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Federal Justice in California

*The Court of Ogden Hoffman,
1851–1891*

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P R E F A C E

At his death in 1891, Ogden Hoffman was one of the longest-serving trial judges in the history of Anglo-American law. For forty years following his appointment in 1851, Hoffman presided over the United States District Court for the Northern District of California. Simply hearing and dealing with the initial complaints of tens of thousands of litigants was an extraordinary achievement. But Hoffman's career is important apart from the staggering amount of work he accomplished and his record for judicial longevity. Hoffman's judgeship offers a special opportunity to examine the nature of the common-law tradition, the making of a trial judge, and the operation of a federal district court in the nineteenth century.

Precisely because Hoffman was a trial judge, his experience provides fresh insight into the nature of the judicial process and the workings of the common law. Since he rarely decided appeals, his judgeship is an important counterpoint to the type of judicial experience from which most of our understanding of common-law judging is drawn. Overwhelmingly, the appellate process has been the focus of studies and reflections exploring the nature of common-law adjudication.¹ Similarly, appellate judges dominate as subjects of judicial biography. It may be that appellate judges and their courts have been considered more important to the legal history of the United States, since their decisions frequently have a more general effect. Yet this scholarly emphasis has come at the cost of leaving us largely unaware of the operation of law at the trial level, where most people participate.

Hoffman's judgeship also provides a detailed picture of federal trial court practice over time. During his tenure, Hoffman exercised virtually all types of jurisdiction that a federal district court of the nineteenth century could: circuit court powers, special land jurisdiction, and proceedings in bankruptcy, as well as the traditional fare of the admiralty, criminal, and common-law and equity dockets. The judicial business of his court was subject to wide fluctuations. Indeed, an examination of the over 19,000 cases filed during his forty-year tenure reveals that Hoffman's greatest judicial labors occurred in several, somewhat overlapping, periods. Ultimately, the statis-

tical analysis of the judicial business before Hoffman's court makes it possible to test the typicality of the northern district by comparing who used the federal trial courts for what purposes and with what results.²

The fundamentally different roles that trial and appellate courts play in our legal system undermine the validity of generalizing about trial courts based on the appellate experience. Trial courts are principally concerned with applying law after a determination of facts, whereas appellate courts primarily review the correctness of the law as applied.³ These distinct functions of trial and appellate courts produce important differences in the experience of the two types of judges, both in the nineteenth century and today. Trial judges preside over the initial conflicting claims made by litigants and their lawyers and are more directly exposed to the circumstances that give rise to litigation than are appellate judges. Further, the judicial business of trial courts is readily distinguished from that of appellate courts by its far greater volume of cases, most of them routine. Moreover, in the nineteenth century, federal district judges performed their tasks largely alone, without the collegiality that both state and federal appellate judges enjoyed.

These institutional differences and the judicial experiences that they fostered clearly shaped Hoffman's judgeship. Indeed, the kind of judge Ogden Hoffman became owed much to the fact that he sat on a trial court. Although this institutional framework influenced both Hoffman's judicial character and the substance of his opinions, it hardly led to uniformity in the behavior of all federal judges. Different backgrounds, experiences, education, and political views helped shape distinctive judicial personalities within the context of a similar institutional structure.

Although the functional differences between trial and appellate courts should not be overlooked, neither should they be exaggerated. To differing degrees, both types of judges were engaged in the essential process of the common law: explaining the reasons for their decisions through written opinions. In Hoffman's day, as well as our own, judicial opinions were largely seen as the measure of a judge's contribution to law, society, and legal history. Traditionally, scholars have relied on judicial opinions as the best source for understanding the philosophy of judges and the values or ends their courts promoted.

Hoffman's opinions do offer substantial insight into his judicial attitudes,

but along with other trial court judges, he left behind even more valuable sources for understanding his judgeship and his court: the case files and docket books constituting the judicial work of the northern district. Published judicial opinions are a discrete and readily accessible source. Confronting the sheer volume of archival documents in the case files, on the other hand, is a daunting task. Still, the effort is indispensable if we are to penetrate the inner workings of trial courts, assess their role in a community, and trace the relationship between the activity of judging and the development of judicial attitudes and temperament.

Moreover, combining Hoffman's judicial opinions with this additional archival source produces a comprehensive picture of a federal district court, a picture that can be compared with broader assertions about the role of law and the courts during Hoffman's period. The vast majority of cases—including those that involved or affected commerce—never went to trial, and of those that did go to trial, only a fraction were appealed. Thus, whereas legal doctrine involving such subjects as contract and tort can be traced through published opinions and treatises, day-to-day commercial litigation by and large remains an uncharted land.

Recently, legal historians have focused on two general themes: whether and to what extent judges facilitated economic and commercial development, and changes in the style and reasoning of judicial opinions. Much of this discussion of the role of law in promoting American economic development in the nineteenth century has revolved around interpretations advanced by Morton J. Horwitz and James Willard Hurst.⁴ Although Horwitz, Hurst, and others discussing the subject have reached different conclusions, none of their interpretations draw on a detailed analysis of the judicial business of a nineteenth-century trial court.

Strictly speaking, this study is neither a biography nor an institutional study. Hoffman's background, education, and aspirations influenced his behavior and self-perception as a judge. This interplay between Hoffman the person and Hoffman the trial judge is the key to understanding his judgeship. How Hoffman came to comprehend his role as a federal judge and how his court was used by litigants are equally necessary in assessing the broader significance of the northern district. It is important both to appreciate the personal dimensions of Hoffman's court and to place his judicial business within a social, political, and economic context. Thus, the context

of Hoffman's judgeship is first established by examining his background and judicial ambitions before analyzing the principal areas of his judicial work.

Like all authors, I have accumulated many debts in the course of writing this book. In reducing the financial kind, I am thankful to the University of California for an Otilie R. Schubert Fellowship, to the Henry E. Huntington Library for a Post-Doctoral Fellowship, and to the American Bar Foundation for a Fellowship in Legal History.

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1

Beginnings

New York Origins and San Francisco Lifestyle

Understanding Ogden Hoffman and his judgeship requires an appreciation of his extraordinary pride. One revealing comment is found in a letter he wrote in 1878, alluding to his “long descent from an historic name.” Hoffman’s pride in himself and in his family was both a source of strength and the cause of many hurts, real and imagined. This pride would help him cope with the disappointments he suffered later in life in his pursuit of higher judicial office.¹

Much of Hoffman’s pride came from the prominence of his grandfather and father as members of the bar and as leaders in the political life of New York. His grandfather, Josiah Ogden Hoffman, was a well-known Federalist and New York City trial lawyer who moved in the highest social and political circles of that city. During the course of his career, Josiah served in the New York Assembly, as recorder of New York City, as attorney general during John Jay’s governorship of the state, and as a superior court judge for the last eight years of his life.²

By all accounts, Josiah was a man of fashion and a “court of last resort in the quiddities of minuets and precedence at table.” He also engaged in extensive investments in land—at first successfully. In the late eighteenth century, Josiah purchased much property in upstate New York, as well as around

New York City. Unfortunately, by the 1820s he had lost all he had made. Indeed, in 1823 he wrote a confidential letter to the New York governor, Joseph Yates, requesting a judgeship because his income was “insufficient” to defray “family expenses.” Being greatly “embarrassed and perplexed” by his reduced circumstances evidently drove him to drink. Although he lived until 1837, his last years were not happy.³

Likewise, Hoffman’s father followed a similar pattern of attaining a widespread political and legal reputation but ultimately encountering financial failure. Graduating from Columbia College in 1812, Hoffman’s father, Ogden Hoffman, Sr., joined the U.S. Navy when hostilities broke out with Britain. Resigning his commission in 1816, Hoffman read law in New York City and in Goshen, Orange County, New York. During this time he developed his talents as an orator by participating in a series of public debates. Toward the end of his legal apprenticeship he married Emily Burrall, whose well-to-do Orange County family would prove to be an important source of financial support for the Hoffmans.⁴

During the first years of Hoffman’s legal practice in Goshen, Emily gave birth to two sons, Charles in 1821 and Ogden Hoffman, Jr., in 1822. Meanwhile, Ogden senior began to make a name for himself. In 1823 he was appointed district attorney of Orange County, and two years later the county voters elected him to the state assembly. After one term, Hugh Maxwell, the district attorney for New York City, made Hoffman his law partner. Prompted by this mark of professional advancement, Hoffman moved his family into the wider circle of opportunities presented by New York City. His association with Maxwell resulted in his appointment as the associate counsel in a number of notorious criminal cases prosecuted by the New York district attorney. After a second term in the state assembly in 1828, this time representing New York City, Hoffman succeeded his partner as the district attorney for the city in 1829. Retaining this position for seven years gave him considerable trial experience and public exposure.

During this period Hoffman’s reputation grew and so did his expenditures. His wife’s relatives, the Wickhams, proved to be the most important stabilizing force for the Hoffman family. By 1827, Emily insisted that the family spend the summer at Goshen with her relatives, to save money. A good deal of the financial strain on the family, however, stemmed from Hoffman’s capacity to spend money. Even before his appointment as the district attorney for New York City, he moved his family to a new, more fashionable

address on the west side of Broadway. Although Emily found the two-storied house "very pleasant," she objected to the annual rent of \$850. On more than one occasion the Wickhams provided funds to the renowned advocate, but poor businessman, to keep his family out of debt.⁵

While Hoffman was serving as New York City's district attorney, his wife died. She had borne him five children, but only Charles and Ogden survived into adulthood. After Emily's death, her uncle, George Wickham, and his wife, Bridget, took a major part in raising Charles and Ogden. Goshen became the country haven for the two Hoffman boys, who filled the days with hunting, fishing, and watching trotter-horse racing, for which the town was well known. By the time Hoffman remarried in the late 1830s, the two boys were nearing their late teens. Hoffman's second wife, Virginia Southard, established additional connections for her husband's advancement. His new father-in-law, Samuel L. Southard, served as the secretary of the navy from 1823 to 1829 and as a Whig senator from New Jersey from 1833 until his death in 1842.⁶

Between 1820 and 1835, Hoffman continued to enhance his reputation both as a prosecutor and as a political speaker. During this time he broke from the Democratic party because of President Andrew Jackson's hostility toward the Second Bank of the United States and joined the National Republicans—the nascent Whig party. For the next twenty-five years he lent his support to the Whig cause and in 1837 entered Congress, where he served two consecutive terms. Although Hoffman shared many Whig assumptions held by men of his class, such as the benefits of an active governmental role in the economy and the natural right of educated, well-born, and wealthier men to be leaders of society, he gravitated to the most conservative wing of his party. Following in the Whig tradition of Henry Clay and Daniel Webster, these conservatives resisted and resented any discussion of issues that increased sectional tensions. Slavery, in their view, had been accommodated in a constitutional compromise that ought not to be tampered with by either the North or the South. Hoffman described the Missouri Compromise as "a holy theory, above the reach of Political Legislation." Hence it was not surprising that he was described as "one of the *National Whigs*."⁷

The calls by such Whigs for preserving the Union above all else and decrying demagogues and party spirit seem unrealistic given American political life and experience in the 1840s and 1850s. Still, their desperate

efforts to cling to a mythical political past—a time of supposed apolitical stability featuring respectable and dignified leaders—formed an essential aspect of the conservative Whigs' outlook that Ogden junior inherited from his father.⁸

Hoffman's principal value to the Whig party was not as a strategist or political thinker but as a popular speechmaker. Throughout the 1830s and 1840s, Hoffman became a frequent speaker at Whig assemblies, sometimes sharing the speaker's platform with Daniel Webster and often presiding over political dinners. His forte was the seemingly extemporaneous two-to-three-hour speech. Philip Hone—a prominent Whig and leader of New York society—declared he had not heard a speech “delivered with greater grace and eloquence” than was Hoffman's address to the alumni of Columbia in 1832. Generally regarded as “one of the great orators of his generation,” Hoffman had a dignified bearing and possessed “a voice of magic eloquence and a court manner, polished, suave and courteous.” Such traits served him well both on the political stump and in the courtroom.⁹

Hoffman's oratorical skills were extremely important to his fellow Whigs because such speechmakers were expected not only to defend the principles of Whiggery but also to inculcate these values among the people. Whereas today these nineteenth-century rhetorical productions may seem didactic, moralizing, and verbose, they were meant to appeal to both head and heart. In large measure a lost art form whose meaning and value have faded, the speeches that Webster and Hoffman delivered helped define the dominant American political imagery of the nineteenth century.¹⁰

In addition to his oratorical skills, Hoffman had exceptional social credentials. Beyond his immediate ancestors, Hoffman traced a relationship back to Alexander Hamilton. Murray Hoffman, a New York judge and a prolific treatise writer, was a closer relation whose reputation added luster to the family name. By marriage the Hoffmans were also related to the socially prominent Hone family of New York City. The combination of Hoffman's social credentials, professional talent, and political role brought his family within New York's most elite social circles.¹¹

Despite his reputation, Hoffman repeatedly missed opportunities to consolidate a fortune. He had all the instincts of a well-born member of New York society, but he lacked both an inheritance to indulge his style of living and the drive to convert his professionalism into a sufficient source of income. One friend described Hoffman as having a “slip-shod laziness—a

way of basking in the sun all summer at Rockaway and lounging at the Union Club and strolling through the [law] courts all the rest of the year, save when some special matter stirred up his faculties." Another friend described Hoffman as "an extravagantly high liver." Indeed, the cost of actively participating in New York City's finest clubs proved ruinous. Hoffman's financial difficulties, combined with his determination to live as a society gentleman, led to predictable results. Spending beyond his means and neglecting his business matters, he repeatedly brought his family into dire financial straits. In these crises, the Wickham money helped, but Hoffman invariably failed to reduce his spending.¹²

Whig President William Henry Harrison's election in 1840 brought Hoffman's reward: an appointment as the U.S. attorney for the Southern District of New York. To a friend, the appointment seemed "hardly . . . worth accepting to a lawyer of his distinction." But Hoffman readily accepted the post with its \$6,000 annual salary. Nonetheless, he made almost desperate attempts to earn additional fees over and above his set compensation by characterizing lawsuits as outside his official duties. Yet in the midst of his financial difficulties, Hoffman spent money he did not have to fix up what he called the family's "*County Seat*" in Goshen. In any event, his federal salary came to an end when President James K. Polk, a Democrat, removed him from his post in 1845. Hoffman returned to private practice, but two years later his wife, Virginia, alluded to his "trouble" and struggle to "discharge his heavy duties." However, the election in 1848 of a Whig president, Zachary Taylor, held out the promise of additional federal patronage—especially given Hoffman's many services to the party as a stump speaker during the campaign.¹³

Unfortunately, his pride and his self-perception that he was not a politician interfered with his desired reappointment as the U.S. attorney. As much as he needed the job, he merely wrote to the secretary of state saying that the office "would be acceptable" to him and alluding to his prior record as federal prosecutor. Too late, Hoffman sent a note inquiring about the status of his application. "I have the vanity to believe that my appointment would be popular with a large majority of the Whigs of this city: But if my professional, political, or personal character . . . is not now strong enough, my pride will not suffer me to bolster it up by certificates." Hoffman did not get the appointment.¹⁴

Hoffman's behavior can best be understood in terms of an old-fashioned

Whiggery that marked the outlook he transmitted to his son. Essentially, such men were uncomfortable with the new form of mass-movement and organized politics emerging during the Jacksonian period. Despite their own political ambitions and goals, they continued to see themselves as antiparty, opposed to the demagoguery they saw around them, and committed to a personalized leadership that rose above parties. Such men had difficulty admitting their own ambitions and politicking; they preferred to believe, in the words of David Walker Howe, that high office "was a moral reward rather than an object of competitive striving." This distaste for political partisanship clearly hampered them in the competition for office, as Hoffman's experience in New York demonstrated. Likewise, this aversion to party politics would later frustrate the plans of Hoffman's son Ogden for judicial advancement in California.¹⁵

Hoffman had better luck capitalizing on his Whig connections within New York State. In 1853 he won election as the Whig candidate for state attorney general. But financial troubles still plagued him, and the "constitutional fetters" around what he called his "miserable compensation" of \$2,000 a year did not improve matters. By April 1855 he was desperate. Many of the suits that he had filed as attorney general had not yet become judgments, and thus costs he was entitled to remained uncollectable. Moreover, he had spent most of his quarterly salary repaying loans from friends. Hoffman wrote a confidential letter to Thurlow Weed, a leading New York Whig, asking help to meet "a debt of sacred honor"—some \$500 for a loan imminently due. He lamented being "cut off *from business, and all honors, without one dollar*" to meet his present emergency and hoped that after Weed helped him out, they could have "a frank conversation" so that Hoffman could "explain . . . the disease and consult [Weed] as to the remedy."¹⁶

Yet, Hoffman's financial health did not improve, and his physical health soon failed him. When he died at the age of sixty-three on May 1, 1856, he left his wife, their three children, and his two sons by his first marriage, Ogden and Charles, "absolutely penniless" and in debt. Hoffman's close friends discreetly took up a collection to stave off the disgrace of destitution that faced his family and to place them "above the fear of want." Even so, his widow opened a "school for young ladies" to support the family that Hoffman had left behind.¹⁷

Ogden Hoffman, Jr., nicknamed Og as a youth, grew up with an acute awareness of the need to maintain one's honor and pride as a gentleman. If

he recognized that his father's sort of pride and honor had contributed to his indebtedness, it was a lesson Ogden chose to ignore. Indeed, the elder Hoffman succeeded very well in giving his son a heightened sense of the importance of living like a gentleman, even at the risk of exceeding one's financial limits.

In addition to leaving Ogden with a strong sense of pride and honor, Hoffman also encouraged his son's wide-ranging interests and intellectual curiosity. Ogden's inquiring mind and his interest in many subjects other than law owed much to his father's model and the salon atmosphere of the household. Hoffman's oratory drew on history and literature as well as a knowledge of law. As one biographer put it, Hoffman was never "a mere case lawyer." Moreover, a bent toward literature came naturally in a family where the writer Washington Irving bounced young Ogden on his knee and where one uncle, Charles Fenno Hoffman, attained contemporary distinction as a novelist and as the editor of the *Knickerbocker Magazine*. Ogden's father's house had been a common ground for great statesmen, lawyers, writers, and intellectuals of the day.¹⁸

Ogden's youth also bore the marks of his father's two marriages. Perhaps inevitably, the two surviving children of Hoffman's first marriage felt somewhat estranged from their stepmother, Virginia, with whom their father started a second family. Ogden apparently had few memories of his own mother. Rather, his childless aunt, Bridget Wickham, became a surrogate mother to him, as she had with his brother, Charles.¹⁹

Overindulged, Ogden grew up without developing habits of fiscal responsibility. His father hardly provided an appropriate model. The son, like his father, had a flair for living, and he managed from a rather young age to overspend—in part, perhaps, responding to social pressure to maintain the standards of a gentleman. Even as a minor, Ogden disposed of his independent income—made possible by bequests from his mother's family—too quickly. His letters to his Aunt Bridget were filled with requests for more money or with calculations of money due him under a family trust.²⁰

Ogden's father, perhaps in part because of his frequent absences after their mother died, also indulged and spoiled the two boys. Not surprisingly, the effects of this behavior showed. Hoffman described Ogden at seventeen as "upon the whole . . . a good boy," who nonetheless needed to "correct the faults of his disposition." Warning Bridget Wickham, at whose home the Hoffman family was about to arrive, Ogden's stepmother noted, "[Ogden] is

more unruly and ungovernable than ever—so I hope you will provide yourself with a large stock of fortitude and patience.” Virginia also referred to “his ceaseless tongue,” a trait that continued to characterize Ogden in later years, long after he mastered his temper.²¹

Indulgence as a child stemmed in part from his health. Frail from birth, Ogden grew up particularly susceptible to respiratory illnesses. During the long periods spent with the Wickhams in Goshen as a child, Ogden was cautioned by his father not to “overexercise” and thereby lose the “health advantages” of his stay. Persistent coughs continually threatened to become more serious, and even as he grew older the state of his health remained a concern.²²

Still, Ogden managed to live the high life that the social elite enjoyed in New York. The Hoffmans, as a family, frequented the upper-class resorts, such as Saratoga Springs. Evenings of playing whist with prominent politicians or of attending fancy-dress balls with socialites left a taste for New York society that no amount of club life in San Francisco would erase.²³

As did his father, Ogden attended Columbia College, and in 1840 he received his B.A. During this time Ogden studied the classics and read widely in history and literature—considered the correct foundation for a young gentleman of his background. Indeed, Columbia was only the first step in acquiring an elite education. Soon after graduation he began to study law under Justice Joseph Story and Professor Simon Greenleaf of the Harvard Law School.

In 1840 Harvard offered the only national legal education in the country. It earned this reputation both from the geographical diversity of its students and the scope of its curriculum. The ninety-nine students entering with Hoffman, for example, came from twenty-one states, from Quebec, and from Ireland. More important, the school continued to embody Story’s vision of a training ground for the country’s future leaders, who would emerge knowledgeable about an American common law and imbued with a nationalistic constitutionalism. The goal of the law school, in Story’s view, was “to teach law not as a body of fixed principles to be memorized but as a system and method of adjusting old rules to changing circumstances or, if necessary, of making new rules from old materials.” Despite different teaching styles, Story and Greenleaf shared this educational mission. Hoffman’s judgeship demonstrates that he grasped their message and took it to heart.²⁴