

level. In abolishing the separate *procedures* of equity, they became the first lawmakers in America or England to think up and use “procedure” as a conceptual category in the sense that we use it today.

In addition to equity, the second alternative to adversarialism was courts of conciliation, which Kessler explores in the last two chapters of the book. These kinds of tribunals, established in several continental systems and theorized by Jeremy Bentham, were presided over by lay judges (community notables, or representatives of corporatist interests) who engaged in informal dispute resolution that obviated the need for parties to have lawyers. In contrast to equity’s extant narrative as a long-standing system that was ultimately dismantled, the story of American conciliation courts is one of unadopted proposals and brief experiments. The most important of these was the Freedmen’s Bureau’s use of such courts to resolve inter-racial labor disputes for approximately 4 years during Southern Reconstruction. Northern whites viewed the Bureau courts as extralegal and, therefore, a salutary means of paternalistic education for freedpeople and Southern whites in the ways of free labor. By contrast, Southern whites viewed them as extralegal and therefore un-American, drawing on the ascendant conception of due process as defined by the adversary system.

Overall, this book is a tour de force and will become a landmark in the American and comparative history of procedure and legal institutions. Whereas many histories in this genre succeed in recreating internal court operations but have a narrow and technical cast, Kessler provides us—especially in the core chapters on equity—with a superb example of how to integrate the nitty-gritty of institutional history with the cultural and political history of the time. Furthermore, her book is filled with original findings on the United States and simultaneously informed by deep comparative learning.

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Cynthia Nicoletti, *Secession on Trial: The Treason Prosecution of Jefferson Davis*, New York: Cambridge University Press, 2017. Pp. 345. \$99.99 cloth (ISBN 9781108415521); \$29.99 paper (ISBN 9781108401531).

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On May 10, 1865, Union soldiers captured Confederate President Jefferson Davis near Irwinville, Georgia. For 4 years, Davis had presided over a gigantic rebellion against the federal government, but the Union had won on the

battlefield. In a moment of desperation just before his arrest, Davis's wife, Varina, threw a shawl over her husband's head to try to conceal his identity, but Union soldiers recognized him. In the ensuing months, printmakers would have fun depicting the Confederate president dressed in drag.

President Andrew Johnson wrestled with what to do with Davis. Some Unionists wanted him tried in a military tribunal, whereas others insisted that he be arraigned before a jury of his peers. Eventually the Johnson Administration settled on a civil trial in Richmond, the former capital of the Confederacy. Unfortunately, Johnson would soon learn just how difficult it was to obtain a treason conviction in a civil court. For 2 years, Davis sat in prison at Fort Monroe in Hampton Roads, Virginia. But when it became clear in 1867 that the government was not ready to move forward with the trial, he was released on \$100,000 bail. For various reasons, the judges, prosecutors, and defense attorneys continued to delay. Finally, on Christmas Day of 1868, Johnson pardoned all ex-Confederates who were still under indictment for treason, effectively ending Davis's treason trial before it had ever really begun.

The basic outlines of the Davis prosecution have been well known for a century and a half, but Cynthia Nicoletti brings a new level of research and understanding to the proceedings. The story she tells includes people who were once household names but are now, unfortunately, largely forgotten. The prosecution, for example, included Richard Henry Dana, Jr. and William Evarts. Evarts was one of the most prominent attorneys of nineteenth-century America and the father of one of the most important judicial reforms in United States history: the Judiciary Act of 1891 (also known as the Evarts Act), which created our current appellate court system. Dana is most often remembered for his 1840 memoir *Two Years Before the Mast*, but Nicoletti resurrects his important legacy as a constitutional and maritime lawyer.

Nicoletti's main purpose is to reveal how the constitutionality of secession was still an open question after the Civil War. Prosecuting Davis had the potential to settle that question in a court of law. A conviction would forever brand secession as illegal and treasonous because it would reject Davis's claim that the South had lawfully seceded and that he was the leader of a foreign nation who no longer owed allegiance to the United States. An acquittal, by contrast, could undermine the meaning of the Union's victory on the battlefield, which had, in effect, established the illegality of secession.

As national leaders sought to resolve these issues, the Davis trial made for strange political bedfellows. Perhaps most surprisingly, Radical Republican Thaddeus Stevens of Pennsylvania offered his support to Davis's defense team because he believed that a Davis acquittal would support his theory that the Southern states had left the Union and were now "conquered provinces." Nicoletti's account is also one of judges behaving badly: United States District Judge John Underwood was too eager to hear the case and to put his thumbs on the scales of justice, whereas Chief Justice Salmon Chase

was too eager to avoid it. Chase even met privately with defense lawyers to suggest a way for them to end the case.

Readers of this journal will recognize Chapter 4, “The Civil War as a Trial by Battle,” which appeared in the February 2010 issue. The article is excellent—it won the Kathryn T. Preyer Prize—but it may not have been necessary to reproduce it in its entirety in the book, as it takes the focus away from the Davis trial. In another curious decision, Nicoletti bases her discussion of secession on postwar reminiscences by Jefferson Davis and Confederate Vice President Alexander Stephens, as well as on writings by John Calhoun, rather than on the arguments made by Southerners during the secession winter of 1860–61. Nicoletti might also have placed this case in better historical context by explaining the difficulty that the federal government had in prosecuting treason cases in the six decades leading up to the Civil War.

These issues aside, *Secession on Trial* is a valuable piece of research and analysis. Nicoletti has done a remarkable job of unearthing nearly every relevant scrap of archival material related to the case, and she pieces together the story in a compelling way. If used in a legal history course, this book might be assigned in conjunction with *The Confederacy on Trial: The Piracy and Sequestration Cases of 1861* by Mark Weitz, which deals with similar questions in cases that arose much earlier in the war. The two books together could lead to a good discussion among students about the role of judges, courts, and law in wartime.

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Laura Kalman, *The Long Reach of the Sixties: LBJ, Nixon, and the Making of the Contemporary Supreme Court*, New York: Oxford University Press, 2017. Pp. 488. \$34.99 (ISBN-13: 978-0199958221).  
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*The Long Reach of the Sixties*, Laura Kalman’s richly detailed and thoroughly engaging new book, charts the relationship between the Johnson and Nixon administrations and the Supreme Court. The mid-1960s through the early 1970s was a remarkably eventful period for the court. There were ten total Supreme Court nominations, four of them failed (Johnson and Nixon had two each), a resignation under a cloud of scandal (Abe Fortas), and a campaign, quietly urged by Nixon himself, to impeach a justice (William Douglas). It was also a period for which there are unusually thorough records of what was