

Message from the Chief Justice

Malcolm Lucas

Almost one hundred and fifty years ago, one Mr. Botts, a delegate to California's first constitutional convention in 1849, observed: "Your Legislature and your Executive departments might be faulty in design, the principles of liberty might be discarded and denied by the despot on the throne, and the evils would be less felt than those under a bad judiciary system from the despot of the law. . . ."1 Some might consider this an overstatement, but it highlights the fact that the early crafters of California's Constitution considered the creation of a strong, stable judicial system key to the success of their work. A review of the record of both the 1849 and 1879 constitutional conventions reveals that the judicial article was the subject of heated debate on issues ranging from the structure of the courts to the scope of appellate review to the location of arguments before the Supreme Court.

Why should the history of those who served on the courts and the times in which they served be of interest to more than a few history buffs? After all, casebooks offer an easily accessible source of how the law has been interpreted and applied; they provide the precedent on which lawyers and judges rely. The answer lies in the fact that "the law" is more than words penned on a page—or called up on a computer screen. As we grapple today with the scope of the rule of law and the role of our justice system, our knowledge about the individuals who crafted the opinions that helped shape our world, the society in which they lived, and the forces that touched them as they reached their decisions provides context and perspective and a broader understanding of the administration of justice that will help us face the challenges of the future.

The men and women bring to it their own personal history and views. Judges interpret the written law presented in constitutions and statutes and strive to apply that law to the facts presented in a fair, objective manner. But it is obvious that the practice of law and the rendering of decisions is not an exact science. If it were, briefs might actually live up to their name, and dissents would become obsolete. Nor is the significance of our system of law confined to information contained in official case

reports. As an equal branch of government, the judicial system plays a societal role beyond the adjudication of specific cases and issues. As one third of our tripartite system, the court system is one of the stabilizing pedestals on which our government rests. Courts function within the broader framework of government. An understanding of their relations with the other branches of government, with the citizens they serve, and with popular perceptions about the justice system is essential to evaluating whether our courts are serving their fundamental constitutional functions and whether they remain truly independent.

We often take the stability and continuity of our system of justice for granted. It is clear, however, that its independence and strength must be carefully guarded. The list of stresses confronting courts is lengthy. Budgetary constraints, increasing caseloads, societal trends that affect the nature and number of issues brought to the courts, public expectations, insufficient general knowledge about the administration of justice, and partisan political pressures are only some of the factors that affect court functioning. Three years ago, as chair of the Judicial Council, I appointed a Commission on the Future of the Courts. Its report, issued earlier this year, looks ahead to the year 2020 and outlines a “preferred future” for the justice system. The report touches on a multitude of changes and trends that are expected to affect the courts. It makes it abundantly clear that administering justice does not and cannot take place in an ivory tower isolated from the rest of society and its problems.²

As we look ahead, we can learn from the past. The individual twist on a problem may be different, but reading the debates at the constitutional conventions of 1849 and 1879 reveals that many questions that occupied the drafters remain open today. Common themes pervade our judicial system’s history—independence of the judiciary, assuring access to the courts—and extend to our expectations for the future.

The Supreme Court Historical Society offers an avenue to obtain information and insights that will aid us as we move into the next century. I am pleased that this first yearbook starts us on what I hope will be a continuing journey of education and enlightenment.

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¹Browne, Report of the Debates in the Convention of California on the Formation of the State Constitution (1850) at p. 218; see also Vols. 1-3, Willis & Stockton, Debates and Proceedings of the Constitutional Convention of the State of California (1880).

²Scholarly papers written for the Commission on the Future of the Courts are published in a symposium in the *Southern California Law Review*, 66 (1993).