

# H-Net Reviews

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Robert Bruce Murray. *Legal Cases of the Civil War*. Mechanicsburg: Stackpole Books, 2003. xii + 324 pp. \$29.95 (cloth), ISBN 978-0-8117-0059-7.

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## The Supreme Court and the Civil War

Some historians proclaim the Civil War to be the Second American Revolution while others maintain the rebellion was only the inevitable conclusion to the first. Increasingly, authors are reexamining the legacy of the war and attempting to measure the benefits to our society from the horrible costs of the war. David Blight in *Race and Reunion: The Civil War in American Memory*, for example, describes the war as a catalyst necessary for the social revolution that followed emancipation; a revolution that was quickly subordinated to sectional reconciliation by a still-racist society.[1] The Civil War was also a catalyst for a profound redefinition of the federal government and how central authority would deal with component states and individual citizens. The U.S. Supreme Court accorded constitutional sanction to much of this new structure and created a lasting legacy of the period as the justices considered questions and conflicts generated by the unique circumstances of civil war.

Despite the profound changes generated or justified by the Civil War-era Supreme Court, the literature on the legal aspects of the Civil War is relatively thin. Robert Bruce Murray's *Legal Cases of the Civil War* is a welcome addition to this area of Civil War history because of the large number of cases covered in the book and the lasting significance the decisions have had on the nation that emerged from the war. Murray, a retired lawyer with over forty years of legal experience, demonstrates an ability to translate the arcane language of court reports into concise, readable briefs that clearly articulate the historical context, positions of the principals, and the judgment and logic of the court opinion.

Murray arranged his book topically by chapters in roughly chronological order from the beginning of the war through the early postwar period. From these cases, among other things, the reader can discern the legal justification for the war in the Prize cases as well as the date assigned as the legal end of the insurrection from the Anderson case (p. 202). Each chapter begins with a brief introduction, drawn from several secondary sources, which provides the historical context of the cases to follow. After setting the context, each case study provides a summary of arguments from the opposing lawyers followed by an understandable brief of the court's majority and minority opinions. Murray derived case information from *U.S. Supreme Court Reports, Lawyers' Edition*. Appendices include brief biographical sketches of the justices who served from 1861 through 1871 and one-paragraph descriptions of all Civil War-related Supreme Court cases.

Murray reviewed 185 cases that reached the Supreme Court during the years 1861-1871, filed by people and corporations from all segments of the populations of both the Union and the Confederacy (p. xi). From that number, he chose cases that he considered reflective of the turmoil created by the war or which settled questions of lasting importance. Some are readily familiar to students of the Civil War, such as the Prize cases, *ex parte Milligan*, or the Legal Tender cases, but many deal with the problems of ordinary people as they attempted to put their lives back together after the disruptions of the war.

The Prize cases dealt with disputes over the disposi-

tion of merchant vessels intercepted by Union warships during the blockade of rebel ports. The majority opinion gave Supreme Court sanction to President Lincoln's emergency assumption of power at the beginning of the rebellion. The opinion remains a reference for executive war powers discussions. Murray, in his analysis, contradicts widely held conclusions of historians and political scientists with his assertion that the Prize cases was not really a five-to-four verdict, but was only close on one of the four component cases. On the other three, the vote was eight to one, a far more impressive endorsement of presidential authority (p. 17).

The Legal Tender cases examined the revolutionary idea of using federally generated paper currency as legal tender, unprecedented at the time, but universally accepted in the modern era. Murray's analysis of the Legal Tender cases provides an interesting contrast between wartime Treasury Secretary Salmon P. Chase's actions on issues of central authority with Chief Justice Chase's later opinions on similar questions. If the Prize cases and Legal Tender cases accepted expansion of executive power, *ex parte Milligan*, a postwar decision, drew some of it back.

As one considers the cases presented by Murray, the influence on the court by external events is particularly evident in a comparison between wartime and postwar decisions. The court was clearly more willing to grant the executive greater power to save the nation when the bullets were flying. They seemed equally anxious to rebalance the power structure after the immediate danger passed. The Vallandigham and Milligan cases provide the starkest contrast but the impression is apparent throughout the book. Students of the opposition to the Civil War will find the case of Clement Vallandigham particularly interesting, especially when compared to the Milligan case. Vallandigham was an Ohio politician and outspoken leader of the "Copperhead" faction adamantly opposed to the war and Lincoln's policies. Under executive authority, Vallandigham was brought to trial before a military commission, imprisoned, and later banished to the Confederacy. After the war, Milligan was accused of participating in the Rebel-sympathizing Sons of Liberty, similarly tried by a military commission, and sentenced to hang. While the wartime court upheld the military commission in Vallandigham, a postwar court of slightly different composition ruled for Milligan in an effort to reestablish the protection of individual rights in a climate, according to Justice Davis, "without the passion

that was involved during the Rebellion" (p. 81). Murray says when the country is at peril, future courts will follow *Vallandigham*, while peacetime courts will follow *Milligan* (p. 84). The months to come may bring these discussions to the front pages again as the United States ponders the use of military commissions or tribunals to try accused terrorists.

The cases brought to the Supreme Court by ordinary citizens and corporations underscore the unique divisions created by civil war. People often found themselves on both sides of the battle lines at one time or another as the armies advanced and retreated. Contracts created under such conditions, or between parties with existing contracts before the commencement of hostilities, provided unique challenges unanticipated by the legal code. New issues, such as the tests of allegiance and fidelity, became important factors in the discussion. The court used a combination of existing code, international law, and compassionate common sense to derive their opinions seemingly cognizant of the precedents they were creating with their judgments.

*Legal Cases of the Civil War* is an excellent reference book for students interested in the influence of the judicial branch on the legacy of the Civil War. While not a substitute for primary research, the book serves as a supplement to court records and legal documents. Murray set out to explain a representative sample of Supreme Court Civil War decisions and he accomplished his purpose. His comments on historical and political context accordingly were very brief and based on a limited bibliography of secondary sources. Most of his historical information seems to be derived from the works of James G. Randall and Donald Herbert David, unquestionably excellent sources, but limited nevertheless. This book coupled with David Silver's *Lincoln's Supreme Court* would be an effective combination.[2] Silver's political analysis, his discussion of the Lincoln appointees to the court, and more detailed resumes of the justices provide the broader context for Murray's presentation of the major cases of the period.

#### Notes

[1]. David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Harvard University Press, 2001).

[2]. David Silver, *Lincoln's Supreme Court* (Urbana: University of Illinois Press, 1956).

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