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The Body of John Merryman: Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman and Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman

Eric M. Freedman

Maurice A. Deane School of Law at Hofstra University

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that the South shared many modern, capitalist characteristics with the North. Southern railroads faced some of the same business challenges as their northern counterparts and responded with similar rhetorical and technological solutions. Thomas uses GIS and statistical analysis to demonstrate that the level of railroad access for the South's free population nearly matched that of northerners while the number of depots and junctions per capita in the South exceeded that in the North.

As anyone who has ever confronted an e-mail inbox after a week's vacation knows, however, digital technology can have its disadvantages. One of the most common is an overwhelming amount of information. This book is packed with so much information that Thomas sometimes loses the thread of his argument while exploring material that is interesting but not clearly related to what precedes or follows it. Still, very few people are willing to renounce digital technology because of overstuffed e-mail inboxes. Thomas's skillful use of innovative new research tools shows why—the benefits and insights such technology can provide are substantial.

Robert G. Angevine
George Washington University
Washington, D.C.

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The Body of John Merryman: Abraham Lincoln and the Suspension of Habeas Corpus. By Brian McGinty. (Cambridge: Harvard University Press, 2011. 253 pp. \$29.95.)

Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman. By Jonathan W. White. (Baton Rouge: Louisiana State University Press, 2011. xvi, 191 pp. Cloth, \$49.95. Paper, \$18.95.)

Governments jail people who are perceived as threats. More often than not the governments believe the threats to be genuine and the incarcerations to be legally sound. But governments are sometimes wrong. When a court issues a writ of habeas corpus (also known as the Great Writ of Liberty), it orders jailers to bring a prisoner into court and requires them to persuade a neutral judicial officer of the

correctness of their legal and factual assertions, or else release the captive. Unsurprisingly, jailers frequently resist being called to account. Much of the Anglo-American history of the rule of law has been shaped by the resolution of the resulting clashes.

One frequently recounted episode is the centerpiece of both books under review. As Union troops rushed to Washington, D.C., in April 1861, many Southern sympathizers violently opposed their passage. The leader of a Maryland cavalry unit, John Merryman, ordered the destruction of several key railroad bridges to prevent additional Northern units from passing through Baltimore. It remains contested to this day whether he did so as an act of hostility or, with the concurrence of the local authorities, in good faith to forestall further violence. In any event, Union military officers considered his actions treasonous, placed him under arrest, and confined him to Fort McHenry.

Merryman's counsel sought a writ of habeas corpus from Chief Justice Roger Taney, who ordered that the commanding general produce Merryman in court and justify the detention. Gen. George Cadwalader instead sent a letter informing a surprised Taney that President Abraham Lincoln had authorized Cadwalader to suspend the writ of habeas corpus, that he had done so, and that therefore neither the prisoner nor an explanation for his detention would be forthcoming. In *Ex Parte Merryman* (1861), Taney denounced the putative suspension as unconstitutional and expressed the pious hope that Lincoln, with whom he had long been bitterly at odds, would correct the situation. Lincoln instead publicly defended his actions, and Merryman remained in military confinement.

Readers whose primary interest is history rather than law will find Jonathan W. White's monograph a more valuable consideration of these events than Brian McGinty's. White, who teaches American studies at Christopher Newport University, has written a vivid and impressively researched account particularly noteworthy for its scrupulous reliance on primary sources. He even uncovers a previously unpublished letter by Merryman explaining his actions.

White treats the events of spring 1861 as part of two wider stories: the story of Merryman's continuing involvement with the criminal

and civil legal system as a result of the burning of the bridge; and the story of the fate of thousands of other prisoners detained by unilateral executive decision, frequently in defiance of the commands of Congress and the courts. The first of these stories illuminates the practical difficulties faced by the constituted authorities and their adversaries in attempting to vindicate their respective claims through legal mechanisms that had been created long ago under completely different conditions. The second story is familiar thanks to the work of Mark E. Neely Jr., but developments since September 11, 2001, make it particularly timely for us to recall the sheer radicalism of Lincoln's position. He claimed and exercised both the power to detain civilians preventatively, incarcerating them until the end of the conflict to forestall any harm they might do, and the power to try to punish them by military tribunals for an ill-defined range of conduct thought to be inimical to the war effort. Lincoln believed, White argues, that he "had a war to fight and a nation to save and he would not allow himself or his administration to be hamstrung by another branch's interpretation of the suspension clause" of the Constitution (article 1, section 9, clause 2) (p. 75).

Readers whose primary interest is the various legal arguments spawned at the time by Lincoln's views should turn to the extended summaries provided in the work of McGinty, a lawyer who has previously published books in the field. The salient feature of his book is its insistence on the degree to which legal doctrines influenced events in the outside world. McGinty adopts the political scientist Carl Brent Swisher's view that *Ex Parte Merryman* "had the impact of a military victory for the South," and continues: "That the victory did not carry the South to ultimate independence is due in large measure to the answers Lincoln provided to Taney's *Merryman* arguments" (pp. 7–8). That is a strong statement—conventional wisdom is surely that the North would have prevailed militarily regardless of how Lincoln had responded to the ruling—and one that the author's generally unremarkable narrative fails to prove.

McGinty compounds the difficulty of promising in argument more than he delivers in evidence by asserting that "after the guns of war

finally fell silent, the suspension was sustained and the Union was saved" (p. 9). His account of subsequent decisions during the period shows a more mixed record. As history, that section is also marred by the insertion of commentary on the Supreme Court's cases during the current war on terror without even a side-long glance at the legal lessons of World War I as taught by its First Amendment cases, of World War II as taught by its Japanese internment cases, or the Korean War as taught by *Youngstown Sheet & Tube Co. v. Sawyer* (1952).

Both authors agree that we live in a different legal world than Lincoln did and that, even so, Lincoln was often ambivalent about pushing the legal envelope. He most likely hoped that his successors would understand his broad abrogation of civil liberties to secure victory as an instance of "winning ugly." It was preferable to defeat but not an example to emulate.

Eric M. Freedman
Hofstra University Law School
Hempstead, New York

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The Peninsula Campaign and the Necessity of Emancipation: African Americans and the Fight for Freedom. By Glenn David Brasher. (Chapel Hill: University of North Carolina Press, 2012. 288 pp. \$39.95.)

Mark Grimsley argued in *Hard Hand of War* (1995) that the 1862 Peninsula Campaign was the turning point in the creation of the Federal hard war policy. Glenn David Brasher zeroes in on the campaign's impact regarding one part of that policy, emancipation, and, unlike Grimsley, he extensively explores it. Brasher maintains that Confederate use of numerous slaves to build fortifications contributed to the failure of the Federal invasion under Gen. George McClellan, an opponent of Union interference with slavery. According to Brasher, McClellan's inability to end the war, exaggerated tales about Confederate use of slave soldiers, the large number of slaves fleeing to Federal forces, and the Union troops' receptivity to them because of their usefulness enabled the Radical Republicans to convince a formerly reluctant President Abraham Lincoln to issue an emancipation proclamation.

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