H-Net Reviews
in the Humanities & Social Sciences

Walter W. Manley, II, E. Canter Brown Jr., Eric W. Rise. *The Supreme Court of Florida and Its Predecessor Courts, 1821-1917.* Gainesville: University Press of Florida, 1997. xvii + 454 pp. 95 (cloth), ISBN 978-0-8130-1540-8.

Reviewed by Russell Fowler (Department of Political Science, The University of Tennessee at Chattanooga)
Published on H-Florida (July, 2005)

Florida's Supreme Court: A Tribunal's Triumph

This important book covers the period from the establishment of the Florida Territory during President Monroe's presidency through the Progressive era, and addresses much more of the history of Florida than its title suggests. It commences with a superb discussion of the political maneuverings surrounding the establishment of the territory and Andrew Jackson's tenure as governor. From Jackson's turbulent administration, Florida's post-Spanish judiciary hesitantly emerged, inhibited by Jackson's determination to retain the reigns of judicial power firmly in his grasp and resulting in a colorful jurisdictional dispute with Judge Eligius Fromentin of the U.S. Court for West Florida. Also recounted is the rise of the engaging William DuVal, who briefly served as the territorial judge for East Florida, with far better dealings with Jackson than Fromentin. DuVal would later be appointed governor of the territory and remained a fixture of Florida politics into the 1850s.

Although Jackson's governorship was brief, the book details his lasting influence on Florida's political landscape, especially the leadership of his protges. Nevertheless, significant changes were made in the structure of territorial governance, particularly the creation of a legislative body and reorganization of the judiciary with first two and later three superior courts with clarified jurisdiction. Appeals of federal issues ran directly to the Supreme Court of the United States. Subsequently, an appellate court was founded to address appeals concerning territorial law questions. The changes would not only be structural, however. Florida's culture, including its law, experienced Americanization while benefitting from its Spanish heritage, such as more racial tolerance than in the rest of the South. With the active aid of the territorial government, Middle Florida developed swiftly and political power shifted to this region at the expense of East and West Florida. Due to dramatic population growth, there was a corresponding increase in caseloads in the courts, and Florida's substantive law was responsively forged, including subjects fairly unique to the area like salvage law. Not surprisingly for a frontier region, land disputes became a burdensome form of civil litigation.

In the 1830s, dominant Middle Florida became a part of the Old South cotton culture, and all of the territory would benefit from federally funded internal improvements, but serious racial problems arose, as well as warfare with the Indian population and an economic downturn. Nevertheless, the movement for statehood under the leadership of Governor Richard Call, who cited the weakness of the appellate system as one of many reasons for a constitution and statehood, proved successful in 1845. With statehood came a supreme court and supreme and district court judgeships chosen by the legislature. As for substantive law, measures were enacted by the legislature to heavily regulate free blacks and slaves, but East and West Florida clung to a somewhat more tolerant racial attitude inherited from Spanish colonial rule.

With the rise of a true two-party system in the antebellum period, legislative judicial selection entailed partisan influences, but the new supreme court benefited from exceptionally robust judicial authority and clear separation of powers. Understandably, the court's early docket was dominated by procedural and jurisdictional issues, and, despite growing conflict in state politics, Florida's supreme court demonstrated remarkable unanimity, overcame minor conflicts with the legislature, won respect from its well-reasoned opinions, and laid the foundation for Florida's jurisprudence as it dealt with issues as wide-ranging as tort law and women's property rights. In the 1850s, the justices were required to ride circuit instead of only hearing cases in Tallahassee and popular election of justices was achieved, thus further strengthening the separation of powers. By the late 1850s, however, internal division engulfed the court resulting from a bitter public dispute between Chief Justice Thomas Baltzell and Justice Charles DuPont, originating over the appointment of a lower court judge to serve on

a panel of the court and ending with DuPont's defeat of Baltzell in the 1859 election for the chief justiceship.

After an excellent description of Florida's process of secession and the effects of the Civil War itself, the wartime judiciary is addressed. Officially, Florida's courts assumed responsibility for cases previously filed in federal courts, but many trial courts ceased to operate and, regardless of increased jurisdiction, Florida's tribunals resolved few cases. Among the disputes not reached were a number of important constitutional matters. Yet in its dozen opinions rendered from 1862 to 1864, the secessionist supreme court did deal with major seizer of property and conscription cases and handed down a ruling that would foster railroad development. The ability to function as well as it did during the war, especially in comparison with the high courts of other Southern states, was chiefly due to the absence of large contending armies.

During presidential Reconstruction, the supreme court continued to deal with unique causes occasioned by the war such as the legal effects of emancipation. Judicial reform was achieved by granting the governor the power to appoint justices for six-year terms with senate approval. Further revision under the Constitution of 1868 gave justices tenure on good behavior, in effect a life appointment, and specified supreme court powers. During the period of congressional Reconstruction, former Confederate justices were removed, and the court soon found itself at the center of the most important issues of the day, such as the effect of Confederate court judgments, the ability of ex-Confederates to hold public office, the impeachment of Governor Harrison Reed, and the disputed presidential election of 1876. Contrary to fears that the new Republican court would be a carpetbag puppet of the executive branch, the justices won a reputation for independence, legal acumen, and agility in avoiding disputes best left to the overtly political branches of government. The court reached the end of Reconstruction as the only branch of government unsullied by scandal or corruption.

Following Reconstruction, Florida experienced a period of dramatic change, exemplified by an expanding population, urbanization, and rapid railroad development led by Henry Plant and Henry Flagler. The Constitution of 1885 reinstated popular election as the method of selecting justices, but the court kept its reputation for bipartisanship and integrity. The justices of the "Bourbon period" dealt with complex cases concerning state regularity power and the rights of the accused, and the court aided railroad expansion by refashioning the state's tort laws to shield lines from many personal injury claims. Yet, like other courts of the Solid South, Florida's supreme court failed to protect the voting rights of black Floridians from local machinations designed to block political participation.

Florida took part in progressivism to a more liberal extent than other Southern states, most notably during the governorship of Napoleon Bonaparte Broward. To deal with all the litigation generated by new regulatory measures and growth of the state, the size of the supreme court was increased and the justices decided to divide into two divisions. It would sit *en banc* when a disagreement could not be resolved in a division. In 1913 the court moved into its own building named for the popular Chief Justice James Bryan Whitfield. As for the court's jurisprudence from 1897 to 1916, the justices displayed creatively as they dealt with novel litigation produced by the advent of the automobile, corporate regulation, and prohibition. The Progressive era court's greatest triumph was the landmark 1908 decision of *Montgomery v. State* in which Chief Justice Whitfield surprisingly applied the equal protection clause of the U.S. Constitution to hold that a black criminal defendant was entitled to have blacks on the panel from which his jury was selected. Accordingly, the supreme court proved to be bold and visionary in comparison to other state and federal appellate courts of the age.

This book does not follow the current fashion of similar works in ignoring the importance of individual jurists and their personalities, nor does it adhere to the convention of earlier American judicial historians in only focusing on the lives of judges. The authors here have found a judicious balance. The separate biographical sections not only provide insight into the legal importance of those who served on the court, but also present a fascinating perspective on the impact of justices on wider Florida history before, during, and after their service on the bench. As stated at the outset, this book's scope is much broader than a history of the Supreme Court of Florida and skillfully presents the judiciary and law within the wider context of historical forces and events. Therefore, it thoroughly addresses the state's overall political, social, economic, legal, and constitutional development, and is a reliable resource for historians, students, and lawyers alike, especially considering the reinvigoration of state constitutional law in America in recent years. This well-bound and handsome volume contains numerous illustrations that are clear and well placed within the text and demonstrate significant research. The notes, bibliography, and index are excellent and useful. The writing is clean and crisp. This book is undoubtedly the leader in state judicial histories and is required for any serious Florida history collection and a must for every Florida lawyer.

If there is additional discussion of this review, you may access it through the list discussion logs at:
http://h-net.msu.edu/cgi-bin/logbrowse.pl.

Citation: Russell Fowler. Review of Manley, Walter W., II; Jr., E. Canter Brown; Rise, Eric W., *The Supreme Court of Florida and Its Predecessor Courts, 1821-1917.* H-Florida, H-Net Reviews. July, 2005.
URL: http://www.h-net.org/reviews/showrev.php?id=10734

Copyright © 2005 by H-Net, all rights reserved. H-Net permits the redistribution and reprinting of this work for nonprofit, educational purposes, with full and accurate attribution to the author, web location, date of publication, originating list, and H-Net: Humanities & Social Sciences Online. For any other proposed use, contact the Reviews editorial staff at hbooks@mail.h-net.msu.edu.