

A HISTORY OF THE CALIFORNIA SUPREME COURT IN ITS FIRST THREE DECADES, 1850–1879

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PREFACE

“The history of the United States has been written not merely in the halls of Congress, in the Executive offices, and on the battlefields, but to a great extent in the chambers of the Supreme Court of the United States.”¹ It is no exaggeration to say that the Supreme Court of California holds an analogous position in the history of the Golden State.

The discovery of gold made California a turbulent and volatile state during the first decades of statehood. The presence of the precious ore transformed an essentially pastoral society into an active commercial and industrial society. Drawn to what was once a relatively tranquil Mexican province was a disparate population from all sections of the United States and from many foreign nations.

Helping to create order from veritable chaos was the California Supreme Court. The Court served the dual function of bringing a settled

* Ph.D., University of Southern California, 1973 (see Preface for additional information).

¹ Charles Warren, *The Supreme Court in United States History*, vol. I (2 vols.; rev. ed., Boston; Little, Brown, and Company, 1922, 1926), 1.

order of affairs to the state, and also, in a less noticeable role, of providing a sense of continuity with the rest of the nation by bringing the state into the mainstream of American law.

This study presents the story of the Court for the entire thirty-year period during which California's 1849 Constitution served as the state's organic law. In spite of the importance of the State Supreme Court to the history of California, no attempt has yet been made at a full study of the Court's work during its formative years, although there have been articles and books treating specific aspects of the Court, its personnel, and its decisions. This study attempts to fill at least part of the void. The bulk of the materials used, and indeed the basis of this study, was the decisions of the Court, but this work has not been designed as a legal treatise, but an examination of an active, living institution in a certain period of time, and within the context of that period.

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In its present form, this study combines two prior works: my 1969 master's thesis covering the period of 1849–59,² and my 1973 doctoral dissertation covering the period of 1860–79.³ They have been combined to read as a single work — but without attempting to update the contents, as this seems both unnecessary and futile: in one sense, the record of the cases decided by the Court is a closed one; and in another, scholarship on the history of the Court remains ongoing.

I wish to quote the closing statement from each of my prior works —

From 1969: "Special thanks must be extended to Dr. Doyce B. Nunis, Jr. for his guidance and encouragement, to my wife Carol for her patience and typing ability, and to my son Joseph, who made my work easier by not crying during his first year of life."

From 1972: "The author of any lengthy work such as this incurs numerous obligations for help received, and I am no exception. First, many thanks to Louis Lipofsky and Daniel Shafton, members of the California Bar, for helping me resolve some legal questions; to Dr. Doyce B. Nunis, Jr. for his guidance, encouragement, and patience; to Joseph, Sharon, and

² Arnold Roth, "The California State Supreme Court: 1850–1859" (M.A. thesis, University of Southern California, 1969).

³ Arnold Roth, "The California State Supreme Court: 1860–1879, A Legal History" (Ph.D. diss., University of Southern California, 1973).

Deborah, for letting daddy “work”; and to my wife, Carol, who has shared the burden of this work in a very real way.”

And, now in 2019, I wish to add:

Reflecting back on this research and writing has instilled me with a sense of accomplishment of task and validation of topic. Similarly, while I did not end up a college history professor, I definitely reached career satisfaction as a public school administrator and math teacher in Northern California for twenty-seven years, afterwards expanding into teaching both history and math college courses at night, and ultimately becoming a full-time retiree in 2012. This course of my life has run from my birth in New York City in 1934 to graduation from Fairfax High School in Los Angeles in 1951, followed by a B.A. in Anthropology in 1955 from the University of California, Los Angeles, and an M.A. in History in 1969 and Ph.D. in History in 1973, both from the University of Southern California.

Beyond just this work, I have been fortunate to continue sharing life experiences and burdens with my wife of fifty-three years, Carol, a nurse who transitioned into a college health professional, in the City of Stockton⁴ (where we moved following receipt of my Ph.D. and continue to reside). With our three grown children living their own lives, four grandchildren, travel, bridge and a bevy of other retirement activities, I periodically have produced some additional historical work:

- “Sunday ‘Blue Laws’ and the California State Supreme Court,” *Southern California Quarterly*, LV, no. 1 (Spring 1973), 43–47; available at <https://scq.ucpress.edu/content/55/1/43>.
- “Stockton’s Jewish Community and Temple Israel,” with an outline of Stockton Jewish history (December 17, 2011); available at <https://templeisraelstockton.com/about-us/our-history/#long>.
- *General Sir Ernest Dunlop Swinton*, a paper written while I was a docent at the Haggin Museum in Stockton for use by docents leading tours. (Dunlop was a leader in ‘Tank Warfare’ in World War I, and came to Stockton to meet with Benjamin Holt about the use of the caterpillar drive for tanks.)
- *The KKK in Stockton in the 1920s*, a study still in progress.

⁴ Ironically, both Commodore Stockton (the person) and the City of Stockton are referenced repeatedly in this work.

I am grateful for the diligence and interest of the California Supreme Court Historical Society and *California Legal History* editor-in-chief Selma Moidel Smith, Esq. to find, appreciate and publish my combined works about the early years of the California Supreme Court. I am glad history remains relevant, and hope it provides useful background and context for studying future eras of California's history and the Court.

— ARNOLD ROTH