Critical Dialogue

Liberalizing Lynching: Building a New Racialized State. By Daniel Kato. New York: Oxford University Press, 2015. 232p. $39.95.
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— Michael Javen Fortner, *City University of New York*

"Southern trees bear a strange fruit," Billie Holiday sings in her haunting melody depicting the brutal absurdity of lynching. This depressing peculiarity of post-Reconstruction American life animates Daniel Kato's *Liberalizing Lynching: Building a New Racialized State*—a creative and thoughtful examination of the federal government's role in the cultivation of this "strange and bitter crop." Suffused with a melancholy and incredulity akin to Holiday's blues, this text seeks to decipher federal passivity in the face of these gruesome, public, lawless acts. For Kato, the coincidence of southern lynch mobs and liberal democracy represents a paradox in desperate need of explanation. He finds little comfort in accounts that emphasize the weakness of the American state. The federal government, according to Kato, possessed the ability to intervene, prosecute, and save. It simply chose not to do so.

Kato, impressively and adroitly synthesizing the insights of historical institutionalism with legal and social theories, formulates and deploys his own theoretical framework: "constitutional anarchy." "Constitutional anarchy" is "a conceptual configuration of the federal government that epitomizes accurately the interplay between the political vacillation and judicial accommodation as it relates to lynching." It is also "a theory of interbranch dynamics that hinges on law and politics being both independent and interdependent simultaneously" and it explains "federal nonintervention without ever completely relinquishing federal authority for rights enforcement" (p. 18). He maintains that "constitutional anarchy is meant to frame the federal government's fluctuating disengagement with the rights enforcement of blacks in such a way that accurately subordinates the legal complexities of such enforcement to more pertinent question of political will formation" (p. 22). For Kato, judicial decisions regarding lynching constituted a legal jazz—not a strict, consistent reading of court doctrines but improvisational interpretations attuned to the demands of the political environment.

The originality of the argument and carefulness of the research notwithstanding, *Liberalizing Lynching* does not consider other sources of state power. Capacity clearly matters, as it can determine whether and when a government pursues certain policies. Kato's careful legal and historical analysis convincingly demonstrates that the post-Reconstruction federal government possessed the ability to intercede in local cases, but abjured its liberal responsibilities. Accommodating this contradiction, judges issued rulings that simultaneously preserved federal authority and countenanced federal fecklessness. He observes, "After Reconstruction, when the federal government provided white Southerners the autonomy to manage racial affairs in the South, the Supreme Court responded accordingly through cases such as *Cruikshank*, *Harris*, and the *Civil Rights Cases* that it was going to rule negatively on issues relating to federal rights enforcement for blacks in the South." He adds, "In doing so, the Court did not repudiate and/or strip the federal government of its authority to engage in federal rights enforcement" (p. 132). The post-Reconstruction American state was not weak. It was disinterested.

Yet this apathy warrants closer theoretical and historical scrutiny. Capacity is only one measure of state power; autonomy is another. Theda Skocpol teaches us that states are strong when they possess the capacity to pursue their goals (*States and Social Revolutions: A Comparative Analysis of France, Russia, and China*, 1979) *and* when "independent goal formation occurs" (1985, p. 9). States "may formulate and pursue goals that are not simply reflective of the demands or interests of social groups, classes, or society" ("Bring the State Back In: Strategies of Analysis in Current Research," in *Bringing the State Back In*, 1985, p. 9). Daniel Carpenter brilliantly documents how in the late 19th Century and early 20th century mid-level officials within some executive agencies exploited their networks and reputation to "induce politicians to defer to the wishes of the agencies even when they prefer otherwise" (*The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928,* 2001, p. 4)." Yet this autonomy was not achievable in racial matters. Kato's study indicates that the racial imperatives of the polity limited the freedom of action of federal officials in local rights enforcement. So the American state was not entirely weak, but it was also not completely strong.

The dual dimensions of state power—capacity and autonomy—and the social and institutional dynamics of

the post-Reconstruction American polity clarify the contradictions that inspired this intriguing monograph. Lynching was just one of the criminal aspects of the Redeemers' South (Eric Foner, *Founding Brothers: the Revolutionary Generation*, 1988). The federal government turned a deaf ear to African American pleas for security and justice and in doing so hastened the birth and sustained the reign of Jim Crow. The question is: why? It was not due to a scarcity of resources or authority—*Liberalizing Lynching* makes this abundantly clear. Rather, the government was overwhelmed by the exigencies of racial hierarchy. Whites in the South and North were united by a shared material interest in and ideological commitment to black subordination (Eduardo Bonilla-Silva, Rethinking racism: Toward a structural interpretation. *American Sociological Review*, 1997). Moreover, the "solid" South's position within the Electoral College and Democratic Party created mechanisms by which white supremacy could bend the state to its will (Earl Black and Merle Black, *Politics and society in the South*, 1987). The federal government enjoyed legitimacy and influence but was ultimately beholden to American racism.

Finally, I wonder whether the central paradox driving this text—the tension between legalism and lawlessness—is actually a puzzle at all. Kato seems to concede as much. He suggests that "lynchings are not an aberration that bears no significance to American liberalism; rather, lynchings constitute the very basis by which American liberalism operates." He adds, "The central premise is that it was only by abandoning the right to personal security for blacks could American liberalism work" (p. 14). Unfortunately, Kato does not adequately expound on this "central premise." Truth be told, this is one area that needed much more sustained attention. Kato neither defines nor contextualizes American liberalism and, as a result, he misses an opportunity to deepen our understanding of the perverse origins of federal quiescence to white supremacy in the late 19th Century and early 20th Century.

Where Kato sees a capricious leviathan, I see a consistent liberal state lacking a deep moral obligation to African Americans. In fact, racial injustice was crucial to the birth of this nation. White supremacy actuated American liberalism. Famed historian Edmund S. Morgan tells us that "[r]acism made it possible for white Virginians to develop a devotion to the equality that English republicans had declared to be the soul of liberty." He notes that "the forces which dictated that Virginians see Negroes, mulattoes, and Indians as one also dictated that they see small and large planters as one. Racism became an essential, if unacknowledged, ingredient of the republican ideology that enabled Virginians to lead the nation" (*American Slavery, American Freedom: the Ordeal of Colonial Virginia*, 1975, p. 386). In order to safeguard this great liberal experiment for whites, the "founding brothers" and future generations of political leaders in the South and North forged a series of compromises on race (Joseph Ellis, *Founding Brothers: the Revolutionary Generation*, 2000). The Civil War and Reconstruction-era constitutional amendments and jurisprudence upended the legal infrastructure of these sordid agreements, but they did little to abrade the nation's material and ideological investment in white domination (W.E.B. Du Bois, *Black Reconstruction: an Essay toward a History of the Part which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880,* 1935). Thus, while *Liberalizing Lynching* presents compelling reasons for why the federal government demurred at "black bodies swingin' in the Southern breeze," it does not thoroughly grapple with both the "blood on the leaves" and the "blood at the root."

Response to Michael Javen Fortner's review of *Liberalizing Lynching: Building a New Racialized State*

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— Daniel Kato

What does "blood at the root" mean and how does one study it? Michael Javen Fortner brings up Edmund Morgan's work regarding the intertwining of republican conceptions of freedom with slavery as a model to emulate**.** But slavery and the violence associated with it had constitutional backing in a way lynchings never did. Whereas Fortner rightfully points out the consistent failure to meet the "deep moral obligation to African-Americans," the ways in which that failure is manifested has changed over time. Following the passage of the Reconstruction Amendments, a black man did have rights which a white man was at least supposed to obey but did not. Once slavery was abolished and blacks were considered citizens, a new form of racial subordination emerged that was informed by previous forms of subordination but was not necessarily a simple facsimile of them. My work tries to show how lynching was embedded within this newly reconfigured liberal conception of citizenship. There is a historical, institutional and juridical specificity to lynchings that belie any overgeneralization.

With that said however, it is also impossible to deny the influence of an overarching racial ordering that consistently confirmed that black lives do not matter, which is what Fortner alludes to in his review. When he suggests I need to more "thoroughly grapple" with racism, I take him to mean that I need to show the consistency across time. But I hasten to wonder if the consistent lack of fulfilling the "deep moral obligation to African-Americans" is partly due to the inconsistent ways in which that obligation has been nullified across time. In other words, even though the blood might be the same, the root might perhaps be changing.

I have chosen to focus on the specificity of lynchings, but there is definitely a need for more comprehensive accounts across different eras. The trick however is to do so in a manner that does not overly conflate the similarities but also is not too preoccupied with the differences either. Political scientists, including myself, have generally preferred to err on the side of specificity over that of generality, but I take to heart Fortner's challenge. I thus take Fortner's review as less of a criticism than a call to arms. Fortner's review extends beyond particular criticisms of my book and hints at particular issues of methodology. In their book that outlines the basic thrust of American Political Development, Karen Orren and Stephen Skowronek state that "scholars formulate historical propositions that are more subtle and exacting, but they have less to say than scholars in earlier generations about the development of the American polity overall" (*The Search for American Political Development*, 2004). Perhaps it is time, as Fortner suggests, to revisit the earlier scholarly approaches that focused on the polity overall, particularly as it pertains to race.

Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment. By Michael Javen Fortner. Cambridge, MA: Harvard University Press, 2015. 368p. $29.95.
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— Daniel Kato, *Queen Mary University of London*

Accounts of mass incarceration are beginning to resemble the historiography surrounding Reconstruction. One line of thought focuses on the conservative plan for mass incarceration. There has subsequently been a second, revisionist response that focus on liberals. And there has also been a third line of post-revisionist scholarship that is skeptical of both accounts (Eric Foner, "Reconstruction Revisited," *Reviews in American History*, 1982; The glaring difference is that Reconstruction historiography was based on prevailing accounts that excoriated liberals while the revisionist accounts focused on conservatives). Michael Javen Fortner represents this third wave that complicates one-dimensional accounts of the carceral state.

Unlike the 1940s, when white liberals and African-Americans agreed that structural conditions and rehabilitation should be the primary focus when it comes to drug policy, a schism emerged after the emergence of heroin, the rise of middle-class Harlemites, and the growing disregard for the white gaze. Previously overshadowed by black radicals and liberal congressmen, this burgeoning black silent majority wrested discursive control away and shifted the focus to punishment, partly because of the policy failures established by reformers and also because of the electoral concerns of Nelson Rockefeller. Fortner discredits different notions of determinism, whether it be the claim that all African-Americans necessarily operated under the guise of a "linked fate," all whites operated under the proviso of a racial backlash, or that politics is wholly determined by macro-economics. Fortner provides a counter-narrative that suggests middle-class Harlemites and suburban whites operated in terms more aligned with local dynamics of class than national narratives of race.

It is hard not to applaud Fortner's effort to "redeem the agency of black people." He also points to the cautionary rejoinder to avoid reading the intent of policy solely from the consequences of policy. Whether it is in regards to the racialized consequences of Rockefeller drug policies or his failure to win the Republican presidential nomination, it is always helpful to be reminded of the problems associated with retrospective analyses. Also, whereas most accounts of the intersectionality of race and class emphasize the additive oppression of such combination, Fortner provocatively unpacks how intersectionality can conflict in ways that deprioritize race for class. Those caught in the web of strict drug policies might find that their neighbor who shares the same race is their biggest opponent, while the people that they have the least in common with might be their biggest ally. In that regard, Fortner's account could be read as a rebuke to W.E.B. DuBois' famous quotation that the problem of the twentieth century is the problem of the color line. When it comes to the black silent majority, class trumped race.

Fortner however gives short shrift to blacks not in the silent majority and conservative Republicans. The high salience of concern for crime amongst Harlemites and the opposing voting patterns of local black politicians beg for an explanation that extends beyond Fortner's claim that legislators were simply more optimistic and liberal. If the black silent majority were as concerned about crime as Fortner suggests, why was there no electoral backlash? It is unclear why the electoral importance of the black silent majority only emerges on the gubernatorial and national level but not on the local level. Lisa Miller has investigated very similar groups in Pennsylvania and makes a point of how evidence of a highly punitive public is often decoupled from the rest of the comments offered. According to Miller, the actual interests of these groups can be distorted depending on which level of government they are addressing: "diversity of perspective is lost at the state and national levels, where policy frames reflect more simplistic narratives" (*The Perils of Federalism*, 2008). In regards to conservative Republicans, to what degree was Rockefeller's drug plan a product of intra-party infighting or cross-sectional coalition building? If Rockefeller's revisions to his drug plan was more "to woo vacillating Republicans" than him "casting his lots with African American voters," then that reduces the role of the black silent majority in "shifting the discursive terrain" from one of causation to that of correlation.

This last point relates to some of the controversy surrounding this book. Many have accused Fortner of blaming the victim. Fortner would have been better served if he tempered his criticisms of racial backlash theory in a more immanent fashion. In so doing, it would have encouraged accounts of synthesis instead of forcing to pick between the two. Instead of situating the punitive turn of the black silent majority in regards to their concern about the white gaze, he could have foregrounded an account of the declining role of the welfare state and how that contributed to the constrained spectrum of choices that the black silent majority had.

With that said, there is nevertheless a concern that these issues regarding scale might obscure another significant point, which is what the very existence of such voices that he calls the black silent majority signify. Much of the criticism levied against Fortner is similar to those of Thomas Frank's *What's the Matter with Kansas?* They both point to how groups find common cause with those whose long term interests fundamentally conflict. Gun control and abortion are to Frank's white working class what crime and drugs are to Fortner's black silent majority. They both provide evidence as to why neither class nor race can adequately be addressed comprehensively and how each can serve to inhibit the other.

Both also note how the conservative turn within the Democratic Party had as much to do with its own failings as it was the expedient appeal of Republican Party. This reminds me of a quote from Carl Schurz following the Civil War: "Nothing renders society more restless than a social revolution but half accomplished. . . . All classes are intensely dissatisfied. . . . This state of uncertainty impedes all successful working of the social forces" (Carl Schurz, *Reports on the Condition of the South,* 2006). Fortner's account shows the claustrophobic impact of a "revolution but half accomplished" and how the allure of political expediency can further obscure and embed the color line. Michelle Alexander made a similar point. Racism is not simply a result of white supremacy; it is also reinforced by "black support for harsh responses to urban crime—support born of desperation and legitimate concern over the unraveling of basic security in inner-city communities" (Michelle Alexander, *The New Jim Crow*, 2012). Those in the black silent majority that Fortner describe are not ignorant of the structural concerns of racism nor are they interested in maintaining such structures; but he nevertheless shows how those in the know can nevertheless act as if they do not. This reluctant conservatism works to the advantage of genuine conservatives and will eventually lead to the comeuppance of the reluctant, but such lessons are derived only after the fact. Political expediency can obscure long-term structural concerns to the point of subversion.

Fortner's account is hence less of a repudiation of Du Bois' famous maxim as it is a resignation to the political inexpediency of race. The distinctive class analysis that the concept black silent majority implies is illustrative of how hard it is to tackle the color line in part because there are many politically salient issues lying in its way that are too tempting for some to pass up. The color line is partly reinforced by those trying to distance themselves from that line. The indelible nature of racism is thus not something biological, but a socio-political construction that is constantly being reconstructed not only by agents who directly benefit, but also by those who think they can benefit as well, if only temporarily so.

This tragedy is farcical if paired along with Frank's account, but the indictment of comeuppance is perhaps worse for Harlemites because of an expectation that they should be more aware of their racial self-interest than white Kansans and their economic self-interest. Regardless of the nature of class inequality and racial discrimination, Fortner's point is how such debates are framed around the politics of the possible, which is predicated on the failures of the past, the pressing concerns of the present, and the cynicism of the future. In this regard, I would argue that Fortner is less concerned with redeeming the agency of black people as he is about contextualizing the choices provided to black people given such dire circumstances. It is less a project of redemption as it is an account of travestied emancipation. Fortner puts in the forefront what has lurked in the background and in so doing has exposed an uncomfortable truth or overstated the case, or perhaps done a bit of both. Whatever the case may be, it is an account to be reckoned with.

Response to Daniel Kato's review of *Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment*

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— Michael Javen Fortner

"The almost universal and unsolicited testimony of better class Negroes," W.E.B. Du Bois wrote in his 1899 classic *The Philadelphia Negro: A Social Study*, "was that the attempted clearing out of the slums of the Fifth Ward acted disastrously upon them." The "better class Negroes" complained because "prostitutes and gamblers" had moved to "respectable Negro" areas and the property purchased by "thrifty Negroes" had "greatly depreciated." Du Bois explained that real estate agents rented to individuals that "ruined" these neighborhoods "on the theory that all Negroes belong to the same general class." Finally, he remarked, "It is not well to clean a [cesspool] until one knows where the refuse can be disposed of without general harm."

In his thoughtful review of *Black Silent Majority,* Daniel Kato reminds us of Du Bois' famous dictum about the "color line." The legendary Du Bois has also taught us much about economics and class. My book bears witness

to the analytic power of both sets of insights. It exposes how persistent racial segregation and deindustrialization trapped many African Americans in declining communities and compelled working and middle-class blacks to confront challenges cultivated by the concentration of poverty, including drug addiction and violent crime. These urban residents feared threats to their person, property, civic and religious life, budding "consumers' republic," (Lizabeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America*, 2003) and the quality of their newly-won citizenship—at the moment, as Kato's monograph makes clear, liberalism's promise was redeemed. So they drew upon their class-based morality to understand these dangers and upon their organizational resources to advocate for policing and punishment.

That working- and middle-class African Americans cast a jaundiced eye on drug dealers and users should not surprise anyone. "Respectability" has always been a strong ideological current in black politics (Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880–1920*¸1993; Cathy Cohen, *The Boundaries of Blackness: AIDS and the Breakdown of Black Politics,* 2009). Still, it is certainly appropriate to question, as Kato does, the prevalence of punitive attitudes: Conservative values need not imply penal cures for social ills. The voluminous survey evidence presented in the book, however, clearly establishes that African Americans were profoundly worried about drugs and crime and, because of the intensity of their hurt and terror, embraced harsh solutions. For example, a 1973 *New York Times* poll revealed that about three-fourths of blacks in New York City supported life sentences without parole for "pushers" and three in five favored the imposition of the death penalty for certain crimes.

Contrary to Kato, *Black Silent Majority* does not attribute the passage of the drug laws strictly to African American preferences. The book's causal claims can be found in the details of its policy history. It traces the development of narcotics control strategies in the state from the late 1940s until 1973 and explains both periods of incrementalism and sudden bursts of change. For years, insufficient capacity frustrated attempts by the state's drug policy issue network to implement a robust rehabilitative approach. Nonetheless, members of the network regularly acted autonomously, leveraging their expertise and reputation, to prevent undesirable revisions to the penal code and to expand, though gradually, rehabilitative resources. Events in the "political stream" (John W. Kingdon, *Agendas, Alternatives, and Public Policies,* 1984) occasionally prompted dramatic deviations from this path. In 1962, Governor Nelson Rockefeller, seeking to brandish his liberal bona fides, tackled the state's drug problem by adopting previously ignored reformist ideas. In 1973, in order to remain competitive among Republican activists increasingly enamored with Ronald Reagan, the patrician politician released his controversial proposals and appropriated a narrative fashioned by working and middle-class African Americans to defend the plan.

These findings are not unusual. *Black Silent Majority* uncovers a people placed in dire straits and their all-too-human reactions, born of their earnest pain and lingering class-based biases. It documents a lethargic drug control policy regime weighted down by capacity constraints and bureaucratic rivalries. It demonstrates how an entrepreneurial executive abruptly lurched this apparatus in one ideological direction or another when it was in his interests to do so and how he adroitly deployed compelling and convenient frames to justify these endeavors. Like so many policy studies before it, it shows that, in the fevered rush of these moments, America's liberal democracy convulses, rapidly crafting legislative responses to social problems without full recognition of the "general harm" that such remedies can unexpectedly incur.

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