



Cheshire Dormistor

IN MEMORIAM

Michael E. Smith
Professor of Law, Emeritus
UC Berkeley
1935 – 2009

University of California, Berkeley, School of Law Professor Emeritus Michael E. Smith died on March 29, 2009, at the age of 73. He had been diagnosed with pancreatic cancer about a year before.

Born on August 3, 1935, Smith grew up in Great Neck, New York, and Gloucester, Massachusetts. After receiving a B.A. from Haverford College in 1956 with a major in history and government, he worked for two years, first as a community service worker for the American Friends' Service Committee and then as an instructor in world history at Cheshire Academy.

In 1958, he became a graduate student in government at Harvard University, obtaining his M.A. in 1963. He then attended the law school of the University of Michigan, earning his J.D. in 1964.

Smith went on to serve for a year as a law clerk to Judge Sterry Waterman of the U.S. Court of Appeals in New York City and for a second year as a law clerk to Chief Justice Earl Warren of the U.S. Supreme Court.

In 1966 Smith married Martha Julia Barnes, and the newlyweds spent a year traveling abroad.

Smith joined the law faculty at the University of California, Berkeley, in 1967. Apart from a period of public service in 1976-77 as chief staff counsel to the U.S. Court of Appeals in the District of Columbia, he taught at Berkeley for 40 years.

During his time at the School of Law, Smith mastered and taught a dazzling array of diverse subjects that included criminal law, constitutional law, legal history, estates and trusts, federal courts, corporate law, and conflict of laws.

His first major scholarly effort consisted of an exhaustive narrative account of the labor troubles in California's central valley in the early years of the twentieth century.

Next Smith turned his attention to federal judges and federal courts. Although his planned legal history of the Second Circuit Federal Court of Appeals was never completed, one of his most important publications came from this period: "Judge Charles E. Clark and the Rules of Civil Procedure," appearing in the *Yale Law Journal* in 1976. In this article, Smith compared Clark's views as a law professor and one of the drafters of the Federal Rules with the way Clark dealt with the rules when on the bench. Subsequent articles from his research in this era included "How Liberated Was Judge Jerome Frank?" (*Michigan Law Review*) and "Justice on Appeal" (*University of Michigan Journal of Law Reform*). This was also the period when Smith took leave for a year to work for the Federal Court of Appeals for the District of Columbia Circuit, and during that service he co-wrote the *Handbook of Practice and Internal Procedures* for the Court.

After returning from Washington, Smith became especially interested in religion, as well as law and religion. He earned an M.A. in moral theology from the Graduate Theological Union in Berkeley in 1982, and he began to do scholarly research and writing in that field. For example, he published "The Special Place of Religion in the Constitution" (*Supreme Court Review*, 1984), "Religious Activism: The Historical Record" (*William and Mary Law Review*, 1986), and "Relations between Church and State in the United States" (*American Journal of Comparative Law*, 1987).

Following a sabbatical leave year (1990-91), Smith initiated a course on concepts of punishment, first to law students and later to both law students and to undergraduates through the Legal Studies Program. This class, in a sense, merged his interests in both criminal law and religion.

In 1994, he became an emeritus professor, but he continued to pursue his teaching and scholarly interests. In addition to the concepts of punishment course, Smith developed what turned out to be a very popular course on law in the Bible that he taught for several years to undergraduates through the Legal Studies Program. Indeed, he continued to teach that course until a year or two before his death.

As a result of this later teaching Smith published "Punishment in the *Divine Comedy*" (*Cumberland Law Review*, 1995) and he completed two long (but still unpublished) manuscripts: "Two Kinds of Divine Law in Genesis 1-3" and "The Old Law and the New, According to Thomas Aquinas."

Throughout his career at Berkeley, Smith devoted a great deal of effort to University service. For example, he chaired the campus Committee for the Protection of Human Subjects for several years, served as vice chair for two years as part of his longer service to the campus Graduate Council, and for a number of years headed the Law School Admissions Committee.

Smith was a member of St. Margaret Mary Roman Catholic Church, where he attended the Latin mass. One of the brightest parts of his final years was hiking with his collie, Cleo, in the hills and mountains of the West.

Smith is survived by his wife of 42 years, Martha, and their son, David.

John E. Coons
Sanford H. Kadish

2009