

DANIEL KOLKEY*

Preface by the President Emeritus

It is only fitting and proper that the California Supreme Court's 175th Anniversary be commemorated in this 20th issue of the California Supreme Court Historical Society's journal.

After all, this is no ordinary court. From its establishment as a *three-justice* court appointed by the *Legislature* in 1850 to a *seven-justice* court appointed by the *Governor*, the California Supreme Court has had an outsized influence on U.S. jurisprudence.

And this was not a mere function of California's size, but of its pioneering spirit, the diversity of its economy, its hospitable climate, its demographic diversity, and its relative openness to change and experiment.

Accordingly, although this Court's docket was initially dominated by issues arising out of gold and silver mining and water rights, the issues facing the Court rapidly broadened to agriculture, industry, and later entertainment, the environment, and high tech.

The year 1940 was a major turning point. By 1940, the Great Depression had ushered in a new type of governing body—the administrative agency—whose standard for judicial review had to be developed. Simultaneously, the advent of World War II had led to the creation of thousands of defense jobs, triggering the migration of more African Americans into an already diverse California. And in that year, Governor Culbert Olson appointed Phil S. Gibson as Chief Justice, who became the Court's second longest-serving Chief Justice (1940–1964).

* Daniel M. Kolkey, a retired partner of Gibson Dunn & Crutcher and former associate justice of the California Court of Appeal, Third Appellate District, served as President of the California Supreme Court Historical Society from 2022 to 2025.

As a result of these and other political, economic, and demographic changes, the Gibson Court played an important role in promoting racial justice, shaping the law governing the review of administrative agencies' decisions, and inspiring the revolution in tort law that Chief Justice Gibson's successor, Chief Justice Roger Traynor, furthered. Of course, the Gibson Court's pathbreaking jurisprudence necessarily experienced growing pains, as evidenced by the fact that another justice on the Court, also appointed by Governor Olson—Justice Jesse Carter—ended up writing more dissents than any other justice: 505 dissenting opinions. But as history and logic reveal, dissents improve the analytic strength of the majority opinions by which a court generates persuasive and impactful jurisprudence.

Eventually, our State Supreme Court became, in the words of UC Berkeley Law Professor Emeritus Harry Scheiber, “the nation’s most innovative and influential court in the reform of tort law.”¹ These decisions included *Escola v. Coca-Cola Bottling Co.*² in 1944, which liberalized the criteria for applying the doctrine of *res ipsa loquitur* in favor of the injured plaintiff; *Greenman v. Yuba Power Products, Inc.*³ in 1963, which completed Justice Traynor’s effort to muster a majority for adopting a strict liability standard for defective products; and *Rowland v. Christian*⁴ in 1968, which transformed premises liability.

Moreover, beginning with the Gibson Court, our state Supreme Court was also in the forefront of enforcing the right against racial segregation and against racial discrimination in housing,⁵ and in favor of equalizing funding for public schools.⁶ By 1971, the Court was voiding gender-based limits on women’s employment.⁷

Indeed, our state high court’s jurisprudence was occasionally ahead of that of the U.S. Supreme Court. For instance, in *Perez v. Sharpe* in 1948,⁸ the Traynor Court struck down California’s ban on interracial marriage—nearly two decades before the U.S. Supreme Court did so in *Loving v. Virginia* in 1967.⁹

¹ Harry Scheiber, “The Liberal Court: Ascendancy and Crisis, 1964–1987, in *Constitutional Governance and Judicial Power: The History of the California Supreme Court*, ed. Harry Scheiber (Berkeley Public Policy Press 2016), 377.

² 24 Cal.2d 453 (1944).

³ 59 Cal.2d 57 (1963).

⁴ 69 Cal.2d 108 (1968).

⁵ See, e.g., *Mulkey v. Reitman*, 64 Cal.2d 529 (1966); *Jackson v. Pasadena*, 59 Cal.2d 876 (1962); *San Francisco Unified School Dist. v. Johnson*, 3 Cal.3d 937 (1971) [school desegregation].

⁶ See, e.g., *Serrano v. Priest*, 5 Cal.3d 584 (1971).

⁷ *Sail’er Inn v. Kirby*, 5 Cal.3d 1 (1971).

⁸ 32 Cal.2d 711 (1948).

⁹ 388 U.S. 1.

Likewise, our Supreme Court’s decision in *In re Marriage Cases*¹⁰ recognized same-sex marriages seven years before the U.S. Supreme Court’s decision in *Obergefell v. Hodges*.¹¹

Equally significant for our state high court’s legacy are the judicial administrative reforms that California chief justices had accomplished. For instance, Chief Justice Gibson persuaded the California Legislature to authorize the California Judicial Council to develop procedural rules for the courts. And another giant in the court’s history, former Chief Justice Ronald M. George, built upon Gibson’s administrative work by centralizing administrative control and funding for California’s 220 courts¹²—a reform that included the unification of the municipal and superior courts.¹³ And he relieved the burden of jury service in order to encourage it by limiting jury duty to one day or one trial.¹⁴

Accordingly, as California celebrates our state high court’s 175 years of jurisprudence, it is altogether fitting and proper that the California Supreme Court Historical Society’s journal commemorates it. After all, the role of the Society is to preserve and disseminate our judiciary’s history through its funding of our State Supreme Court justices’ oral histories, its sponsorship of a comprehensive book compiling the Court’s history, the articles that it publishes in both this journal and its semiannual magazine, the *Review*, and its programs about the Court’s decisions, the State’s judiciary, and our legal history in general.



¹⁰ 43 Cal.4th 757 (2008).

¹¹ 576 U.S. 644 (2015).

¹² Selvin, “Defining a Branch, Finding the Center: The George Court, 1996–2010,” in *Constitutional Governance and Judicial Power: The History of the California Supreme Court*, ed. Harry Scheiber (Berkeley Public Policy Press 2016), 565.

¹³ *Id.* at 571.

¹⁴ *Id.* at 572.