

HASTINGS COLLEGE OF THE LAW THE FIRST CENTURY

By Thomas Garden Barnes

EPILOGUE

University of California
Hastings College of the Law Press

Copyright © 1978
By the Board of Directors
Hastings College of the Law

Electronic version available at:
<http://www.uchastings.edu/about/history/barnes-book/>

Epilogue

SERRANUS CLINTON Hastings and his contemporaries entertained no doubts about the value and the validity of history. For them, history taught lessons, and practical ones at that. A statesman ignorant of history was innocent of statecraft. He might be the helmsman of the ship-of-state, but he would not be a navigator. History was also the key to understanding the inimitable and even ineffable "spirit" of a people, a "race." The towering philosopher of nineteenth century German metaphysics, G.W.F. Hegel, had posited the working of *Geist*, or spirit, as a process in history over time. For Hastings' generation, the worlds of the mind and of society seemed dominated by two of Hegel's wayward intellectual "children," both of whom were probably familiar to Hastings, if for no other reason than that the German universities which he visited in the 1870s were charged with their notions. Karl Marx had rejected Hegel's *Geist* and substituted for it materialism, but a materialism that was a process in history over time, obeying the same laws of dialecticism as Hegel's *Geist*. Hastings would never have approved of Marx. Neither would he have found Heinrich von Treitschke much more palatable; Treitschke's exaltation of the German *Volkgeist*, the spirit of the German race, would not have sat well with one so eminently Anglo-Saxon as Hastings. Yet, Hastings understood the appeal of "spirit," and abhorred:

a growing tendency . . . to neglect the study of history of the law and its traditions, without the knowledge of which the student can never become imbued with the true spirit of jurisprudence.¹

Hastings would have appreciated the careful scholarship of the most eminent German historian of the day, Leopold von Ranke, a “scientific” historian who shunned subjectivism without tumbling into positivism. And Hastings’ Catholicism would have made him open to the appeal of John Lord Acton, who reminded his generation that “History compels us to fasten on abiding issues and rescues us from the temporary and the transient.”² Hastings’ own ambition in founding the College that bears his name was to provide a hedge against the temporary and the transient. He succeeded.

We are no longer sure that history teaches anyone anything. Historical “process,” whether in the manifestation of the spirit or the material, has little appeal to our age. The path pointed out by Treitschke led to the double holocausts of Verdun and Auschwitz, and the Marxists have found it simpler to jettison the Teacher’s history than to attempt to make it fit the evidence that tells against it. Perhaps Acton has best stood the test of time and the trammels of technology—the “abiding issues” do indeed abide, thanks to an innate human sense that such issues exist, and thanks to historians who, while they tell us more and more about less and less, still assume that the past has meaning and that history has some other purpose than to entertain.

The “abiding issues” of Hastings’ first century might easily be overlooked in the sometimes dramatic, always engaging events of its past. That would be a pity, because Hastings has enjoyed a remarkable continuity in its institutional development. For all the struggles, despite the setbacks, regardless of weaknesses, and notwithstanding often limited resources, the College has maintained its purpose, its constituency, its contribution to society, and its integrity.

From the beginning the College’s purpose has been

to train lawyers. This it has never failed to do. It has prepared more men and women to practice law than any other law school in California, and this has been its almost exclusive function. Unlike a number of other major law schools, it has not sought to train academic lawyers—it still eschews a graduate law program. It has never aspired to being a school of “jurisprudence,” not even in the middle years of the first half of the twentieth century when a number of law schools accepted a broadly-based jurisprudential emphasis as the mark of distinction in academic law. While its curriculum and programs, especially during the past two decades, have been expanded and modernized, the thrust of the changes has been towards practicality and practice. Hastings has always avoided pedagogical frills (going so far, sometimes, as to avoid apparent frills which would have added measurably to its program), and the observation in 1935 of Monroe Deutsch, vice-president of the University of California, that the Directors of Hastings were more interested in substance than in form in the matter of legal education³ has been true throughout the College’s history.

Hastings has remained loyal to its constituency. Above all, it has remained loyal to its students. From the outset, it sought to train anyone possessing the qualities of intellect and character requisite to a lawyer, without respect to social status or wealth, to the limits of the College’s facilities. Serranus Clinton Hastings made clear the College’s policy on this point:

the founder (and he hopes his descendants) will look upon the rejection of any applicant or student on account of his poverty or limited means of support, as a calamity subversive of the object of the foundation.⁴

It required Clara Shortridge Foltz and Laura De Force Gordon to make explicit that “student” included women, but it has welcomed women aspirants since. Today, in its recruitment of women and minorities Hastings has gone further than most law schools in this country and

at least as far as any other. Hastings has also remained true to its greater community. It has always drawn the bulk of its students from the San Francisco Bay Area. It has maintained close relations with the legal profession in the Bay Area and the state. It has refused to move away from its traditional bailiwick of downtown San Francisco, and it remains committed to the urban environment, to the inner-city, to the cause of the metropolitan area in an era when very little is to be gained educationally by proximity to the courts and when other institutions and individuals have been fleeing to ex-urban areas. This purposefulness and solidity is maintained at the expense of many of the amenities which traditional academic life values.

Hastings' contributions have been primarily to the practicing bar and to the judiciary drawn from the bar, secondarily to California political life in elected, appointed, and civil-service officials. This was true from the earliest graduates (from the Class of '82) and it remains true today. In a profound way, Hastings College of the Law is a "service institution," contributing its sons and daughters to the legal and political system which continues to be the instrument for change, the forum for civic life, and the vehicle for human aspirations, personal and collective, for a better life in a better society.

Hastings College of the Law, though it remains "the law department of the University of California," has not been for three-quarters of a century the only law school of the University. Nevertheless, it contributes to the greatness of that great University by rounding out its structure for legal education. The College has had to struggle to retain its autonomy—its integrity. A succession of deans and generations of Directors have had to avoid the embrace of an institution which has grown enormously over the years, of a university the units of which have become excellent while losing their inimitable individual characters. Hastings has managed to become excellent while retaining its individuality and dis-

tinctive institutional character. Without its own Board of Directors and without the privileged position afforded it by the 1878 act, Hastings long since would have been swallowed up by the behemoth University. The price paid for autonomy has been Hastings' isolation from the cross-fertilization of a larger university community. The cost was less than an academic would usually be prepared to credit: law schools everywhere have tended to be rather more isolated from other university units than any other professional school, and the 65 Club gave to Hastings at a critical moment in its growth a faculty that had been as thoroughly involved in a broad nexus of interdepartmental influences as any law professors anywhere. The gain has been great. Hastings has been enabled to retain its principal purpose undeterred by blandishments to do something else because current academic ideology dictates it be done. Because of its isolation, Hastings has been able to remain faithful to its constituency—to its students by a more immediate contact between the policymakers at the top and the recipients of education at the bottom, to its metropolitan community by the intimate connection between the College and the bench and bar. The College remains graspable as an institutional entity—the dean is available and the dean can act with finality. No other unit of the University of California (assuming that Hastings is such a unit) has been in a position to deal so directly with students and community since Robert Gordon Sproul transformed the presidency of one campus into an imperium over many. Hastings remains open to direct influences from outside. There is no filtering process between the outside and the law school, no statewide administration either to absorb external pressure or to impose its own interpretation of external reality. The perils of openness are more than offset by the benefits. The direct links between Hastings and the legal and political life of California make the College and its students aware of external realities and sensitive to societal concerns.

This Actonian analysis does not quite do justice to the historic Hastings. Perhaps there is something to be said for Hegelian "spirit" in evoking an institution's past. Hastings' *Geist*—its unique and inimitable quality—is a compound of its adherence to traditional educational and professional values and its determination to adapt to new circumstances. From the outset, it has sought to make "learned" lawyers capable of dealing intelligently, discerningly, and knowledgeably with legal problems. In these pages, the educational activities of the College have received major attention. Overlooked has been what the College demanded of its postulants in terms of character. Probity has been a constant refrain from the beginning, even though about 1950 the requirement for an applicant to present evidence of good moral character was dropped from the announcement, and a course in legal ethics, so devoutly desired by the Founder, has appeared, disappeared, reappeared, and disappeared again. Good character was a constant refrain even when such an eminent graduate as Abe Ruef, '86, ended up in San Quentin for corruption and a number of others of its alumni found themselves afoul of the law and professional standards of propriety. With probity goes civility, and civility in turn evidences professional commitment. Over the course of a century, Hastings' alumni have manifested as students and practitioners a high level of good behavior and professionalism. The College has demanded no less professionalism of itself. With its eye fixed on the needs of the legal profession, the College has sought to provide the best education for the practitioner. In its early years, this was the Pomeroy System; in its middle years, the detailed curriculum of traditional subjects conveyed by the Langdell/Ames method; latterly, the problem-orientation taking account of broader concerns and contemporary social context. The professors have gladly taught and the students gladly learned, whether there was a sole Professor, a staff composed almost en-

tirely of part-time practitioners, a faculty of eminent retired professors from other law schools, or a faculty composed (as it is today) of retirees, younger full-time, and part-time professors. No matter how poor—or how rich—the College has adapted to changing needs in legal education by its commitment to educating practicing lawyers, and it has been prepared to do the unusual in providing that education. It has eschewed trendiness while welcoming novelty. Hastings' *Geist* has been the spirit to stand firm but not pat.

Historians make poor prophets—their eyes are too firmly fixed on the past to afford them much prospect of the future—and they should be without honor as prophets everywhere. Yet there is merit in applying to institutions what earlier was directed at the College's early graduates:

Youth, what man's age is like to be doth show;
We may our ends by our beginnings know.⁵

Hastings' youth is over; its maturity begins. It is now a major, national, American law school, in curriculum, admissions standards, and quality of faculty hardly distinguishable from the other dozen or so sister-institutions which inhabit those empyrean heights of legal academe. It carries with it the affection and the loyalty of the thousands it has made learned in the law. It goes forth with the respect of the community of which it is a part and which it has served for a century. Hastings' "youth" was turbulent and productive. Given its first century, it is unlikely that the second will be any less challenging, any less dramatic, any less creative. It only remains to be seen what the challenges will be, how the drama will unfold, what new paths creativity will take. Here the historian would have to turn prophet, and that he would not be. But the present makes clear that the abiding issues remain, the spirit is undiminished. Hastings will remain unique, inimitable in its next century as it was in its first.

