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BOOK REVIEW

Defender of the Faith: The High Court of Mississippi, 1817-1875. By Meredith Lang.* Jackson, Mississippi: University Press of Mississippi, 1977. Pp. vii, 176. \$10.00.

*Reviewed by H. T. Holmes***

The role exercised by a state appellate court in shaping and mirroring the growth of social structure and attitude is described in Meredith Lang's *Defender of the Faith: The High Court of Mississippi, 1817-1875*. In recounting the history of the High Court of Mississippi, Dr. Lang provides a contemplative account of the manner in which Mississippi's highest appellate court from 1817 to 1860 played its role in the developing constitutional crisis that resulted in civil war. For the general reader of Mississippi History, the role of the Mississippi judiciary in shaping anti-unionist sentiment in the state prior to 1860 has been ignored for the more dramatic utterances made by the state's politicians of the time; it is good to be reminded of the significant role that the High Court of Mississippi played in the development of Mississippi political philosophy in the nineteenth century.

The makeup of the High Court varied during this time according to the constitution then in force. Under the Constitution of 1817, the judicial power of the state was vested in one Supreme Court and such superior and inferior courts of law and equity as the legislature may from time to time direct. The Constitution of 1832 changed the Supreme Court to the High Court of Errors and Appeals, composed of three judges serving staggered six year terms. The High Court convened twice each year at a place directed by the legislature until 1836, after which it met at the seat of government. The Constitution of 1861 made no change in the High Court, and the Constitution of 1865 was merely a restoration of the 1832 Constitution with required amendments. The 1869 Constitution changed the name back to Supreme Court and directed that it consist of three judges appointed by the governor for nine year terms.

Lang's review of the history of this court is not a detailed accounting, but a selective scholarly review of certain issues the court addressed itself to throughout the period. It is Lang's contention that the tenor of the court's philosophy can be illustrated by judicial action in these areas: federal-state relations, contracts, criminal justice and manumission. The study is concluded with a description of the judicial chaos following the union victory of 1865 and of the court's ultimate turn-around in philosophy.

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Basic to this study is the contention that the High Court sought at all times to balance its adjudication between the national creed and the basic beliefs of Mississippi society. In much of the adjudication, slavery was the central issue, whether it was a point in litigation or not. In her study of the High Court's approach to a philosophy of government, Lang recites the case histories that led to the ultimate position taken by the court, reflected by the secession of Mississippi from the Union in 1861, that the people's sovereign will rested in the state, and the state, therefore, had the power to abolish its compact with the other states. Evidence of popular and political support for this position is presented through the statements and positions of contemporary political leaders, among them, John C. Calhoun, Jefferson Davis and John A. Quitman.

In her discussion of the High Court's approach to contract law, Lang finds an interesting stand-off between the Mississippi High Court and the United States Supreme Court. Indeed, one of the fascinating aspects of this study is the unyielding stance the High Court often took in relation to Supreme Court decisions. Lang generously illustrates the manner and method by which the High Court subverted the decrees of the United States Supreme Court.

A positive picture is painted of the High Court prior to the period of the war in the area of criminal justice, and Lang has fine praise for the court's rulings in this area:

The High Court of Mississippi maintained in the area of criminal law such a dignity of stance and nobility of spirit that the ante-bellum court seems to emerge as a knighted institution in search of the Holy Grail of justice Unaided by any national criteria for measuring the specific content of justice or the elements of a fair trial, the Mississippi High Court found its answer after searching its own conscience and exploring the primary value of individual human dignity upon which the nation was founded. It was truly a court for all times.

Unfortunately, such a lofty sentiment does not hold true for all areas into which the court delved, and, Lang asserts, manumission was the nadir of the court's respectability. The court's attitude toward slavery and manumission, though somewhat soft in the very early years, quickly hardened into a stern attitude that remained the official position for most of its years. This attitude so infected the thinking of the court that, by 1859, Lang says, "Any emancipation accommodation was anathema, and the explosive character of the High Court's response merely testified to the loathsomeness of the idea in the minds of three men who had ceased deporting themselves like justices."

It is in the discussion of the High Court and manumission that the relationship between justice and public demand is especially highlighted. Unfortunately, Lang poses more questions than she

answers about the shaping role that the judiciary actually played in developing and strengthening the political philosophy of Mississippi as it was espoused by political leaders of the time. Without delving into the personalities of the justices, Lang illustrates well the hair-line interpretations the court found itself making in its attempt to protect the Mississippi social structure and yet maintain its dignity as a high court.

A brief glance is given to the status and function of the court in the post war era through 1875. Here Lang suggests the principal activities of the court were determining the status of state laws passed during the Confederacy and interpreting Mississippi's post war relationship to the federal union. Gone were the days of the court's magnificence and high-mindedness; the court focused its attention on the re-establishment of Mississippi out of its political ruins.

In the concluding chapter of this study, Lang offers some after-thoughts on the material she has presented, posing some "What if?" questions and finding that her basic premise still holds, i.e., "the high court was a legal-political institution functioning in a philosophically deviant state." It is only in this last chapter that Dr. Lang begins to mention justices by name and to speculate on the influence of personal philosophy on the court's decisions. Although Dr. Lang makes a successful presentation of her theses based almost entirely on case study, the question begs to be asked if her work would not have been stronger had she devoted some of her explication to the persons and personalities that occupied the seats on the High Court from 1817 to 1875.

Regardless, Dr. Lang is to be commended for her study on the history of Mississippi appellate court; she has done a fine job in pointing out the role of the judiciary in the developing constitutional crisis of the first half of the nineteenth century. It is to be hoped that the judicial role in the shaping of the social-political climate of Mississippi will be further analyzed and delineated using *Defender of the Faith* as the starting point.

