

H-Net Reviews

in the Humanities & Social Sciences

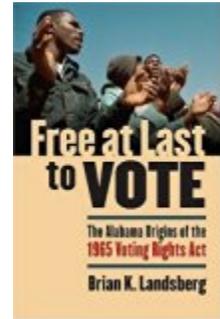
Tony Allan Freyer. *Little Rock on Trial: Cooper v. Aaron and School Desegregation (Landmark Law Cases and American Society)*. Lawrence: University Press of Kansas, 2007. xi + 276 pp. \$35.00 (cloth), ISBN 978-0-7006-1535-3; \$17.95 (paper), ISBN 978-0-7006-1536-0.

Brian K. Landsberg. *Free at Last to Vote: The Alabama Origins of the 1965 Voting Rights Act*. Lawrence: University Press of Kansas, 2007. 280 pp. \$34.95 (cloth), ISBN 978-0-7006-1510-0.

Reviewed by Michael Fitzgerald

Published on H-Law (September, 2008)

Commissioned by Michael J. Pfeifer



Law and the Civil Rights Struggle

Audience is one of the issues raised by legal history; is it to be written for lawyers, with the training to appreciate legal nuance, or for the historical profession more broadly? In the interest of full disclosure, my own training is as a southern historian. Thus, the focus here will be on how well legal issues are made intelligible, and how their importance is conveyed to the historical community. This review examines books on two significant issues, the Little Rock school crisis of 1957-58, and the federal efforts to secure suffrage rights in Alabama in the early 1960s. These works are quite different, but both raise interesting issues for a range of scholars. Both books concur on the crucial role of the courts in shaping how the national public, and the world, perceived the justice of the civil rights struggle. There is, however, an obvious interpretive difference: Tony A. Freyer's book on Little Rock emphasizes "how central judicial sanction of constitutional rights was in overturning the South's Jim Crow apartheid system" (p. 4). As a Justice Department observer of how that process unfolded, Brian K. Landsberg emphasizes the opposite, that the federal courts were unhelpful; their primary contribution was to demonstrate the futility of litigation as a vehicle of social change. That, in a conceptual nutshell, is the contrast between these works.

Freyer's book on Little Rock is the fruit of mature re-

flection; he is the author of numerous books and articles on the topic. In some respects, this presents a problem: there is a historiographic forest for the trees issue here. The author does not clearly define the thesis, and does not explain his main contribution to this dense literature. One goal is countering the widespread misperception that the judicial enforcement of the *Brown v. Board of Education* (1954) decision was "insignificant," relative to the mass movement led by Martin Luther King Jr. (p. 233). In keeping with this emphasis, the author offers a blow-by-blow analysis of the legal and political maneuvering surrounding the Little Rock school desegregation cases. There are striking individual interpretations, but without further background, it is difficult to tease out those that are unique to this specific work. One interpretive point is that the gradualism of the *Brown II* decision of 1955, mandating school integration with "all deliberate speed," actually emboldened the segregationist cause. *Brown II* suggested that faced with massive resistance, the courts would back off of enforcement. Much of the book is comprised of recounting the courts' effort to reverse this impression. Another interpretive emphasis is on the indigenous origins of the litigation. Freyer holds that the National Association for the Advancement of Colored People (NAACP) had a minor role in the initiation of the lawsuit, and that only when Governor Orval Faubus made the resulting confrontation front page

news, did Thurgood Marshall and the NAACP legal defense fund become heavily involved. One of the strengths of this book is its interpenetration of legal issues with the author's evident knowledge of the political context, and particularly the political maneuvering of Faubus. One might read this as a study of the demise of Jim Crow in the upper South: the segregationists overplayed their hand by privatizing the school system to avoid desegregation, and then presiding over a purge of hundreds of teachers on political grounds. Massive resistance looked like local chaos as it unfolded over time.

Freyer's crucial chapters deal with the Supreme Court, and how the desire for unanimous verdicts yielded to a gradualist approach that worked out poorly on the ground. The activists on the Earl Warren court got their unanimous verdict, but with an incongruous concurring opinion by Justice Felix Frankfurter. This treatment seems sensible, as does the argument that the vigorous assertion by the Supreme Court of ultimate authority to interpret the Constitution is an important legal result of the case. Still, I found following the overall interpretation tough going; for nonlegal scholars, the book reads like an "inside baseball" account of how the Supreme Court responded. The author wants to make a case for the overriding importance of the Little Rock crisis, and to some extent he succeeds; segregationists' outright defiance of the courts altered national perceptions of the issue. The civil rights mobilization clearly drew sustenance from the legal struggle, and the Supreme Court's response mattered. However, the argument is harder to make for the wider significance of individual judges' opinions. After all, the author argues that the court effectively papered over internal fissures; this would tend to minimize the public importance of what individual judges said.

If Freyer's book is inclined toward a subtle statement of a thesis, Landsberg's book raises no such issues. The subtitle, *The Alabama Origins of the 1965 Voting Rights Act*, doubles as an argument. One seldom sees such a scholarly example of accurate advertising. For five months in 1964, Landsberg was a young lawyer with the Department of Justice in Alabama, "a bit player" in the wider civil rights mobilization (p. 109). He draws on that experience to argue that suffrage obstructions in such places forced the federal government to pass a voting rights act. The book examines the behavior of local officials, and the federal courts, in three rural places, Sumter, Elmore, and Perry counties—rather than, say, high-profile Birmingham or Selma. Landsberg finds that in such out-of-the-way places the pattern of local obstruction was blatantly obvious, even comic. It was

proved repeatedly in court, thus both strengthening the local civil rights forces and building national resolve to do something about it. The escalating conflict after the 1957 and 1960 federal civil rights acts had a cumulative effect in demonstrating that local officials would prevent mass registration, and that techniques for doing so could be devised ad infinitum. Indeed, the number of blacks registered by local officials declined substantially after the federal legislation. The situation in Sumter County under registrar Ruby Tartt was instructive; Alabama required that registrants had to have a white voter vouch for their moral conduct. Registrar Tartt was a folklorist on the slave experience of some note; in her relatively paternalist hands (if Landsberg's term can be used here), the voucher provision became essentially a requirement that Tartt approve of one's lifestyle.

A second issue raised by the book is the range of responses to litigation by federal judges, subject as they were to white community pressure. My sense is that this point is familiar in the literature, but the theme is vividly illustrated here. One of his three judges is the well-known Frank Johnson; the other two were the formalist Harlan Grooms and the openly obstructionist Daniel H. Thomas. Johnson's heroic example demonstrated that the courts *could* uphold civil rights laws, while the other two demonstrated how unlikely in practice redress through the courts would be. Earlier civil rights legislation provided for judicially appointed monitors of voter registrars' behavior. In most places these appointees accomplished nothing beyond further documentation of limitations on suffrage. Unless judges were willing to indulge in extensive, continuing, and drastic intervention in registration practices, nothing would change. Judicial conduct provided another incentive for one of the salient features of the eventual voting rights act, its enforcement provisions. Litigation was not relied on as the primary mechanism, but direct administrative redress by the federal government. That is to say, the federal government added voters to the rolls itself. Landsberg's wider argument is that the experience of what did not work in places like rural Alabama shaped the legislation proposed by Justice Department lawyers, and thus the landmark legislation. Though not in a position to affirm the specifics, I found this line of argument plausible. One could scarcely imagine a clearer justification of the voting rights acts' pre-clearance provision than this sorry tale of suffrage abridgement by local officials.

Another positive thing about the book is its skillful weaving of a participant's memoir with a wider argument about the significance of the topic. The book mostly ex-

amines places where the civil rights movement *did not* happen. That is to say, Sumter and Elmore counties did not feature a sustained mass movement up to this time. What activism did exist occurred around voter registration for individuals, group support for efforts to jump through endless hoops, some of them provided by indifferent federal courts. This is actually a compelling rationale for this study, because in much of the South the early sixties must have looked like this. Historians spend less time examining such areas than their numbers would warrant. Furthermore, the surface-level civility in Sumter County contrasts starkly with its previous experience during Reconstruction, in which dozens of freedmen were murdered by Klansmen and White Leaguers. On the one hand, Landsberg's attention to Tartt's activities may illuminate a wider story of racial interaction, but that is not what the author attempts here. On the other hand, Landsberg's discussion of events in Perry County addresses matters of larger significance. An important local activist, Jimmie Lee Jackson, was killed by police during a demonstration here, and the outrage over his martyrdom directly inspired the Selma march. This yielded the horrific beating on the bridge that assured passage of the voting rights act.

All these strengths notwithstanding, there is a core problem with the book. The author wants to make the argument that the experience of the Justice Department in Alabama, and specifically in these three counties, directly influenced the legislative breakthrough of the voting rights act. This book reads like a brief for the importance of his subject. But as the author occasionally admits, there was a lot going on in Mississippi and other southern states. There is no attempt to demonstrate from the debates in Washington what the relative weight of the outbreaks was in various areas, which is what would be needed to make this case. Perhaps it is inevitable for a participant in such breathtaking events to highlight his witness, but this is overreaching, and it is not required to make this book worthwhile. Historians without legal training will find it an accessible primer for why the voting rights act took the form it did. A clear and lively exposition of the legal issues of this landmark act is always useful for classroom instructors. At the moment, it is useful to be reminded that the federal government can have an important role in guaranteeing basic suffrage rights. As recent headlines suggest, Americans may have to revisit this issue soon enough.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-law>

Citation: Michael Fitzgerald. Review of Freyer, Tony Allan, *Little Rock on Trial: Cooper v. Aaron and School Desegregation (Landmark Law Cases and American Society)* and Landsberg, Brian K., *Free at Last to Vote: The Alabama Origins of the 1965 Voting Rights Act*. H-Law, H-Net Reviews. September, 2008.

URL: <http://www.h-net.org/reviews/showrev.php?id=15497>



This work is licensed under a Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License.