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provides a delightful change of texture following Gabriel's Rebellion and preceding the Girard case. Given Jefferson's passion for the separation of church and state, perhaps a more concrete segue might have been made from his views to that contested episode (beginning with Girard's death in 1831) involving republican fear of the "dead hand" of self-perpetuating, ecclesiastical charitable trusts in the United States; but Ferguson is very likely assuming some basic familiarity with this period on the part of his readers.

If the book is occasionally marred by some overly broad generalizations, it is written with remarkable clarity and moves along at a varied pace that never fails to engage us. Reading the Early Republic is an innovative and distinguished contribution that enriches our understanding of the period.

Michael Kammen
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State v. Mann has long deserved the kind of sustained treatment that a book can best provide. The 1830 opinion by Judge Thomas Ruffin of North Carolina's Supreme Court is best known for its frank recognition of the harsh requirements of slavery. The brief opinion sets out the paradoxical logic of slavery—that the free will of the slave necessitates an effort to extinguish it. The opinion seems to condemn slavery (or at least the doctrine of complete dominion) morally as it defends it legally. Notable for its candor, the opinion nevertheless demands a kind of silence from both slaves and courts. The language of this particular defense of slavery was used by Harriet Beecher Stowe in an effort to arouse anti-slavery sentiments.

A hirer of the slave Lydia had shot her after she started to run from him as he punished her. He was indicted and convicted of assault and battery on the grounds that his behavior was "cruel and unwarrantable, and disproportionate." Judge Ruffin's opinion for the court reversed John Mann's conviction, determining that the criminal law must remain silent on the matter of a master (or hirer's) treatment of a slave. Slavery demanded the master's complete dominion over the body of the slave. The institution could endure neither the reality nor the perception of a legal appeal from such absolute power.

Ruffin begins the opinion (one of his first as justice) with a lamentation and soon moves to the imperious language of duty. It is terrible when such cases come forward, pitting the sentiments of man against the requirements of law—the duties of the judge. But it would be "criminal" to avoid the duties the law imposes. Aware of the harshness of the result, Ruffin observes toward the end of the opinion that statutory protections, the self-interest of owners, the familiarity of slaves and owners raised together, and community norms might reduce the occasions when courts were called on to answer such questions.

Tushnet divides this work into six chapters, in addition to an introduction and
a bibliographical essay. He opens with a chapter on slavery and the law, touching on relevant legal contrasts. Among them are Lord Mansfield’s view that slavery was inconsistent with the common law and the American South’s rejection of that view, the promise of the Declaration as compared to the accommodation of the Constitution, the gulf between law and practice, the criminal law’s treatment of “strangers” versus owners in their respective relations with slaves, and the race-specific provocation rules in antebellum North Carolina homicide cases. Ensuing chapters are devoted to the opinion itself—including its development through two prior drafts, previous scholarly treatments of the case, and lenses through which it might be viewed—from abolitionist writer Theodore Dwight Weld’s analysis of self interest and passion through Robert Cover’s “moral-formal dilemma” to more recent analyses, and the economic and political setting of the case along with an analysis of Ruffin’s jurisprudence and character as they might help explain the opinion and its high rhetoric. Final chapters cover Harriet Beecher Stowe’s second anti-slavery novel, Dred: A Tale of the Great Dismal Swamp—a novel in which she incorporates the Mann opinion—and scholarly reaction to the novel.

The virtues of Slave Law in the American South are considerable. Perhaps the most signal of these is Tushnet’s decision to analyze rather than moralize, to assess Mann and Ruffin in their own contexts, insofar as this is possible. The result is a very helpful treatment of Ruffin’s opinion as an exercise in character construction. Then there is Tushnet’s epistemic modesty. About the case’s precipitating events, there is likely little we can know, he says. Similarly, he is willing to lay out ambiguous—but suggestive—evidence, as he does on the issues of the severity of Mann’s assault on Lydia, whether Chowan County juries were especially sympathetic to claims of abuse of slaves, what family might have owned Lydia, and what might have been the circumstances of her hirer, John Mann. Tushnet presents such evidence as pointing to possibilities and nothing more. He thus fairly presents facts that support contrary interpretations.

It is easy to dismiss, in a manner Tushnet refuses to, Ruffin’s references to informal social norms (and statutes) as cynical efforts to cloak the harshness of the law’s silence in the face of owners’ abuses of slaves. One result of this refusal is an insightful analysis of the role of non-legal institutions in the social practice of slavery. Tushnet sees one of Mann’s functions as institutional allocation. Ruffin feared the consequences of allowing the common law to address the (non-homicidal) depredations owners might wreak on slaves, but he was hopeful that non-legal institutions and norms might allow communities to control masters.

Tushnet profitably deploys the scholarship of others, expressing reasoned reservations about a number of scholarly claims—some quite specific, such as the severity of Mann’s assault, and others more general, such as economic analysis of masters’ liability for their conduct toward their slaves. Tushnet is less interested in simply recounting the work of others than in interacting with it in an effort to uncover richer meanings.

Ruffin’s argument is pragmatic and utilitarian but invokes certitude, necessity, and duty. Tushnet’s analysis of that argument is wide-ranging and contextual, illuminating the complexities of a troubling opinion and its author. Along the way,
we come to better understand the roles of the common law, statutes, and non-legal institutions in slavery’s practice.

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Although barely recognized nowadays, the Great Gaines Case was, as Elizabeth Urban Alexander explains, the most sensational case of the nineteenth century, not only in Louisiana but in the nation at large. The longest continuous litigation in American history (1834–1891) began when the twenty-five-year-old Myra Clark Gaines (1804?–1885) discovered that the couple who raised her were not her natural parents and that her biological father had been the millionaire Daniel Clark of New Orleans. His enormous estate was the prize in Myra’s quest to prove herself Clark’s legitimate daughter and heir. And what a quest it was, for the Gaines “case” was actually some three hundred cases, generating eight appeals to the Louisiana Supreme Court and seventeen to the United States Supreme Court.

The litigation centered on two contested events—first, the marriage vel non of Daniel Clark and Myra’s mother, the Creole beauty Zulime Carrière, and, second, Clark’s alleged deathbed composition of a never-discovered holographic will naming Myra as his legitimate daughter and heir. Of special interest to legal historians is Alexander’s skillful explanation of how Louisiana’s Franco-Hispanic laws shaped Myra’s claims. Even though not named as an heir in Clark’s 1811 will, Myra would nevertheless be placed in possession of four-fifths of the estate under the civilian doctrine of “forced heirship,” but only if she was his “legitimate” daughter: hence the true-life romantic tale at the heart of the litigation—the riddle of Clark’s status as either Zulime’s husband or merely her paramour.

Besides offering a well-told tale, Alexander aspires to establish the connections between law and society, particularly between nineteenth-century literary and legal discourses. Although de rigueur for modern legal historians, establishing law-and-society connections is not easily, or often, accomplished. Alexander’s stated goals are “to weave together an account of the emergence of domestic relations law, the popularity of sentimental fiction, and the transformation of judicial attitudes toward women” while narrating the saga of the Gaines litigation (xii). Alexander is more successful in the latter goal, in fashioning an understandable description of Myra’s multifarious legal actions, even if she does not necessarily provide the reader with an understanding of Myra the person. This reader, for one, did not get a sense of the real Myra Clark Gaines—but maybe that is the point: perhaps she was, in the end, only the Great Gaines Case. Indeed, although Alexander portrays Gaines as a pioneering, courageous woman who broke through domestic barriers to assert herself in the male domain of the courtroom, another plausible portrait