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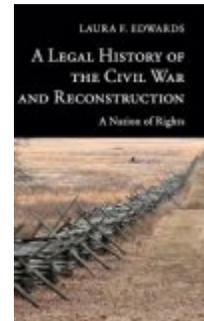
in the Humanities & Social Sciences

Laura F. Edwards. *A Legal History of the Civil War and Reconstruction: A Nation of Rights*. Cambridge: Cambridge University Press, 2015. xii + 212 pp. \$80.00 (cloth), ISBN 978-1-107-00879-3; \$29.99 (paper), ISBN 978-1-107-40134-1.

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A Nation of Rights: A Legal History of the Civil War and Reconstruction

Potential readers of this book should not be misled by the somewhat lackluster title. In *A Legal History of the Civil War and Reconstruction: A Nation of Rights*, Laura F. Edwards has provided a relatively brief but incisive synthesis of the recent historical literature on the Civil War and Reconstruction that focuses on the legal consequences of emancipation. In doing so, she also puts forward her own original—and ultimately persuasive—argument. Oddly, the subtitle probably gives a better indication of the book’s subject matter and contents than does the title (and one wonders if perhaps the title and subtitle ought to have been reversed). Moreover, the book’s chronological framework, the title notwithstanding, transcends the era of the Civil War and Reconstruction, extending into the early years of the twentieth century. Edwards has written a volume that will benefit scholars of the Civil War era, broadly construed, the Gilded Age and late nineteenth century, and legal and constitutional history.

Edwards’s essential argument is that the Civil War and the abolition of slavery resulted in a fundamental transformation of the nation’s entire legal and constitutional order, from the national level on down through the local level. The war and emancipation, in addition to transforming the legal status of the slaves and recasting the relations between former slaves and former slaveholders, altered the means by which *all* Americans were linked to each other and to their national government. If the Civil War resulted from Americans’ disagreements

over the nation’s legal order—disagreements that Edwards maintains were rooted in slavery—then that legal order itself, she insists, “numbered among the Civil War’s casualties” (p. 3). The policies of both the Union and Confederate governments, both intentionally and unintentionally, contributed to the dismantling of the old legal order, while the war and emancipation likewise “created space for people to express popular conceptions of justice and to move them into the ambit of government policy” (p. 3). Fundamental questions raised during the war about citizenship, legal authority, and the relationship between the individual and government remained unresolved by the war’s end and therefore had to be addressed—and settled—during Reconstruction.

Owing to their wartime experiences, almost all Americans came to envision a form of government—national, state, and local—that played a much more active role in their lives than had been the case before the war. While the national government, the authority of which emerged from the war supreme, moved to ensure all citizens’ basic civil and political rights through the Civil War amendments to the US Constitution and by other measures, ordinary Americans of all backgrounds attempted to put forward their own understandings of freedom, citizenship, rights, justice, etc., and of the role of government in securing these ideals. Ordinary Americans disagreed among themselves—sometimes violently—on these matters, but they also came to disagree with their own political leaders and to challenge the assumptions that under-

girded the nation's legal and political institutions. Many Americans, Edwards maintains, "imagined rights in far more expansive ways than their political leaders or their courts did" (p. 6). Moreover, whereas many Americans saw "rights" primarily as a means toward the larger ends of securing a meaningful freedom and economic justice, and whereas they attempted to pursue those ends through collective action or cooperative initiatives, "federal policy and the courts tended to define rights in highly individualized terms, as the bundle of privileges necessary for individuals to access the legal system in civil and criminal matters and to attend to their economic interests" (p. 6).

Federal policymakers thus subscribed to a vision of rights that prioritized individual rights over almost every other consideration, Edwards contends, and that was at variance with the thinking of many ordinary Americans. This narrow, highly individualized notion of rights also proved to be an effective means of undermining the various challenges to institutionalized inequality that black people, white women, and working people collectively attempted to mount in the decades after the Civil War. "That view, which ultimately prevailed," Edwards writes, "disaggregated the American people into a nation of individuals, each one connected to the federal government through his or her own rights" (p. 6). If Americans tended to see themselves as members of communities or of other collective entities before the war, after it they increasingly became atomized, lone—even alienated—individuals linked directly to their national government by a system of rights that often failed to address their everyday needs.

And yet, even though many Gilded Age Americans may have felt poorly served by this narrow conception of rights, they nonetheless remained largely committed to a (new) legal order that was based, at least ostensibly, on the principle of equality before the law for all citizens and to which, as citizens, they were guaranteed access. Indeed, despite what Edwards calls (in the title of chapter 6) "the limits of rights," many ordinary Americans embraced their new relationship to the national government, and they undertook—the odds against them notwithstanding, failing far more often than not—to compel that government to recognize and to act upon their own more expansive, collectivist vision of rights. There is therefore an ironic quality to the book's subtitle, since the "nation of rights" that the Civil War had created promised more than it could ultimately deliver. Only in later decades, well into the twentieth century, would Americans' more expansive notions of rights be-

come reconciled—and even then only imperfectly—with the individualized conception of rights that came out of the Civil War era.

Edwards develops this argument over the course of six carefully crafted chapters. Three chapters each are devoted to the Civil War and to Reconstruction, with the last chapter covering events and developments into the early twentieth century. Chapters 1 and 2 respectively examine legal changes in the wartime North and in the Confederacy, while chapter 3 focuses more specifically on the process of emancipation and its implications for the nation's legal order. The transformation of the wartime North, as Northern society mobilized its human, financial, and material resources to fight the war, has been well established in the scholarly literature, as has been the destruction of slavery. But Edwards also argues that the policies of the Confederate national and state governments—and white and black Southerners' reactions to them—played no less of a role in undoing the nation's antebellum legal order. As the analysis moves into the postwar era, chapter 4 explores legal changes at the federal level, emphasizing both the democratizing effects and the centralizing tendencies of those changes, while chapter 5 examines more popular conceptions of legal change, tracing the attitudes and actions of African Americans as well as of white women and of working people throughout the nation as they attempted to shape the new legal arrangements. In taking the story through the end of the century, chapter 6 examines both the possibilities and the limitations of a definition of rights that was framed in such narrowly individualistic terms.

In making her argument, Edwards attempts to correct what she sees as a shortcoming in the existing scholarly literature. Legal and constitutional scholars, who almost by definition employ an institutional approach, have tended to overlook the literature on the social and economic changes caused by the Civil War and emancipation, while social historians, who focus on the dynamics of class, racial, and gender relations, have likewise tended to ignore the scholarly work on legal and constitutional developments—and often anything that smacks of an institutional approach—in their own accounts of emancipation and its consequences. Instead, Edwards maintains, the two approaches must be seen in tandem, as part of a singular, integrated process. Changes in society at large can no more be understood without reference to legal and constitutional—and indeed all institutional—developments than can legal and constitutional changes be understood apart from the very persons whose lives they influence or the social relations they shape. Conse-

quently, for Edwards, there is little of the vast literature on emancipation of the past several decades that lies beyond the purview of the “legal” history of the Civil War era. As she has done so persuasively in all of her previous scholarship, Edwards here makes a compelling case for an approach that weds legal and constitutional shifts to social and economic developments.

Edwards provides concise and insightful summaries of the scholarship on any number of issues and questions relating to the legal consequences of the Civil War and the end of slavery, and the book is replete with keen observations. It is also deceptively brief. Although coming in at only 176 pages of text, it requires the reader to pause after almost every paragraph to think through the author’s point. While this review could explore a host of issues that the book artfully addresses, three are of particular significance to current historiography on the legal dimensions of the Civil War era: the legal problem of emancipation; the difficulties of grafting the principle of “equality before the law” after the war onto the various forms of inequality that were woven into the very fabric of nineteenth-century American life; and the implications of the some of the important US Supreme Court cases that arose out of the conflicts over Reconstruction and their role in the ultimate “failure” of Reconstruction.

In her section on “The Legal Problem of Emancipation,” in chapter 3, Edwards explores what has long since become the familiar topic of fugitive slaves and wartime emancipation. She provides a concise overview of the myriad issues that Union military commanders and federal policymakers confronted in addressing the problem of fugitive slaves. Much of the vast scholarly literature on this topic, Edwards contends, tends to emphasize, however implicitly, the moral and ethical dimensions of the decisions that individual commanders or lawmakers had to make. Yet this perspective, she further argues, is to miss the deeper, structural problem that was at hand. The crafting of wartime military emancipation, and the transforming of military emancipation into constitutional abolition, was not simply a matter of individual sensibility or opinion, but was rather a matter of what could and could not be done under the Constitution and the law at the time. “That scholarship focuses on the moral and ethical dimensions of the problem, charting lawmakers’ course in grappling with their own feelings about slavery and their efforts to persuade others to act, assuming that abolition could be accomplished once the tide of opinion turned,” Edwards writes. “But the law made it difficult for even the most principled official to use federal power to end slavery. Government policy

during the war years reflected those legal constraints as clearly as it did federal officials’ convictions about abolition” (p. 76). To be sure, there are exceptions to Edwards’s generalization about the scholarship on wartime emancipation, and yet much of that scholarship has been infused, as she insists, with a kind of implicit moral perspective.

Similarly, the phrase “the equal protection of the laws,” as articulated in the Fourteenth Amendment, has resonated with generations of Americans, as well it should. As an expression of the foundational ideals of the American political creed, it stands on a par with “all men are created equal” of the Declaration of Independence and the Constitution’s “We the people.” And yet, as Edwards observes at a number of points in her analysis, by establishing, as they did in all good faith, a rigidly formalistic legal equality, while at the same time remaining almost willfully oblivious to the repercussions of the profound racial, class, and sexual inequalities and hierarchies that constituted the essential reality of American society, the framers of the Fourteenth Amendment in effect codified those inequalities, making it even less likely that such inequalities could be addressed in any meaningful way by law or public policy. Almost by definition, under this understanding of rights, any initiatives that attempted to address historic inequities could be nullified as special dispensations or favoritism, the pleadings of particular groups for an unfair advantage, and thus a violation of other individuals’ rights. The relevance of this point to current discussions of affirmative action or other similar programs should be fairly obvious. This conception of rights manifested itself in any number of ways in the decades after the Civil War, as the efforts of African Americans, women, working people, and American Indians, which were usually collective in nature, to achieve their own understandings of freedom or justice were defeated or suppressed, sometimes ruthlessly. Yet these outcomes, it is important to note, were not the byproduct of some deep, dark conspiracy, concocted by traditional elites or other beneficiaries of the fundamental inequalities in American life. Instead, they resulted from the very logic of a system of rights that was framed in such radically individualistic terms.

Finally, a number of important US Supreme Court decisions during the latter decades of the nineteenth century—the *Slaughterhouse Cases* (1873), *Cruikshank* (1876), the *Civil Rights Cases* (1883), *Plessy v. Ferguson* (1896), and others—have often been seen both as a *consequence* of the nation’s “retreat from Reconstruction” and as a central *cause* for Reconstruction’s failure. More-

over, a number of other important cases, though not directly relating to Reconstruction, are also said to have contributed to that failure. “In fact, conventional historiographical wisdom has laid much of the blame for Reconstruction’s failure at the feet of the US Supreme Court,” Edwards writes, owing to the court’s constraining of federal efforts to enforce civil rights, especially in the South. And while recent scholarship, she continues, “has moderated those conclusions,” it was nonetheless the case during these decades that “the Court upheld a narrow, individualized view of civil rights, one at odds with the aspirations of many Americans” (pp. 161-162). In all of these cases, in one way or another, as Edwards shows, the problem was not so much a lack of will in enforcing civil rights, as is often said to have been the case. To the contrary, the problem was an overzealousness—though one predicated, again, on good faith—in enforcing a definition of rights so narrow as to be of limited use to most ordinary Americans.

As Edwards argues, the main accomplishments of the Civil War and Reconstruction—particularly the three amendments to the Constitution—are appropriately celebrated, but they also raised difficult, even intractable, questions regarding individual rights and freedoms. This volume is a welcome addition to the scholarship on the Civil War era, and it serves as an invaluable entrée into recent scholarship. The book includes limited footnote citations, and it might have been helpful if Edwards had more specifically cited some of the secondary works she is critiquing, since not all readers will be familiar with the works she discusses. But this is a minor point. By contrast, the book includes a bibliographic essay *and* a bibliography, both of which are excellent guides to the literature. This book is highly recommended to scholars of the Civil War era and the period of US history between the mid-nineteenth and early twentieth centuries, in addition to scholars of legal and constitutional history.

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