

With Malice Toward Some: Treason and Loyalty in the Civil War Era

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Review

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Blair, William A. *With Malice Toward Some: Treason and Loyalty in the Civil War Era*. University of North Carolina Press, \$40.00 ISBN 978-1-4696-1405-2

Loyalty and Treason During the Civil War

There is just one crime specified in the U. S. Constitution. Treason, according to the third section of Article III, “shall consist only in levying war against (the United States), or in adhering to their enemies, giving them aid and comfort.” This crime, strictly defined, amounts to much more than disloyal speech or even conspiracy against the government. What’s more, conviction for such overt actions, in the absence of a confession, requires the testimony of at least two witnesses. With these terms, the framers set a deliberately high bar, rejecting the British tradition of constructive treason, which gave the king wide latitude to punish enemies both political and personal. As William Blair wryly notes, “In the United States, one has to earn a treason conviction.” (2) Perhaps it was not surprising that until 1859, when the commonwealth of Virginia hanged John Brown, the federal government had not yet tried, convicted, and executed anyone for this singular offense.

Just months later, however, the Civil War triggered a sea change in the ways that Americans thought about and acted toward suspected traitors. In his ambitious new study, *With Malice toward Some*, Blair explores the contradictions of this profound shift. Treason, he contends, had been a subject “very much on the minds of antebellum Americans,” particularly during the sectional crisis, but only with secession and war did it become wrenched loose from its traditional juridical moorings. (34) Faced with an existential threat to the Union’s very survival, both the Lincoln administration and much of the northern public endorsed forceful actions against Confederates, rebel sympathizers, and partisan critics of the president, even as those measures seemed to fall short of the Founders’ high constitutional threshold. Blair underscores the collaborative relationship between Lincoln and the public intellectuals, editors, and citizens

who supported him, arguing that popular understandings of expressed or implied treason proved instrumental in shaping a broad and elastic range of policies against suspected traitors, including arrest, disfranchisement, and the confiscation of slaves and other property. This dynamic interplay among the northern public and its leaders, reconstructed from newspapers, partisan tracts, and the correspondence of political leaders, remains the central thread throughout this lively narrative history.

The Union military likewise emerges as a key collaborator throughout the book. Chapter Four deftly explicates the roles of the provost marshals in defining the contours of loyalty, identifying three kinds of provosts, each with slightly different responsibilities, chains of command, and interests: the army's own provosts, which focused largely upon fellow soldiers; those of military departments assigned to monitor a specific territory; and the men who supervised and enforced the draft in northern states after the Conscription Act of 1863. Blair argues that the "system" of provosts "took shape haphazardly to meet needs as they arose, rather than as a thoughtful, coordinated plan to protect national security." (100) As the war dragged on, provosts became ever more influential, serving as levers of federal enforcement at the local level. The following chapter examines the Union army's experience with households in the occupied South and highlights the fluidity and variability of military-civilian contacts, describing them as a "constant negotiation . . . in which the rules of behavior were established by daily interpersonal exchanges." (147) Chapters Six and Seven examine the military's influence upon elections through the use of test oaths, soldiers' furloughs, and political arrests of Copperheads, including that of Clement Vallandigham. Blair takes seriously the Democratic complaint against such meddling, and although he finds that the military left heavy footprints upon the elections in loyal border states, he concludes that its influence played but a marginal role in Lincoln's 1864 reelection.

The book's final chapters turn to the immediate postwar period and consider the paradoxical tensions between Unionists' contempt for treason and the demonstrable leniency ultimately shown toward most Confederates. Why, despite many northerners' cries for vengeance, did the Union not hang any of the rebels? Blair suggests that any answer must begin with the military. The pardons that Ulysses Grant and other Union leaders offered in exchange for the promised loyalty by defeated Confederates helped advance the turn toward clemency. Critics claimed that military pardons covered the rebels in war but not in peace, and that prosecution of traitors remained possible. Enthusiasm for executing the

rebellion's leaders soon waned, eclipsed by other Republican priorities for Reconstruction, such as the equality and voting rights of African-American men. Yet even as prospects for federal prosecutions of treason faded, the desire to punish traitors by other means persisted at the state level. Blair reveals how border state Republicans utilized loyalty oaths, voter registration laws, and the broad disfranchisement of not just rebels but also "stay-at-home traitors" to secure partisan advantage against Democratic rivals. (269)

Blair's richly textured, impressively researched study rarely loses touch of the connections between high politics, legal theory, and the actions, fears, and attitudes of men and women across the country. "The closer one gets to ground level," he reminds us, "the messier matters appeared." (65) The book's lengthy appendices, which detail the variety of political arrests reported in newspapers, along with courts-martial for treason and disloyalty, attest to this messiness and to the author's skill in elucidating its significance across such a broad area. *With Malice toward Some* is an important book that will surely and deservedly attract great attention from students of the Civil War era for many years to come.

Jeremy Neely is an Instructor of History at Missouri State University in Springfield. He is the author of The Border between Them: Violence and Reconciliation on the Kansas-Missouri Line (University of Missouri Press, 2007) and "The Quantrill Men Reunions: The Border War, Fifty Years On," in Jonathan Earle and Diane Mutti-Burke, eds., Bleeding Kansas, Bleeding Missouri: The Long Civil War on the Border (University Press of Kansas, 2013).