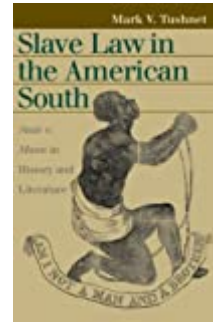




Mark V. Tushnet. *Slave Law in the American South: State v. Mann in History and Literature.* Lawrence: University Press of Kansas, 2003. x + 150 pp. \$29.95 (cloth), ISBN 978-0-7006-1270-3; \$12.95 (paper), ISBN 978-0-7006-1271-0.



Reviewed by John Sacher (Department of Social Sciences, Emporia State University)

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Slave Law: Rhetoric and Reality

One of the fundamental contradictions inherent in antebellum slavery was the tension between viewing slaves as people or as property. In order to resolve this tension, southerners frequently looked to the courts to establish boundaries between these categories. *State v. Mann*, a case decided in North Carolina in 1830, represents one of the most famous court decisions regarding this dilemma. In *Slave Law in the American South*, Mark Tushnet examines the case itself, the rationale behind Thomas Ruffin's decision, and the case's impact. In his final section, Tushnet provides an in-depth analysis of Harriet Beecher Stowe's *Dred: A Tale of the Great Dismal Swamp* (1857), a novel which revolves around the decision made in *State v. Mann*. Not surprisingly, Tushnet, a renowned scholar of legal history, provides a brilliant analysis of Ruffin's decision in *State v. Mann*. He is, unfortunately, not as successful in connecting the case to Stowe and other abolitionists and in assessing the decision's overall impact.

As Tushnet explains, the underlying case in *State v. Mann* was not very complicated. In 1828, John Mann hired the slave Lydia from Elizabeth Jones. At some

point, Mann decided to punish Lydia. In the midst of this punishment, she fled, whereupon Mann shot and wounded her. A Chowan County jury convicted Mann of battery and fined him \$5. The case was appealed to the North Carolina state supreme court where Thomas Ruffin, a recent appointee, wrote an opinion overturning this conviction.

Tushnet skillfully demonstrates that the importance of the decision can be found in its rhetoric more than in the case itself. In his decision, Ruffin maintained that "the slave, to remain a slave, must be made sensible that there is no appeal from his master" (p. 25). In asserting "that the power of the master must be absolute to render the submission of the slave perfect," Ruffin seemingly endorsed a view that granted society no ability whatsoever to interfere with the relationship between owners and slaves (p. 1). Ruffin tempered his decision by acknowledging his "sense of the harshness of the proposition" and the "struggle ... between the feelings of the man and the duty of the magistrate" (p. 1). Abolitionists, including Stowe, seized upon Ruffin's apparent admission that he detested the role that he was forced to play in upholding

the South's peculiar institution in order to demonstrate the extent to which the plague of slavery had infected the South. They contended that southern law forced all men, even upright ones such as Ruffin, to swallow their pride and support slavery despite their awareness of its malignance.

In the most successful part of his work, Tushnet expertly explains Ruffin's decision and demonstrates how contemporaries and historians have misunderstood his position. When Ruffin wrote of the conflict between the man and the magistrate, he was not experiencing a moral dilemma regarding slavery. Owning thirty-two slaves himself, Ruffin did not question the presence of slavery in southern society; rather he questioned slave law and the role of the judiciary. While he maintained that under existing laws the courts must view the master's power as absolute, he believed that other groups (particularly the legislature and the community at large) had the power to limit the owner's behavior. Such limits could include statutes, personal interest, and community opinion. In explaining these varied controls on the power of masters, Tushnet delves briefly but convincingly into such topics as the economics of slavery, the southern code of honor, the role of evangelical religion, and the limits of hegemony. Furthermore, Tushnet, using Ruffin's decision in *State v. Mann* and two other cases, posits the judge as an instrumentalist. As an instrumentalist judge, Ruffin placed the importance of general rules over justice for individuals, used the law to promote public policy, and relied heavily on precedent. All three of these distinctions help explain his decision in this case.

Unfortunately, despite Tushnet's best efforts, he is unable to find much about the case aside from the material in Ruffin's decision. Local newspapers are no longer extant, census records provide ambiguous and incomplete reports about the individuals involved, and no material whatsoever can be discovered regarding the slave Lydia. This lack of information weakens Tushnet's efforts to place the case within an historical context.

After analyzing Ruffin's decision, Tushnet moves on to address Harriet Beecher Stowe's use of the case in her 1857 novel *Dred*. Stowe considered Ruffin, based on her reading of the rhetoric of his decision, to be an exemplar of the dilemma in which slavery placed honorable southern men. In her view, these men may have detested slavery, but they were compelled to uphold it. In *Dred*, the characters face a similar (though as Tushnet points out, legally implausible) situation to the one in *State v.*

Mann. Like the original, this case results in a conviction which is overturned by a judge who, in the novel, recites Ruffin's decision verbatim. According to Tushnet, Stowe is trying to demonstrate that neither law, southern religion, southern politics, nor slave rebellion can end slavery. Not only could this view be seen as pessimistic, but Stanley Elkins and others have used arguments such as this to brand the abolitionists as anti-institutional. Yet, Tushnet claims that these scholars have misunderstood Stowe's argument. He insists that Stowe possessed faith in both the power of organized religion, properly understood, and the power of community opinion to influence behavior. In his conclusion, he posits the idea that in her reliance on the power of civil society, Stowe ironically joins Ruffin as an advocate of the concept that the power of the community could be more influential than the power of the courts.

While *Slave Law and the American South* brilliantly analyzes Ruffin's decision in *State v. Mann*, the rest of the work lacks the strength of that section. The book reads as though Tushnet has written two articles, an excellent one on the decision itself and a decent one on Stowe's novel, and tried to force them together in a book. This reader finds himself wishing for more information on the impact of the case and for more connections between the two sections. For instance, how often did judges cite *State v. Mann* in their own decisions? In other words, how important was the case in establishing a precedent? (The editors' preface considers the case to be the intellectual ancestor to *Dred Scott*, yet no connection is ever made.) How did southerners react to Stowe's novel? Particularly, did Ruffin himself have any reaction to abolitionists' incorrect interpretation of his decision? How many other abolitionists capitalized on Ruffin's decision in the manner that Stowe did?

Answers to questions such as these would have strengthened the link between the two disparate sections of Tushnet's work. Instead, the sections on *Dred* focus on issues only tangentially related to the historical impact of *State v. Mann*. Examining Stowe's views regarding religion and institutions (and historians' views of Stowe's views on these subjects), Tushnet, only in the final paragraph, attempts to connect this back to Ruffin by asserting that they both stress the importance of community opinion. While this lack of coherence undermines Tushnet's work, the book is still very valuable for its section on the logic behind Ruffin's decision in *State v. Mann* and the role that courts played in upholding the South's peculiar institution.

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