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Bill Arp, David B. Parker. *Bill Arp's Peace Papers: Columns on War and Reconstruction, 1861-1873.* Columbia: University of South Carolina Press, 2009. 304 pp. \$14.95 (paper), ISBN 978-1-57003-835-8.

Christian G. Samito. *Changes in Law and Society during the Civil War and Reconstruction: A Legal History Documentary Reader.* Carbondale: Southern Illinois University Press, 2009. xiii + 336 pp. \$29.50 (paper), ISBN 978-0-8093-2889-5.

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By Custom or by Law: The Nature of Constitutional and Social Change in the Aftermath of the American Civil War

Though Americans are enamored by the word “change,” when faced with its actuality, they have proven resistant to it. This fear has historically been at the heart of the slow pace of sociopolitical evolution in the United States. Change means readjustment from what was familiar to the unknown, and the potential pratfalls involved are unnerving, especially when political debate accentuates the worse-case scenarios. Adding to this perception is that once change is implemented a new and different set of circumstances will arise, thus forcing a change to the “change.” However, stagnant sameness is not an option for any society, for such a situation is the foundation of decline and fall in every civilization.

One of the most vital elements of social cohesion is the law, for there is a certainty that commands seriousness and respect. But even this can be deceiving, for the law can change, bringing consequences ranging from the violent confrontation of “Bleeding Kansas” personified by John Brown, to the pacifist activism of the civil rights movement embodied by Dr. Martin Luther King, Jr. In tandem, there are practices legitimized by law and others by social custom which are not necessarily compatible. When animosity between these two elements—*de jure* and *de facto*—is heightened without the option of

compromise, it will lead to open hostility and violence.

The American Civil War is an excellent case in point. Though in the end the result was the emancipation of human chattel, it was also an uncompromising constitutional conundrum with regard to sovereignty and the definition of liberty. Northerners looked upon the governing document as a contract between the states that was legally binding regardless of debasement; on the other hand, Southerners acted as if the Constitution were a compact between the states that was binding so long as all parties acted within its terms, but once violated the agreement was made null and void. When the Southern states seceded from the Union over what they believed was a continuous encroachment upon their rights as guaranteed by the Constitution, citing the Tenth Amendment, the North retaliated, citing the supreme law clause of Article VI—terms foreshadowed by the Webster-Hayne debate in the U.S. Senate in three decades earlier. When the South capitulated to the North the former was forced to abandon its legal and social traditions for a new paradigm dictated to them by the latter.

In his documentary reader *Changes in Law and Society during the Civil War and Reconstruction*, Boston attorney

ney Christian M. Samito has presented a useful volume for any study of this crucial era in American history. At its best, the smoothly edited work intertwines the law as both statute and as public practice. The editor has placed his chosen documents front and center, thereby allowing the law to be the storyteller. Concurrently, it is obvious the documents were chosen with care, and they are interspersed in a manner that highlights the important abstract ideas of the era. The work is thus valuable as a guide to the most pertinent legal documents of the period.

The merit of this volume for historians is best demonstrated by its fourth chapter, in which the Civil War constitutional amendments are placed within the context of war, martial law, and Reconstruction. The documents have a carefully developed theme of essential liberties and the redefinition of citizenship. At the heart of these changes is federal legislation passed in a hell-bent effort to rebuild a tattered nation in an inclusive manner regardless of the cost of reconciliation. Of specific interest is an excerpt from President Ulysses Grant's address to the Senate of January 13, 1875, in which he presents his rationale for treating white supremacist groups as terrorists: "[T]he spirit of hatred and violence is stronger than the law" (Samito, p. 257). To include such a gem in this volume is a sign of astute insight on the part of the editor.

Yet, though the choice of documents is admirable, it is not enough to cover the inadequacies of the book. The first drawback is that in its entirety the book has a dual personality: it is difficult to resolve whether it is a legal history reader with social history overtones, or a social history reader wrought through legal and political documents. This problem does much to detract from the stated purpose of the book to demonstrate "how idealism and pragmatism converged to change the law" (Samito, p. 3). For example, the first chapter reads as a social history of human chattel slavery in America accentuated by legal precedent; however, by chapter 5, judicial interpretation is the focus, with thin threads that tie the opening and closing sections together. Had the editor chosen to focus more stringently on either social or legal history, a more meaningful and proficient volume would have been the outcome.

The second shortcoming is one of omission: U.S. Supreme Court decisions that would have brought a greater depth to the topics the editor wanted to highlight. For example, the case of *Jones v. Van Zandt* (1847) was born out of Northern abolitionists' refusal to recognize the fugitive slave clause of Article IV, section 2

as legitimate law, citing the Bible as the "higher law" that dictated their actions. In a unanimous decision the Court, through associate justice Levi Woodbury, ruled that not only was it enforceable law, but that all citizens under the Constitution were bound to uphold it, though it was in conflict with a citizen's personal moral code, as dictated by the supreme law clause of Article VI. Another pertinent example is *Ableman v. Booth* (1859), which concerned the "personal liberty laws" enacted by several Northern state governments in order to circumvent the Supreme Court's ruling in *Scott v. Sandford* (1859). In a unanimous decision the Court, speaking through chief justice Roger Brooke Taney, and specifically citing the supremacy clause of Article VI, asserted the full sovereignty of the federal government. In doing so, the Court mandated that the Constitution provided for the uniformity of judicial precedent, which would be destroyed if individual state courts and governments claimed precedence over the federal judiciary. The most glaring omission is that of *Santa Clara County v. Southern Pacific Railroad Co.* (1886), in which a unanimous decision written by chief justice Morrison Waite, held that the Fourteenth Amendment applied to corporations as well as to individuals. This decision, being within the editor's time frame, is still enforceable law and affects the outcomes of cases brought by individual citizens against large corporations, which inevitably favors the latter over the former in any American courtroom.

The most disturbing aspect of the volume is its serious neglect of Southern reaction and debate over these changes, especially in the chapters during and following the Civil War. It is as if the Confederacy's ultimate defeat on the battlefield devalued the South's intellectual input into this debate until it was no longer of any substantive consequence. This becomes apparent when one reviews the table of contents: slave narratives and abolitionist tracts are well represented, yet there is not a word from the foremost intellectual defenders of slavery, such as Thomas Roderick Dew or John C. Calhoun, the exception being two excerpts from works by George Fitzhugh in chapter 1. Furthermore, at the onset of Reconstruction the South is given no input into the debate whatsoever, as if it had merely accepted defeat and with it Northern dominance. Not a word from Edward Pollard's 1866 treatise *The Lost Cause*—the foundation of the Southern civil religion of defeat and ultimate redemption that dominated the region for generations—nor excerpts from the numerous Jim Crow laws passed by Southern state legislatures.

Simultaneously with the release of the Samito volume

comes the reissue of *Bill Arp's Peace Papers* by the University of South Carolina Press as part of its Southern Classics series. Written by columnist and politician Charles Henry Smith under the "Arp" pseudonym, and originally published in 1873, these editorial articles were composed in a distinct linguistic style that was meant to be close to that of the author's immediate community. Yet, these writings reflect more than mere homespun humor of the time: they are a clear demonstration of Southern nationalism during a time of conflict and readjustment. The author spares no one, skewering everything from the many proclamations of President "Linkhorn" to the incessant infighting amongst Confederate leaders, political and otherwise. In the wake of Robert E. Lee's surrender at Appomattox Courthouse, Smith turns his pen loose on Northern Reconstruction policies, which is interesting in that the author served a term as mayor of Rome, Georgia from 1867-69.

Smith composed his editorials in a manner that led the casual reader to believe the author was one of their own, as evidenced in the flagrant misspellings and sentence structure. However, the potency of these writings lies in a well-honed folksy sarcasm reminiscent of Mark Twain, retaining a bite that is recognizable in the style of modern political commentators and topical comedians. Apart from being snippy critiques of the incompetence of power they are, concurrently, a glimpse into the mindset of a nation fighting for its survival, as well as a people dealing with defeat at the war's close. Such a glance into failed nationalism is priceless; but, for historians of this fraternal conflagration it is also a valuable document that reveals the source of Southern resistance to Northern Reconstruction.

Civil War historians have often argued that Confederate defeat was wrought not only by a deficiency of industry, but also by a lack of true nationalism. Yet, as evidenced by this collection of Bill Arp's editorials, it is clear that a unique form of Southern patriotism was thriving, though not necessarily one compatible with accepted modern definition. In his 1983 book *Nations and Nationalism* Ernest Gellner, philosophy professor at the London School of Economics, argued that nationalism was constructed upon a "pre-existing, historically inherited proliferation of cultures or cultural wealth." [1] Utilizing this definition as a base, it is clear that a strong affinity existed in a dual loyalty deeply rooted in a tradition of regionalism: the region of state and larger region of the South itself. It is this definition, a confederation model based upon a notion of countries-within-a-country consistent with Gellner's observations and best demonstrated in

contemporary times by the European Union, that finds ready expression in Arp's commentaries.

In his initial column Arp mentions several states that have armed themselves in the cause of Southern independence following the fall of Fort Sumter: "Most of em are so hot they fairly siz when you pour water on em" (Parker, p. 20). Arp espoused repeatedly throughout the war that even if defeat were wrought on the battlefield by President "Linkhorn" and his troops, the Southern people were unified by their shared ideas, history, and tradition: "After they hav whipped us, then they hav to subjugate us ... and they can't do it" (Parker, p. 104). Once Northern Reconstruction had begun, Arp commented that its efforts were futile because the longer the army occupied the region, the greater the reverence for such symbols as the "Gray Jacket" and the "Konkered Banner" would grow among the Southern people (Parker, p. 160). As anyone who resides in the former Confederate states or has traveled through them can attest, those symbols are still proudly displayed and venerated.

There were, however, disturbing elements of Southern nationalism, the most distasteful being the subjugation of Americans of African descent. Given the more than two-hundred-year-long tradition of slavery, it was neither unusual nor considered morally reprehensible for Southern whites of the time to view such human beings as property. Such overt racism as expressed in Arp's commentaries, is brutal to modern sensibilities; but, when placed in its proper historical context, may be seen as providing bitter medicine to a unified nation that had yet to fully meet its own national aspirations.

Arp defends the continual oppression of African Americans without reservation. In his "Third Paper," in which the author lambastes the impending Emancipation Proclamation as the day when "Niggerdom" will be unleashed, he claims it will make no difference, for "our stubborn people [will] continue to buy em and sell um, and the shorter the lease, the hier the price they are payin" (Parker, p. 27). Furthermore, when it became clear to the author that the war was concluding unfavorably for the South, Arp was defiant: "I want to by a nigger, and I had jist as lief by a chunk of a *free* nigger as any other" (Parker, p. 105). Finally, in his "Twenty-Seventh Paper," Arp wrote a scathingly smug editorial in which he argued for black inequality, the heart of his contention being that he and the Southern people wanted to keep their former slave "jist where he belongs" (Parker, p. 183). Such passages from these popular editorials reveal that Southern racism ran deep, providing the impe-

tus for the emergence of both Jim Crow laws and white supremacist groups during Reconstruction.

It is admirable that the editor sought to maintain the integrity of the original volume. Yet, to the conscientious reader with a sense of history, it is clear that Bill Arp's columns, for well or for ill, were an accurate barometer of the Southern frame of mind during a crucial era in the American saga. Drawn from the attitudes and beliefs of a people struggling with the destruction of their tradition and history, the influence of Arp's writings upon Confederate nationalism cannot be dismissed, for, as Parker points out in his introduction, towns, counties, and schools in the South still proudly bear his name. Therefore, it is the suggestion of this reviewer that Parker should compile a complete set of Arp's editorials for the benefit of intellectual historians.

In closing, these two volumes are compatible in their aspirations. While Samito's book demonstrates a rethinking of the law made with a well-ordered set of primary-source documents, Arp's commentaries present the view of the group of people for whom these changes were designed. They are important documents of action and reaction, of point and counterpoint, and of the conflict between law and tradition. These works are recommended for together they provide a useful guide to a nation forced to reunite for its common good in a post-slavery environment.

Note

[1]. Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983), 55.

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