

role in cotton markets in the late 1830s (89–92). And the Mississippi trust charged with overseeing debt collection and asset dispersion for the moribund Second Bank actually owned as many as four plantations during the 1840s (127).

Kilbourne's account (chap. 4) of the various lawsuits facing the Mississippi trust and the legislation passed in the 1840s reveals how powerful market forces can be and how responsive people are to incentives. He offers interesting anecdotes (chap. 5) about how people made money from their neighbors. The details Kilbourne provides about the machinations of trustee Joseph Roberts (chaps. 4 and 5) are fascinating, if a bit drawn out. He notes that slavery provided reliable income streams, although he seems surprised by this fact, terming slavery a "retrograde labor system" (140). Given the amount of research that shows just how productive Southern slavery was, Kilbourne's surprise and his terminology are puzzling.

One of Kilbourne's principal claims is that slave agriculture generated a vast amount of foreign exchange (10). This may well be, yet he does not showcase his own data to support that claim. Even a few simple tables could have buttressed his arguments nicely.

The big head-scratcher for me, however, was Kilbourne's conclusion: that a government monopoly on the money supply goes hand in hand with totalitarianism (152). I had trouble figuring out what in the previous five chapters led him to this statement. Sure, we can criticize fiat money and centralized banking. A more reasonable conclusion, however, would have been to stick to what Kilbourne's own data actually reveal: that a state-based case study using accounting records gives us a somewhat more detailed picture of what happened in U.S. financial markets from 1831 to 1852 than we had before.

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Stuart Streichler, *Justice Curtis in the Civil War Era: At the Crossroads of American Constitutionalism*, Charlottesville: University of Virginia Press, 2005. Pp. xvi + 271. \$37.50 (ISBN 0-8139-2342-5).

Stuart Streichler aims to use his study of constitutional problems "engaged" by Boston lawyer and Supreme Court Justice Benjamin R. Curtis during 1850 to 1868 to "present . . . a constitutional history of the Civil War era" (xi). Curtis served on the Supreme Court from 1851 to 1857, when he resigned. He returned to Boston, and his reputation gained him a leading role in defending Andrew Johnson against impeachment and later an offer of the Chief Justiceship. Streichler rightly thinks that Curtis's career provides a useful window on the era's events.

For his history, Streichler provides chapter-length studies of legal controversies over fugitive slaves; the commerce clause; the due process clause; the *Dred Scott* case; presidential war powers, including the Emancipation Proclamation; and the Johnson impeachment trial. In each study, Streichler provides an adequate, if limited, sketch of the legal-historical context for Curtis's position and compares his assessment of Curtis's actions to those made by later constitutional scholars. Streichler's

account is balanced, but his assessments of the significance of Curtis's actions are not always persuasive (e.g., 118, 199) and often seem focused on defending Curtis against modern constitutional scholars rather than placing him in an appropriate historical context (e.g., 107–8). *Justice Curtis* is nevertheless a generally interesting and often informative book about a complex, important, and little-understood figure in nineteenth-century law. It serves as a reasonable introduction to many of Streichler's topics, but is unlikely to be the last word on most of them.

Why did Curtis escape the attention of modern legal biographers until Streichler rescued him? Several reasons suggest themselves. Justice Curtis seems to have fled political controversy on occasion; his resignation from the Court seemed to some like a "desertion" (149). His great dissent in *Dred Scott* seemed aberrational to others when viewed in the light of the remainder of his career. And Justice Curtis's "approach [to the constitution] was decidedly at odds with the revolutionary temper of the times" (210).

Curtis sought to hold the middle ground at a time when the middle ground was collapsing around him, whether in Massachusetts on fugitive slavery, on the Taney Court, or during the Civil War when he became so disenchanted with Lincoln that he attacked the Emancipation Proclamation as an abuse of executive power and supported McClellan for president. Curtis was a man who—as Streichler shows—in *Dred Scott* championed the argument that the Constitution recognized at least some free African-Americans as citizens, but referred to them as "niggers" in "unquestionably racist" private correspondence where he deemed desirable the Fourteenth Amendment's provision limiting states' representation unless black suffrage was granted, because ". . . Southern niggers can not govern them ["the people"] without their consent . . ." (125–29; 205).

Streichler seeks to show how Curtis sought to approach these disparate issues—with a commitment to "constitutionalism" and to "common law" constitutional adjudication. The book opens by sketching Curtis's Whig philosophy and dedication to the common law. Streichler's studies show that Curtis sought to confine each branch of the federal government—and that government itself—within what Curtis deemed its constitutional bounds. And there were other continuities in Curtis's career.

Streichler's account suggests that Curtis was exceptionally sensitive to perceived abuses of power and attacked any institution he thought was abusing it. This included attacking the Taney Court majority's legitimacy in his *Dred Scott* dissent, and Lincoln. Nor was Curtis interested in popularity, as evidenced by his defense of Johnson, the slaveholder in *Commonwealth v. Aves*, and the constitutionality of the Fugitive Slave Act of 1850. Curtis took hypertechnical or "superficial" positions on several important slavery-related issues (37, 65). Some accused him of "hallucination" and of acting at the most "inopportune moment" (167). Streichler concludes that Curtis "sometimes acted with a touch of arrogance" (210). He had "little sensitivity to the human face of the tragedy" of Civil War and Reconstruction (205). Curtis may have been an intellectual heir of Marshall and Story, but he was not their equal as a judicial statesman.

In the end, one wishes that Streichler had made more effort to populate the constitutional "middle ground" with others like Curtis to provide a broader historical

context for Curtis's actions. Was there a viable pre-Civil War legal and political "middle ground" on slavery and the Constitution, and who occupied it? Delineation of that middle ground should help to illuminate Curtis's and McLean's actions in *Dred Scott*. Streichler's position on whether they sought a fight is equivocal, but he thinks Curtis was searching for a middle ground on some issues there (122, 131–33). One suspects that more remains to be learned about Curtis and others like him who, like the English Constitutional Royalists in their day, sought unsuccessfully to defend the "great fortress of constitutional government" in a civil war era of constitutional revolution (197).

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Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War*, Chicago: University of Chicago Press, 2007. Pp. 231. \$39.00 (ISBN 0-226-31482-0).

The debate over the respective roles of republicanism and liberalism in the early Republic is still a front-burner issue among legal historians who argue over the extent to which early American property law was typified by an ethic of community obligation and public regulation (read republicanism) or individualism and limited state control (read liberalism). Both sides to the debate agree that by the end of the nineteenth century republicanism had faded from political consequence and American constitutionalism was pervasively liberal. The dispute is whether liberalism's dominance was established at the Founding or whether republicanism exerted substantial influence well into the nation's first century. In *The Limits of Sovereignty*, Daniel Hamilton explores Civil War property confiscation for the light it sheds on this question.

The republicanism/liberalism issue is not the only topic developed by Hamilton. In discussing Northern property confiscation, Hamilton recounts, as other historians have done, the role of the elected branches of government. But he also gives us a seminal analysis of the contribution of the Supreme Court. Hamilton's equally thorough discussion of Southern property confiscation suggestively frames it as part of the early development of the American administrative state.

But most of all, Hamilton's analysis of Civil War property confiscation revamps our understanding of the sanctity of property in American law and the history of republicanism as an influential governmental ethos. For Hamilton, a key tenet of republicanism is that property rights are contingent upon "continuing loyalty" to the community (2). Liberalism, in contrast, teaches that because property is a pre-political and natural right, property belongs to an individual regardless of his or her political commitments.

In Hamilton's view, the dominance of republican notions of property account for the massive legislative confiscation of loyalist property during the Revolution. He demonstrates that many Civil War legislators—both in the North and the South—drew from Revolutionary-era precedents in proposing their schemes to confiscate