

H-Net Reviews

in the Humanities & Social Sciences



Peter Charles Hoffer. *Uncivil Warriors: The Lawyers' Civil War.* New York: Oxford University Press, 2018. 240 pp. \$27.95 (cloth), ISBN 978-0-19-085176-7.

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Just when it seemed the Civil War could not possibly provide fresh material, along comes Peter Hoffer's *Uncivil Warriors; The Lawyers' Civil War*. In 184 pages, Hoffer, a legal historian, tells the story of the lawyers who used their skills to frame the issues presented by this unique war, resolve disputes, and generally maintain some form of order to the conflict. He portrays the war ultimately as not one of guns or honor, but "a Civil War by lawyers, of lawyers, and in the end, for lawyers" (p. 4). Along the way, Hoffer supplies a new appreciation of the role of law—and lawyers—in initiating, carrying out, and terminating warfare.

Hoffer's work is an introduction to the role of lawyers in the Civil War, not a treatise. He focuses on the two legal issues at the heart of the conflict: the status of slavery and the purported secession of seven states from the Union. Hoffer convincingly demonstrates that both issues were at least as much legal questions as political ones, and lawyer/politicians used the language of law to understand, analyze, and resolve these questions. As Hoffer notes, the work lawyers performed in placing the conflict in a legal framework made the Civil War, "unlike civil wars before and after, remarkably rule-bound" (p. 3).

However, lawyers did not play an equal role on both sides. The cabinets of both Abraham Lincoln and Jefferson Davis were replete with lawyers, Hoffer notes, but Lincoln (being a lawyer himself) was able to harness the talents of his lawyer/politicians. In Hoffer's exploration of the advocacy and competition within the Lincoln cabinet, we see shades of the *Team of Rivals* narrative that has become familiar to many. Yet Hoffer goes beyond this

story to explore the reason Lincoln was able to not only tolerate, but value the role his lawyer/politicians played in challenging his thinking. Davis, on the other hand, was not receptive to legal counsel, and suffered for it in the form of rash decisions and lack of congressional support.

Uncivil Warriors also adds value by exploring the constitutional mindset that Union lawyer/politicians struggled with, the idea of an "old Constitution" of limited federal powers and states' rights. The book is fundamentally an exploration of how Lincoln and his team of lawyer/politicians—along with the Supreme Court—wrestled with, rubbed up against, and ultimately cast aside the old Constitution to which Lincoln had pledged himself in favor of a new Constitution marked by federal supremacy, human rights, and governmental obligations.

Uncivil Warriors does not fully cover the role of lawyers in the war. Hoffer does not explore the many lawyers who accepted commissions to serve on the battlefield. He spends little time exploring the war's legal development most known by military and international lawyers—the development of the Lieber Code, the document that gave rise many of international law's foundational agreements. At other times, the book seems to struggle to maintain its focus, as in its extended discussion of the Supreme Court's *In Re Merryman* decision (admittedly an important subject). The inclusion of both an epilogue *and* a conclusion in such a short work feels somewhat out of place, as does—to be nitpicky—the title. After all, Hoffer's thrust is that lawyers made the war *more* civil, not less.

These minor points aside, *Uncivil Warriors* remains a

worthy contribution to the field, allowing the reader to see the war not as a primarily political, cultural, or military conflict, but a legal one. If war is truly a political entity, and if most politicians (especially during that era) are lawyers, it makes sense that war should have a strong legal element. Hoffer shows that the Civil War served as a fulcrum around which our view of the Constitution pivots. In this sense, *Uncivil Warriors* makes the Civil War seem like a fresh and underexplored topic—no small accomplishment.

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