

Racialized Violence and American Liberalism

Author : Aziz Rana

Date : January 26, 2015

Daniel Kato, [Constitutionalizing Anarchy: Liberalism, Lynching, and the Law](#), 10 *J. of Hate Stud.* 143 (2012).

For nearly a century in the American South, lynching as a practice of racialized violence persisted openly and with minimal federal intervention. In his article, “Constitutionalizing Anarchy,” the center-piece of a book forthcoming from Oxford University Press titled *Liberalizing Lynching: Building a New Racialized State, 1883-1966*, [Daniel Kato](#) not only provides a compelling and novel explanation for the reasons why. He also forcefully argues that one cannot understand either the character of American liberalism or how the American state developed over the course of the twentieth century without placing the question of racial violence at the center.

In studies on American political development, accounts of lynching and its persistence abound. Some scholars argue that the American state in the post-Civil War period was “weak,” institutionally limited in its capacity to address rampant violence against African Americans—especially given the divided and federalist nature of the constitutional system. By contrast, others contend that rather than being incapable of stopping lynching, the federal government actually implicitly sanctioned the activity.

By contrast, Kato draws from Ernst Fraenkel’s account of the dual state to develop a complex and creative theory of what he calls constitutional anarchy to explain federal permissiveness. According to Kato, federal officials (especially the Supreme Court) viewed lynching as a legally bounded region of lawlessness, in which officials maintained a policy of non-interference while always retaining the sovereign authority to intercede to stop the practice. Moreover, Kato goes further and highlights how the federal government’s response to lynching was not simply an oversight due to racist sentiment. Rather, the question of lynching and black rights more generally was central to the very development of the American state during the late nineteenth and early twentieth centuries. Through the concept of constitutional anarchy, Kato beautifully shows how the federal government’s inaction was actually part of a calculated set of judgments by an increasingly activist state.

As a consequence, Kato’s theory of constitutional anarchy suggests the real limitations of the dominant explanations in the political development literature. The weak state thesis seemingly ignores the fact that the U.S. federal government actually expanded its administrative capacities and regulatory reach dramatically during precisely the same period that it contracted its power in the arena of race. The weakness thesis thus leaves unanswered the key question of why the nation state became weak in federal rights enforcements for Southern blacks (especially by comparison with the heyday of Reconstruction) just as it was gaining significant strength in other domains. As for the argument that the government affirmatively legitimated the practice, such a view fails to address why federal officials (across the three branches) refused to give explicit legal sanction to lynching and often directly attacked such violence as barbaric—opponents even included committed white supremacists like Woodrow Wilson.

In addition to exploring how race affected state structure and development, “Constitutionalizing Anarchy” also speaks to a key issue at the core of the American liberal tradition. In recent years, numerous scholars have explored how American political identity has been marked by an uneasy mix between illiberal and liberal ideologies—what Rogers Smith refers to as the nation’s “multiple traditions.” Yet, scholars have had a much harder time accounting for why avowed American liberals could nonetheless be complicit in deeply oppressive practices. In other words, it is one thing to argue in the abstract that Americans have held contradictory ideas at once, but quite another to be able to explain the process by which individuals actually internally reconciled these contradictions.

Kato implicitly offers an account of the *psychology* of American liberalism—namely how political actors could persist in thinking of themselves as liberal despite actively permitting extreme racial violence. As he demonstrates, the contours of constitutional anarchy allowed federal officials to view lynchings as savage acts at the edges of federal power; thus they could decry lynching (as Woodrow Wilson did in calling it a “disgraceful evil”) while at the same time perpetuating a political system that systematically refused to address the violence. Even more critically, precisely because lynching was viewed as a realm of lawlessness by federal officials, its very persistence could be juxtaposed against what officials claimed was the real essence of American legality—namely a pristine domain of liberal values and rule-of-law commitments. As a result, lynching counter-intuitively helped to cement for many national elites their own self-conception as liberal.

In placing racial violence at the heart of debates about both American state development and liberal political identity, Kato offers a persuasive reinterpretation of post-Civil War constitutional history. And given the sweep of his claims, I very much look forward to seeing the larger book in print.

Cite as: Aziz Rana, *Racialized Violence and American Liberalism*, JOTWELL (January 26, 2015) (reviewing Daniel Kato, *Constitutionalizing Anarchy: Liberalism, Lynching, and the Law*, 10 *J. of Hate Stud.* 143 (2012)), <http://legalhist.jotwell.com/racialized-violence-and-american-liberalism/>.