

### Act of Justice: Lincoln's Emancipation Proclamation and the Law of War

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## Review

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**Carnahan, Burrus M.** *Act of Justice: Lincoln's Emancipation Proclamation and the Law of War*. University Press of Kentucky, \$40.00 hardcover ISBN 9780812124636

### The Legal Aspects of Emancipation

Abraham Lincoln's Emancipation Proclamation naturally has commanded substantial scholarly scrutiny. Historians have explored the famous order's origins, its apparent limitations, and how the presidential announcement signaled a shift to a more expansive war to undermine southern society as well as its slave system. Scholars have hardly ignored the constitutional implications of the executive verdict for freedom, but typically attention has focused on the political calculations and military impact of Lincoln's decision. In this careful study Burrus Carnahan delves much more deeply into the legal roots of the emancipation policy. A State Department officer with expertise in legal issues as well, he is ideally suited to analyze emancipation in the context of international law respected the waging of war. More than any other work, this intriguing volume clarifies the rather complex legal questions involving the conduct of the war and the issue of confiscating slave owner property.

For all practical purposes, analysis of the law of war and emancipation in the United States begins with John Quincy Adams. As Secretary of State, Adams first defended the property rights of aggrieved American slave owners who lost slaves to the British during the War of 1812. Subsequently, however, as a critic of the Slave Power, Congressman Adams asserted that the war making powers proved ample legal authority to seize enemy property, including slaves. Although the law of nations did not specify that slave property was thus vulnerable, British authorities had resorted to military emancipation both in 1775 and in 1812, as had American generals attempting (without complete success) to quell the Seminole uprising in Florida in the 1830s. Later Charles Sumner, and other antislavery advocates, urged President Lincoln to employ his presidential

powers to assault slavery.

With painstaking attention to the legal details, Carnahan reviews the prewar precedents involving seizure of slave property, and other instances in which military authorities seized private property. He then focuses on the Lincoln administration's struggle with defeating the Confederate challenge without recognizing the secession movement's legitimacy. After somewhat inadvertently recognizing Confederate belligerent rights in the declaration of the coastal blockade, the Lincoln administration grudgingly recognized application of the laws of war by dealing with unavoidable issues such as prisoner of war status, military truces, and the identification and treatment of guerrillas.

Some of the discussion may be familiar to veteran readers, as Carnahan reexamines the policies of Generals John Fr mont, Benjamin Butler, and David Hunter. Even so, the author adds insight by placing these familiar episodes in proper legal context. For example, his analysis of Butler's actions shows that the controversial general's contraband policy did not measure up to typical assumptions. On the other hand, Civil War readers will often be pleasantly surprised by the intriguing new insights offered by Carnahan's approach. First of all, many will be impressed with the legal questions and responsibilities Civil War officers confronted, beyond their expected military duties. In theory, officers could be held personally and financially responsible for possible illegal acts, such as inappropriately seizing private property, even for military use. Proper treatment of prisoners, guerrillas, or escaped slaves presented particular legal headaches. Moreover, estimations of certain commanders may improve (while others slacken). Henry Halleck, for example, knew his military law. Others faced the legal wrangles less confidently. (Another unexpected assessment: Carnahan rates the Confederate sequestration policy as more adept than the Union's confiscation acts. Score one for the Confederacy.)

As might be expected, much of the attention focuses on Lincoln's legal reasoning in reaching his emancipation decision. Besides carefully dissecting Lincoln's emancipation decree, Carnahan also includes a useful appendix containing the various versions of the proclamation as well as other relevant documents. If still necessary, Carnahan's approach helps to remind readers of Lincoln's skills as a lawyer and political leader. Once again, respect for Lincoln's abilities may be further enhanced by the author's treatment of Lincoln's decision-making process. Although Lincoln's evident concern for complying with international law—or worrying about his officers' legal liabilities—may not be

completely convincing, readers will no doubt be impressed by the focus and determination of Lincoln's search for a legally defensible policy. Often criticized for the timing of the emancipation order, Lincoln in Carnahan's analysis earns points for deliberation and attention to legal precedents. In accordance with the law of war, the emancipation edict could be defended as a military necessity to counter an impending threat at the same time that it promised justice to those denied freedom. (International law did not recognize property in man; slave systems existed by municipal or state law only.) Most of all, Carnahan shows that Lincoln greatly extended the typical practice in his freedom order—the last military emancipation decree in the West—by including slaves not actually under one's military control. The author argues that Lincoln's decision was based on sound legal reasoning while helping to inspire more modern efforts to extend justice in the international context. Placing the Civil War emancipation order into international perspective may be Carnahan's main contribution. Finally, his worthy study reminds us of current controversies involving human rights and the usage of presidential power. In that sense his historical foray into international law is quite timely and thought-provoking.

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