

Roger J. Traynor: Legend in American Jurisprudence

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Unquestionably one of the most notable jurists in American history, Roger J. Traynor was appointed to the California Supreme Court in 1940 at the young age of 40. He was then elevated as chief justice in 1964 by Governor Pat Brown and continued to serve on the court until 1970. While on the bench, Traynor wrote a total of 950 opinions; the constitutional historian Bernard Schwartz called him one of the "ten greatest American judges."¹

Traynor combined a commitment to rationality with a sensitivity to the results of his decisions and a rare clarity of prose style. In responding to rapid growth and social change in the United States in general, and in California in particular, Traynor made major contributions to American jurisprudence in the areas of product liability, conflict of laws, civil procedure, constitutional rights, taxation, and criminal law. Under his leadership, the Supreme Court of California became widely regarded as "the most innovative court in the country."²

Prior to his ascent to the bench, Traynor was primarily a scholar. He graduated from the Boalt Hall School of Law in 1927, where he served as the editor of the *California Law Review*. Simultaneously, he was earning a Ph.D. in political science at the University of California, Berkeley. He remained at Berkeley to serve as a law professor at Boalt from 1930 until 1940, when he was appointed to the court. An authority on tax law, Traynor also served as a consultant to the California Board of Equalization and the United States Treasury Department.

His opinions reflected his scholarly background, especially evident in his frequent references to law review articles—a practice now common, but then innovative, in opinion writing. After his retirement from the bench in 1970, Traynor returned to teaching, this time at Hastings College of the Law. Thus, Traynor committed his life to the study and

This article originally appeared in the Society's *Newsletter*, I (1992).

the development—one might fairly say to the *modernization*—of California and American law.

During his tenure on the California Supreme Court, as one commentator wrote, Traynor “inspired a dramatic renaissance of the common law.”³ The Traynor Court modified tort law to reflect the changes in the marketplace—its growing impersonality, the expanding complexity of products, and the increasing purchasing power of consumers.

In 1944, for example, in his concurrence in *Escola v. Coca Cola Bottling*, Traynor set forth the essential principle of strict liability for defective products.⁴ This principle was to replace the traditional common law requirement of privity between the parties, substituting for it a system that allowed manufacturers to insure against injuries, to distribute the cost equally to consumers, and to provide compensation to injured victims. In the decades that followed, the law of defective products was transformed, not only in California but throughout the United States, to reflect Traynor’s early insights regarding strict liability.

In other areas of tort law, Traynor contributed to the undermining of governmental, family, and charitable immunities and to the development of the tort of intentional infliction of emotional distress.⁵ Traynor also led in the modification of other private law areas, such as property and contracts law. In all of these reforms, as G. Edward White has contended, Traynor often “de-emphasized formalities in the face of immediate practical consequences.”⁶

In the conflict-of-laws area, Traynor also rejected old formalities, overturning sterile and rigid rules that had often produced irrationality and confusion regarding what law ought to be applied. Traynor adopted instead “interest analysis,” a test that balanced the interests of the different states—the forum state, the state of domicile, and the state where the event occurred—in determining what law ought to be applied. Traynor’s contribution to conflict-of-laws principles also demonstrates his continued attention to and interaction with the academic community: he relied on scholarly works in formulating his own theories, and he also contributed to the scholarly debate through his academic writing.

Traynor was, on the whole, supportive of governmental activism. For example, he upheld innovations in the taxation area, extending approval to government seizure of land for tax delinquency and giving judicial validation to new types of corporate income tax. He also supported the government in some aspects of criminal procedure, allowing prosecutors

and police greater leeway in the areas of search and seizure, and of discovery. His support of governmental activism did not, however, indicate an insensitivity to individual rights; indeed, the California Supreme Court was ahead of the U.S. Supreme Court in extending protection of these rights, especially with respect to Fourth Amendment guarantees. And Traynor wrote the court's opinion declaring an antimiscegenation statute unconstitutional, 16 years before the U.S. Supreme Court followed suit. He also supported the First Amendment rights of those with minority political opinions, as in cases involving the ACLU and the Communist Party.

Opposed to "judicial lethargy," Chief Justice Traynor subscribed to the view that "the real concern is not the remote possibility of too many creative opinions but their continuing scarcity." He welcomed "judicial boldness."⁷ During his time on the court, Traynor remained committed to this principle, with results that profoundly changed the landscape of American jurisprudence.

NOTES

¹Bernard Schwartz, "The Judicial Ten: America's Greatest Judges," *Southern Illinois University Law Journal*, 405, 407 (1979), quoted in Jerome Hall, "Chief Justice Traynor and Criminal Law," *Hastings Law Journal*, 35:817, 826 (1984).

²Grant Gilmore, *The Death of Contract* (1974), 91, quoted in Edmund Ursin, "Judicial Creativity and Court Law," *George Washington Law Review*, 49:229 (1981).

³Matthew O. Tobriner, "Chief Justice Roger Traynor," *Harvard Law Review*, 83:1769 (1970), quoted in Ursin, "Judicial Creativity."

⁴*Escola v. Coca Cola Bottling*, 24 Cal.2d 453 (1944).

⁵G. Edward White, *The American Judicial Tradition* (1977), 309.

⁶*Id.*, 310.

⁷Roger J. Traynor, "Comment on Courts and Lawmaking," in M. Paulsen, ed., *Legal Institutions Today and Tomorrow* (1959), 48.