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The Texas Supreme Court: A Narrative History, 1836–1986 (book review)

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Lone Star Justice

The Texas Supreme Court: A Narrative History, 1836-1986

by James L. Haley

Austin: University of Texas Press, 2013. 350 pp. \$29.95 paper.

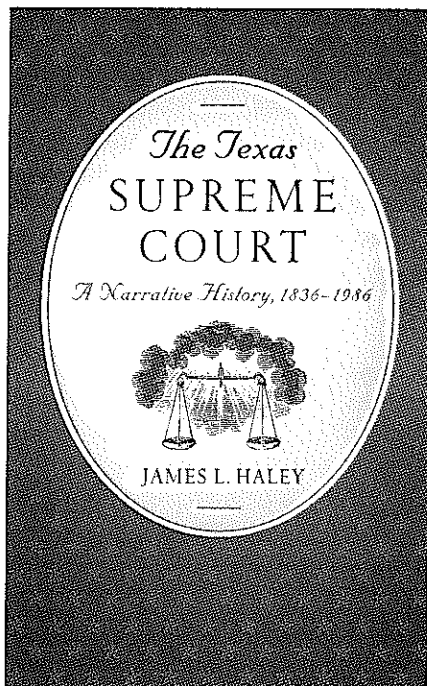
Reviewed by
Michael Ariens

Historians remain dependent on the kindness of strangers. This may be especially true for American legal historians, who can read 200-year-old appellate court decisions because entrepreneurs began publishing those opinions, and who can also read early treatises on American law and nineteenth century American law magazines. The problem with this material is that it is both too much and too little. Hundreds of published case opinions became thousands of opinions by the end of the 1820s, leading lawyers to conclude that no one could know the entirety of the law. This cascade of information was also too little, because the work of treatise writers and law magazine editors was ruthlessly focused on then-existing legal concerns. The kindness of strangers who wrote about the law of the time generates a possible historical weakness, for it makes the blind spots of any current generation the same blind spots for the historian. Further, the idiosyncratic interests of legal historians make it difficult for one to present a coherent, overarching history of an era, an issue (e.g., the law of slavery) or an institution.

Like poets who reject free verse, Haley is working within difficult strictures.

James L. Haley's *The Texas Supreme Court: A Narrative History, 1836-1986* is dependent on the kindness of strangers. Like poets who reject free verse, Haley is working within difficult strictures. Because his story is about the Texas Supreme Court, he is largely limited to a study of (1) its members and their

relationships, and (2) its case decisions. Additionally, Haley acknowledges he was asked by the Texas Supreme Court Historical Society to complete his narrative history in a year. (Why he was given this deadline is unclear,



particularly given the fact that the project had been in the works for over a decade. A disclaimer: I was one of those who agreed to write a chapter of the initially-conceived history, which was published in the *St. Mary's Law Journal* after it appeared the project had foundered.) Given these constraints, Haley has done an impressive amount of work, ably assisted by Marilyn Duncan. He has found and used well a number of secondary works concerning the Texas Supreme Court over the 150 years the book covers. Because those works were not designed to assess the Texas Supreme Court of any era, their idiosyncratic nature leaves Haley with the impossible task of creating overviews of the Court from a modest set of secondary materials combined with a massive amount of primary materials (published opinions) that would take over a year to master. Given these conditions, Haley has done better

than most would expect. The Historical Society chose well. Haley has written a number of historical works, many on Texas's history and historical figures. He provides an insightful general background on Texas, placing the court within the culture of its times. He drives the narrative expertly, and his writing is clear and crisp. However, the strictures attached to this history have made it less than it should have been.

The book is divided into seventeen chronological chapters plus a Prologue. The chapters vary in length, in part because Haley often links a chapter to the tenure of a Chief Justice. The Historical Society decided to have Haley include a brief biography of each member of the court. This is a mistake for three reasons. First, biographical information for each justice is available on the Internet. Given the limited space available, such biographies should have been limited to the most important justices in the court's history. Second, many justices did so little or served for such a short time that no need for any biography exists. Third, these biographies rarely give Haley sufficient information to assess the interplay of the justices and their decisions. They also halt his narrative flow.

The discussion of cases, apparently due to the limitations of space and time to complete the work, varies significantly. Some chapters discuss cases in detail, and others lightly touch the course of jurisprudence. On some occasions, the discussion of a case is not as helpful as it should be. For example, in discussing *Gabel v. City of Houston* (1867), Haley expresses the opinion that the court's decision was not of the "highest caliber." *Gabel* concerned the constitutionality of a Houston ordinance banning the sale of malt liquor on Sundays. The court held the ordinance constitutional, as neither infringing on the free exercise of religion nor creating an impermissible establishment of religion. Not only was this decision consistent with decisions of nearly all other state courts of that time, the Supreme Court of the United

CONTINUED ON PAGE 22

alongside Penelope Cruz, Salma Hayek, and Julia Roberts. These events are just briefly alluded to, but they serve to emphasize and make powerful the real emotional struggles that Shepard describes and shares with Dark. Sometimes Dark is our surrogate in that relationship, asking questions and saying things that we want to say to Shepard, but he's also a fully fleshed-out character every bit as nuanced and as interesting as the playwright. It's a friendship deep and to be desired, and for a brief moment this book lets us join it vicariously.★

Graham Oliver is a second year MARC student at Texas State University. His other book reviews can be read in *The Rumpus*.

HEART OF THE MATTER
CONTINUED FROM PAGE 11

that hide despair and longing. But collectively, they come across as too similar, leading the reader to wonder if LeBlanc is a one-trick pony, only capable of replicating the same basic themes of longing and desire. However, LeBlanc compensates for this with her grit.

Perhaps the best story in the collection is the one that dismisses the common themes and traits of the others: "The Blind Salamander." Though snakes and other pet animals are central motifs, here, LeBlanc instead focuses attention on the yearnings of a successful toy store owner. Gillian, the store owner, is caught in a simpler, more identifiable internal conflict: balancing her caring for others with her caring for herself.

One of the better lines that LeBlanc delivers occurs in "Donor," when Sheila compares herself to her Ford Mustang. She says, "No one could ever find what caused our problems or stop them, but we did run, fast." The sentiment applies to all of the characters in this unflinching collection.★

David M. Pegram is an English professor at Paradise Valley Community College in Phoenix, Arizona.

States decided a set of four very similar Sunday closing law cases in largely the same way in 1961.

Several other opinions reflect dated historical interpretations. For example, when Haley discusses the end of Reconstruction, he declares that Grant ended it because "Reconstruction had finally run its vengeful course." He calls the late nineteenth century "an era of virtually laissez-faire capitalism, in which exploitation of labor and invulnerability from the repercussions of predatory conduct accrued to the profit of a small but grotesquely wealthy class of 'robber barons.'" Haley's conclusions, made without citation to any authority, fail to acknowledge that recent histories make such assertions misleading at best.

Finally, a little knowledge is a dangerous thing. Haley notes that the court discussed a free exercise of religion case in 1900, which "was a realm of conflict usually litigated in the federal courts." In 1900, this was untrue. The First Amendment's free exercise clause was not "incorporated" into the due process clause of the Fourteenth Amendment until 1940. Before then, a person claiming a state violated his or her right of free exercise of religion was limited to making a state constitutional claim in state court. A federal claim made in federal court was non-existent.

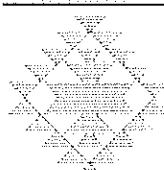
The decision to end this history in 1986 is curious. It undoubtedly avoids hurt feelings by eliminating any need to cast aspersions on any member of the court after that time, or to carefully measure the biography of any living justice or former justice. But it also means that some of the court's most important shifts (whether for better or worse) are left unacknowledged. *The Texas Supreme Court* is a valuable work. Haley and the Historical Society should be commended. It should have been better.★

Michael Ariens is a professor at St. Mary's University school of law in San Antonio, Texas.

how the brownness, whiteness, and blackness of the Lanier High Voks and other San Antonio residents were constructed relationally.


More than mere peccadillos in the history of Lanier High basketball's rise to fame, these issues complicate the cultural, gender, and racial politics of the Mexican American generation. They force us to consider how narratives of Americanization, inclusion, and assimilation don't always tell the whole story when it comes to Mexican American life in the Great Depression and World War II. *When Mexicans Could Play Ball* helps us consider struggles for racial equality in the 1930s and '40s and their dis/continuities with those that came later. For this alone, it is a worthwhile read for anyone with interest in Chicana/o, Texas, sports, urban, and education history.★

Luis Alvarez is Associate Professor of History at UC San Diego.



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