901–02 the staff of the department was increased to six, which enabled it to offer two complete years of professional work. In 1902–03 four additional lecturers were added. Among the newcomers was Orrin Kip McMurray, who was to play a leading part, first as a professor and later as Dean, in the development and advancement of what is now Boalt Hall. Three full years of professional study were provided and a fully developed law school was in operation. Three men received the LL.B. degree in May, 1903.\textsuperscript{18}

Space limitations on the campus became apparent in 1902, when President Wheeler cited the need for a separate building or "at least a suite of rooms where the students would be separated from the distractions of undergraduate life . . . [and a] library with sufficient space for tables and desks . . . ."\textsuperscript{19} The work in law was carried on in Room 19 of old North Hall. The law library of 7,000 volumes was housed in the basement of Bacon Hall.\textsuperscript{20} The need for more accommodations began to be met in 1906 with the Charter Day announcement of a gift of $100,000 from Mrs. Elizabeth Boalt for a law building in honor of her late husband, Judge John H. Boalt. The Regents decided to erect a building at a cost of $150,000. The additional funds were gained through contributions from several lawyers throughout the state. A circular was prepared and distributed, saying, in part:

"California must create a great School of Law and leadership. The University of California will build this School of Law on the campus at Berkeley. Boalt Hall will house it. The Lawyer’s Memorial Hall will be the living center—the heart of the School of Law. . . . [The aim is] to create not merely a law department of good standing, but a center of legal education of the highest rank—a Harvard and Columbia of the West; and more—drawing a student body from the western half of the continent, training future leaders in the community, giving special consideration to the special development of the law of the states this side of the Rockies."

First occupied in January, 1911, and dedicated on April 28 of that year, "Boalt Hall" became the popular title of the Department of Jurisprudence at the University of California. At this time the income from a $20,000 endowment fund given by Mrs. Jane K. Sather made possible the purchase of legal works for the law library.

\textsuperscript{17} Ibid.

\textsuperscript{18} Jones, \textit{supra} note 4, at 266, 12 \textit{CALIF. L. REV.} at 342.

\textsuperscript{19} \textit{PRESIDENT’S REPORT 1900-1902}, at 41 (1902).

\textsuperscript{20} Kidd, \textit{supra} note 6, at 30.

\textsuperscript{21} \textit{FERMIER}, \textit{op. cit. supra} note 2, at 489.
The year 1912 marked several significant achievements in professional training in law at the University of California. The plans and efforts of William Carey Jones to build a true university school of law were realized on November 12, 1912, when the Department of Jurisprudence, by action of the Regents, became the School of Jurisprudence. They took this step as "a recognition of the excellent provision for professional training in law which has now been created by the generosity of Mrs. Boalt, of the lawyers of California, and of Mrs. Jane K. Sather, the endeavors of the faculty, and the general development of the University." William Carey Jones was appointed Director, and later Dean, of the School, a post which he held until his retirement from the University in 1923 after forty-eight years of service.

The stated purpose of the new school was to furnish instruction in the historical, theoretical, and practical spheres of law—international, public, and private. On the historical and theoretical side, the school offered courses in international law, Roman law, jurisprudence, and on various topics in the history of the common law. On the practical side, it offered a complete professional curriculum based on at least three years of preparatory academic training. The main body of this curriculum was of general application, constituting a preparation for the practice of law in any jurisdiction founded on the common law. At the same time, emphasis was given to courses which directed attention to local legal conditions and practice in the western states, such as mining law and code procedure.

In October, 1912, Jones reported that the Department of Jurisprudence had conferred forty-eight law degrees since 1903 and had been admitted to membership in the Association of American Law Schools the preceding summer. The accrediting committee said that the Department had been entitled to admission for six years or more and that it held a high rank among the law schools of the country. It was also in 1912 that Earl Warren, the first Chief Justice of the United States from west of the Mississippi, received the B.L. degree from the University of California. In 1914 he was granted the J.D. degree and was a member of the first class to have its entire three years of professional study in Boalt Hall of Law.

The California Law Review made its first appearance in November, 1912, with the announcement that it would be published bimonthly under the chief editorship of Professor Orrin Kip McMurray. In the preface to Volume I, Number 1, the editors cited the need for a periodical through

23 University of California Register 1912–13, pt. 2, at 142.
which those who are engaged in the process of law-making, whether as lawyers, judges, legislators, writers, or teachers, might express themselves freely or extensively; a medium through which exchange of thought in regard to legal problems of local importance might be carried on; a regular publication that would serve to record the history and development of the law. They pointed to the need for a journal that would present constructive criticism of legal problems in California and other Pacific Coast states.\(^{26}\)

**IV**

**WILLIAM CAREY JONES’ CONTRIBUTIONS TO LEGAL EDUCATION**

Foremost among William Carey Jones’ ideas on the proper training of lawyers was his belief that the teaching of law as a profession should receive sanction only when given within a university. He believed that it is only by close association with the scientific activities and by becoming a part of these activities that the law school can fulfill its high functions. Another great purpose of the law school, according to Jones, was the development of legal research—a pursuit that could be carried out only in a university setting. “[T] hose whose primary purpose it is to investigate legal institutions and ideas must do so within the common home of culture and research,” he wrote.\(^{27}\) He drew an analogy with the University departments of education and agriculture, saying that they make contributions to the public welfare by identifying themselves with the interests of the state and adding that the state University should assume a similar attitude toward “the most transcendent interest of the state—the administration of justice, the vindication of right.”\(^{28}\)

For Jones, the study of Roman law held a place of primary importance in the intellectual development of lawyers. The general elementary course in Roman law provided the basis of legal education, in his view, and should come early in a student’s preparation. In addition, he was convinced that a more advanced course in Roman law should be offered in the last year of law school: “All systematic thought in jurisprudence, as the coordinated knowledge of legal facts, relies on Roman law for its method, its phraseology, and its fundamental conceptions. Roman law is thus the common meeting ground for the student of Ethics and the student of Jurisprudence.”\(^{29}\) He advocated training in the classical curriculum, modern languages, and the foundations of history and political science. Future lawyers must get the ethical content and bearings of their subject from the study

\(^{26}\) 1 CALIF. L. REV. 46, 48 (1912).


\(^{28}\) Jones, *supra* note 1, at 9.

\(^{29}\) Jones, *supra* note 27, at 11.
of moral philosophy, and they should have their intellects opened and their thought ennobled by the pursuit of metaphysics. His plea was always for a greater emphasis upon scholarship for the prospective lawyer. "Law ought to be a science and lawyers philosophical," he said.30

He would have placed in the first year such subjects as Roman law and the theory and history of the common law. Begin with history and philosophy of the law, he said, and you will produce both lawyers whose intellects are broadened by a view of the history of legal institutions, by acquaintance with the development of legal principles, and by a comprehensive survey of the whole scope of their splendid profession; and lawyers whose faculties are refined and sharpened, by a course of gradually increased intensiveness, for the immediate and practical discharge of their professional duties.31 Jones thought that the law touched the humanities at every point and thus had a place as a liberal arts study within a university. He strongly held that scholars of history, political science, ethics, philosophy, and philology could derive great benefits from investigations into law and jurisprudence. As he wrote: "[L]aw is the greatest, the most interesting, and in a word the most humane of the political sciences. The subject-matter of jurisprudence, intimately connected with the historical institutions of mankind and with the history of human nature, possesses vast resources which it may lay at the service of all humane scholars."32 As a part of liberal education, Jones advocated the study of the general principles of law, the methods of legal development, the nature, growth, and influence of legal conceptions and institutions, and certain larger branches of jurisprudence. He would have included such subjects as Roman law, Old English law, Slavonic or Germanic legal institutions, the history of legal institutions during the Middle Ages, and international law.33

On the nature of the law itself, he said in 1911 that it is in a process of constant becoming. He spoke of the law as ever being re-created, not only through legislation, but through a sort of self-reproduction. He disagreed with the position that the common law no longer is a re-creative power, and that this function was exhausted in the Middle Ages. This erroneous view, he said, was shared not only by the laity but also by many judges and lawyers. He regarded the consequences of such a view as deplorable in the extreme, because it implied that a large portion of our law is medieval in the most reprehensible sense of that term.

That there is a just ground for the reproach that the law is mediaeval is due to the very fact that too many of our lawyers and judges do not know

30 Id. at 2.
31 Jones, supra note 1, at 3–4.
32 Jones, supra note 27, at 3.
33 Ibid.
the history and development of our legal principles; do not know when an
old principle is dead and when a new principle is born; do not know the
spirit of the common law; do not know that, through the hands of the judi-
cracy, the common law can and should give protection to new conditions as
they arise, and so constantly give birth to new legal rights.34

The contributions that William Carey Jones made to the study of law
and to the University of California went beyond his teaching and leader-
ship in the School of Jurisprudence. Although the Regents selected Ben-
jamin Ide Wheeler of Cornell as President of the University in 1899, Jones
was considered, along with Professor Bernard Moses, as a possible suc-
cessor to Martin Kellogg for the post. Upon Wheeler’s resignation in 1919,
Jones served as chairman of the Administrative Board that carried out the
responsibilities of the president for a nine-month interim period between
the resignation of Wheeler and the inauguration of David P. Barrows as
President in 1920. Jones was also Dean of the Graduate Division from
1918 to 1920. In addition to being a recognized authority on the school law
of California, he was responsible for a plan of accrediting the public high
schools in the state, which brought the University into closer connection
with secondary education. Largely through his efforts, legislation creating
union high school districts was passed. Jones was a principal author of the
charters under which the city of Berkeley operated for many years—chart-
ers which in turn were used as models for other cities in the state.35

The outstanding feature of Jones’ life work, according to a former State
Supreme Court Justice, was the editing and annotating of a two-volume
His close association with the early life of the University led to the writing
of the Illustrated History of the University of California, published in 1895
and revised in 1901.

William Carey Jones’ abilities as an administrator and a scholar were
matched by his skill as a teacher. There was no formalism or preaching in
his approach. He did not tell his students what to think, but was able skill-
fully to enable students to grasp fine distinctions and fundamental ideas.
One student recalled: “I shall always remember many things he taught by
example rather than by precept: that the law is not an exact science; that
one need not be dogmatic in order to be impressive; that one can argue
without becoming heated; that there is nothing like a saving sense of humor.
From any teacher who can learn more?”37 Orrin Kip McMurray, who had
been a student of Jones and was to succeed him as Dean, recalled that

34 Jones, supra note 1, at 4.
Jones, unlike many other teachers, showed that there was a point of view beyond and transcending the academic one—which came as something of a shock to self-satisfied college students. His method was not dogmatic, but critical, and freedom of opinion and discussion always prevailed in his classes.38

William Carey Jones was devoted to building something more than a vocational school. His intention was to provide leaders for a changing world.39 It was in the service of this larger, nobler concept that he made his contribution to legal education and to the founding of the School of Jurisprudence at the University of California half a century ago.

39 Id. at 346-47.