

society scholars, sociologists, anthropologists, political scientists, criminologists, and anyone interested in understanding the postcolonial world. It is also a very good text for graduate and advanced undergraduate students interested in sociolegal studies, conflict and violence, criminology, and globalization.

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Dred Scott and the Problem of Constitutional Evil. By Mark Graber. Cambridge, United Kingdom: Cambridge University Press, 2006. Pp. 278. \$43.00 cloth; \$24.99 paper.

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What might we learn from asking whether *Dred Scott* (1857) may have been correct—not just justifiable under the constitutional principles accepted in antebellum federal courts, but also as the Supreme Court’s best effort to uphold the founding vision of governance through consensus? Graber struggles with the ethics of accommodating moral evil for the sake of peace. His argument requires relinquishing the hope that constitutional principle or correct constitutional reasoning alone can leverage a way out of evil. For Graber, constitutionalism’s goal is to generate the conditions enabling heterogeneous groups to live together in sufficient peace and order that “ordinary politics may be about justice” (p. 250).

Dred Scott and the Problem of Constitutional Evil contains two books, one a work of constitutional interpretive theory and the other a study of institutional history and constitutional failure. The first analyzes *Dred Scott* in context, addressing constitutional theorists’ struggles over the case’s status as a cautionary tale about the dangers of choosing the wrong means of interpreting the Constitution. Graber upends the competing logics, demonstrating that institutional, historical, and aspirational approaches can all plausibly support Chief Justice Roger Taney’s side in the case.

If the *Dred Scott* case is not a failure of constitutional reasoning, then what kind of failure is it? Is it a failure at all? To respond, Graber theorizes institutionally about how the constitutional bargain between slave-holding and free states initiated in 1787 foundered. For Graber, the nation experienced two distinct stable periods negotiated through constitutional compromise. The original Constitution structurally balanced power between free and slave states. These compromises incorporated the Framers’ assumptions that the South would dominate in the House, where population growth drove representation, and that the North would

maintain its interests in the Senate. The founding Constitution, argues Graber, failed rapidly within a few decades as the Framers' vision collapsed in the face of massive land acquisition and rapid expansion and population growth in the North. A new ordering device emerged in the form of Jacksonian-era bisectonal political parties that could win elections only by serving the interests of both their Southern and Northern constituents (p. 177).

Ultimately, the constitutional design undid itself by requiring local elections for national representative positions, pushing candidates to take harder lines for or against slavery. The collapses of successive efforts to mediate sectional conflict, failures attributed to unforeseeable problems of constitutional design, made the Civil War much more likely by 1860, although Graber does not believe it was inevitable.

Nonetheless, Graber identifies two crucial leitmotifs worthy of more investigation, both of which relate to considerations of race beyond the issue of slavery. Graber notes that not all anti-slavery political actors were abolitionists, and even among abolitionists, racist motivations existed. Northern opponents of slavery, including Abraham Lincoln, saw a white union, not racial egalitarianism, as America's ideal situation. Even as national political elites navigated sectional tensions, a white working class that defined itself across ethnic lines and against African-descended slaves developed among the newly enfranchised Jacksonian masses (see Roediger 1991). And the deep Southern states became increasingly enmired in the ideology and economics of slavery. Graber rightly traces the dimensions of compromise and collapse along sectional divisions over slavery. His analysis could be enhanced by considering the emergence and growth of commitments to whiteness. The expansion of whiteness as an aspirational political ideology structurally supported the bipartisan sectional compromises that Graber details. Likewise, the free states' elites' commitment to preserving the West not just as free land, but as white land, contributed to the ultimate intractability of the 1850s debates over popular sovereignty.

Graber closes with a provocative discussion of the 1860 presidential election. Most contemporary commentators endorse candidate Lincoln, but Graber argues that John Bell, who supported the union and opposed national expansion, was more faithful to the Constitution's principles. For Graber, Lincoln's error was rejecting the consensus model that had prevailed since the founding and governing from his narrow majoritarian victory. He does note that Southern political elites had closed down the avenues for serious moral engagement over slavery, which arguably also frustrated a key Republican term of the constitutional contract. But among the presidential candidates in 1860, only Bell

adhered to the Republican commitments of the Constitution. A vote for Bell expressed faith in republicanism's capacity to eliminate slavery peaceably through reason and enlightenment (pp. 232–3). But Graber recognizes the increased repressiveness of the antebellum order: by the late 1850s, both republicanism and democracy were under threat on both sides of the Mason-Dixon line (p. 235).

Graber says of the antebellum constitution: “Constitutional evil, stupidity, and tragedy are consequences of human imperfection. The Constitution is flawed because Americans have never been fully capable of realizing or living up to constitutional principle” (p. 245). This insight transcends the Civil War and Reconstruction. Freedmen and freedwomen briefly grasped the constitutional dream in recognition of their blood sacrifice in the Civil War. But then, as all too often in American history, the tentative remediation made for the crucial assistance rendered by people of color in times of national crisis was followed by further compromise with evil. Can, as Graber hopes, constitutions at least produce a space where political actors can grapple seriously with issues of justice in the course of ordinary politics? Perhaps I am less optimistic than he is on this count. But I agree that the uncertain hope of generating space for such debate is a less bad alternative than engaging in the kind of bloodshed of which we are now capable.

Reference

Roediger, David (1991) *The Wages of Whiteness: Race and the Making of the American Working Class*. London: Verso.

Case Cited

Dred Scott v. Sandford, 60 U.S. 393 (1857).

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Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex. By Elizabeth Bernstein. Chicago: University of Chicago Press, 2007. Pp. ix+291. \$22.00 paper.

Reviewed by Ann M. Lucas, San José State University

Bernstein's *Temporarily Yours* is a masterful work of scholarship. Bernstein argues that new forms and meanings of sex commerce