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Worse Than 'Dred Scott'

Dark Places of the Earth
By Jonathan M. Bryant
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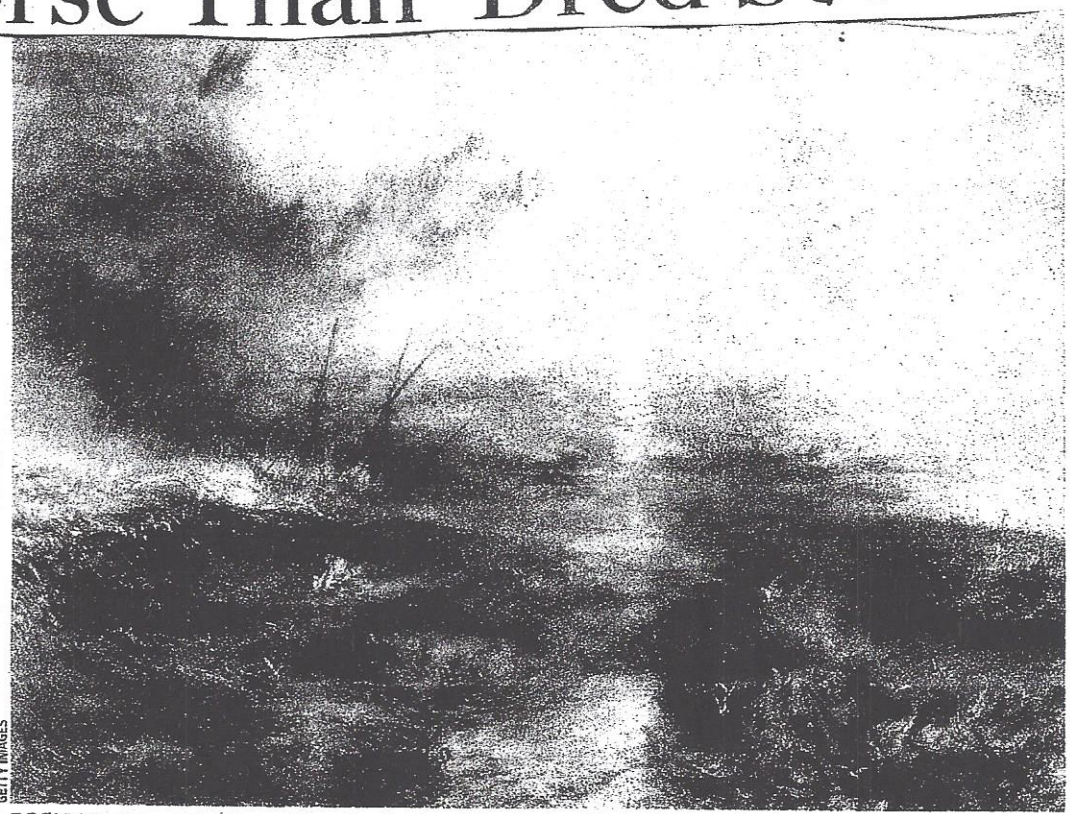

GETTY IMAGES

DOOM 'The Slave Ship (Slavers Throwing Overboard the Dead and Dying, Typhoon Coming On)' (1840) by J.M.W. Turner.

WERE AMERICA'S millions of enslaved Africans property, or were they human beings with intrinsic rights? For John Marshall, the chief justice of the Supreme Court from 1801 to 1835, they were, astoundingly, both. Marshall conceded that slavery was "contrary to the law of nature," since "every man has a natural right to the fruits of his own labor." But for Marshall natural law did not trump human law. Slavery was condoned by custom and by the Constitution. And so, Marshall declared, "this Court must not yield to feelings which might seduce it from the path of duty, and must obey the mandate of the law." Even the horrific slave trade, which America had banned in an 1808 bill that was stiffened by Congress in 1819, must be tolerated when it was carried on under the flags of nations where the trade was legal.

Marshall made his schizoid pronouncements on slavery in an important but little-known case involving a captured Spanish slave ship, the Antelope, which is now the subject of Jonathan M. Bryant's illuminating book "Dark Places of the Earth."

The Antelope, a Spanish-licensed ship, left Cuba on Aug. 24, 1819, on a voyage to Africa, where it took on slaves before being captured by the Arraganta, a privateer under the Uruguayan flag. After seizing the Antelope and its slaves, the Arraganta stole additional slaves from Portuguese ships that it then destroyed. The Arraganta and the hijacked Antelope, carrying more than 300 chained Africans, recrossed the Atlantic to Brazil, where the Arraganta was wrecked in a storm. The privateer crew then took the Antelope north and sailed near St. Augustine, in what is now Florida. On June 29, 1820, the ship, with 281 remaining captives, was captured by the Dallas, a U.S. Navy cutter. The Africans were transported to Savannah, Ga., where they waited for their fates to be decided. The wait lasted seven years (for those who lived), as the case went through local courts and was appealed to the Supreme Court three times.

At issue was the legal standing of the captives. Five parties laid claim to them: Spain, Portugal, the privateer captain of the Arraganta, the captain of the Dallas, and the United States, represented by the Georgia attorney Richard Wylly Habersham, who maintained that the Africans were free under the 1819 Slave Trade Act. (Presidents James Monroe and John Quincy Adams, who successively held office during the years of the Antelope proceedings, kept their distance from the case due to the volatility of the slavery issue.) The argument that the captives were human beings with natural rights was presented to the Supreme Court by the lawyers Francis Scott Key (of "Star-Spangled Banner" fame) and William Wirt. They faced a team of attorneys, led by John M. Berrien, who held that the captives should be treated as property.

By the time the legal ordeal ended, only about two-thirds of those who had been originally taken captive in Africa were still alive. Thirty-seven had been retained in slavery in America, and 131 deported to Liberia.

The captive Africans who stayed in the U.S. met with abuse, disease and overwork. Even those deported to Liberia, though fortunate to be saved from American slavery, encountered new forms of suffering there that quickly decimated their ranks.

The intricacies of the Antelope voyage and the legal maneuverings don't make for rapid reading, especially since Mr. Bryant frequently makes biographical and contextual digressions. But these often fascinating tangents distinguish this book from John Thomas Noonan's lean 1977 book, "The Antelope: The Ordeal of the Recaptured Africans in the Administrations of John Quincy Adams and James Monroe." Mr. Bryant provides information on many topics, among them: piracy and privateering; cotton production; the yellow fever; living conditions in the South and in Liberia; and, most compellingly, positive law (decided by courts or the government) vs. natural law (moral or religious principle).

Corruption and greed are ubiquitous in Mr. Bryant's narrative. Those directly involved in the slave trade were thoroughly venal. Side players were hardly better. The U.S. marshal John H. Morel, for instance, took charge of the captives during the years of the court proceedings and enslaved many of the Africans on his Georgia plantation, even as he charged the U. S. government massively for their "care."

> The Supreme Court's ruling kept the slave trade open for 35 more years, as ships hid under other nations' flags.

No one in the Antelope imbroglio came off completely clean. Richard Habersham and Francis Scott Key, who, out of respect for the 1819 slave-trade law, pleaded for the captives' freedom and made stirring pronouncements about their rights, were themselves slave owners, as were four of the six justices on John Marshall's court, including Marshall himself.

The Antelope case left a dark legacy. The court's ruling that the U.S. could not interfere with the slave laws of other nations opened the way for almost continuous international slave trafficking between 1825 and 1866, during which time more than 1.5 million enslaved Africans were transported to the Americas in ships that frequently hid under other nations' colors.

On the other hand, the natural law arguments proffered by several Antelope attorneys inspired John Quincy Adams, who became more openly antislavery in his post-presidential years. In *Amistad v. United States* (1841), he won freedom for slave rebels who had taken over a ship. To prepare for that famous case, Adams closely studied the Antelope documents. The Marshall court, he noted, had hypocritically held that slavery was detestable but not contrary to law. Adams declared that the Declaration of Independence, with its proclamation of human equality, must be the final arbiter of law.

It was not far from Adams's stance to that of Abraham Lincoln, who in 1863 affirmed at Gettysburg that the nation was conceived in liberty and dedicated to the proposition that all are created equal.

Mr. Reynolds, a professor at the CUNY Graduate Center, is the author or editor of 15 books, most recently "Lincoln's Selected Writings."