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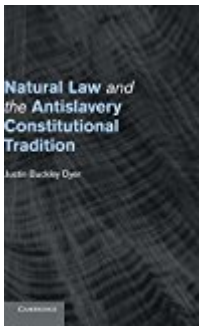
Justin Buckley Dyer. *Natural Law and the Antislavery Constitutional Tradition.* Cambridge: Cambridge University Press, 2012. x + 197 pp. $91.00, cloth, ISBN 978-1-107-01363-6.



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In its ratified form, the United States Constitution was constructed on the sands of an unmistakable paradox. How could its drafters create a republican document committed to securing individual freedoms and preventing the arbitrary exercise of authority, while also preserving perpetual race-based chattel slavery? This was not lost on many of the drafters, like slavery critic Gouverneur Morris and slaveholder George Mason. Nor was it lost on slavery's later detractors, including evangelical abolitionist William Lloyd Garrison, who famously rejected the Constitution as an immoral "covenant with death" and an "agreement with hell."[1] In *Natural Law and the Antislavery Constitutional Tradition*, Justin Buckley Dyer tackles this paradox by returning morality to the center of late eighteenth- and early nineteenth-century American antislavery debates. Challenging contemporary scholarship, he argues that natural law and antislavery constitutionalism are not incompatible. His thesis builds on two key principles: 1) many Americans believed that slavery violated natural law, especially its immoral imposition of one man's arbitrary authority over another, and 2) they believed the Constitution should be interpreted as consistent with the Declaration of Independence's commitment to those natural-law principles of equality and liberty. Dyer examines the private and public rhetoric of judges, lawyers, statesmen, and orators who challenged slavery on constitutional grounds, revealing a tradition that championed the moral right to equality against the reality that fact, custom, and law protected slavery.

Dyer substantively opens his book with an appeal to natural-law examinations of antislavery traditions, noting that Oliver Wendell Holmes and subsequent legal positivists sought to sever morality's relevance to law. The author disagrees, arguing that the Constitution enshrined a moral commitment to equality and liberty despite its slave-related provisions. As Abraham Lincoln suggested, the Constitution secured slavery only as a matter of temporary and expedient compromise in 1787. Beyond that, the enduring Constitution ultimately served as a sturdy frame to showcase the

aspirational "apple of gold"--the Declaration of Independence's moral promise of universal equality (pp. 22-23).

The author organizes each of the remaining chapters around a significant figure's contribution to an antislavery constitutional tradition, often anchoring it with a legal case or issue. The first of these chapters looks at the English opinion ***Somerset v. Stewart*** (1772). Lord Mansfield's ruling framed the subsequent legal debate on Atlantic slavery: although the institution was immorally deplorable, slavery was still subject to the assertions of positive law that preserved it. The next chapter pairs cases involving slave ships--***The Antelope*** and ***La Amistad***--to highlight John Quincy Adams's antislavery constitutional philosophies. Adams insisted that the rights to equality and freedom conflicted with the factual existence of slavery, creating "a constitutional ***disharmony***" (p. 77). He argued that the constitutional identification of slaves as "persons" should have necessarily afforded them rights as persons. As for the mutinous slaves aboard ***La Amistad***, such natural rights included the right to be free, or if charged as assassins, the right to self-preservation in the face of another man's arbitrary rule.

Other chapters study the antislavery rhetoric emerging from high-profile United States Supreme Court cases, especially ***Dred Scott v. Sandford*** (1857). Dyer deftly locates the roots of Lincoln's antislavery constitutionalism in Justice John McLean's ***Dred Scott*** dissent. McLean argued that the Constitution was framed in a way that would allow later policymakers to honor the Declaration's promise of freedom. When the law was unclear or ambiguous, McLean insisted judges were free to rule with preference for what was morally just. Lincoln's political religion added to this aspirational theory. Lincoln understood the Civil War as providence. It was God's way of revealing his disdain for slavery and the need to remove the scourge. Thus, slavery's end was a divinely ordained moral imperative. However, Lincoln's belief in an antislavery Constitution conflicted with ***Dred Scott***. In a peculiar twist, Lincoln reconciled his aspirational theory with slavery's fact by declaring that Supreme Court rulings--like Chief Justice Roger Taney's in ***Dred*** Scott--only applied specifically to the involved parties' circumstances, and did not create universal legal principles for the nation. Dyer concludes his theoretical analyses with a chapter on Frederick Douglass's quest for public reason. Douglass hoped to locate "overlapping views of reasonable citizens" that would point to slavery's immorality in a constitutional republic (p. 164).

The book's greatest strength is Dyer's deep reading of an antislavery constitutional tradition and the philosophies of its most vocal proponents. Many legal studies rely principally on lead judicial rulings and attorney arguments. But Dyer looks at the rhetoric of often understudied figures, underscoring their own philosophical understandings. For example, scholarly treatments of ***Dred Scott*** tend to focus on Taney's flawed opinion for the court, as well as Justice Benjamin Curtis's dissenting challenge to Taney's historical errors. Dyer goes further, examining Justice McLean's more nuanced dissent to reveal natural law's deep roots in challenging slavery's constitutional validity.

This strength coincidentally serves as the book's most glaring weakness. Dyer's precise attention to natural-law philosophy does not do much to uncover the past. While readers will appreciate the depth with which he explores the beliefs of early American antislavery-minded judges and statesmen, the practical usefulness of this book suffers from a general lack of historical grounding. First, many of his explanations leave readers with insufficient understandings of how and why past events came about. For example, instead of showing how Dred Scott's case made its way into a federal court, he does the scholarly equivalent of "yadda yadda" by lazily stating that it got there "[t]hrough a convoluted series of

events" (p. 111). It is helpful to know that the state court denied his freedom, in part, because his status as a slave reattached when he returned to Missouri. Moreover, while the Supreme Court justices considered the merits of Scott's case, volatile national events framed their deliberations, including the war in Kansas, the caning of Senator Charles Sumner, and the validation of the ideologically driven Republican Party in the 1856 elections. Secondly, readers will not get a full sense of the judicial rulings and their contextual aftereffects. He tells very little about the effects the *Amistad* ruling had on the defendants, or on the nation as a controlling precedent. Nor does he deeply pursue the confusion that followed the decision in *Prigg v. Pennsylvania* (1842), its inconsistent applications, and how it eventually led to the to the Fugitive Slave Act of 1850. This lack of follow-through is a bit frustrating. After all, what is gained by understanding antislavery philosophies if we cannot appreciate their contextual origins, effects, or limitations in practice? Admittedly, this reviewer comes to this book as a historian. My discipline stresses the importance of responsibly unveiling the varied truths that evidence can provide. The author's approach shows little reverence for this objective contextualization.[2]

Dyer's final chapter, "Public Reason and the Wrong of Slavery," best illustrates the contrast in studying legal theories and historical facts. Ostensibly, the chapter is supposed to survey Frederick Douglass's public reason challenge to constitutional slavery, yet the author dedicates only a few pages to Douglass's actual philosophy. Instead, most of the chapter challenges John Rawls's twentieth-century legal postulates, especially as they related to *Dred Scott*. What advantages come from anachronistically applying twentieth-century philosophical tools to explain how Americans thought about slavery a hundred years earlier? The book is not clear on this question, and it begs non-theorists to have faith in their relevance. In puzzling fashion, Dyer details Rawls's philosophies at great length, but repeatedly dismisses their applicability or helpfulness as they relate to Douglass's thinking (pp. 166, 168, 171, 174, 184, 185). If they do not apply, why build an entire chapter around them? Although the author speaks to debates in legal and political philosophy, non-theorists will only see this as propping Rawls up as a strawman just to burn him down. The chapter tells us little about Douglass, his contributions, or even the effects his philosophies had on abolition. It matters that he was a former slave. It matters that he had the ears of slavery's most ardent and moderate opponents, including Garrison and Lincoln. It matters that he had a hand in shaping postwar civil rights policies. The author does not explore these in meaningful ways, and he neglects to make them relevant to the philosophies under his microscope. In fact, he concentrates on Douglass's antislavery constitutionalism only in the context of *Dred Scott*, closing such a narrow window on a lifetime of achievements. Disappointingly, this chapter reads as a twentieth-century debate on nineteenth-century antislavery ideas, with a brief nod to Douglass who might have shared (or not shared) some of those ideas.

Dyer's book is not intended for broad audiences. At times, its density requires the patience of intellectually dexterous political and legal philosophers. This, however, should not dissuade curious readers. For those familiar with legal philosophy, or for those willing to venture into these waters, Dyer writes clearly enough to make philosophy quite accessible. Furthermore, it might be an apt primer for those looking to study legal and political philosophy with a specific application--in this case, antislavery constitutionalism--as Dyer considers the works of many of the familiar canon, including Rawls, Ronald Dworkin, John Finnis, Lon Fuller, and Leo Strauss.

If the purpose of Dyer's book is to serve as a resource on the foundations and meanings of American antislavery constitutional rhetoric, then this is a fine contribution to the literature. It makes compelling links between past thought and

more recent legal philosophers. In particular, it sheds clear light on the natural-law thinking of celebrated judges and statesmen, like Mansfield, Adams, and Lincoln. Non-theorists, however, will be quite unfulfilled if they turn to this book for examinations of American slavery, antislavery movements, or the actual effects that antislavery constitutional rhetoric had on national developments.

Notes

[1]. Paul Finkelman, "Garrison's Constitution: The Covenant with Death and How it was Made," *Prologue* 32 (Winter 2000): 231-245.

[2]. This debate between historians and political philosophers is not new. For more, see Gordon S. Wood, "History Versus Political Theory," in *The Purpose of the Past: Reflections on the Uses of History* (New York: Penguin, 2008), 146-163.

each chapter

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