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Burrus M. Carnahan. *Lincoln on Trial: Southern Civilians and the Law of War.* Louisville: University Press of Kentucky, 2010. 168 pp. $30.00 (cloth), ISBN 978-0-8131-2569-5.

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A. Lincoln, War Leader

"Little in his background had prepared Abraham Lincoln to issue military orders endangering civilians," writes Burrus M. Carnahan. "Nevertheless, he would grapple with [such] issues repeatedly" during the American Civil War. According to Carnahan, Lincoln's critics, both during the war and today, argue that "the president was at heart a bloody-minded autocrat, careless of innocent life and property." Some today even call him a war criminal. At the same time, Lincoln is widely known for his humanitarianism and kindheartedness. In this well-written book, Carnahan asks, "how are we to reconcile Lincoln the humanitarian, who hated the 'monstrous injustice' of slavery, with Lincoln the relentless commander in chief, who would bombard the citizens of Baltimore to save the government in Washington? " (p. 2). In short, Carnahan seeks to answer the question: "[D]id President Lincoln authorize or condone violations of the laws of war, as they were understood in his time? " (p. 7). Carnahan evaluates Lincoln's record based on the policies that Lincoln either specifically "authorized, or at least which ones he knew about and did not oppose" (p. 2) so as to avoid judging him for any unauthorized actions committed by undisciplined or unprincipled troops and commanders.

In the opening chapter, Carnahan discusses the international law dilemma that faced Lincoln at the beginning of the war. On the one hand, Lincoln treated the Confederacy as a foreign belligerent when he declared the blockade of Southern ports; on the other hand, Lincoln refused to acknowledge the Confederacy as a legitimate foreign nation. In grappling with this difficult legal situation, Lincoln treated captured Confederate soldiers as prisoners of war, just as they would be under the international laws of war. At the same time, the Lincoln administration treated hostile Southern civilians as international law dictated: "not as U.S. citizens but as alien enemies who had no rights under the U.S. Constitution or Bill of Rights. Under international law," writes Carnahan, "the freedom of enemy citizens could be sharply curtailed and their property was subject to seizure or destruction" (p. 21). From this starting point, each subsequent chapter examines a different aspect of the treatment of Southern civilians by the Lincoln administration to determine whether Lincoln's policies violated the laws of war as they were understood in the 1860s.

At the beginning of the Civil War, Lincoln promised to protect the property of Southern civilians, but as the war dragged on and covered increasingly vast amounts of territory, Lincoln could no longer protect private property as he would have in peacetime. Moreover, the movements of Union forces "necessarily impinged on civilian property" (p. 36). In chapter 2, Carnahan analyzes Lincoln's policies regarding the seizure and destruction of property owned by Southern civilians. By July 1862, "Confederate private property would now be treated in accordance with the international laws of war, not the Fifth Amendment to the Constitution" (p. 39). Lincoln authorized the military to "seize and use any property ... which may be necessary or convenient for their several commands as supplies" (p. 42). Unfortunately, foraging soldiers often became pillagers; Union military officials sometimes took charge of churches; and the destruction of private property sometimes led to wanton acts of retaliation. In matters related to the treatment of Southern civilians and property, Lincoln rarely gave general orders or instructions; he usually dealt with individual situa-

tions as they arose and in those instances he instructed his commanders in the field to only seize or destroy property when necessary for the success of the war effort.

In a chapter on guerrilla warfare and retaliation, Carnahan argues that Lincoln only permitted retaliatory acts in cases required by military necessity. Thus, Lincoln revoked an order to deport four hundred residents of Virginia's Eastern Shore because, according to Carnahan, "[t]here was no clear military necessity for this act since the Eastern Shore was firmly under Union control." At the same time, Lincoln permitted General Thomas Ewing's infamous General Orders No. 11 to stand (depopulating four Missouri counties) because, in Carnahan's words, "a reasonable case could be made that military necessity required truly drastic action" (pp. 65-66). In a similar way, Lincoln was hesitant to permit retaliatory executions unless they served some actual purpose. He did not want the innocent to suffer for the wrongdoings of the guilty, but in some instances he permitted military commanders to carry out such executions if it "shall be solely done with reference to the security of the future" (quoted on p. 75). In other words, Lincoln would permit retaliatory measures if they would bring about further stability and progress for the Union military, but not for revenge.

The final two chapters explore Lincoln's policies regarding the destruction of Southern property (such as the burning of homes and farms), and instances when Union forces personally injured Southern civilians (including the bombardment of Southern cities and the Dahlgren affair, which might have led to the assassination of Jefferson Davis and the burning of Richmond). As in the earlier chapters, Carnahan argues that Lincoln permitted actions that he deemed necessary for the Union war effort but curtailed military officers who were motivated by malice when inflicting harm on Southern civilians: "In any event," writes Carnahan, "the pattern of presidential behavior is familiar–intervening in a specific case where military authority was abused, but offering no general directions to prevent further abuses" (p. 82). Indeed, Carnahan argues throughout the book that Lincoln reacted to particular situations rather than offering general guidance or formal regulations.

In the end, Carnahan concludes that by "the standards of his time, President Lincoln did not authorize or condone any violations of the laws of war against enemy civilians." Lincoln approved of acts that deprived Southern civilians of their rights or property if those actions were necessary militarily; however, he often suspended orders by his subordinates that were predicated on revenge, malice, or some other self-serving motive. "The government, Lincoln believed, 'can properly have no motive of revenge, no purpose to punish merely for punishment's sake' " (p. 119). In short, Carnahan argues that Lincoln used "cold, calculating unimpassioned reason"–rather than emotion–to determine what measures were necessary and legitimate when it came to winning the war. As Carnahan writes: "military necessity authorizes … hostile action that has a rational relationship to the defeat of the enemy's armed forces" (p. 120).

Lincoln on Trial is a clearly written book, although it does not attempt to treat exhaustively any of the topics it covers. Many, if not most, of the stories it contains will be familiar to Civil War historians. One omission seems glaring. Carnahan does not give adequate attention to the topic of restraints on personal liberty, such as military arrests, the taking of hostages, and military commission trials. These would seem to be very relevant topics but they get, at most, only passing mention. Military commission trials, in particular, are an important omission since they may be an exception to Carnahan's overall thesis.

In line with Carnahan's argument, Lincoln maintained that military arrests and trials of civilians were a military "necessity" carried out for preventive reasons rather than punitive purposes. In his famous public letter to Erastus Corning, Lincoln declared that these types of "arrests are made, not so much for what has been done, as for what probably would be done." As such, they were "more for the preventive, and less for the vindictive."[1] In another defense of his administration's policies, Lincoln wrote: "The military arrests and detentions, which have been made … have been for *prevention*, and not for *punishment*–as injunctions to stay injury, as proceedings to keep the peace." As a consequence, Lincoln maintained, these proceedings "have not been accompanied with indictments, or trials by juries, nor, in a single case by any punishment whatever, beyond what is purely incidental to the prevention."[2]

Lincoln's defense of military arrests (here he was defending the arrest and trial of Clement Vallandigham, but his argument could logically be extended to the arrests of Southern and border state civilians as well) was that military necessity justified the making of such arrests. They were not punitive, vindictive, or malicious; they were a military necessity. Such an argument completely coincides with Carnahan's thesis that "so long as there was a rational connection … between an act of war and the

defeat of the enemy's forces, the principle of military necessity was regarded as having been satisfied" (p. 32).

The problem is that Lincoln's claim that military arrests were preventive and not punitive was not fully honest. Lincoln reviewed hundreds of military commission case files from the Southern and border slave states and in each case he had to determine whether or not the sentence would be carried out. As Mark E. Neely, Jr., has rightly observed: "Such a statement [the second Lincoln quote above] at least stretched the truth in the case of Vallandigham and was altogether untrue in respect to many others. Since the president repeatedly reviewed the results of trials by military commission in his White House office, the statement did not stem from ignorance either. Sentences to hard labor or prison terms fixed by years (and not the duration of the conflict) were punishments, pure and simple. Lincoln did not want to admit that the alternative military-justice system for some civilians had been set up. He must have hoped its disappearance at war's end would erase the military trials of civilians from national memory."[3]

The military arrest and trial of civilians, as well as the taking of hostages, are a few topics that could have been more thoroughly addressed in this book–especially since military tribunals have been and continue to be such an enduringly controversial subject. In order to do so, however, Carnahan would have had to delve into unpublished records. A careful perusal of Carnahan's footnotes suggests that he relied exclusively on published primary and secondary sources (with the exception of a few items from the Lincoln Papers, which are keyword searchable through the Library of Congress's "American Memory" Web page). Military commission case files would have provided deeper insight into how and why the Union military punished Southern civilians; court-martial case files of soldiers who violated the rights of Southern civilians also would have shed light on Union military policy toward civilians. These sorts of records, which are both available in Record Group 153 at the National Archives, could have added significant depth to Carnahan's work.[4] The records of the Southern Claims Commission, the federal courts, the Treasury Department, and, of course, the manuscript collections of prominent politicians, soldiers, and civilians also might have added new dimensions to the book.

All this said, Carnahan's defense of Lincoln is generally convincing. And, while much of his evidence will be familiar to members of H-CivWar, it will be new to most undergraduates. It's lack of a chronological approach may be confusing to some college students, but the book could still be a useful teaching tool for upper-level courses on military policy. The problems of determining how to deal with civilians in enemy territory and irregular enemy combatants will resonate with students and should lead to lively discussion.

Notes

[1]. Lincoln to Erastus Corning and others, June 12, 1863, in Roy P. Basler et al., eds., *The Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick, N.J.: Rutgers University Press, 1953-1955), 6:260-269.

[2]. Lincoln to Matthew Birchard and others, June 29, 1863, in ibid., 303.

[3]. Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991), 174-175.

[4]. Carnahan cites General Henry Wager Halleck to show that military commission trials were "the proper tribunals to punish freebooters, banditti, and guerrillas" (p. 30), but military tribunals tried many other types of Southern and border state civilians. Carnahan also briefly discusses two court-martial cases of Union soldiers who damaged Southern property (pp. 5-6). Further research into these types of cases might have shed significant light on his discussion of pillaging in chapter 2. For information on court-martial and military commission records, see Thomas P. Lowry, "Research Note: New Access to a Civil War Resource," *Civil War History* 49 (March 2003): 52-63.

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