

HASTINGS COLLEGE OF THE LAW THE FIRST CENTURY

By Thomas Garden Barnes

PREFACE

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Preface

THIS STUDY is the official Centennial History of Hastings College of the Law, which was commissioned by the Board of Directors in 1973. The faculty History and Arts Committee, under the chairmanship of the late George E. Osborne, discussed the nature of the project with me and invited me to undertake it. What the Committee wished was a full-length history of the first century of the College that would also make a contribution to the history of California and to that of legal education in the United States. This wish accorded entirely with my own idea of what I should do, because my principal scholarly interests have been in the history of institutions, either legal institutions or institutions closely connected with the law, in the context of political and social change, usually with a definite local focus. What made the task both stimulating and difficult was unfamiliarity with time and place, both far from my previous scholarly concentration. An historian of Tudor and Stuart legal history, who has felt very daring in making sorties into the legal history of early Massachusetts and French courts about 1600, I found it a new experience to work in "recent" history in the American Far West. This required the acquisition of a great deal more knowledge of American and California history than I would otherwise have attempted. I am left with a certain uneasiness about writing the history of an institution which is not only not defunct but very lively

as it rushes into its second century. On reflection, after the fact, the work done, I have quieted my uneasiness with the recognition that there are certain similarities in the development of all institutions in any context irrespective of period. The narrative emphasis that a study such as this demands knows neither place nor time. Certainly, given the paucity of institutional archival material, my fears of being crushed by the burden of documentation with which my colleagues in recent American history must deal were chimerical—and the skills that the mediaevalist and early-modern historian must command to make the best use of what he has in documentation have stood me in good stead. At the time I agreed to write this history, I thought the History and Arts Committee was bold to confide this project to a scholar who has for a quarter of a century exhibited great reluctance to go beyond 1641. No less courageous was the Committee's decision to commission a professor at Berkeley to do the job. Perhaps that my base is primarily the history department seemed reassuring, but that my secondary site is Boalt Hall should have caused some disquiet! I have striven to keep my Berkeley biases under control.

Though this study has been commissioned, it is not "court history," not an exercise in panegyrics. I was in no way connected with Hastings before I began work. Over the course of research and writing, which has occupied me for four years, I have maintained as much distance between myself and the College as I could and still obtain the assistance of the staff for the provision of materials for the research. While I gathered oral evidence in taped interviews, the bulk of my evidence is written. No documentation has been kept from me, no question that I have put has been answered otherwise than fully and honestly, no attempt has been made to impose a viewpoint on the work or its author. This history represents my own best interpretation made on the basis of the evidence. Not everyone will be pleased with

all of it, but their displeasure can only be manifested after the fact.

Because I have not been connected with Hastings other than in this work, this history does not have that graceful intimacy and filial affection which Arthur Sutherland's recent history of Harvard Law School possesses. On the other hand, it is in some ways more ambitious than Sutherland's book, since I have sought to fit Hastings into its regional ambience and also to deal with some of the great issues of American legal education over the past century. This study does assume a certain familiarity with the general history of the United States and an awareness of California's past. Much of the broader context is at most alluded to; I resisted the impulse to write the history of California from the perspective of Hastings. On balance, I believe that Hastings has responded much more to professional and academic influences than to political and social forces. Yet I have avoided the heavily internalized approach that Elizabeth Gaspar Brown took in chronicling the University of Michigan Law School's first century. The glory of Hastings has been its people, who were also singular personalities, not limited to their intramural importance or a purely institutional prominence. Until the last quarter-century at least, Hastings was indeed almost entirely the shadow of its dean at the time. This is no longer true, but the possibility for an individual to make a perceptible and measurable impact on the institution by a single act remains greater at Hastings than in most educational institutions. That so much of the narrative (and therefore the history) centers on personalities is not a misplaced emphasis.

I confess that as I finish the race, I have come to have genuine affection for Hastings College of the Law. It is a seductive place, different, full of enthusiasms, buoyed by pride, lively, loved. But then, this is not to tell any of its faculty, staff, students, alumni, and friends anything they did not already know. This book is of-

ferred to them to tell them more about what they long ago appreciated.

Though the action of *Indebitatus Assumpsit* has long since passed out of our Common Law, I stand a seventeenth-century debtor to all those who have helped me without any express promise on my part to repay them for their labors!

One of the major rewards of my travail has been the opportunity to meet personally or to talk on the phone with many alumni, faculty, staff, students, and friends of Hastings. All responded with graciousness, enthusiasm, and infinite patience. Perhaps it is invidious to single out a few to receive thanks for all, but Thomas L. Berkley, A. Frank Bray, Jr., Albert G. Evans, Hazel Utz Lancaster, Lewis E. Lercara, Ben Margolis, and Wiley W. Manuel provided aid above the call of duty. Of the many who, though not technically alumni, have been connected with the College in one way or another, and have accorded me assistance, I wish to thank particularly Harry H. Hastings, Juanita M. Olsson, and Robert Gordon Sproul, Jr. The faculty of Hastings who have gone out of their way to be of help have placed me under special obligation. Jerome Hall, Thomas R. Kerr, Adrian Kragen, the late George E. Osborne, George S. Prugh, and Sheldon Tefft, all past or present members of the History and Arts Committee, proffered advice and encouragement much appreciated. The staff at Hastings assisted greatly in finding information and running to earth hard to find facts, and I am especially grateful to Jacqueline Bartells, Myrl Northway, and Elizabeth Stroube for their help in this. To all the College's "family," my most sincere thanks for their forbearance and assistance.

To a number of people outside the "family," I have incurred debts for a variety of courtesies. Lynn Otis provided her typescript guide to the State Archives' attorneys general documents. A number of librarians and

archivists have been most helpful, but especially Robert H. Becker at the Bancroft Library, J.R.K. Kantor, the University Archivist, and at the Boalt Library, Francis Doyle and Thomas H. Reynolds. Saundra Epstein, who is engaged on a history of Boalt Hall, to be published next year, was unstinting in her assistance, and we have compared notes frequently. Gary Ostrower, whom I met at the Bancroft while he was engaged in research on the California women's suffrage movement, put me onto the Mary McHenry Keith papers and opened up for me that dimension of the College's impact. Three colleagues in History at Berkeley have rendered assistance, Gunther Barth and the late Walton Bean in Western and California history, and James H. Kettner in American legal history of the nineteenth century. My former student and old friend, Leo M. Snowiss in Political Science at UCLA, critically read the first two chapters. My colleague Preble Stolz at Boalt read and criticized Chapter VI, adding much to my understanding of the early law school reform movement. To all of these upon whom I could fix no Hastings claim and who are probably grateful that they will not again have to support me talking about the College, my most profound thanks.

There is a particular pleasure in thanking those directly engaged in the publication of this book, the first under the logo of the Hastings College of the Law Press. Jane-Ellen Long has undertaken production, engaging the exceptional talents of Randall Goodall as designer, and seeing the whole through the press. This has been a massive undertaking, with tight schedules made more snug by a procrastinating author, and she has done an efficient and devoted job. Adrienne Morgan ably executed the graphs and Karen Sussell the index. Martha A. Karatz, besides editing the College's alumni magazine, has served as editorial assistant, as retriever of rare photographs, lost data, and errant alumni, and as promotion editor. To my fellows on the Press' editorial committee—Marvin J. Anderson, David A. Concepción,

Dan F. Henke, and Harriet Renaud—my heartfelt thanks and the *temoinage* of my happiness in having worked with them. Of course, to the Dean of Hastings College of the Law, the associate dean for administration, and the librarian (for Messrs. Anderson, Concepción, and Henke, respectively, wear those hats in more mundane moments) another debt of gratitude is owed, and not one to be easily discharged by mere acknowledgment. And so with Harriet Renaud, latterly the editor of this book but for many years neighbor and friend, to say thank you for an assiduous editing of the manuscript, constant availability to hash over crossed “i”s and dotted “t”s, and all this as galleys arrived while copy was still going to the compositor, is not enough. She saved the author from egregious error and the reader from much frustration. For the manifold help, the encouragement, and the fellowship in the enterprise of these colleagues, my gratitude and my homage.

To Jeanne-Marie, who knows as much about Hastings now as her husband does, to Claudine, Françoise, and Marc, who forewent the pleasurable frivolities that depend upon a dad and bore with the grumpy inattentiveness of father, my loving thanks for their tolerance, support, and encouragement of, and ineffable sensitivity to, an author possessed.

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Candlemas

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