

### Justice in Blue and Gray: A Legal History of the Civil War

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## Review

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**Neff, Stephen C.** *Justice in Blue and Gray: A Legal History of the Civil War.* Harvard University Press, \$45.00 ISBN 978-0-674-03602-4

### Cross-Examining Civil War Legal History

This is the best book on the subject since James G. Randall's *Constitutional Problems Under Lincoln*, published in 1926. In some ways that is an astonishing judgment. Stephen Neff is neither an American nor a professional historian. He teaches international law at the University of Edinburgh. In other ways, however, it is not a surprising judgment at all. Neff is also the author of *War and the Law of Nations: A General History* (2005) and curiosity, rather than a preexisting historiographical position, prompted him to direct his expertise on a study of the American Civil War.

Neff focuses primarily on the North and emphasizes that the Union war effort had a "dualistic" legal character. As the Supreme Court put it shortly after the surrender at Appomattox, the United States had "the double character of a belligerent and sovereign, and has the rights of both. These rights co-exist, and may be exercised at pleasure" (28). Neff elaborates the resulting implications for rules of engagement on the battlefield, for occupying enemy territory, for deciding when to prosecute rebels for treason and when to treat them as prisoners of war, for emancipation, for dealing with the property of loyal citizens behind enemy lines, for internal security policy and institutions, for diplomacy, for intensive regulation of trade with the enemy, for direct taxation and military government, for conscription, and for a great many other things. Along this route, Neff orchestrates two main themes. He shows how the law of nations and American public law channeled wartime action in Washington, in the field, and at sea. He also shows how Civil War exigencies generated innovations in the application of international law, all of which were controversial at the time and some of which remain fixtures in the law of war to this day.

Saying that law shaped the Civil War in some ways, yet in others was shaped by it, is not to say anything striking or new. But interpretive flair is not what makes *Justice in Blue and Gray* such a great book. Neff describes everything he touches with extraordinary precision. Neff compresses one complicated, sometimes ambiguous, phenomenon after another with extraordinary clarity. And Neff reports some extraordinary things that nobody else knows. Specialists and neophytes alike will be impressed by this learned, intelligible, and important book.

*Charles W. McCurdy is Professor of History and Law at the University of Virginia. He is the author of The Anti-Rent Era in New York Law and Politics, 1839-1865 (2001).*