

### Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman

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## Review

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**White, Jonathan W.** *Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman*. Louisiana State University Press, \$49.95 ISBN 978-0-8071-4214-1

### Examining Lincoln's Tactics

In 1850, the eccentric radical abolitionist G.W.F. (George Washington Frost) Mellen published "The Old 'Habeas Corpus,'" a "new" fourteen-verse song he had set to the tune of Yankee Doodle. "Knowing that the peculiarity of the writ of Habeas Corpus is, that no one can be held in restraint without crime, and this is the supreme law of this land, anything in the constitution or laws of any state to the contrary notwithstanding," he wrote in an accompanying note, "we cannot but think it is time that this privilege should be enjoyed by all." As Jonathan W. White (an Assistant Professor of American Studies at Christopher Newport University) tells us, twelve years later several musical odes and ditties appeared in response to the denial of this privilege to John Merryman. White uses this sort of detail to good effect in *Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman*, providing an informative treatment of this troubling episode in American history. Yet, for all its strengths, the book ultimately suffers from its brevity and its contextual detours.

In chapters one and two White does a very nice job of telling the story of the Baltimore riot and the Lincoln Administration's immediate response. He shows that this response served as the catalyst for the Constitutional chain reaction that made Merryman's name an important part of the nation's legal history. However, several areas would have benefited from additional analysis. For example, we are told that "[a]ccounts of Merryman's behavior...conflict with the report that he was willing to slaughter his prize-winning cattle to feed the Pennsylvania soldiers" (20). Yet, we are told very little about this conflict. A more detailed analysis of this apparently incongruous aspect of the Merryman story would have made an important contribution to White's goal of informing

his readers about the motivations for his subject's actions.

In chapters three and four White takes "a slight detour from the Merryman story," a detour that is to the overall detriment of the book (6). To be sure, both chapters contain interesting and informative discussions that will appeal to a broad range of scholars. White's exploration of the difficulties of prosecuting treason cases in courts staffed by southern-sympathizing judges will attract the attention of legal historians. And political historians will find much of interest in his examination of the complexities and inadequacies of the Congressional response and reaction to Lincoln's suspension of habeas corpus. However, in both chapters the Merryman story is relegated to the sidelines. Instead the focus is on the complex legal-political machinations that occurred between a large cast of judicial, legislative, and executive characters. These chapters would have been far more engaging had they been more explicitly linked to the Merryman narrative. These shortcomings aside, in this book White has convincingly demonstrated the importance of his "subsidiary point" that "legal scholars [need] to delve more deeply into unpublished case materials and to rely on more than the published court reports" in order to gain complete understandings of judicial proceedings (8). White seeks to settle the dispute between historians about whether Chief Justice Taney's opinion should be read as the decision of a Supreme Court Justice riding circuit or as an "in chambers" opinion by the Chief Justice. In so doing, he makes exceptional use of the original manuscript copy of Taney's opinion (although, he never explains what an "in chambers" opinion is; nor does he account for his conclusion that the "compilers of *Federal Cases* likely omitted the 'at chambers' notation because they believed it would have forced them to exclude the case from the series they were producing" (40)). And in the best ten pages of the book (in chapter five), White addresses Merryman's motives by engaging in rich analysis of a previously unpublished May 1863 letter from Merryman to Simon Cameron (Lincoln's first Secretary of War).

These superb archival materials demonstrate that the book's brevity, and resulting analytical shortcomings do not stem from insufficient research by its author, a conclusion supported by the material in the extensive endnotes. Indeed, the book would have benefited greatly had much of that material been brought forward and analyzed in the body of the text.

At the beginning of *Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman*, White observes that, "[h]istorians love to tell the Merryman story" (2). Had White italicized Merryman, he could have further

emphasized the quality that sets his treatment apart from the other iterations of this “story.” For it is the Merryman case upon which historians have primarily focused; faces have rarely been put to the judicial decisions, and the parties’ backstories have not been told in detail. As its clever subtitle indicates, this book endeavors to fill this literary void by telling us about the legal trial of John Merryman while additionally (and more significantly) exploring the trials and tribulations that this bridge burning-initiated event wrought. And despite some of its analytical deficiencies and detours, the book admirably accomplishes this goal.

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