Review Essay

In Praise of Civil War Nationalism
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Mark E. Neely Jr., one of the leading Lincoln scholars of the last half-century, has produced yet another masterwork: *Lincoln and the Triumph of the Nation*. Readers take note, though. This is less a book about Lincoln than about the nation, or more precisely, nationalism. And it is as much a book about Confederate nationalism as about Union nationalism. Indeed, it is the most original, thought-provoking, and—at times—quarrelsome book about Civil War-era nationalism ever published.

Although not a new subject to historians of the Civil War, nationalism has received less attention from those scholars than it has from historians specializing in other times and places. Also, as Neely observes, nationalism has tended to receive more criticism than praise from historians. Neely seeks to remedy both deficiencies. He examines Civil War nationalism not only on its own terms but alongside the nationalism of other countries in the period between the late-eighteenth century and the present. He also seeks to correct—at least for the Union and the Confederacy during the Civil War—the view of nationalism that he regards as dominant among scholars: that nationalism is a kind of “pathology.” In taking on the “pathological” approach to nationalism, Neely invokes Benedict Anderson, whose influential book, *Imagined Communities*, criticizes those “progressive, cosmopolitan intellectuals” who describe nationalism in “near-pathological” terms (49). Neely is obviously enamored with Anderson’s book, especially those parts of it that identify such beneficial by-products of nationalism as poems, anthems, and self-sacrifice. Yet, readers familiar with Anderson’s book might find Neely’s reading of it narrow, as Anderson is hardly the champion of nationalism that Neely makes him out to be. While it is true that Anderson refuses to dismiss nationalism as mere pathology, he is far less interested in the intrinsic value of nationalism than in the means by which nationalism emerges. Yet, regardless of what
Anderson says or does not say about nationalism, what Neely says about it could not be clearer. In Lincoln’s America, declares Neely, nationalism was the opposite of pathological. It was stabilizing, peaceful, and unifying, and ultimately it was an effective lubricant in the gears of nation-making that kept both the Union and the Confederacy from self-destructing.

The first part of the book examines presidential power in the Union during the war. This is familiar ground for Neely, whose book on northern civil liberties during the era, *The Fate of Liberty*, won the Pulitzer Prize twenty years ago. But whereas that book focused mainly on the individuals put under arrest (“arbitrary” arrest, according to Lincoln’s critics) and denied habeas corpus, the new book looks at presidential power more broadly and pays closer attention to those who made policy than to those who were arrested, tried, or imprisoned by it. At every point in Neely’s analysis he rejects any suggestion that Lincoln and his administration were conservative, authoritarian, or overreaching in any way when it came to the Constitution. Did Lincoln go too far in rejecting secession and using force to keep southern states in the Union? No. Did he abuse civil liberties when he rejected Chief Justice Roger B. Taney’s *Ex parte Merryman* decision denying his power to suspend habeas corpus? No again. Maybe in another country or another era such moves by an executive would be dangerous and destructive, but not in Lincoln’s America. Why not? Because Lincoln acted out of nationalism, Neely argues, and not the bad sort of nationalism that we associate with autocrats of modern times, but a good, stabilizing, even loving nationalism. Nationalism, Neely, writes, “though a powerful force in the Civil War, did not prove to be conservative, did not find the Constitution an incumbrance to be shed, and did not lead to one-man rule or even to any long-run strengthening of the executive branch under the Constitution” (109).

How do we know that Lincoln’s nationalism was of the good sort? In part because he had stout defenders among some of the great constitutional minds of the day, including Joel Parker and Horace Binney. Also on Lincoln’s side—at least when it came to the constitutionality of waging war for U.S. nationalism in a decisive manner—was Frederick Douglass. The great abolitionist, who Neely rightly argues needs to be recognized by historians as one of the great constitutional thinkers of his day (he is ignored in almost all standard works of constitutional history), may have thought Lincoln slow when it came to emancipation and equal rights, but he was on Lincoln’s side from the beginning in seeing the fight for national unity as both the mandate of the Constitution and the will of the people.
We also know that Lincoln was right in his policies—at least according to Neely—because his critics were anti-nationalists. That was true of Taney, Neely writes, who “was not a nationalist, or not much of one. There were limits to the sacrifices he would make to save the Union. He would settle for two nations rather than exceed those limits” (65). Taney’s most prominent defender in the Merryman case, former justice Benjamin R. Curtis, also does not fare well in Neely’s estimation. Curtis’s pamphlet criticizing Lincoln’s habeas corpus policy contained disclaimers conceding that in times of war other approaches to civil liberties were hard to fathom. Also, neither Curtis nor Taney, nor any of Lincoln’s other detractors, made constructive suggestions about using Congress to craft a habeas policy that was both effective and—in their view—constitutional. Their critique, then, was less constitutional than political. “Grudging and opportunistic” is how Neely describes them, though, to be sure, Neely thinks that Lincoln’s supporters also were guilty of giving into “the adversarial style of politics (and legal proceedings)” of the day (100).

Readers familiar with Neely’s 2005 book, The Union Divided, will recognize in the new book the author’s old vitriol for those who put immediate political gain before the higher cause of the Union. But what is new in Neely’s anti-partisanship is his refreshing critique of judges—not just legislators or the president—as political animals. Legal historians too often treat nineteenth-century judges as judicial interpreters who shielded themselves from the partisan currents of their time. Neely offers a superb corrective to the standard, naïve approach, showing how judges in both the Union and the Confederacy were happy “to hold forth from the bench on political questions” (189). Political gain was always foremost in judges’ minds. Indeed, according to Neely, from the era of the early republic through at least the era of the Civil War, “constitutional history was more concerned with power than with individual liberty” (199).

The legal issue before the courts that Neely explores in the greatest depth is national conscription policy, both North and South. State courts on both sides in the Civil War heard numerous cases in which plaintiffs used the principle of local and state control of the militia to challenge national conscription. Over and over again, judges declared their sympathy with those who preferred local over national control of the military, but in the end, almost all conceded that national conscription was constitutional. State judges, then, despite their local loyalties and visible partisan stripes, tended to be nationalists. In turning away fathers, mothers, wives, and employers of young men who pleaded for the exemption of the conscripted, they put nation before the needs
and desires of the family or the community, and they put national law before state and local law.

Neely’s research into the state court decisions around military service represents perhaps the greatest contribution of the book. Particularly noteworthy are two truly original contributions. First, Neely has uncovered dozens of cases in which families pleaded for their children to be excused from service because of their young age. In most of those cases, the young men had lied about their age and enlisted enthusiastically, or they had been coerced into service by shady recruiting agents. In almost all of the cases, the state judges refused to dismiss the children—and Neely does pointedly use the term children—from military service. That state and local authorities cooperated in keeping underage soldiers and sailors in uniform reveals a significant shift toward the creation of a modern nation-state. As Neely writes, “Civil War society proves to have been more uncomfortably close to the modern era of child soldiers than we might expect in a sentimental Victorian culture” (165).

To justify their nationalizing tendencies, Union state judges often invoked, of all things, a proslavery decision. Ableman v. Booth, an 1859 U.S. Supreme Court ruling, declared that state and local authorities could not obstruct but had to assist in the enforcement of federal laws, in this instance the Fugitive Slave Act of 1850. During the Civil War, when local authorities in the Union looked the other way when men avoided federal conscription, defenders of national conscription repeatedly brought down the Ableman hammer. Neely’s investigation of such cases is truly original and fascinating. Here was a nation set on destroying the “slave power” embodied in the Confederacy, but in order to succeed, it deployed one of the most maligned weapons of the “slave power,” the Fugitive Slave Act. And just as remarkable, the strategy worked. The nationalizing, anti-states-rights logic of Ableman was irrefutable, even if many northerners despised the pernicious way that the decision, along with other federal policies, had kept the nation in thrall to slavery in the years leading up to the war. Thus a proslavery doctrine helped strengthen a nation that would ultimately bring down slavery.

Meanwhile, in the Confederacy, nationalism took a different course and had different manifestations than in the Union, though it was no less powerful. Neely takes on the two dominant interpretations of Confederate nationalism: that it was undermined at all turns by states’ rights ideology; and that it represented the manipulation of popular will by patriarchal slaveholders. The first claim was made famous by the historian Frank L. Owsley and picked up by at least two later
generations of scholars. The second is of more recent vintage and has found its clearest expression in the recent work of Stephanie McCurry. To refute the first claim, Neely once again turns to the lower courts of the South. There, he finds local and state judges, especially in their charges to grand juries, demanding that the citizenry put nation before state and local concerns. These charges to grand juries are indeed rich sources, and they have been underexploited by southern historians and legal historians alike. Neely might have been a bit more critical in using them. Judges knew that their charges to grand juries were likely to become public documents—indeed, they often worked behind the scenes to make sure that they were published in pamphlets or newspapers—and their nationalist rhetoric may have been less a reflection of genuine sentiment than of a desire to garner patronage or higher office from the Confederate government. Neely has done a great service in bringing those speeches to our attention. They put the lie to notions that state-level authorities could never subordinate their duty to their local constituencies to their belief in the higher nationalist cause. And he is not so doctrinaire as to dismiss the power of states’ rights ideology, which may have been subdued by Confederate patriotism during the war but was never vanquished. “The Confederacy did not die of state rights,” Neely writes, “but state rights never died, either” (342).

In fact, the two phenomena—states’ rights ideology and Confederate nationalism—could be compatible, a contention that Neely supports with a nuanced analysis of the editorials in the Charleston Mercury, a paper that was notorious for its states’ rights views but which, as Neely shows, was just as fervent in its support of the new southern nation.

Neely’s criticism of the “died of states’ rights” interpretation is sharp; even more pointed is his argument against the second common critique of Confederate nationalism—that it was less a popular movement than the product of exaggeration and manipulation by slaveholding elites. Neely takes aim in particular at McCurry’s Confederate Reckoning, the most recent comprehensive study of the Confederacy. Where McCurry sees bullying, coercion, and even violence on the part of slave owners to secure pro-secession unity, or at least the appearance of unity, Neely sees relative political harmony. Voters, most of whom were not slave owners, turned out in low numbers to elect delegates to state secession conventions, and almost none of the elections were contested. For Neely, the absence of contention suggests a population of voters who genuinely supported the pro-secession sympathies of the delegates who were elected. He goes so far as to make the provocative argument that there is far more evidence of manipulation by elites in the 1787 elections for delegates to the state conventions to ratify the U.S. Consti-
tution than there is for the convention elections of 1860–61. Those who argue that secession was not a popular movement but a slaveholders’ revolution—or counterrevolution—simply have it wrong, says Neely. While McCurry is his main target, he is implicitly taking on as well a host of other distinguished southern historians who previously have made a similar argument, including Michael P. Johnson, J. Mills Thornton, and William W. Freehling.

Neely is perhaps too intent on keeping his knives sharpened. Take, for example, his use of the apparent electoral calm in the southern states on the eve of secession as evidence against McCurry. The absence of significant political squabbling in the secession elections may look like quiet endorsement of secession among the people, but it could just as well be the result of precisely the sort of intimidation and harassment described by McCurry. Low voter turnout, big electoral majorities, and general political calm are common features of “democratic” elections in modern totalitarian regimes. No sensible observer of such regimes would interpret those phenomena as evidence of genuine popular support for the leadership. Why, then, should we suspend disbelief when we look at the southern state convention elections of 1860–61? If popular sentiment was in line with the political views of the slaveholding elite, then why did the delegates in every Lower South convention but one vote against submitting convention resolutions for secession to a popular vote? (Texas was the exception, and though the popular vote did go in favor of secession, corruption, fraud, and intimidation was rampant in the balloting.) The question of popular support for secession is complex and controversial. It demands nuance and balance. Neely’s interpretation is too fiercely contrarian.

In other parts of the book as well, Neely does a disservice to some historians by quoting selectively from their works and reducing their arguments to caricature. George M. Fredrickson is made to sound like he considered Horace Binney and all other Civil War-era northern intellectuals as “reactionary and authoritarian” (78), when in fact Fredrickson’s assessment is far less severe. Ira Berlin is targeted by Neely as one of many southern historians who refuse to take constitutional ideas seriously and reduce all political and social behavior in the Old South to “mimicry” of slavery. Yet, the newer scholarship that troubles Neely, and that does indeed put slavery at the center of southern life, is more complex than reductionist, and when Neely oversimplifies his fellow historians’ arguments, he risks falling into a reductionist trap of his own making.

The occasional stridency of Neely’s contrarianism is the only weakness is an otherwise significant and engaging book. Every chapter
brims with fresh interpretations and provocative questions. To those who suggest that nationalism is nearly always “pathological,” Neely points out that nationalism in the Civil War North played a leading role in subduing, though hardly eradicating, racism. Predictions that the Emancipation Proclamation would lead to mass desertions among whites and perhaps even an anti-Lincoln coup proved to be far off the mark. The Proclamation may have helped Democrats win some seats in the 1862 elections, but it did not unleash the race war that many had feared. Why not? Because “nationalism simply trumped racism,” Neely writes (155). Northern soldiers’ preoccupation with winning the war and saving the nation pushed whatever racist views they might have had to the margins. Neely is not naive: he well understands the “steady presence of racism” before, during, and after the war (158), and he suggests that racism might indeed have undermined the Union war effort if Stephen A. Douglas, a master of making racism seem constitutionally and politically sound, had remained the leader of the Democratic Party instead of dying in the summer of 1861. Neely’s objective is not to downplay racism or any other crucial phenomena of Civil War-era constitutionalism. Rather, it is to remind readers of the often salutatory effects of an underappreciated phenomenon: nationalism.

Neely also understands that an appreciation of nationalism should not blind us to some of the troubling aspects of nation-building. Lincoln may have invoked nationalism whenever he suspended writs of habeas corpus, but that did not make the suspensions something else or less than an abridgement of individuals’ civil liberties, even if the preservation of the nation was at stake. As Neely writes, “Lincoln’s actions remind us of the necessity of applying force or vigorous leadership in creating or maintaining nation-states even amid generally supportive national sentiment” (197). Behind Confederate nationalism was also a willingness to use force for the sake of the nation-state, but the will to apply and endure the coercive tendencies of nation-building was never as strong there as it was in the Union. To make that point, Neely focuses on wartime Richmond under martial law. Nationalism never faltered in the Confederate capital, but the civilian and military officials there were less willing than their counterparts in the North to use the power granted to them under martial law to disrupt the everyday lives of southerners. That reluctance may have doomed the Confederacy from becoming a long-lasting nation, for, as Neely reminds us, “nationalism may be full and complete enough to sustain a nation-state for years and still require the employment of force on some of its citizens to maintain national existence” (289).
Neely has made a major contribution to the study of Civil War constitutionalism and nationalism, and it is hard not to be persuaded by his argument that if there is a danger in nationalism, it does not lie in some inherent pathology of the nationalist but rather in the tendency of the modernizing nation-state to rely on coercion and even violence to sustain itself. As Neely writes, “it is easy to create a nation . . . but it is very difficult to create a nation-state” (234).