William Henry Hastie—The Lawyer

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He was, as others have duly noted, a jurist of the very first rank. As a lawyer in federal service and later as Governor of the Virgin Islands, he was an auspicious representative of his people, invariably willing to shoulder his acknowledged responsibilities as an ambassador and a leader. As Dean of the Howard Law School, he won the acclaim of students and colleagues alike for his extraordinary intellect and marvelous teaching ability. And lest we forget, William Henry Hastie earned the title "esquire" both for his comportment, which was gentlemanly, and for his skill as an advocate, which was prodigious.

I knew Hastie in all of these capacities. In each he achieved widespread and lasting fame. Nonetheless, without keen appreciation of the interrelationship of these separate roles, some of the fullness of his legal career is apt to be lost. Hastie's contributions to the law cannot be measured solely by the power and precision with which he pronounced it from the bench, nor by the accomplishments of scores of younger lawyers who profited so handsomely by his tutelage and his example. Neither can the impact of Hastie the lawyer be accurately evaluated simply by scrutinizing the several landmark cases in which he participated before the Supreme Court and other tribunals about the land.[1]

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[1] Among the most notable cases in which Hastie was a principal were Fisher v. Hurst, 333 U.S. 147 (1948) (enforcing the mandate of Sipuel v. Board of Regents, 332 U.S. 631 (1948) that blacks must be accorded access to professional schools of equal quality with whites); Morgan v. Virginia, 328 U.S. 373 (1946) (described in the text); Smith v. Allwright, 321 U.S. 649 (1944) (invalidating Texas' "white primary" rules); and Alston v. School Bd., 112 F.2d 992 (4th Cir. 1940) (declaring unconstitutional separate salary schedules for black and white public school teachers). In addition, he ably served the NAACP as amicus curiae in, *inter alia*, Railway Mail Ass'n v. Corsi, 326 U.S. 88 (1945) (upholding a New York law prohibiting discrimination in labor organizations) and Steele v. Louisville & Nashville R.R., 323 U.S. 192 (1944) (establishing under the Railway Labor Act, 45 U.S.C. §§ 151-88 (1970), a duty of labor organizations that are exclusive bargaining representatives of a craft or class to refrain from discrimination). He was a prime mover in the effort to outlaw racially restrictive housing covenants that culminated in Shelley v. Kraemer, 334 U.S. 1 (1948). *See* Mays v. Burgess, 147 F.2d 869 (D.C. Cir.), *cert. denied*, 325 U.S. 868 (1945).

To grasp the point, one must first understand the methodology by which a large volume of civil rights litigation was conducted out of the nexus of the Howard Law School, civil rights organizations, and dedicated lawyers across the country. In the beginning, around 1940, besides Hastie there were Charles H. Houston, architect of the modern Howard Law School and common mentor for those comprising a newly-formed legal corps; Thurgood Marshall, Houston's up-and-coming protégé—destined for the Supreme Court bench; James M. Nabrit, Jr., a distinguished law professor who was to ascend to the presidency of Howard University; Leon A. Ransom, another esteemed law teacher; and George E. C. Hayes, a practitioner long revered as an advocate. There were others, from near and far, and their number increased as time marched on. So it was that during Hastie's tenure as Dean that the Howard Law School became headquarters for a legal collective bred by a shared purpose and united by mutual respect.

Any lawyer anywhere with a meritorious case involving an issue of racial discrimination could find help just for the asking. At any moment one might be confronted by another with urgent need for anything from a co-author on a brief to a devil's advocate for testing a troublesome point. When something larger was in the offing, everyone available rushed together into the breach. Ofttimes the identity of the last late-night compatriot who provided a crucial nuance or shored up a sagging syllogism went unacknowledged; sometimes even critical contributions went unreflected in the listing of counsel on the briefs. Oversights of that sort were of no moment, for those who labored sought not glory but results, and the successes of that difficult era made it all worthwhile.

Hastie was a charter member of this informal but closely-knit group, and one of its most faithful and ardent adherents. He was unstinting in his willingness to assist and advance the common objective. Despite the constantly heavy demands of his deanship, he could always be counted on to respond to the plea of a beleaguered brother-in-arms. More importantly and fortunately for us and for our clients, he brought into the joint effort the rare and precious qualities that were distinctively his. No one among us possessed greater facility as a logician or debater, yet the talent we chiefly sought lay elsewhere. His courtly reserve was emblematic of an ability to approach problems from a perspective divorced from the emotions of a lifetime—emotions

felt deeply, but kept completely under control in his personal and professional relationships. Calm and dispassionate presentation of ideas was undeviatingly his manner, and clarity of expression his trademark.

Hastie had the knack of converting anyone's train of thought, however abstruse or emotionally loaded, into words having a cool but incisive thrust immediately accessible to his readers. This is not to say merely that he was a great legal composer; it is to say a great deal more. He could channel not only legal propositions but also the aspirations of millions of black Americans into prescriptions for social change capable of moving jurists who had to be persuaded of the merit of his arguments—and acquainted with the moral virtue of their acceptance. Perhaps the clearest example of this faculty, and certainly one of the most important, was the closing statement he composed for the brief in *Morgan v. Virginia*[2] on behalf of a black woman convicted in 1944 for refusing to move to the rear of a Virginia bus:

> Today we are just emerging from a war in which all of the people of the United States were joined in a death struggle against the apostles of racism. We have already recognized by solemn subscription to the Charter of the United Nations . . . our duty, along with our neighbors, to eschew racism in our national life and to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." How much clearer, therefore, must it be today, than it was in 1877,[3] that the national business of interstate commerce is not to be disfigured by disruptive local practices bred of racial notions alien to our national ideals, and to the solemn undertakings of the community of civilized nations as well.[4]

Another aspect of *Morgan* typifies both the *modus operandi* of civil rights lawyers during the 1940's and the skill and strength of Hastie's advocacy. As Dean of the Howard Law School, Hastie appointed me to a faculty post at the Law School in 1939, three months after my graduation therefrom. For much of the

[2] 328 U.S. 373 (1946).
[3] The reference is to Hall v. DeCuir, 95 U.S. 485 (1877).
[4] Brief for Appellant at 28, Morgan v. Virginia, 328 U.S. 373 (1946).

ensuing decade, I was terribly busy learning at his feet, and those of Houston, Marshall, and other first-rate legal craftsmen. That golden opportunity was a principal reason for foregoing my bar examination for four years and, for another four, commuting weekly from part-time law practice in Richmond to law teaching at Howard. Ms. Morgan was my client, and I had represented her in the Virginia courts. Because all civil rights litigation before *Brown*[5] in 1954 had been overshadowed since 1896 by the *éminence grise* of *Plessy*,[6] the argument for Ms. Morgan, modeled on the Supreme Court's 1877 decision in *Hall v. De Cuir*,[7] was that racial segregation in interstate travel transgressed the federal commerce power. That approach was well off the beaten track of fourteenth amendment due process and equal protection, and required initiation into a different order of constitutional mystery. When *Morgan* became ripe for appeal to the Supreme Court, however, I did not qualify for admission to its bar because I did not have the necessary three years as a practitioner before the highest court of a state.

I called for help, and it came readily from Hastie and Marshall. Both were steeped in the intricacies of that era's construction of the fourteenth amendment, but *Morgan* demanded a mastery of the lore of the commerce clause, which was certainly not their forte. Thus for a while the pupil, to his infinite delight, had an opportunity to instruct the masters. They were apt students, of course, and in no time they became learned in the arcana of yet another area of constitutional law. They demonstrated their newly acquired proficiency by adding substantially to the quality of the brief and by presenting superb oral arguments, which persuaded the Court to the soundness of our position.

Indeed, for a moment during oral argument it seemed that at least Hastie might have been too skilled. The segregation practice to which Ms. Morgan had been subjected prompted inquiry from the bench about whether the issue called for an application of the fourteenth amendment—an undertaking portending a head-on collision with *Plessy*. I winced inwardly when the question was put, for I knew Hastie was bursting with arguments against *Plessy*'s separate-but-equal doctrine which he thought were irrefutable. In 1954 his conviction was vindicated,

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[5] Brown v. Board of Educ., 347 U.S. 483 (1954).
[6] Plessy v. Ferguson, 163 U.S. 536 (1896).
[7] 95 U.S. 485 (1877).

but in 1946, when *Morgan* was argued, no one could predict reliably how such a sweeping contention would fare. Hastie quickly calculated the odds: an assault on separate-but-equal might not only fail but might even divert the Court's focus from the commerce clause thesis, which we felt was eminently sound. So Hastie resisted the temptation to air his strongly held views on *Plessy*, and instead took a course at once wise and bold. His response was that the litigation before the Court neither required nor urged a reconsideration of *Plessy*, but he intimated that someday he would be back with just such a challenge.

As fate would have it, that day never came for Hastie, although it did for others. Hastie was a federal judge when, several years later, we did return to the Court with that challenge —in *Brown* and its companion cases. But our heritage from Hastie's days in law practice remained with us to inspire that arduous endeavor and enhance its success. It is hardly an overstatement to say that those landmark decisions of the 1940's and 1950's stand as intangible but indestructible monuments to men like Hastie, as does the revival of the dreams and hopes of countless Americans that followed in their wake.