

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

the property of disloyal compatriots. Not only did these legislators premise their position on republican notions of property, but Hamilton asserts that in 1860 “the brief for confiscation [was] easier to make than the brief against it” (4). Other historians have asserted that the Northern proponents of confiscation were driven by a fanatical vengeance to propose confiscatory schemes that were clear violations of the Constitution. Hamilton portrays them as sensibly grounded in a traditional, more community-oriented, less individualistic ideology of property.

Other historians also have said that the Union’s failure to enact effective confiscation reflected its pursuit of a policy of reconciliation and reunion. In contrast, Hamilton asserts that ideology, rather than interest, was determinative of the Union’s ultimate decision not to impose Revolutionary-era style confiscation on the Confederates. In making this argument, Hamilton focuses on congressmen and senators from New England who, despite the wishes of their constituents, cast the decisive votes preventing the enactment of harsh measures. In 1862, when the North was losing the war, when the rebels were confiscating property owned by Northerners, and when the citizenry was demanding retaliation, these legislators broke party ranks to vote down effective confiscation laws. This crucial bloc of legislators grounded their vote in the view that judicial condemnation, on an inefficient case-by-case basis, was the only legitimate way to seize a rebel’s property. Because this bloc held the balance of power, Hamilton argues that in refusing to confiscate rebel wealth by legislative fiat, Congress “restrained itself on ideological grounds” (58).

Hamilton persuasively argues that the Union’s refusal to enact effective confiscation legislation was a significant, and perhaps transformative, event in the emergence of liberal, property-rights-centered constitutionalism. As the Union was moving toward divesting Southerners of title to their most distinctive and important asset—their slaves—it was disclaiming a traditional power that would have allowed it to take more. These decisions, then, became starting points of the post-war social and constitutional order.

It is important not to overread Hamilton’s claim. Because he studies only the Revolutionary and Civil War eras, Hamilton cannot tell us when republicanism slipped from dominance. It might have been at the Founding, or it might have taken until the Civil War. Indeed the pro-confiscation position may have represented a resurgence of an otherwise moribund ethos under the stress of national calamity. Hamilton suggests that the Civil War confiscation debates “led . . . to the acceleration of new constitutional and ideological norms” (58), but additional studies are necessary to establish an accurate trend line.

By connecting Civil War property confiscation to the republicanism/liberalism debate, Hamilton gives us a more sympathetic understanding of the Radical members of Congress who advocated general confiscation of rebel wealth and situates Civil War property confiscation as among the salient events that pushed liberal constitutionalism to unchallenged dominance and republicanism into total eclipse. Hamilton’s closely argued book successfully links the Civil War with long-term trends in American history.

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