

# IN SEARCH OF CALIFORNIA'S LEGAL HISTORY:

## *A Bibliography of Sources*

BY SCOTT HAMILTON DEWEY\*

### INTRODUCTION

In the summer of 1988, Christian G. Fritz and Gordon M. Bakken published an article, entitled, “California Legal History: A Bibliographic Essay” (hereinafter referred to as “Fritz & Bakken”).<sup>1</sup> This article discussed various key topics in the legal history of the State of California and pointed readers toward some of the essential resources then available regarding those topics. Fritz & Bakken’s article also marked an early recognition of California legal history as a rich research area worthy of further exploration.

Fritz & Bakken’s original essay was just over nineteen pages long. As Professor Fritz has observed recently, it was intended only as a brief introduction to its topic, and as an encouragement to additional research and researchers, at a time when American legal history generally remained relatively new as a field of study, and California legal history even newer.<sup>2</sup>

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<sup>1</sup> Christian G. Fritz & Gordon M. Bakken, “California Legal History: A Bibliographic Essay,” *Southern California Quarterly*, Vol. 70, No. 2 (Summer 1988), pp. 203–222.

<sup>2</sup> E-mail message from Christian G. Fritz to Selma Moidel Smith, October 16, 2015.

More than twenty-seven years later, like many other fields of history in the post-1970 era, California legal history has expanded hugely, even explosively, over its still-fledgling state as of 1988. The field of legal history also has tended at times to merge with other fields of history, such that now, in addition to more traditional, “pure” legal history of matters such as courts, cases, judges, lawyers, and legal doctrine, one also routinely finds “hybrid” studies, combining legal history with, for example, social history, gender history, demographic history, labor history, agricultural history, economic history, or environmental history — among many other possibilities. Thus California legal history has grown progressively richer and more complex over the past quarter century, in ways that might have been difficult even to dream of when Fritz & Bakken offered their original introduction.

Given the growth, evolution, and maturation of the field of California legal history over the past decades, Selma Moidel Smith, editor of the journal *California Legal History*, has for some time been eager to have Fritz & Bakken’s essay updated and expanded. In 2010, she wrote:

One of the rewards of studying California legal history is that the field may be entered from nearly any perspective and pursued in nearly any area of interest. This is so because California legal history is not merely a microcosm of American legal history. It is a special case. California’s eventful legal history and its position as a legal innovator have allowed it to be among the few states whose legal history is recognized as a field of study. Unlike the study of American legal history in general, it is exceptional because it has not as yet crystallized into a self-contained academic field.

This circumstance gives rise to both its weaknesses and its strengths. Among the obvious weaknesses are that few university courses are devoted specifically to California legal history, and it is not recognized as a field of publishing apart from *California Legal History*. It would be difficult to name a scholar whose career has been devoted entirely to its study. And yet this circumstance also leads to one of the field’s less-obvious strengths, its unique diversity of perspectives and subject matter.<sup>3</sup>

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<sup>3</sup> Selma Moidel Smith, “At the Intersection of Law and Scholarship: Recent Approaches to California Legal History,” *California Supreme Court Historical Society Newsletter* (Spring/Summer 2010), p. 7 (written without a byline in the author’s capacity as Publica-

Accordingly, Selma informed me that her goal in asking me to undertake this project was to create a resource that would encourage scholars to pursue new research and also enable teachers to prepare course curricula in the field. The bibliography that follows represents an effort to do just that, as well as a slightly belated twenty-fifth-anniversary commemoration of the original article.

As readers will quickly discover — perhaps gleefully, perhaps glumly — this updated bibliography is a whole lot longer than the original, and seeks to be more comprehensive than the original was ever intended to be. The new bibliography also draws upon powerful new digital bibliographic research tools and techniques that remained mostly or entirely unavailable back in 1988.<sup>4</sup> Indeed, the whole era of microcomputing and related digital technologies that have revolutionized libraries, research, and information science in general has happened mostly since that time. Partly as a result of that transition and the expanded access to information that it has made possible, this bibliography includes a much wider range of particular topics and subtopics than the original article, along with expanded coverage of the topics Fritz & Bakken addressed.

As the length of this work approached 120,000 words (requiring about 300 pages in *California Legal History*), Selma proposed the more practical — and altogether more desirable — concept of expanding the bibliography from the pages of the journal to an independent online format. Thus, the main body of this text appears in the 2015 edition of the journal (volume 10) for general reading, but the complete results of my work — including the full body text and over 400 notes with thousands of bibliographic entries — appear online at <http://www.cschs.org/history/resources/bibliography>.

The benefit is self-evident: Rather than being out-of-date the moment it is published, the bibliography will become a living resource. Readers are hereby invited to submit suggestions for citations (and corrections, please) directly to me at [dewey@law.ucla.edu](mailto:dewey@law.ucla.edu). I have agreed to continue in the capacity of Bibliography editor and gatekeeper for an indefinite period.

Perhaps ironically, though, notwithstanding the present bibliography's greatly expanded size and ambitious — or hubristic — goal of being complete and comprehensive, it is actually only *more* comprehensive than Fritz &

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tions Chair and Editor of the *Newsletter*); available at <http://www.cschs.org/wp-content/uploads/2014/08/2010-Newsletter-Spring-Intersection-of-Law-and-Scholarship.pdf>.

<sup>4</sup> See my “Research Notes and Concluding Comments” on this topic and several others at the end.

Bakken, and thus in a sense remains, like the original, only an introduction. That is, despite the copious lists of sources concerning myriad topics that may be found here, this bibliography, too, remains inherently and inevitably incomplete — there is, and likely will always be, even more information out there regarding California legal history than can ever be captured in a bibliography.

That is partly because, like any other field of history, California legal history is a moving target: new books, articles, and theses are being written or are already in the publication pipeline even as this introduction is being written, while existing primary and secondary materials are being found — or recognized as relevant — and added to library or archival collections, catalogs, indexes, and finding aids. Such items are not yet listed in indexes or databases to be found. So, just as one cannot put one's foot in the same river twice, this snapshot of the state of California legal history, begun in the summer of 2015, would be doomed to incompleteness at the outset and in ever-greater need of updating later, like its predecessor, if not for the new era of digital, online publishing.

This bibliography is nevertheless predestined to be incomplete for the added reason that it remains practically impossible to construct and conduct theoretically perfect searches that produce all actual relevant results (and, preferably, no irrelevant ones) on any topic, and certainly on a topic as broad and diffuse as California legal history. It is frankly daunting, even humbling, to approach a subject as broad and multi-faceted as “California legal history,” to confront even a fraction of the myriad potential sub-topics, directions, and paths one may wander down in pursuit of that broad, amorphous general topic, and to recognize that law and legal history potentially touch almost all aspects of human existence and vice versa. John Muir's famous quote is singularly appropriate here: “When we try to pick out anything by itself, we find it hitched to everything else in the Universe.”<sup>5</sup> Where, exactly, does legal history stop, and “ordinary” history, or life, begin? In terms of digital research, the proliferation of sub-topics entails a similar proliferation of potential search terms. And there is no one master database, and no one set of “correct” search terms, that will produce everything that could be appropriately characterized as California legal history — which categorization necessarily requires a

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<sup>5</sup> See [http://vault.sierraclub.org/john\\_muir\\_exhibit/writings/misquotes.aspx](http://vault.sierraclub.org/john_muir_exhibit/writings/misquotes.aspx).

human judgment call, anyway. Rather, the results must be chased down using various different search terms in several different databases, and, perhaps contrary to the idealized theories of information science, in reality, if you switch databases, or even if you switch search terms or strategies using the same database, you will continue to find new relevant results that did not appear in earlier searches. Although this bibliography was compiled from many different searches in many different databases producing thousands of potentially (but not always actually) relevant results that had to be sifted one by one, along with other search techniques and many helpful suggested items for inclusion from members of the editorial board of *California Legal History*, it did not (and could not) draw upon literally every conceivable search in every available database. For this reason, too, it is inevitably incomplete.

With the caveat that this bibliography (even with ongoing improvement) can by no means be the final word on the subject, and remains only an introduction, a gateway into the field of California legal history the way Fritz & Bakken's original essay was, it is nevertheless hoped that it may serve as a helpful, useful, maybe even stimulating exposure to the vast, diverse, complex richness that California legal history has become. Indeed, hopefully some readers and researchers may come away with some of the same sort of feeling of discovery, and awe, that the author/compiler experienced — rather like Howard Carter reportedly murmured in 1923 following his first glimpses of the treasures in Tutankhamun's tomb, in response to Lord Carnarvon's question, "Can you see anything?"

"Yes, wonderful things."<sup>6</sup>

## SPECIAL HONORS & COMMEMORATIONS

Although it is not the purpose of this bibliography to play favorites, certain scholars have made particularly notable and extensive contributions to scholarship in various areas of California history, and this bibliography seeks to appropriately recognize their efforts. For the most part, such special contributions are commemorated at or near the beginning of relevant topic headings — with the following two exceptions concerning two scholars who have made particularly major and broad-ranging contributions to California legal history in general.

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<sup>6</sup> See [https://www.goodreads.com/author/quotes/202032.Howard\\_Carter](https://www.goodreads.com/author/quotes/202032.Howard_Carter).