BOOK REVIEW


The era of slavery in the American South was hardly anarchic or lawless. The region boasted an array of laws, legal processes, and legal institutions comparable to those of the American North. Rather than somehow standing apart from law, slavery was intertwined with it in countless ways. In reflecting on this interrelationship of law and slavery, scholars have been especially intrigued by the North Carolina prosecution in 1829 of John Mann for assault and battery on the slave Lydia. Convicted in the trial court, Mann appealed. The opinion of the North Carolina Supreme Court written by Justice Thomas Ruffin has seemed to many a particularly revealing and painful contemplation of slavery under American law. The historian Eugene Genovese, among others, has taken Ruffin’s opinion to capture the disturbing “logic of slavery.”

Distinguished legal historian and constitutional law scholar Mark V. Tushnet brings his critical acumen to bear on the case in Slave Law in the American South: State v. Mann in History and Literature. Tushnet does not purport to provide a detailed “micro-history” of Mann’s prosecution and appeal, and, indeed, the lack of surviving trial transcripts, appellate briefs, and even local newspaper accounts makes this type of study difficult if not totally impossible. Tushnet is resourceful in other ways. He places State v. Mann into a range of law-related discourses, demonstrating how different kinds of scholars might make sense of the case. In the end, his volume is as much about varieties of law-related analysis and interpretation as it is about a criminal prosecution in antebellum North Carolina.

3 Most trial records of North Carolina slavery cases were destroyed during the Civil War, and no newspaper accounts of Mann’s criminal offense have been located. Id., 67–68.

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The stage was set for the actual case in 1828 when John Mann rented the slave Lydia from the latter’s owner, one Elizabeth Jones, in Chowan County, North Carolina. When in 1829 Lydia began to run off after being disciplined, Mann shot at and wounded her. This might have made Mann liable to Jones for damages to Jones’ property, but instead local officials indicted Mann for a criminal offense against Lydia. A hastily convened local court found Mann guilty of assault and battery, and he was fined $5.00. Tushnet estimates that amount to be equal to about $90.00 in the present.\(^4\) While one might be inclined to simply pay a speeding ticket for this amount, in his case Mann apparently perceived a matter of principle and appealed his conviction. Judge Thomas Ruffin, himself a slaveowner serving his first term on the North Carolina Supreme Court, reversed. Despite his ostentatiously professed regret that he had to decide such a case, Ruffin concluded that slavery gave a slaveowner full dominion over the slave. Since Mann stood in the shoes of the owner Jones, he could not be convicted of assault and battery on Lydia.

Tushnet’s interpretation of Ruffin’s opinion does not parallel that of the extraordinary scholarly work of the late Robert Cover. The latter emphasized the conflict between judges’ moral positions regarding slavery and their perceived duties as judges.\(^5\) In general, the perceived duties trumped the moral positions, and something similar could be seen as happening to Ruffin. Beating his breast, Ruffin bemoans his duties as a judge. Were I just a man, he suggests, he could decide differently. Do not be deceived, Tushnet tells us. “Judge Ruffin plainly did not think slavery was immoral.”\(^6\)

Instead of emphasizing the conflict between a judge’s morality and judicial duties, Tushnet interprets Ruffin’s opinion with reference to what Tushnet calls a “strategy of institutional allocation.”\(^7\) While the phrase seems obtuse at first, Tushnet sharpens its meaning. Ruffin, he argues, acknowledged that the state legislature could enact criminal laws about offenses by and against slaves, but it was the more fundamental common law of slavery – the deepest expression of human reasoning – that mandated full dominion of the masters over the slaves. As a judge rather than a legislator, Ruffin had a responsibility to be faithful to the common law and its underlying reasoning.

\(^4\) Id., 67.
\(^6\) Tushnet, *supra* note 2, 63.
\(^7\) Id.