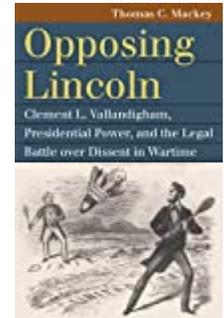


Thomas C. Mackey. *Opposing Lincoln: Clement L. Vallandigham, Presidential Power, and the Legal Battle over Dissent in Wartime (Landmark Law Cases and American Society)*. Lawrence: University Press of Kansas, 2020. 200 pp. \$55.00, cloth, ISBN 978-0-7006-3014-1.



Reviewed by Jennifer Weber (United States Air Force Academy)

Published on H-CivWar (February, 2021)

Commissioned by G. David Schieffler (Crowder College)

Since Mark E. Neely Jr. wrote his Pulitzer Prize-winning book, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* in 1991, a small but growing group of historians has been engaged in a robust discussion about the constitutionality of some of Lincoln's decisions. Neely was not the first to raise the question—James G. Randall wrote *Constitutional Problems under Lincoln* in 1926, for instance—but Neely sparked a sustained conversation that continues even now. Thomas Mackey's *Opposing Lincoln: Clement L. Vallandigham, Presidential Power, and the Legal Battle over Dissent in Wartime*, does not add much new to the discussion in terms of either evidence or argument, but it does neatly synthesize the work in this subfield in the years since *The Fate of Liberty* came out.

Opposing Lincoln ostensibly places Ohio congressman Clement L. Vallandigham at the heart of his story, though in fact, he becomes a central figure only in the last two chapters. Vallandigham rose to notoriety early in the Civil War as Lincoln's (possibly) most outspoken opponent. Certainly he became the most public face of the antiwar Demo-

crats, aka Copperheads, as the war wore on. From shortly after the Confederate attack on Fort Sumter to the end of the war, Lincoln made decisions that were constitutionally debatable and that stirred fierce opposition among conservative Democrats: declaring a blockade, raising troops with only after-the-fact congressional approval, adopting a draft law, and, most controversially, issuing the Emancipation Proclamation and suspending habeas corpus. By the summer of 1862, the Copperheads' rallying cry was "the Union as it was and the Constitution as it is."

Vallandigham's role to this point was to serve mostly as a nuisance for Lincoln, a pesky dog nipping at his heels. While the Copperheads became increasingly difficult to ignore, especially as their call for Midwestern secession gained traction, the congressman himself was easy for the president to disregard. Until, that is, General Ambrose Burnside had Vallandigham, by now out of office, arrested in April 1863 for violating the general's order that banned acts which aided the Confederacy. Among the actions that General Orders No. 38 listed were

two that appear aimed directly at the Copperheads: expressing sympathy for the enemy or making statements that "expressed or implied" treason (pp. 78-79). Within days Vallandigham challenged the order in a speech in which he called Lincoln a tyrant, announced yet again his opposition to the war, and blasted Burnside's order. Burnside had his men arrest Vallandigham five days later and moved Val from his hometown of Dayton to Cincinnati, where a military commission heard the case. The general feared, with some reason, that he could not find a reliably loyal jury in southern Ohio. After a three-day trial, the officers making up the commission found Vallandigham guilty of violating General Orders No. 38 and sentenced him to spend the rest of the war in a military prison.

Lincoln's efforts to manage the fallout from Vallandigham's conviction and his justification for Vallandigham's arrest are the subject of a detailed analysis that constitutes the fifth and final chapter. Rather than have the former congressman sit in prison for the duration, Lincoln ordered him banished to the Confederacy. Val quickly left the South, passed through Bermuda, and went to Canada, taking up residence directly across the river from Detroit. From there, he mounted a campaign for Ohio governor in the fall of 1863, but lost in spectacular fashion. While Vallandigham was busy with his campaign, Lincoln used a letter of protest from Albany Democrats as an opportunity to defend the suspension of habeas corpus. Although suspending habeas corpus obviously was not constitutional in peacetime, he wrote, the war met the constitutional allowance for suspension "in cases of rebellion or Invasion." Although he suggested that he may not have agreed with Burnside's actions, Lincoln pointed out that Vallandigham "was laboring, with some effect, to prevent the raising of troops, to encourage desertions from the army," and to leave the country without sufficient military protection. Comparing a "simple-minded soldier boy who deserts" to the "wily agitator" who encouraged him to desert, Lincoln asked

why he should be allowed to punish only the soldier and not the civilian. Americans would not "lose the right of public discussion, the liberty of speech and the press, the law of evidence, trial by jury, and Habeas corpus" forever, he said—just for the term of the war (pp. 130-131).

Lincoln's response in the widely circulated Corning letter and in subsequent statements was his "clearest assessment of and defense of presidential power in wartime," Mackey writes (p. 123). Vallandigham snuck back into the United States in 1864, but Lincoln did nothing more than tell his subordinates to keep an eye on the Ohioan. Val ended the war a despised figure in much of the North. His arrest, trial, and banishment, however, had resulted in a powerful argument for presidential power during wartime that far outlived both him and Lincoln.

Mackey relays the legal and political confrontation between Lincoln and Vallandigham in great detail. I would be reluctant to assign this to undergraduates, one of Mackey's target audiences, because the detail is almost overwhelming, especially for an audience that has only a minimal understanding of Civil War-era politics or the constitutional stakes at issue. The book would be very useful for graduate students—the second target audience—and their professors if Mackey had used footnotes. For inexplicable reasons, however, there are no citations in this volume, and only a thinly sketched bibliographical essay. These unfortunate decisions minimize the book's value to scholars. The book's greatest value is for scholars who are interested in questions about Lincoln and the wartime powers, but who need a good briefing on the topic before delving into other works.

If there is additional discussion of this review, you may access it through the network, at <https://networks.h-net.org/h-civwar>

Citation: Jennifer Weber. Review of Mackey, Thomas C. *Opposing Lincoln: Clement L. Vallandigham, Presidential Power, and the Legal Battle over Dissent in Wartime (Landmark Law Cases and American Society)*. H-CivWar, H-Net Reviews. February, 2021.

URL: <https://www.h-net.org/reviews/showrev.php?id=55872>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.