

FOREWORD

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It is with great honor and privilege that I have been asked to announce the publication of *The Wayne Law Review, 2010 Annual Survey of Michigan Law*. In its fifty-second edition, the *Annual Survey of Michigan Law* compiles and charts the development of the law in Michigan. Covering twenty areas of law, the publication serves as a big-picture view of the law for students, practitioners, jurists and scholars alike, affording the reader concise, insightful and relevant analysis. Unique to the *Survey* is its reliance on contributions from both academics and practitioners, presenting the widest possible perspective and examination of the state of the law.

For over 234 years, our nation has endured enemies both foreign and domestic, economic upheaval, and societal strife. In its relatively short history, the United States has risen to become the dominant economic and political power of our time. Cross-pollination of ideas and perspectives from a diverse population made possible this remarkable achievement. Yet regardless of one's background, we as a people have come together as a nation carrying the shared ideals of liberty and justice. Our nation's global standing and leadership is not just because of the might of our economic engine or the strength of our military, but also because of the pervasiveness of the rule of law.

Whether it was the fight for emancipation, the struggle for women's suffrage, or the civil rights movement, the framework for a civil society embodied in the Constitution and propagated through our legal system has guaranteed the fidelity, credibility, and legitimacy of our political system and our form of participatory government, even as we endeavor to progress towards a more perfect union. Notwithstanding the challenges and tumult that the nation has faced, the strength of our legal tradition has, in effect, assured that the basic tenants of a free society should prevail. Moreover, it is this heritage and enlightened set of values that has and will safeguard the future for America and allow it to maintain its role as the exemplar for the world to follow.

Both the federal and state constitutions lay the framework for a functioning government, establishing three separate branches, each

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delegated with certain enumerated duties and specifically designed to check and balance the other branches: a legislature to make the law, an executive to enforce the law and a judiciary to resolve disputes in the law. Maintaining separate branches is paramount to a legitimate democratic state, because it ensures that no institution or individual can become so powerful as to usurp the power vested with the people. Of the three branches, the judiciary occupies an esteemed place in governance and is unique, because it is ultimately tasked with ensuring that the activities of the other two branches comport with and remain faithful to the Constitution.

This function was made abundantly clear with the crisis of leadership and corruption faced by local governments in our state in recent years. Our state, confronted with its share of societal, economic, and political challenges, saw some of its political leaders abandon their fiduciary duties and instead focus on their own self-interest. In the midst of scandal, the state witnessed pitched battles between prosecutors and political elites who had failed their constituents. In the middle, sorting all of this out was the judiciary, which held our elected officials answerable to the people and ensured that they conducted their affairs in an accountable and transparent manner, thereby affirming Aristotle's maxim that the "law should govern."

The *Wayne Law Review Annual Survey of Michigan Law* brings the practical applicability of these philosophical constructs to the state level. The legal principles that evolve in the state are purposefully and intelligently surmised in the *Survey*, allowing the reader to grasp not just what has happened in a particular area of law, but also to map the direction the law is taking. The implication, not surprisingly, is an easily digestible strategic guide for litigators, legislators and the learned alike.