

# California Legal History Journal

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## Editor's Preface

*Harry N. Scheiber*<sup>1</sup>

In 1994, in the first issue of this journal—then known as the *California Supreme Court Society Yearbook*—I wrote in an inaugural editor's preface of our hopes with regard to the journal's prospects as a vehicle for publication in California legal history. At the time there were many obvious gaps in the literature on the state's constitutional and legal development. To be sure, the history of California law and of the state's judiciary had not languished, by any means. Still, despite the efforts of many individual historians and organizations, we lacked for judicial biographies, even for studies of some of the most influential jurists in the state's history. We were in need, too, of monographic research on many easily identified and important questions bearing on the historic relationships of law to social, economic, political, and cultural development in the Golden State. And even as to the history of the California Supreme Court as an institution, there were many periods and fascinating specific topical problems that had not received sustained attention from historians and legal scholars.

It was our hopeful purpose to give impetus, with this journal, to research that would provide sound building blocks for construction of the large story of California legal history in its many dimensions. The Hon. Malcolm Lucas, then chief justice of the state, wrote in the inaugural issue that an invigorated scholar-

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ship on the judiciary's history and on the state's more comprehensive legal history would provide valuable perspectives toward achieving "a broader understanding of the administration of justice that [would] help us face the challenges of the future."

That vision was shared by such notables in the law as the late Bernard Witkin and the late Associate Justice Stanley Mosk, who—with Robert Warren, Esq., of Los Angeles, and others on the society's founding board of directors—worked long and hard to establish a publications agenda for the society. Not least important, they also mobilized financial support and membership growth that would make realization of that agenda possible. The debt we owe to them is large, but one hopes it is at least partially repaid by articles and other material published in these pages that have advanced our progress toward the ambitious goals we set forth at the start.

The present issue of the journal illustrates well the diverse purposes that we have pursued. It features, first, a fascinating and highly original study by Dr. Peter Radkowski on housing discrimination and the law in the hectic period of World War II. This was a time when a war-born industrial boom and a great in-migration of African Americans to the East San Francisco Bay area created new social tensions that tested the national regulatory regime for housing in both the state and federal courts. Radkowski's study, based principally on archival records, other manuscript materials, and contemporary printed sources, offers a vivid picture of the race relations that roiled American society in the 1940s. His analysis is set in the context of aggressive assertions of national regulatory power, the resistance of powerful economic interests within the state, and the varied ways in which state and federal judges deployed their authority. He carries the story to the 1960s.

Also published in this issue is a full and revealing oral history interview of the late Justice Frank Newman. The interview was conducted over a fairly long period of years by Carole Hicke for the Bancroft Library's Regional Oral History Collection at UC Berkeley. Although Newman's tenure as associate justice was relatively brief, his role on the court coincided with a period of critical tensions among the justices and between the court and powerful political actors. These tensions were manifested in conflicts both as to the law and in some degree as to the relationships among the justices. A brief introductory essay by Jennifer DeMarco provides an overview of Newman's major opinions and a commentary on how a judge glibly labeled as a "liberal" often confounded his critics and his admirers alike with the staunchly independent approach that he took to constitutional questions.

Justice Newman was deeply interested in seeing a universal concept of human rights incorporated explicitly into American state and federal jurisprudence. He gave expression to this commitment in 1979 in an essay originally presented as a lecture, then distributed to public schools in a widely used pamphlet, on the occasion of the centennial year of the 1879 California Constitution. In conjunction with publication of his oral history, we have reprinted this brief but forceful essay that goes far toward encapsulation of Newman's view on equal protection and human rights.

The present issue also includes a reprinting of one of the late Justice Stanley Mosk's most important scholarly writings on the subject of the California state constitution as a source of fundamental law independent of the federal Constitution. Along with U.S. Supreme Court Justice William Brennan and Chief Justice Roger Traynor of the California high court, Mosk was a major architect of the formal doctrine of "adequate and independent state grounds," which became a highly significant focus of constitutional adjudication in the period of his service on the state court. How Mosk approached the issue of a federal government organized with states (the subnational governments) as constitutional entities, with all the implications that the consequent dualistic constitutional structure implied, is well illustrated in this article, first published in the *Texas Law Review* and widely cited in the literature of legal scholarship. We intend that this article, exemplary of Justice Mosk's profound judicial thought, will serve as a memorial to his long years of service on the Court and his enormous contribution to the jurisprudence of constitutional law in California and in the nation.

The Newman interview is the latest in a line of oral histories that have been published in these pages, including very substantial interviews with Justices Allen Broussard, Raymond Sullivan, and Frank K. Richardson. These primary materials offer perspectives and insights that can be a vein of pure gold to historical and legal scholars. Our journal has also carried many articles from an institutional or biographical perspective on the historic work of the courts on which these justices have served. Articles on Chief Justice Roger Traynor by Amy Toro and by Paul Sabin on Justice Sullivan, an oral history of Bernard Witkin, and other material illustrating biography have examined the careers and contributions of important figures in the state's legal history. In addition, articles by the eminent historians Lucy Salyer, Charles McClain, and Gordon Bakken have presented material on the high court's development and on judicial management that will appear in enlarged form as part of a five-author history of the California Supreme Court that is now in progress under the present writer's editorship. The society has also distributed to its members and to libraries Dr. Ben Field's important book on the jurisprudence of Roger Traynor, a work supported for publication by the society and by UC Berkeley.

In earlier issues, the larger scope of California's legal and constitutional development has been illuminated in many fine contributions by authors from more than a dozen universities, several law firms, and the court's staff. The topics they have addressed are far-ranging: One can mention, for example, in the area of resource law, the subject of Hispanic water law in the California courts, in an article by Professor Peter Reich; and the origins of the public trust doctrine as examined in an article by Dr. Molly Selvin. The equal protection decisions of the Court and their impact on California public education were examined in Sabin's provocative essay on Justice Sullivan. And in a long monographic article based heavily on primary sources not exploited by earlier historians, Susan Edelman, Esq., recounted the history of the 1896 California election campaign on women's suffrage.

Other articles in this journal have dealt with criminal justice in the mining camps, with "national dimensions" of state constitutional conventions, and with racial minorities, public education, and the law. Few of these topics had been explored in depth in earlier studies. There is reason to be confident that some of these articles may well come to be regarded one day as classics. In any event, it has been our objective to publish studies that are soundly researched and authoritative on their subjects, and it is not presumptuous to say that our authors have largely succeeded in meeting that standard.

The present issue continues our practice of publishing reviews of recent books in American history that are of particular interest for students of California law and its development. The editor is grateful for the time and care taken with these reviews by their authors.

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With this issue, I am ending my editorship and am gratified to say that Professor Gordon Bakken of Fullerton State University has agreed to assume the editor's role. The journal will flourish, one can be sure, under his leadership. Like several other members of the society and its board, Gordon has been a mainstay of support for the enterprise, and I want to extend warm thanks to him and other California historians and legal scholars who have contributed articles and oral history interviews to the journal, have vetted manuscripts, and who have given of their wisdom and counsel. The list is long, but I cannot end my stint without mentioning especially Charles McClain, John Wunder, Peter Reich, Christian Fritz, and the Society's program director, Donna Schuele. The writings on California law of eminent historians such as Lawrence M. Friedman of Stanford University, Charles McCurdy of the University of Virginia, and Norris Hundley of UCLA have been an inspiration to our authors and, in no less measure, to the editorial effort.

The Boalt Hall School of Law has given indispensable support over the years, and thus the society and the editor are grateful to Deans Jesse Choper, Herma Hill Kay, Bob Berring, and Chris Edley. The Institute for Legal Research at UC Berkeley, of which I am director at this time, has housed the editorial functions. I wish to thank Toni Mendicino of the institute staff for her fine assistance in manuscript preparation. Claire Johnson, a graduate student in the Jurisprudence and Social Policy Program at UC Berkeley, has served ably as the assistant editor for this issue; additional assistance was given by JD student Meredith Bentley and by PhD student Takeshi Akiba. Special thanks must go to Maria Wolf of the IGS Press, who has brought her fine editorial and production skills to the publication of every issue in this series since its start, and she does so again now. We are indebted to her and to Jerry Lubenow, director of the IGS Press.

Chief Justice Ronald George has been a pillar of support for the society and all its activities, including public outreach and education, not only the publications program. He has been dedicated wholeheartedly to the cause of California legal

and constitutional history; and scholars, students and the public are much in his debt for his concern to advance first-class research in our field.