

H-Net Reviews

in the Humanities & Social Sciences



Roger D. Billings, Frank J. Williams, eds. *Abraham Lincoln, Esq.: The Legal Career of America's Greatest President*. Lexington: University Press of Kentucky, 2010. 263 pp. + 16 pp. of plates. \$40.00 (cloth), ISBN 978-0-8131-2608-1; ISBN 978-0-8131-2609-8.

Harold Holzer, Craig L. Symonds, Frank J. Williams, eds. *The Lincoln Assassination: Crime and Punishment, Myth and Memory A Lincoln Forum Book*. New York: Fordham University Press, 2010. xii + 259 pp. \$27.95 (cloth), ISBN 978-0-8232-3226-0.

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Of Lincoln and Law

These two collections of essays address relatively unstudied elements of Abraham Lincoln's career, death, and martyrdom. The first discusses Lincoln's career as a lawyer in Illinois and also attempts to make law and constitutionalism an important element in his political thought. The second examines key elements of his assassination.

Frequently the quality of essays in an edited collection varies considerably. That is certainly true in this case. Many of the contributors have written thoughtful pieces that are worthy of serious consideration while some of the other pieces seem little more than a recasting of conventional wisdom, recycling of previous work, or an overly narrow conception of their subject. Nevertheless, the volumes taken as a whole provide a good window on the state of the field for Lincoln's legal career and his assassination.

The Legal Career of America's Greatest President represents part of an ongoing effort to examine Lincoln's career as a lawyer. Earlier works have tended to situate Lincoln within the world of the frontier and dramatize Lincoln's success as an advocate. Lincoln is less a serious student of the law and more someone whose folksy demeanor charmed rural audiences as part of his approach. The mythic and legal Lincoln were joined, as it was argued that he refused to accept disreputable clients or sought to lose cases he considered unjust. Conversely, James G. Randall's *Constitutional Problems under Lincoln* (1926), with its sharp critique of the Lincoln administration's policies during the Civil War, only contributed to the sense that Lincoln cared little about law, precedent, or constitutional thought. Lincoln was less the rural sa-

vant than the rural bumpkin who was untutored in the more sophisticated legal analysis that came to dominate the study of law in the nineteenth century. These two different modes of interpretation were reflected in two texts that appeared at roughly the same time in the early 1960s. John Duff's *A. Lincoln: Prairie Lawyer* (1960) presented a folksy Lincoln on the circuit, while John Frank's *Lincoln as a Lawyer* (1991) offered a more critical view of Lincoln as a rather unexceptional lawyer who thought little about law or constitutionalism.

Much of the older view of Lincoln's legal career appears especially anachronistic considering the wealth of documentary material that is now available. For historians in an earlier period, much of the archival material about Lincoln's work as a lawyer was widely scattered. Some of it could be found in the Lincoln Papers at the Library of Congress, but much of it was housed in a variety of county courthouses in Illinois, making it difficult and cumbersome to retrieve. Such difficulties were overcome with the publication of collections of Lincoln's legal papers. These appeared first in a CD-Rom that included the entire collection edited by Martha Benner and Cullom Davis, *The Law Practice of Abraham Lincoln: Complete Documentary Collection*, published in 2000. Their work was augmented by a letterpress edition edited by Daniel Stowell, *The Papers of Abraham Lincoln: Legal Documents and Cases*, which was published in 2008. *The Legal Career of America's Greatest President* thus appears when we are in the midst of a reconsideration of Lincoln's legal career and his constitutional thought. As of this writing two important scholarly accounts of Lincoln's work as a lawyer have appeared: Brian Dirck's *Lincoln the Lawyer* (2007)

and Mark Steiner's *An Honest Calling* (2006). I would imagine this is just the start of what will be an increasing surge of dissertations, articles, and books yet to be written.

The Legal Career of America's Greatest President is divided into three parts. The first consists of four essays that discuss the larger context of Lincoln's legal career. It is followed by a second section that examines Lincoln's career as a lawyer in Illinois and Kentucky in six essays. The final section is focused on Lincoln's presidency, with an emphasis on its domestic and international law aspect, covered in two essays.

The first section represents essays that are quite broadly conceived. As a result they lack sufficient space to delve into the subject matter in much depth. Harold Holzer provides a general overview of Lincoln's legal career; Frank Williams follows with a discussion of how Lincoln serves as a model for the practicing lawyer. Mark Steiner and Brian Dirck complete this section with essays that seek to summarize Lincoln's law career. They are some of the more interesting in the entire volume, but their brevity leaves the reader unsatisfied. I was especially taken by Steiner's discussion of Lincoln's Whig politics, with its emphasis on the rule of law and the need for societal harmony, as an important component of his legal career. However, Steiner discusses this in only a few pages and the larger point that he wishes to make could be developed. It would have been interesting to explain how these Whig conceptions of societal harmony could be reconciled with the tremendous economic transformations that took place in the period. Similarly, Steiner's discussion of honor is equally abbreviated, and that too could be more thoroughly explained. Dirck's essay is a concise discussion of Lincoln's legal career. He makes it clear that Lincoln took all manner of cases and that he was a generalist when it came to the cases that came before him, and provides a good discussion of the practical issues that consumed his practice.

In the second section, five essays discuss various aspects of Lincoln's Illinois law practice, while the sixth examines Lincoln's connection to Kentucky. Many of these essays have a highly detailed emphasis on Lincoln's involvement in property law cases and show how these cases were an important part of his legal career. One wishes that some of these essays included discussions of larger legal and economic matters. However, they serve as a reminder that Lincoln's legal career involved him in a range of cases that dealt with economic questions in the antebellum period. Certainly, Lincoln had an intimate view of how real estate transactions took place in

the state, and he understood the difficulties many people faced in the era of the market revolution. At least three of the essays involve some discussion of ethical issues—how Lincoln serves as a model of strong ethics and of how to interact with legal clients. The concluding essay in this section addresses Lincoln's work with neighboring Kentuckians.

The final section includes two essays that seek to make connections between law and politics, examining Lincoln's behavior as president. Nonetheless, many of the essays of this volume address both law and politics.

The Legal Career of America's Greatest President represents a serious effort to understand Lincoln's legal career. The subject matter is so diverse that at times unifying themes are lost. Some of the essays seem overly broad while others so narrow that their value seems limited. The authors write well about the subjects they find of interest, but it would have been useful to provide a larger framework. Had the essays been chronologically spaced, readers would be able to see Lincoln's growth and maturity over the decades. The role of technology in shaping law in the period also would have been a useful subject for study. Race and slavery are relatively neglected in the essays, although they are mentioned perhaps most strongly in Christopher Schnell's interesting discussion of Lincoln's interactions with Kentuckians. Nevertheless, the authors are to be commended for paying close attention to Lincoln's legal career. Those interested in Lincoln's antebellum legal career will want to read these essays for themselves.

Certainly, one of the more dramatic events in American history was the assassination of Abraham Lincoln. This solemn subject forms the heart of *The Lincoln Assassination*, a collection of essays that discuss various elements of Lincoln's murder. As a group, the authors seem less interested in the actual murder of Lincoln than in discussing the larger legacy that flowed from the assassination. As a result, the method used to try the conspirators, how the assassination was remembered by the larger public, and the legacy of the event, form the heart of their accounts.

While the Lincoln assassination was clearly recognized as a seminal event in American history, until recently, historians of both Lincoln and the Civil War have given it slight attention. Perhaps it remained unmentioned principally because of the subject itself. While it is true that hatred of Lincoln has fueled the emotions of some Americans throughout our history, such hatred has always been held by a minority. Do historians really want to spend their time recounting the sad, pathetic

worldview of a group of people filled with so much hatred that they murdered our greatest president? It can hardly be considered surprising that both scholars of Lincoln and the Civil War seem to prefer writing about Lincoln's presidency and the war rather than his fatal evening at the Ford Theater.

This is not to say that serious works of scholarship on the assassination are nonexistent, for in the last thirty years some important studies have indeed sought to address Lincoln's death. Thomas Turner's *Beware the People Weeping* (1991) examined the North's reaction to Lincoln's murder while Merrill Peterson's *Lincoln in American Memory* (1995) has a strong and moving opening chapter in which he addresses the assassination. Moreover, historians have recently begun to publish important accounts that seek to present a clearer picture of what happened. Edward Steers's *Blood on the Moon* (2005) presents a definitive account of the Lincoln assassination. Michael Kauffman's *American Brutus* (2005) provides an exhaustive discussion of John Wilkes Booth's role in managing the conspiracy and the repercussions that followed for the survivors who were tried. Additionally, in *Lincoln's Avengers* (2004), Elizabeth Leonard has focused on the trial by military commission. Certainly, a range of works has appeared in recent years examining the assassination, the role of the Confederate secret service, the process of capturing conspirators, the trials that followed, and its larger legacy for American history.

Nevertheless, for all of this increasing attention the assassination still seems more the preserve of the conspiracy theorist than of the serious historian. For those Americans who remain convinced that some dark government conspiracy led to the death of President John F. Kennedy, it is not a large leap to believe the same process was at work in the death of Lincoln. The appearance of these thoughtful essays is thus useful for no other reason than to separate myth from history.

This volume consists of eight original essays and a ninth from Richard Current that is reprinted from the *Lincoln Nobody Knows* (1963). The first two essays represent an effort to examine the assassination itself and connect it to art, photography, and memory. Especially interesting is the opening essay by Harold Holzer and Frank Williams in which they trace how Americans have over time remembered the assassination. Equally engaging is Richard Sloan's examination of the memorial exercises held in New York City following Lincoln's death. Sloan manages to combine both a historical reconstruction and analysis of the events themselves; he also con-

nects it all to the present by identifying the present-day terrain of the path Lincoln's body passed on the parade route.

Readers are also treated to four separate essays that examine the conspirators' trials by military commission. Elizabeth Leonard contributes a largely biographical study of Judge Advocate General Joseph Holt, who was responsible for heading up the prosecution. Frank Williams examines the legal process which led to the conspirators' conviction and execution, and tries to situate it into a larger historical framework. Edward Steers presents a detailed discussion of the trial itself, while Michael Kauffman asserts that Booth largely manipulated the other conspirators to achieve his desired result. Steers and Kauffman are both talented historians who have written important works in the field, but their conclusions are often quite different. Their essays in *The Lincoln Assassination* at times reach different judgments about the trials and the conspirators, and should be read together. They differ most widely on the conviction of Dr. Samuel Mudd. Steers believes that Mudd was guilty and deserved his conviction, while Kauffman clearly does not.

The heavy focus on the military commission reveals an increasing attention to the trial process. Certainly, the use of military commissions instead of civilian trials was controversial at the time. But one has to wonder whether historians are focusing on this issue out of a concern for the legal process in the 1860s or a dislike for their use in the present by both George W. Bush and Barack Obama. Their work can at times smack of presentism, in which historians take concerns over the legal process in the twenty-first century and impose them on the Civil War and Reconstruction era.

While many of the essays are quite interesting and engaging, it does seem odd that a volume on the Lincoln assassination seems more interested in the trials than in the murder itself. Also, considering that Booth was a dedicated white supremacist, it is striking that race seems all but completely missing from these volumes. With the exception of the Kauffman essay, little attention is devoted to the role of racial hatred and opposition to emancipation as motivating factors for the conspirators. Additionally, an examination of the climate of opinion in both Maryland and the District of Columbia during the Civil War would have been a useful addition to these works. Nonetheless, both of these volumes present important studies of Lincoln and are worthy of close attention from both scholars and the general public.

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