



THE GETTYSBURG COLLEGE JOURNAL OF THE CIVIL WAR ERA

Volume 5

Article 8

4-20-2015

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Class of 2015

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Kirk, Brianna (2015) "Book Review: With Malice Towards Some: Treason and Loyalty in the Civil War Era," *The Gettysburg College Journal of the Civil War Era*: Vol. 5 , Article 8.

Available at: <https://cupola.gettysburg.edu/gcjcw/vol5/iss1/8>

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Book Review: With Malice Towards Some: Treason and Loyalty in the Civil War Era

Abstract

“Popular understanding of treason, not legal definitions in civil courts, guided actions by Union functionaries, both high and low, throughout the Union and Confederacy,” argues William A. Blair. Popular conceptions of treason – widely shared definitions of loyalty and disloyalty – merged with governmental policy and the military to determine the punishment of traitors both during and after the Civil War. Blair adds a flavor of localism to the traditional narrative of treason in the mid-nineteenth century in his newest book *With Malice Toward Some*, demonstrating that treason did in fact pervade public discourse during the American Civil War. [excerpt]

Keywords

Book Review, Civil War, Treason, Union Army

Blair, William A. *With Malice Towards Some: Treason and Loyalty in the Civil War Era*. Chapel Hill: University of North Carolina Press, 2014.

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“Popular understanding of treason, not legal definitions in civil courts, guided actions by Union functionaries, both high and low, throughout the Union and Confederacy,” argues William A. Blair. Popular conceptions of treason – widely shared definitions of loyalty and disloyalty – merged with governmental policy and the military to determine the punishment of traitors both during and after the Civil War. Blair adds a flavor of localism to the traditional narrative of treason in the mid-nineteenth century in his newest book *With Malice Toward Some*, demonstrating that treason did in fact pervade public discourse during the American Civil War. Blair argues that the definition of treason arose more through a collaboration amongst loyal citizens, than top-down policies.

Though it is the only crime defined in the United States Constitution, Blair observes, the Founders purposefully made a treason conviction hard to come by. Since the U.S. had scant precedent regarding how to address a treasonous offense, Union leaders pulled on international law and foreign examples to guide them on how to treat Confederates as “public enemies” without relinquishing them a traitor’s punishment, with all three branches of the government collectively reaching a consensus on how to define and handle treason.

An interesting section of Blair’s book, and one that is receiving more attention from scholars, is a chapter that focuses on the military as an integral part in defining treason and enforcing loyalty. “Many hands beyond the

federal government contributed to the campaign against disloyalty,” he writes. Members of the Union army opposed treasonous language and often arrested ‘traitors’ based on popular definitions of disloyalty – sometimes before higher officials in the Lincoln administration could make an official decision whether to support their action. The Union military influence was also felt in elections, where Blair persuasively claims that they “left a heavy footprint” through the supervision of test oaths and oversight of the ballots to ensure that those deemed disloyal could not vote, especially in the border states. Taken together, the arrests and prosecution of disloyal people and the intimidation faced at the ballot boxes lends the question as to whether the military was working to “stifle political opposition,” or simply enforce loyalty. It was such interactions between soldiers and civilians that determined the “tempo” of loyalty in Civil War America.

Blair’s analysis of the Northern desire to define, locate, and punish treason culminates into the most compelling and perplexing question of his study: Why did the North not hang rebels at the war’s end? Despite Northern outrage over the crimes committed against the Union, no Confederates faced trial, punishment, or execution for treason. Public debates over whether to seek retribution against Confederate leaders like Jefferson Davis delayed their punishment, and the complexity of Reconstruction issues and politics took priority. The federal government worried that pursuing treason trials for top Confederates would not result in the desired convictions. In addition, if rebels like Davis were found guilty of treason and executed so soon after Appomattox, the Federal government feared that they would be consecrated as martyrs. Blair reminds us that even though Confederates did not face the gallows, they received punishment in other

forms. One of the most well-known of these was Fourteenth Amendment, which robbed former Confederates of their political and economic power in the newly rejoined Union.

William Blair convincingly documents conceptions of loyalty and disloyalty in nineteenth century America, providing the topic of treason with the comprehensive analysis that Civil War scholarship needed. Drawing from a large source base of primary and secondary material, the amount of research put into the study is evident on every page. It is a bottom-up history of the complexities of defining treason and loyalty in the Civil War North that is driven by archives, a crucial aspect to the book's success, and is informed by military and legal history. Blair's great strength is that he does not approach the topic through a narrow collection of specific examples, but rather demonstrates how definitions of treason and loyalty were constantly in flux in Northern society. Although Blair's work is an important contribution to the historiography of the American Civil War, there is still more to be written about treason and loyalty in the Civil War era. Other scholars, especially cultural historians, can draw from Blair's work to delve deeper into the meaning of treason and loyalty to see how these ideas and behaviors intersected and interacted in post-war society.

Until then, Blair's captivating study serves its purpose as a key intervention in the field, revealing that while many wanted to follow Lincoln's idea to act merciful toward the Confederacy, others were all too aware that the war could have ended with Southern victory. Unprepared to extend a forgiving hand to traitorous rebels, they wanted to set a precedent and send a clear message to future generations of Americans – that there could be mercy for many, but malice toward some.