

### Cavalier Justice: Southern Political Solidarity Quashed Dissent

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## Review

### CAVALIER JUSTICE

#### **Southern political solidarity quashed dissent**

**Hardy, Jr., James D.**

**Spring 2000**

**Neely Jr., Mark E.** *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism*. University Press of Virginia, ISBN 813918944

In 1978, the historian Richard Cobb published a short book, entitled *Death in Paris*, about the 400 or so Parisian suicides who found their way to the municipal morgue during the tumultuous years of the Jacobins and the Directory. Ostensibly local history, Cobb's book shows the continuity of bureaucracy, law, and social attitudes during a revolution, along with the continuing need for public order. His book is one of the important treatises on revolutionary France.

Mark E. Neely, Jr., in **Southern Rights**, has written on the same sort of technical topic in a slim treatise. Neely shows the continuity of social attitudes and legal habits, and the abiding need for social order in tumultuous years, in this case in the Confederacy at war. He has written a significant book on the Confederacy, which has implications both for the nature of Confederate government and for southern American society.

**Southern Rights** takes as its thesis that the Confederate record on civil liberties, particularly habeas corpus, was shabby and disreputable, as several southern lawyers and a few judges pointed out at the time. The Confederate government treated civil liberties with suspicion and disregard that matched, perhaps exceeded, Union practices under Lincoln. Modern historiography maintaining that the Confederacy had a tender regard for civil liberties and habeas corpus has been at least misleading and unsupported by documents.

Neely has found large numbers of letters and reports in the archives of the Confederate War Department, documenting at least 4,100 political prisoners in the South, along with the correspondence of those who wanted passes or exemptions from conscription as well as the work of the loosely organized

habeas corpus commissioners who examined the files of those apprehended for disloyalty or indiscreet talk. The correspondence and reports amounted to a substantial body of documents, filed randomly or under the names of the War Department commissioners, and thus hard to track down or classify. Neely has canvassed the records and put together the story of Confederate political prisoners and imposition of political orthodoxy.

Some generalizations can be made about the southern detainees and political prisoners. Many were poor and lacked social influence, and the majority were arrested in border areas, such as coastal Carolina, western Virginia, and eastern Tennessee. The rise in detentions along the borders mirrored the Union pattern, as did the effective suspension, both by law and by administrative usage, of habeas corpus. Many of the southern political prisoners, known to have opposed secession (and consequently hardly worthy of being considered "true southern men"), were detained for their political opinions. Most were arrested for local, not national reasons; they disturbed their neighbors or the local military, not the central or even state governments. In general, the Confederacy had a civil liberties record similar to that of the Union -- not surprising, since the societies were both American and similarly were under the pressures of war.

The Confederacy did not suspend the writ of habeas corpus for the duration. The Confederate Congress suspended habeas corpus by statute from February 27, 1862, to February 13, 1863, and again from February 15, 1864, to July 31, 1864. In addition, Jefferson Davis declared martial law over selected areas of the Confederacy.

But the Confederate government developed a formal system of administering political arrests: the habeas corpus commissioners housed in the War Department. The commissioners began work in September 1861, before martial law or the suspension of habeas corpus, and worked beyond the statutory suspension of the Great Writ. An informal body, operating without clearly defined duties and functioning for administrative convenience, the commissioners disposed of most cases of political prisoners that went up to Richmond. Neely describes them, on page 97, as a "personnel office . . . disciplining difficult people" in order to salvage some for Confederate service. This is not the usual definition of civil liberties law.

The habeas corpus commissioners functioned fundamentally within a culture of political solidarity. From the crisis years of the 1850s, the South had grown

markedly less tolerant of dissent, and this preference of regional solidarity was accentuated by war and Reconstruction. In this excellent and important book on Confederate political prisoners, Mark E. Neely, Jr. has described a neglected chapter in the development of the southern identity, including a certain carelessness about civil liberties.

*James D. Hardy, Jr. is associate dean of the Honors College at Louisiana State University and has published several books on both history and literature.*