

Abraham Lincoln, Esq.

The Legal Career of America's Greatest President

Edited by Roger Billings and Frank J. Williams

(Lexington: University Press of Kentucky, 2010. Pp. 263. Notes, illustrations, index. \$40.00.)

Lincoln on Trial

Southern Civilians and the Law of War

By Burrus M. Carnahan

(Lexington: University Press of Kentucky, 2010. Pp. 165. Notes, index. \$30.00.)

Roger Billings and Frank J. Williams's *Abraham Lincoln, Esq.* and Burrus M. Carnahan's *Lincoln on Trial* are welcome additions to the studies of Lincoln's legal practice and thought that have appeared during the last twenty years. This surprisingly ample literature derives both from the accessibility of a large database containing Lincoln's legal papers and from contemporary critical reflection on lawyers. One important question in much of the "Lincoln as lawyer" literature involves the extent to which Lincoln's background as a lawyer influenced his tortured and, ultimately, tragic presidency.

To emphasize that Lincoln was a lawyer is hardly to stress the insignificant. Folksy legends notwithstanding, Lincoln loved the orderliness and logic of legal thought. While some fellow circuit riders relaxed by reading novels and almanacs, Lincoln delighted in Euclid's *Geometry* and its deductive reasoning. According to Harold Holzer in his essay in *Abraham Lincoln, Esq.*, Lincoln's firm handled between 17 and 34 percent of all cases in his county, far outpacing rival firms. Lincoln himself managed roughly 200 cases per year and also

"took an astounding 340 cases to the Illinois Supreme Court" (p. 9). In the words of Frank J. Williams in an essay in the same volume, "Lincoln was not just a great president, but he was also a great lawyer" (p. 19).

Abraham Lincoln, Esq. includes four general essays evaluating Lincoln's work as a lawyer, six essays discussing particular aspects of Lincoln's Illinois practice, and two essays exploring Lincoln's Washington years. The first group of essays will have the greatest appeal for those seeking a general overview of Lincoln and things legal, but these essays also seem to this reviewer especially prone to excessive lionizing.

The essays on aspects of Lincoln's Illinois practice afford grittier commentaries on how lawyers, legal institutions, and society in general functioned in the antebellum decades. Two—both by Roger Billings—discuss Lincoln's work as a debtor-creditor lawyer and as a real estate lawyer. Lincoln had more debtor-creditor cases than any other kind. He more frequently represented creditors than debtors and even on occasion represented himself while trying to collect a fee. Billings suggests that Lincoln's

debtor-creditor work reveals the problems caused by the shortage of money on the frontier and by banks' inability to satisfactorily support business growth by using unsecured promissory notes (p. 81). Lincoln's real estate work, meanwhile, intertwined with his debtor-creditor work, with many of his cases involving mortgage foreclosures. In both areas, Billings demonstrates, Lincoln prioritized property rights over anything we might call "civil liberties" or "due process."

Writing in the third part of *Abraham Lincoln, Esq.*, Mackubin Thomas Owens and William D. Pederson consider Lincoln's work during his presidency as, respectively, a constitutional lawyer and as an international lawyer. In their essays, we tour Lincoln's understanding of such constitutional issues as secession, the war powers, and emancipation, and such international issues as blockades and the Lieber Code, an early code of war. Pederson lapses into the kind of lionizing characteristic of the first part of the book, saying at one point that "Lincoln could easily be ranked as the greatest international lawyer ever to serve as president of the United States" (p. 241) and at another point invoking a popular book of legal lists to the effect that Lincoln ranks "among the greatest lawyers in American history—second only to John Marshall" (p. 241).

Burrus M. Carnahan's short *Lincoln on Trial* nicely extends the consideration of Lincoln as a wartime

president and an international lawyer. Carnahan insightfully discusses Lincoln's interpretation of the nineteenth century's emerging law of war and this interpretation's impact on civilians. The author avoids the presentist temptation to equate Lincoln's law of war to that of our own time and to compare Lincoln's decisions to more recent presidential actions in relation to the former Yugoslavia, Afghanistan, Iraq, and Libya. Lincoln, it should be underscored, was fighting a civil war on American soil, and he hesitated to invoke the law of war too formally or frequently for fear of according southern rebels sovereignty.

Especially intriguing are the ways in which the emphasis on property law, so evident in Lincoln's Illinois practice, resurfaced in his thinking about war. At the beginning of the Civil War, Lincoln hoped a respect for the peacetime property rights in the border states would discourage secession. Even the Emancipation Proclamation, as he stated in a public letter to James C. Conkling, rested on an appreciation of property. "The most that can be said," Lincoln argued, "is that slaves are property. Is there – had there ever been – any question that by the law of war, property, both of enemies and friends, may be taken when needed?" (p. 27). Late in the war, Lincoln as well as his generals came to the conclusion that "if Southern hearts could not be changed, threats to Southern property could change Southern political calculations" (p. 89). Despite Confederate

pontificating about a duty to preserve a distinctive culture, “[a] confederate government that could not protect its citizens’ property would lose legitimacy” (p. 90).

Most generally, it is plausible that Lincoln’s lawyerly habits of mind, honed by two decades of legal practice, had an impact on his presidential decision making. Both as a practicing lawyer and as president, Lincoln admired Blackstone for having brought order and coherence to a wide range of precedents and developments. Like the model lawyer, Lincoln valued reason over passion, and he greatly preferred to begin with general principles and then draw specific conclusions regarding a given set of facts. Hence, the principle of “military necessity” drove many of his decisions regarding seizure of enemy property, retaliation against the enemy, and devastation of enemy

cities and farms. Carnahan concedes that other psychological and philosophical factors affected Lincoln’s decisions, but he, like most of the essayists assembled by Billings and Williams, maintains that Lincoln’s years as a lawyer affected his presidency. When Lincoln left Springfield, he told his partner not to alter their shingle because he planned to return to practice, but in striking ways Lincoln’s presidency demonstrates that he did not have to return to Springfield to continue working and thinking as a lawyer.

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The Lincoln Assassination Crime & Punishment, Myth & Memory

Edited by Harold Holzer, Craig L. Symonds, and Frank J. Williams

(Bronx, N.Y.: Fordham University Press, 2010. Pp. xii, 259. Illustrations, index. \$27.95.)

This collection is the fourth volume of published essays originally presented at the annual Lincoln Forum in Gettysburg, Pennsylvania; unlike the previous two titles in the series, which relied heavily on essays from academic historians, *The Lincoln Assassination* includes a number of contributions from independent historians. The editors promise that the

essayists “will provide a fresh examination . . . into the legal, social, and iconographic impact of Abraham Lincoln’s death,” (p. 8) but the book provides few, if any, original insights.

In the first essay, co-editors Holzer and Williams examine artistic depictions of Lincoln’s deathbed. They illustrate the essay with examples (many of them from the Lincoln